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WHO: The Office of the Federal Register.

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WASHINGTON, DC

WHEN: June 28, at 9:00 a.m.,
WHERE: Office of the Federal Register, First Floor Confernce Room, 1100 L Street NW., Washington, DC.
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-90-003]

RIN 0581-AA19

Tobacco Inspection; Fees and Charges for Inspection and Grading of Imported Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Adjustment Act of 1983, as amended requires the Secretary of Agriculture to fix and collect fees and charges for the inspection and grading of all tobacco offered for importation into the United States, except cigar and oriental tobacco. This action would increase the fees charged to importers from 40 cents to 45 cents per hundred pounds. The increased fees are necessary in order to cover the Department's costs of providing services under the Act.

EFFECTIVE DATE: August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ernest Price, Director, Tobacco Division, AMS, USDA, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice was given (55 FR 4615, February 9, 1990) that the Department proposed to amend the regulations governing the inspection of all imported tobacco, except cigar and oriental tobacco, to increase the fees for grading. The fee increase is necessary to cover the cost of providing the service, including administrative and supervisory costs. The authority for this regulation is contained in the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

Interested parties were given an opportunity to comment on the proposed rule. No comments were received. Therefore this action makes final the fee increase as proposed.

Imported tobacco is inspected for grade and quality using the same standards applied to tobacco marketed through a warehouse in the United States. Fees are assessed to cover the cost of providing this grading service. The current fee of $.0040 per pound for grading imported tobacco was effective on October 1, 1989.

The Department proposed to increase the fee to $.0045 per pound. This fee was determined after an annual review and analysis was conducted of the financial status of the program. The major factors generating the need for additional funds are increases in salaries, personnel benefits, and overall administrative costs.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business. Few, if any, of the firms which would be affected by this rule are small businesses. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This action would have no significant economic impact upon any entity, small or large, and would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobaccco inspection program.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committee, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department hereby amends the regulations in 7 CFR part 29, subpart B, as follows:

PART 29—[AMENDED]

1. The authority citation for part 29, subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

2. Section 29.500 is amended by revising paragraph (a) to read as follows:

§ 29.500 Fees and Charges for Inspection and Testing of Imported Tobacco.

(a) The fee for inspection of imported tobacco is $.0045 per pound, and shall be paid by the importer. This inspection fee applies to all tobacco imported into the United States except as provided in § 29.400. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service".

* * * * *

Dated: June 6, 1990.

Daniel Haley,
Administrator.

[FR Doc. 90-13545 Filed 6-11-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-85-AD; Amdt. 39-6615]

Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-200B, 747-200C, 747-300, and 747SR Series Airplanes Equipped With BFGoodrich Door 3 Lower Door Cover Assembly, Part Number (P/N) 5A2789, Installed in Accordance With Supplemental Type Certificate SA886GL or SA887GL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-100, 747-100B, 747-200B, 747-200C, 747-300, and 747SR series airplanes, which requires modification of the BFGoodrich door 3 lower door cover. This

amendment is prompted by a report of interference between the door 3 lower door cover (bustle) and the ramp/slide, which prevented the door from opening. This condition, if not corrected, could result in the ramp/slide failing to deploy during an emergency evacuation.

EFFECTIVE DATE: June 29, 1990.

ADDRESSES: The applicable service information may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information my 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: Robert T. Razzeto, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5355.

SUPPLEMENTARY INFORMATION: Some Boeing Model 747 series airplanes have had door 3 lower door cover BFGoodrich P/N 5A2789 modified in accordance with Supplemental Type Certificate (STC) SA886GL or SA887GL. During a routine deployment test, a door 3 one-piece ramp/slide, P/N 7A1418, interfered with the lower door cover and prevented the door from opening. In addition, nonconforming bungee cord assemblies have been found in the ramp/slide installation. This may interfere with the ramp/slide assembly during normal deployment. These conditions, if not corrected, could prevent the deployment of the passenger evacuation system in an emergency situation.

The FAA has reviewed and approved BFGoodrich (B–747 Aircraft Evacuation Systems) Alert Service Bulletin 25–229, dated February 28, 1990, which describes procedures to modify the door 3 lower door covers by fairing the existing door cover to reduce frictional force in areas of potential contact between the ramp/slide and the inside of the door cover.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires modification of the door 3 lower door covers, in accordance with the service bulletin previously described. In addition, this AD requires inspection of the door 3 lower liner bungee cord assembly to ensure proper dimensions, and replacement, if necessary.

Since a situation exists that requires immedicate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to certain Model 747–100, 747–100B, 747–200B, 747–200C, 747–300, and 747SR series airplanes; equipped with BFGoodrich door 3 lower door cover Part Number (P/N) 5A2789, installed in accordance with Supplemental Type Certificate (STC) SA886GL or STC SA887GL; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the door 3 evacuation system, accomplish the following:

A. Within 60 days after the effective date of this AD, accomplish the following:

1. Modify the BFGoodrich door 3 lower door cover P/N 5A2789, in accordance with Paragraph 2.A. of the "Accomplishment Instructions" of BFGoodrich Alert Service Bulletin No. 25–229, dated February 28, 1990.

Note.—This AD does not require the replacement of door boost actuators.

2. Inspect the door 3 lower liner bungee cord assembly, P/N 3A3382–1, for proper dimensions, 32.00 ±.50 inches long and ¼ inch in diameter. Bungee cords which do not meet these dimensions should be replaced prior to further Flight.

B. After accomplishment of paragraph A.1., above, identify the reworked lower door cover by rubber ink stamping "SB–25–229" on the inside of the lower door liner, in accordance with BFGoodrich Alert Service Bulletin 25–229, dated February 28, 1990. Do not obliterate the existing part number.

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Steet, Phoenix, Arizona 85040. 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.

This amendment becomes effective June 29, 1990.

Issued in Seattle, Washington, on June 4, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-13501 Filed 6-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-12-AD; Amendment 39-6630]

Airworthiness Directives; S.N. Centrair Model 201B Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to S.N. Centrair Model 201B gliders, which requires a visual inspection of the rear cockpit airbrake handle for any distortion or cracks, and a determination of adequate thickness of the lower airbrake handle arms. The FAA has become aware of a report of cracks in this handle. The proposed actions will allow continued use of this critical flight control.

EFFECTIVE DATE: July 17, 1990.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD unless already accomplished

ADDRESSES: S.N. Centrair Service Bulletin 201-07, dated February 14, 1990, applicable to this AD, may be obtained from S.N. Centrair Aerodrome FFN 44 36300 La Blanc, France. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. James Kishi, Flight Test Pilot, Aircraft Certification Service, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; or Mr. Carl Mittag, Aerospace Engineer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring a visual inspection of the rear cockpit airbrake handle for any distortion or cracks, and a determination of adequate thickness of lower airbrake handle arms on certain S.N. Centrair Model 201B gliders, was published in the Federal Register on March 27, 1990 (55 FR 11220). The proposal resulted when the FAA became aware of a rear cockpit airbrake handle becoming distorted and cracking in service. Consequently, S.N. Centrair issued S.N. Centrair Service Bulletin 201-07, dated February 14, 1990, which requires visual inspection of the rear cockpit airbrake handle for any distortion or cracks, and a determination of adequate thickness of lower airbrake handle arms.

The French Direction Generale De L'Aviation Civil (DGAC), which has responsibility and authority to maintain the continuing airworthiness of these gliders in France, classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected gliders.

On gliders operated under French registration, this action has the same effect as an AD on gliders certified for operation in the United States. The FAA relies upon the certification of the DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these gliders with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of S.N. Centrair Service Bulletin 201-07 dated February 14, 1990, and the mandatory classification of this Service Bulletin by the DGAC, and concluded that the Condition addressed by S.N. Centrair Service Bulletin 201-07 dated February 14, 1990, was an unsafe condition that may exist on other gliders of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to part 39 of the Federal Aviation Regulations to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly the proposed AD is adopted without change. The FAA has determined there are currently no gliders on the U.S. registry affected by the proposed AD. The cost to visually inspect the rear cockpit airbrake handle per the proposed AD is estimated to be $40 per glider. At this time, there will be no cost associated with the proposed AD. Should some of these gliders become registered in the U.S. in the future, the cost for inspection of the U.S. fleet will not have a significant economic effect on any small entity.

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

S.N. Centrair: Applies to Model 201B (Serial Numbers 201026 thru 201077) gliders certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished. To assure that the airbrake is properly functioning, accomplish the following:

(a) Visually inspect the rear cockpit airbrake handle for any distortion or cracks per the instructions in S.N. Centrair Service Bulletin (SB) No. 201-07, dated February 14, 1990.

(b) Determine that the airbrake handle lower arm has a minimum adequate thickness of 1.5 mm or cannot be inserted into the thickness gauge provided by Centrair per S.N. Centrair SB No. 201-07, dated February 14, 1990.

(c) Prior to further flight, replace any distorted, cracked, or undersized parts with

serviceable parts in accordance with the applicable manufacturers Maintenance Manual.

(d) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30 extension 2710/2711.

Note.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to S.N. Centrair Aerodrome FFN 44 36300 La Blanc, France; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 17, 1990.

Issued in Kansas City, Missouri, on June 1, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-13500 Filed 6-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89-ANM-15]

Alteration of Jet Route J-534; Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule. .

SUMMARY: This amendment alters Jet Route J-534 in the vicinity of Bellingham, WA. This jet route will provide parallel route structures for aircraft departures and arrivals in the Vancouver, BC, Canada, area. This action will enhance the flow of air traffic and reduce controller workload.

EFFECTIVE DATE: 0901 U.T.C., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On November 20, 1989, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter Jet Route J-534 in the vicinity of Bellingham, WA (54 FR 47993). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters Jet Route J-534 in the vicinity of Bellingham, WA. Altering this jet route will provide parallel route structures for aircraft departures and arrivals in the Vancouver, BC, Canada, area. This action will enhance the flow of air trafic and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-534 [Amended]

By removing the words "From Bellingham, WA," and substituting the words "From INT Seattle, WA, 033° and Bellingham, WA, 090° radials; Bellingham;".

Issued in Washington, DC, on May 30, 1990.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-13502 Filed 6-11-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 226

[Docket No. 89N-0390]

Current Good Manufacturing Practice for Type A Medicated Articles; Laboratory Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending a provision of its current good manufacturing practice (CGMP) regulations for Type A medicated articles. The provision currently states "* * * expiration dates shall appear on the labels of the Type A medicated article(s) when needed * * *." This final rule removes the phrase "when needed" to make the provision of the regulations consistent with the agency's intent, with its interpretation that expiration dates must always appear on the labels of Type A medicated articles, and with other provisions of the regulations. This final rule is based on a proposed rule published in the **Federal Register** of December 21, 1989 (54 FR 52421).

EFFECTIVE DATE: July 12, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3044.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 21, 1989 (54 FR 52421), FDA proposed a conforming amendment for a provision of its CGMP regulations for Type A medicated articles. The provision is in paragraph (d) of § 226.58 (21 CFR 226.58) and states that "suitable expiration dates shall appear on the labels of the Type A medicated article(s) when needed to assure that the articles meet

the appropriate standards of identity, strength, quality, and purity at the time of use." FDA proposed to remove the phrase "when needed" to conform § 226.58(d) to the agency's interpretation of § 226.58(d) as requiring that the labels of Type A medicated articles always bear expiration dates. That interpretation was set out by FDA in the preamble to the "Second Generation" final rule, which revised the procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs (March 3, 1986; 51 FR 7382 at 7386). The agency also proposed to remove the phrase "when needed" from § 226.58(d) to conform it to 21 CFR 514.1(b)(5)(x), which, as revised by the "Second Generation" final rule (51 FR 7382 at 7391), includes the statement "Expiration dates shall be proposed for finished pharmaceutical dosage forms and Type A medicated articles."

When issuing the "Second Generation" final rule, the agency inadvertently failed to remove the phrase "when needed" from § 226.58(d). Accordingly, the agency proposed, through notice and comment rulemaking, to so revise § 226.58(d). Interested persons were given 60 days in which to comment on the proposal. No comments were received, and FDA is revising § 226.58(d) by removing the phase "when needed".

List of Subjects in 21 CFR Part 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 226 is amended as follows:

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

1. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: Secs. 501, 502, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 374).

§ 226.58 [Amended]

2. Section 226.58 Laboratory controls is amended in paragraph (d) by removing the phrase "when needed".

Dated: May 16, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–13507 Filed 6–11–90; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 510

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

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for I. D. Russell Co. Laboratories. The sponsor informed FDA of the address change.

EFFECTIVE DATE: June 12, 1990.

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

SUPPLEMENTARY INFORMATION: I. D. Russell Co. Laboratories, 2463 Harrison, Box 1, Kansas City, MO 64141, has informed FDA that it has changed its address to 1301 Iowa Ave., Longmont, CO 80501. Accordingly, the agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect the new address.

List of Subjects in 21 CFR Part 510

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

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 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry "I. D. Russell Co. Laboratories," and in the table in paragraph (c)(2) in the entry "017144" by removing "2463 Harrison, Box 1, Kansas City, MO 64141" and inserting in its place "1301 Iowa Ave., Longmont, CO 80501".

Dated: June 5, 1990.

Robert C. Livingston,

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

[FR Doc. 90–13508 Filed 6–11–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program

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

ACTION: Final rule; summary and disposition of comments on amendment.

SUMMARY: This notice summarizes the comments submitted to OSM concerning the West Virginia permanent regulatory program amendment that the Secretary previously approved, with certain exceptions, as announced by notice published in the **Federal Register** on May 23, 1990. It also explains the Secretary's disposition of those comments. Although the Secretary considered all comments in reaching his decision on the amendment, the urgent need to announce a decision prevented inclusion of a comprehensive summary of the comments and their disposition in the decision notice.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On May 23, 1990 (55 FR 21304–21340), the Secretary of the Interior published his decision to approve, with certain exceptions, an amendment to the West Virginia permanent regulatory program (hereafter referred to as the West Virginia program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) The amendment consists of revisions to the Code of Violations (Administrative Record No. WV 716–B) and extensive modifications to the State's surface mining reclamation regulations, as submitted on April 26, 1989, and revised on December 19, 1989, and February 7, 1990 (Administrative Record Nos. WV 775, WV 807 and WV 821, respectively). A detailed discussion

of the amendment, its background and the Secretary's decision can be found in the May 23, 1990, **Federal Register** notice.

II. Summary and Disposition of Comments

OSM solicited public comment on the proposed amendment by notice published in the **Federal Register** on four different occasions (51 FR 33066, September 18, 1986; 54 FR 22783, May 26, 1989; 55 FR 34, January 2, 1990; and 55 FR 5859, February 20, 1990). The final comment period closed March 7, 1990. Further details on comment opportunities can be found in that portion of the May 23, 1990, **Federal Register** notice entitled "Submission of Proposed Amendments" (55 FR 21304). Since no one requested an opportunity to provide testimony in a public hearing on the proposed amendments, the scheduled hearings were not held. Written comments were received from James E. Ratcliff II on behalf of Hobet Mining and Construction Co., Inc. ("Hobet"); the West Virginia Mining and Reclamation Association on behalf of itself, member companies, the West Virginia Coal Association and the National Coal Association ("WVMRA"); the National Wildlife Federation on behalf of itself, Save Our Mountains, Inc., the Environmental Policy Institute, the West Virginia Council and Mountaineer Chapter of Trout Unlimited, Home Place, Inc., Buckhannon-Tygart River Coalition, Mountain Streams Monitor, 4–H Road Community Association and the West Virginia Highlands Conservancy ("NWF"); the Office of the West Virginia Insurance Commissioner; and the West Virginia Life and Health Guaranty Association.

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), OSM also solicited comments from various Federal agencies with an actual or potential interest in the State program. Comments were received from the U.S. Environmental Protection Agency (EPA), the Soil Conservation Service (SCS) of the U.S. Department of Agriculture; the Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor, and the National Park Service (NPS) of the U.S. Department of the Interior. The Bureau of Land Management of the U.S. Department of the Interior and the Corps of Engineers of the U.S. Department of the Army supported the amendment in general but provided no specific comments. The Fish and Wildlife Service of the U.S. Department of the Interior acknowledged receipt of the comment solicitation letter, but elected not to supply any comments.

Because the revised State rules pertain, in part, to the protection of historic properties, OSM also solicited comments from the West Virginia Department of Culture and History (the State Historic Preservation Officer) and the Advisory Council on Historic Preservation pursuant to 30 CFR 732.17(h)(4). Neither agency commented on the proposed regulations.

The following is a summary of the comments received on the proposed amendments and the Secretary's disposition of those comments. Comments identifying errors of a purely typographical or editorial nature and comments voicing general support for the proposed amendments but devoid of any specific issues are not discussed below; however, copies of all comments have been provided to the State for consideration in this and future rulemakings. In discussing the disposition of comments, numerous responses reference the findings contained in the May 23, 1990, decision document, which should be consulted for a more extensive discussion of the issues in question. Comments and responses are organized by the section of the new State rules to which they pertain. All citations to the State rules in comments and responses have been adjusted to reflect the nomenclature of the February 7, 1990, version of the regulations.

Section 38–2–1: General

1. *Comment:* WVMRA suggests that subsection 1.2(a) should be modified to exempt existing operations and permits and prospecting approvals issued prior to the effective date of the new regulations from compliance with any new requirements of those regulations as long as the operation remains in compliance with all permit conditions and the objectives of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA).

Response: Adoption of the suggested revision would render the State program less effective than the corresponding Federal rules at 30 CFR 701.11, which provide no such exception from compliance with revised performance standards. As authorized by 30 CFR 701.11(e), West Virginia has revised subsections 1.2 and 3.8(b) to clarify that existing structures that meet the new performance standards need not be modified to comply with new design requirements. However, with respect to all other permitting requirements, 30 CFR 774.11(b) provides that the regulatory authority may at any time require reasonable revision of a permit to ensure compliance with program requirements. Therefore, the blanket exemption sought by the commenter would be inconsistent with both this rule and 30 CFR 701.11.

Section 38–2–2: Definitions

1. *Comment:* NWF states that West Virginia's definition of "acid mine drainage" in subsection 2.3 is improperly restricted to mining operations, whereas the corresponding Federal definition at 30 CFR 701.5 also includes reclamation operations.

Response: As discussed in Finding 2.1, West Virginia has revised its definition of acid mine drainage to include both mining and reclamation operations.

2. *Comment:* WVMRA recommends that subsection 2.8, which defines "active surface mining activities" as an operation for which Phase I bond reduction has not been approved, be broadened to apply to the program as a whole, not just for permit renewal purposes. The commenter further suggests that, for permit renewal purposes, the definition be revised to exclude all operations on which mining activities have been completed and only reclamation work remains to be done.

Response: Since 30 CFR 840.11(f)(2) defines an inactive operation, in part, as one for which Reclamation Phase II has been completed, adoption of the first suggested change, which would only require completion of Reclamation Phase I, would render the State definition less effective than the Federal regulations. With respect to the second suggestion pertaining to permit renewals, both the language of the proposed State rule and the commenter's replacement language are no less effective than the Federal rule at 30 CFR 773.11(a), which provides that a permittee need not renew a permit if no further surface coal mining operations will be conducted and only reclamation activities remain to be completed.

3. *Comment:* NWF states that West Virginia's proposed definition of "affected area" at subsection 2.10 is not as complete as the corresponding Federal definition at 30 CFR 701.5.

Response: As discussed in Finding 2.4, the Secretary finds that the State's definition includes all areas included in the Federal definition and that it is therefore no less effective than the Federal definition.

4. *Comment:* WVMRA requests that the definition of "affected area" in subsection 2.10 be revised to restrict it to the bonded area.

Response: Since the corresponding Federal definition in 30 CFR 701.5 has no such limitation, a revision of this nature

would render the State rule less effective than the Federal rule.

5. *Comment:* NWF states that West Virginia should adopt the Federal definition at 30 CFR 701.5 for "auger mining" in place of the State definition in subsection 2.12.

Response: Although it may be less artfully worded, the Secretary finds the proposed State definition to be no less effective than the Federal definition, as discussed in Finding 2.5.

6. *Comment:* WVMRA states that the definition of "bench control system" in subsection 2.14 should be revised to delete the phrase limiting it to haulback-type mining operations.

Response: As discussed in Finding 2.6, the Secretary finds the proposed State definition to be not inconsistent with any Federal requirements. Since there is no corresponding Federal definition, adoption of the change suggested by the commenter would not alter this finding.

7. *Comment:* NWF states that the definition of "best technology currently available" at subsection 2.15 is less effective than the Federal definition in 30 CFR 701.5 because, unlike the Federal definition, it does not list examples of the practices or techniques the term could include.

Response: Although the Federal definition lists certain activities, practices and techniques as examples, the list is not all-inclusive nor is its repetition in State programs required. While the State's proposed definition does not contain any examples, it is sufficiently specific to enable the regulatory authority to determine what activities, practices and techniques are considered to be the best technology currently available. Therefore, the State's definition is no less effective than the Federal definition.

8. *Comment:* NWF objects to the addition of the phrase "operated in connection with a mine" as a limiting modifier in the definition of "coal preparation plant" in subsection 2.22.

Response: Section 701(28) of SMCRA defines "surface coal mining and reclamation operations" as including only those activities conducted in connection with a coal mine. In consideration of this statutory language, OSM, on November 22, 1988 (53 FR 47391), amended 30 CFR 785.21 and part 827 to provide that these regulations, which establish permitting requirements and performance standards for coal preparation plants located outside the permit area of a mine, apply only to those plants that are operated in connection with a mine. Therefore, the revised State definition is no less stringent than SMCRA and no less effective than the Federal regulations.

9. *Comment:* NWF states that subsection 2.23 provides a less effective definition of "coal processing waste" than the Federal regulations by omitting the phrase "or other processing or preparation of coal" found in the corresponding Federal definition at 30 CFR 701.5.

Response: The State's definition of coal processing waste is not identical to the Federal definition. However, because it includes all earth materials that are separated and wasted from coal during its physical or chemical processing, cleaning or concentrating, subsection 2.23 includes all materials covered by the Federal definition. It is therefore no less effective than that definition.

10. *Comment:* NWF states that West Virginia's definition of "collateral bond" at subsection 2.27 includes securities with ratings lower than those allowed by the Federal definition at 30 CFR 800.5.

Response: The Federal regulations require that any securities accepted as a collateral bond have a rating of AAA, AA or A or an equivalent rating issued by a nationally recognized securities rating service. Because subsection 2.27(f) includes only those securities with the highest rating issued by a nationally recognized securities rating service, fewer securities would qualify as collateral bond under the State rule than under the Federal rule. The State definition is therefore no less effective than the Federal definition.

11. *Comment:* NWF states that West Virginia's definition of "compaction" at subsection 2.34 is not as complete and clear as the Federal definition at 30 CFR 701.5.

Response: Although West Virginia's definition is more succinct, it is substantively identical to and therefore no less effective than the Federal definition at 30 CFR 701.5.

12. *Comment:* NWF notes that West Virginia's definition of "complete and accurate application" at subsection 2.35 varies from the Federal definition at 30 CFR 701.5 and is much less complete. In addition, the commenter notes that the word "immediately" is not used in the Federal definition and expresses concern that its use by West Virginia could preclude review by citizens and governmental agencies when applicants submit information immediately prior to permit issuance.

Response: As discussed in Finding 2.9, West Virginia has revised its definition of "complete and accurate application" to be no less effective than the corresponding Federal definition. Before an operator can advertise an application, the regulatory authority must determine that it is administratively complete. As defined in subsection 2.9, "administratively complete" means that the application must address each program requirement and contain all information necessary to initiate processing and public review. Furthermore, if an application is revised in any fashion subsequent to the initial advertisement, it must be readvertised pursuant to subsection 3.2(e), thus providing the public with another opportunity for review and comment. Hence, use of the word "immediately" in the State definition will not preclude public review as feared by the commenter.

13. *Comment:* NWF notes that the State's definition of "downslope" at subsection 2.43 is inconsistent with the Federal definition at 30 CFR 701.5.

Response: As discussed in Finding 2.11, the Secretary finds the State's definition of downslope to be less effective than the Federal definition. Accordingly, he is not approving it and is requiring the State to amend it to correct the deficiency.

14. *Comment:* Based on the history of mining operations and established mining practices in West Virginia, WVMRA argues that the definition of "downslope" in subsection 2.43 should be expanded to mean not only the land surface between the valley floor and the projected outcrop of the lowest coal seam permitted to be mined as presently proposed, but also that land lying between any mining-related construction and valley floor.

Response: Although the corresponding Federal definition at 30 CFR 701.5 lacks a counterpart to the suggested addition, the Secretary finds that its inclusion would not be inconsistent with SMCRA or any other Federal requirement. In promulgating this definition and the rules governing steep-slope mining at 30 CFR 816.107 and 817.107, the Secretary did not intend that these rules be applied so as to prohibit the construction of haul road or pond embankments on steep slopes, although, as noted in the preamble to the latter rules, he did intend to prohibit the downslope placement of all construction-related debris, including brush (48 FR 23366, May 24, 1983). Therefore, while the provision suggested by the commenter is not necessary for the State definition to be no less effective than the Federal definition, its addition would not render the State program inconsistent with any Federal requirements if interpreted as discussed herein. However, as discussed in Finding 2.11, the Secretary finds the revised definition proposed by the State

to be less effective than the Federal definition to the extent that it refers to the lowest coal seam permitted to be mined rather than the lowest coal seam being mined, and he is not approving this aspect of the definition.

15. *Comment:* NWF states that West Virginia's proposed definition of "embankment" at subsection 2.44 is much less comprehensive and less effective than the Federal definition at 30 CFR 701.5.

Response: As discussed in Finding 2.12, the Secretary finds the State's definition of embankment to be less effective than the Federal definition. Accordingly, he is not approving it to the extent that it requires that an embankment be five feet or greater in height as measured from the upstream toe, and he is requiring that the State revise its definition to remove this threshold.

16. *Comment:* WVMRA argues that the proposed State definition of "embankment" at subsection 2.44 should be approved since it has been the basis for mining operations in the eastern U.S. for nearly 20 years and since the exempted structures have never presented any safety or stability problems.

Response: As discussed in Finding 2.12, the Secretary finds the State definition to be less effective than the Federal definition at 30 CFR 701.5 and he is not approving it to the extent that it contains a height threshold. The commenter's arguments for adoption are undocumented and do not provide a basis for approval under SMCRA.

17. *Comment:* NWF states that West Virginia's proposed definition of "excess spoil" at subsection 2.47 is much less comprehensive and less effective than the Federal definition at 30 CFR 701.5.

Response: The State's definition omits only that provision of the Federal definition which excludes certain spoil material placed outside the mined-out area. Otherwise, it is substantively identical to the Federal definition. Since the State definition is no less inclusive than the Federal definition, it is no less effective than that definition. The Secretary further notes that subsection 14.14 of the State's rules, which contains performance standards for excess spoil disposal, restores that part of the Federal definition which excludes spoil used to restore the approximate original contour from compliance with excess spoil disposal requirements.

18 *Comment:* NWF notes that the State's proposed definition of "face-up" in subsection 2.50 omits the words "and/or" before "mineral face". NWF argues that these words must be restored to the definition to include those excavations that do not expose the mineral face.

Response: The Federal regulations do not define the term face-up. While the commenter's suggestion may have merit, the context in which this term is used in the State's rules would allow use of either definition without rendering the State program inconsistent with any Federal requirements.

19. *Comment:* NWF states that West Virginia's proposed definition of "haulageway or access road" at subsection 2.59 omits the affected area of surface coal mining and reclamation operations.

Response: As discussed in Finding 2.13, the State has revised its definition of haulageway or access road to conform with the revised Federal definition of "road" at 30 CFR 701.5, which no longer references the affected area. The State definition is substantively identical to and therefore no less effective than the revised Federal definition.

20. *Comment:* NWF states that the word "surface" has been deleted from the States definition of "haulage or access road" at subsection 2.59, thus raising the possibility that not all road surfaces will be included in the definition.

Response: Although West Virginia has deleted the word "surface" from its list of road components, the definition continues to include the entire area within the road's right-of-way. Since the right-of-way will always include the road surface, West Virginia's definition is no less effective than the Federal definition of "road" at 30 CFR 701.5.

21. *Comment:* NWF notes that the State's definition of "hydrologic regime" at subsection 2.65 omits that part of the Federal definition which provides that it is a function of climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

Response: Like the corresponding Federal definition at 30 CFR 701.5, the proposed State rule defines "hydrologic regime" as the entire state of water movement in a given area. The additional language in the Federal definition is explanatory in nature and adds nothing of substance. Therefore, the State's omission of this language does not render its definition less effective than the Federal definition.

22. *Comment:* NWF states that West Virginia's proposed definition of "impoundment" at subsection 2.66 is contrary to the corresponding Federal definition at 30 CFR 701.5 because it is less complete and restricts the definition to a dimensional construction with a prescribed basin size.

Response: As discussed in Finding 2.15, the Secretary finds the State's revised definition of impoundment to be less effective than the Federal definition because it does not include depressions or dugout ponds built at ground level without an embankment or other barrier. Subsequent to receipt of this comment, West Virginia did revise the definition to eliminate its restriction to basins with a capacity of ten acre-feet or more, thus partially addressing the commenter's concern.

23. *Comment:* Based on standard practices used by mining operations in the eastern U.S., WVMRA argues that the definition of "impoundment" or "impounding structure" in subsection 2.66 should be modified to include only those structures five feet or greater in height as measured from the inside toe and with a holding capacity of 10 acre-feet or more.

Response: The Federal regulations at 30 CFR 701.5, 816.49 and 817.49 contain no threshold for regulation of impoundments. In fact, the preambles to these regulations specifically state their intent to include all structures too small to be regulated by MSHA. Therefore, modification of the State definition in the manner urged by the commenter would result in the State program being less effective than the Federal definition of impoundment in 30 CFR 701.5 and the Federal regulations concerning impoundments.

24. *Comment:* NWF states that West Virginia's definition of "incidental boundary revisions" is inadequate.

Response: The State subsequently deleted the definition. (There is no counterpart Federal definition.)

25. *Comment:* NWF comments that the State's definition of "outer spoil" or "outer slope" at subsection 2.81 is not consistent with the corresponding Federal definition of "outslope" at 30 CFR 701.5.

Response: The State definition at subsection 2.81, which includes all disturbed area from the outer point of the bench down to the extreme lower limit of the disturbed land, is substantively identical to and therefore no less effective than the Federal definition, which includes the face of the spoil sloping downward from the highest elevation to the toe. Unlike the State rule, the Federal definition also includes embankment faces. However, the Secretary finds that this omission does not render the State rule less effective since the meaning of "outslope" in this

context is generally understood and not subject to dispute.

26. *Comment:* NWF states that the State definition of "perennial stream" in subsection 2.85 is incomplete.

Response: Since the State rule defines a perennial stream as a stream or portion of a stream that flows continuously, it is substantively identical to the corresponding Federal definition at 30 CFR 701.5, which includes the same language. While the Federal definition also includes additional explanatory language of a nonsubstantive nature, the omission of this language does not render the State definition less effective than the Federal rule.

27. *Comment:* WVSCMRA recommends that the definition of "preexisting discharge" in subsection 2.89 be revised to include discharges discovered between the initial application date and the time mining disturbance begins.

Response: The State definition is substantively identical to that contained in Public Law 100–4. Although the language of the State definition is confusing, the use of this term in the State rules appears to be confined to the establishment of effluent limitations for remining operations in NPDES permits, a matter over which the Secretary has no jurisdiction. To eliminate any confusion, the Secretary recommends that the State revise this definition to clarify that it applies only to NPDES permits, not to permits "under this subsection", as presently stated. Subsection 2.89, to which "this Subsection" refers, is simply a definition; it does not authorize the issuance of any type of permit.

28. *Comment:* NWF states that West Virginia's earlier definition of "probable maximum precipitation" at subsection 2.93 is preferred and should be adopted in preference to the one currently proposed.

Response: The Federal regulations promulgated by OSM do not define "probable maximum precipitation". However, MSHA's regulations at 30 CFR 77.217(d) define this term in a manner substantively identical to that of the State rule. Since this term is used only in the context of structures meeting MSHA criteria, the Secretary finds that the State definition is not inconsistent with any Federal requirements.

29. *Comment:* NWF notes that the State's definition of "prospecting" at subsection 2.94 is less comprehensive and less effective than the corresponding Federal definition of "coal exploration".

Response: As discussed in Finding 2.19, the Secretary finds the State's definition of "prospecting" to be less effective than the Federal definition of "coal exploration" at 30 CFR 701.5. The Secretary is requiring the State to amend its definition to include the gathering of environmental data.

30. *Comment:* WVMRA recommends that the definition of "prospecting" in subsection 2.94 be revised to include only activities that substantially disturb the land's surface.

Response: Revision of the State definition in this manner would render it less effective than the Federal definition of "coal exploration" at 30 CFR 701.5, which has no such exclusion. Substantial disturbance determines the standards applicable to a prospecting operation, not whether or not it is prospecting.

31. *Comment:* NWF states that West Virginia's definition of "reclamation" in subsection 2.100 omits the phrase "approved by the regulatory authority" found in the corresponding Federal definition at 30 CFR 701.5 when referring to the postmining land use.

Response: Since only the Commissioner can approve a postmining land use and since the State definition uses the phrase "approved postmining land use," the Secretary finds the State definition to be substantively identical to and therefore no less effective than the Federal definition.

32. *Comment:* WVMRA suggests revising the definition of "renewable resource lands" in subsection 2.102 to delete the specific inclusion of aquifers and aquifer recharge areas and replace it with the phrase "geographical areas which contribute significantly to the long range productivity of a water supply."

Response: Adoption of this change would render the State definition less effective than the corresponding Federal definition in 30 CFR 701.5, which includes the items proposed for deletion. The meaning of the phrase suggested by the commenter is unclear.

33. *Comment:* WVMRA recommends revising the definition of " 'sediment control structure' or 'sediment pond' " at subsection 2.107 by replacing the word "impoundment" with "structure" and clarifying that discharges from such structures or ponds need only meet *applicable* water quality standards before leaving the permit area.

Response: Since the corresponding Federal definition of "sedimentation pond" at 30 CFR 701.5 uses the term "impoundment", a term with a specific, defined meaning under both the State and Federal rules, adoption of the first change suggested would, in the absence of compensating revisions, render the State definition less effective than the Federal rule. With respect to the commenter's second suggestion, the State has revised its definition to adopt the proposed change. Since the revised definition continues to require compliance with effluent limitations and all applicable water quality standards, this change is non-substantive and does not render the State rule less effective than the Federal definition, which contains a substantively identical requirement.

34. *Comment:* NWF states that West Virginia's definition of "stabilize" in subsection 2.113 is incomplete when compared to the Federal definition at 30 CFR 701.5.

Response: Since the omitted language only provides examples of stabilizing techniques and is thus nonsubstantive, this omission does not render the State definition less effective than the Federal definition.

35. *Comment:* WVMRA recommends deleting the definition of "stoniness" in subsection 2.114 since it has no Federal counterpart.

Response: Since this definition has no Federal counterpart and does not impact other Federal requirements, its presence or absence in the State program would not alter the Secretary's findings regarding the program's effectiveness.

36. *Comment:* WVMRA suggests assorted changes to the definition of "structure" in subsection 2.116 to restrict its scope.

Response: This State definition has no direct Federal counterpart; however, the State uses it in lieu of listing the structures afforded protection from blasting damage under 30 CFR 816.67(d)(1) and 817.67(d)(1). Some of the changes proposed by the commenter would adversely affect this purpose and thus render the State program 1ess effective than the cited Federal rules.

37. *Comment:* WVMRA recommends revising the definition of "subsidence" in subsection 2.118 to provide that it means a sinking, collapsing and cracking of the earth's surface rather than a sinking, collapsing or cracking of the surface, as presently proposed.

Response: While the Federal rules do not define "subsidence", adoption of the suggested change to the State definition could result in the State program being less effective than the Federal rules concerning repair of subsidence-related damage. Any one of the physical phenomena listed in the State definition occurrence (sinking, collapsing, or cracking) can be indicative of subsidence and can cause material damage. Therefore, to require that evidence of all three be present before the event can be considered subsidence, as suggested by the commenter, would

result in operators not being required to repair or compensate persons who experience material damage because of a subsidence event involving only one or two of these phenomena. Such a result would be contrary to the Federal subsidence protection rules at 30 CFR 817.121.

38. *Comment:* NWF states that the Federal definition of "surface mining activities" at 30 CFR 701.5 is more complete than West Virginia's proposed definition of "surface mining and reclamation operation" at subsection 2.123.

Response: The State does not use the term "surface mining activities," which is defined in the Federal rules at 30 CFR 701.5 as "those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location." Instead, it relies on the definition of "surface mining and reclamation operation" in subsection 2.123, which in turn relies upon the definition of " 'surface mine,' 'surface mining' or 'surface-mining operations' " in section 22A–3–3(w) of WVSCMRA. (The Secretary interprets the terms "surface-mining operations" in section 22–A–3–3(w) of WVSCMRA and "surface coal mining operations" in subsection 2.123 as being equivalent.) The State statutory definition expressly includes all activities included in the Federal definition of "surface mining activities" except the recovery of coal from a deposit not in its original geologic location, and the State has interpreted its definition as including this type of mining as well. In the August 19, 1986, Regulatory Reform I part 732 notification, OSM required the State to revise this definition to expressly include this type of mining, but, since the definition is in the statute, the State is pursuing this change separately from the amendment being considered in this rulemaking. Except for this deficiency and the changes required in 30 CFR 948.16(c)(2), the combination of the statutory definition of the previously listed terms in section 22A–3–3(w) of WVSCMRA, the definition of "surface mining and reclamation operation" in subsection 2.123 in the proposed regulations, and their usage in the State program is no less effective than the Federal definition of "surface mining activities" at 30 CFR 701.5.

39. *Comment:* NWF comments that West Virginia's proposed definition of "topsoil" at subsection 2.125 is less effective than the Federal definition at 30 CFR 701.5 in that it omits the E horizon.

Response: West Virginia has revised its definition of topsoil to include the E horizon.

40. *Comment:* NWF states that the phrase "affected by coal exploration or surface coal mining and reclamation operations that contains a substance that * * *" has been dropped from the State definition of "toxic mine drainage" at subsection 2.127 and must be restored if the definition is to be clear and no less effective than the corresponding Federal definition at 30 CFR 701.5, which includes this phrase.

Response: As discussed in Finding 2.30, West Virginia has revised its definition of toxic mine drainage to restore language equivalent to that of the Federal rule and to clarify that such drainage could be caused by surface mining operations, reclamation operations or prospecting operations.

41. *Comment:* NWF states that West Virginia's definition of "underground development waste" at subsection 2.129 is less effective than the Federal definition at 30 CFR 701.5.

Response: The State's definition of underground development waste is substantively identical to and therefore no less effective than the Federal definition. Both definitions include all waste rock mixtures from underground mines that are not stowed in the underground workings of the mine producing the waste.

42. *Comment:* NWF argues that the State definition of "valid existing rights" (VER) at subsection 2.130 is inconsistent with the Federal regulations and pertinent Federal court decisions since it provides that VER exists where a person demonstrates that a statutory or regulatory limitation or prohibition on mining would constitute an unconstitutional taking of that person's rights. The Federal regulations at 30 CFR 761.5 authorizing use of such a "takings test" were remanded in In Re: Permanent Surface Mining Regulation Litigation II (Civil Action No. 79–1144, D.D.C. 1985) for failure to comply with the Administrative Procedure Act. In a subsequent proposed rulemaking, the Department of the Interior proposed only two alternatives, the "ownership and authority test" and the "good faith all permits test". The "takings test" set forth in the State's proposed regulations was not included. Thus, according to the commenter, the State's proposal is inconsistent with the Federal rules and cannot be approved. Furthermore, the commenter states, West Virginia is required to adopt the existing Federal standard, the "good faith all permits test", pending promulgation of a final rule by the Department. NWF also has incorporated its comments on the proposed Federal rule as Attachment A.

Response: On November 20, 1986, OSM published a **Federal Register** notice suspending certain portions of its VER definition at 30 CFR 761.5, including those authorizing use of the "takings test" (51 FR 41954–41955). During the period of suspension, pursuant to 30 CFR 740.11(a), OSM decided to use the VER definition contained in the appropriate State or Federal regulatory program when making VER determinations on all Federal lands and on those non-Federal lands within areas listed in section 522(e)(1) of SMCRA where the proposed operations would affect the Federal interest. However, in States such as West Virginia where the State program provides for use of a takings test, OSM decided not to process VER applications for lands within units of the National Park System until a new Federal definition is promulgated, an event which has not yet occurred. OSM published a proposed definition on December 27, 1988, but withdrew it on July 21, 1989 (53 FR 52374–52384, 54 FR 30557).

The Secretary initially approved West Virginia's use of the takings test on November 16, 1983 (48 FR 52046). West Virginia resubmitted the same VER definition as part of the revised regulations that the Secretary approved on July 11, 1985 (50 FR 28324–28342). West Virginia's currently proposed VER definition is identical to the one approved in these previous rulemakings. Since the Federal definition was remanded solely on procedural grounds and since the State definition is unchanged in the rules now under consideration, OSM has no basis upon which to require that West Virginia modify its definition unless and until the Secretary promulgates a Federal VER definition necessitating a change in State programs. Furthermore, in Illinois, OSM recently found use of the "takings test" to be no less effective in meeting the requirements of section 522(e) of SMCRA than the "good faith all permits test" (54 FR 118, January 4, 1989). As previously mentioned, until a new Federal VER definition is promulgated, OSM will not process VER applications concerning any lands within units of the National Park System in West Virginia where such operations would affect the Federal interest. VER-related issues other than the takings test, such as the elements of a good faith effort, continually created VER and determination of when protection comes

into existence, are under separate review. If the Director determines that the State is implementing its approved program in a manner inconsistent with SMCRA or the Federal regulations in these areas, he will, pursuant to 30 CFR 732.17(c), notify the State that a program amendment is necessary.

The comments provided by NWF in Attachment A concern the now-defunct proposed Federal VER rule and are not germane to this rulemaking. Therefore, a response to those comments is inappropriate at this time.

43. *Comment:* WVMRA suggests that the definition of "woodlands" in subsection 2.134 be revised to mean commercial woodlands where flat or gently rolling land is essential for the operation or mechanical harvesting.

Response: The original State definition was excessively vague and has since been revised to read "commercial woodlands * * * where flat or gently rolling land is essential for the operation of mechanical harvesting equipment," to be consistent with the finding concerning the original definition. Adoption of the change proposed by the commenter would restore and exacerbate the vagueness present in the earlier definition. See Finding 2.33 for further discussion of this issue.

Section 38–2–3: Permitting

1. *Comment:* NWF argues that West Virginia's regulations must require an air pollution control plan for all exposed surfaces, as specified in the Federal regulations at 30 CFR 780.15 and 784.26.

Response: As discussed in Finding 3.5, the Secretary is requiring that the State revise its rules to require a plan to effectively control air pollution attendant to erosion as required by 30 CFR 780.15(b)(2) and 784.26(b).

2. *Comment:* NWF states that the violation information required of permit applicants by subsection 3.1 falls short of the Federal requirements, particularly 30 CFR 778.14 (c) and (c)(3).

Response: The State's violation information requirements at subsection 3.1(k) are substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 778.14(c).

3. *Comment:* NWF states that West Virginia does not require that the application contain the name, address and telephone number of the operator if different from the applicant, as required by 30 CFR 778.13(b).

Response: The revised Federal rules no longer contain this requirement in this form. Subsection 3.1(b) of the State rules contains applicant information requirements identical to those of the revised Federal rules at 30 CFR 778.13.

4. *Comment:* NWF states that paragraphs (1)–(3) of subsection 3.1(c) must be revised to include principals, principal shareholders and other persons performing a function similar to a director.

Response: West Virginia has completely revised subsection 3.1. Except as discussed in Finding 3.1, subsection 3.1 is now substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 778.13.

5. *Comment:* Hobet, NWF, and WVMRA recommend that West Virginia revise subsections 3.1(f), 3.4(d)(13)(C) and 3.14(b)(13) to require the listing or identification of all owners of record contiguous or next to, rather than within 100 feet of, any part of the proposed permit area, as do the Federal regulations at 30 CFR 778.13(f).

Response: As discussed in Finding 3.4, the Secretary finds the language used in these State rules no less effective than that of 30 CFR 778.13(f). The intent of the Federal rules is to require listing of the owners adjacent to the property upon the mining is proposed. However, where the proposed permit boundary lies far from the property line, the Secretary agrees that it may not be necessary to list adjacent owners.

6. *Comment:* NWF states that West Virginia fails to mention the conditions under which permit application information can be held in confidence, as required by 30 CFR 778.13(h).

Response: Like 30 CFR 778.13(h), subsection 3.1(h) provides that the applicant can request that any information that is not on public file be held in confidence. Therefore, no change is needed for the State rule to be no less effective than the Federal rule. Also, as discussed in Finding 18.4, subsection 18.4(f) identifies other information that may be held in confidence and requires the Commissioner to develop procedures for persons seeking and opposing disclosure of confidential information.

7. *Comment:* NWF states that, for sake of clarity, the "person" referred to in subsection 3.1(k)(3) should be further defined as "any person identified in paragraph (c) of this section", as required by 30 CFR 778.14(c)(3).

Response: Although subsection 3.1(k)(3) does not reference persons identified in paragraph (c), only those persons identified in paragraph (c) would be interested in initiating administrative or judicial appeals in the context of the regulations. Furthermore, the Federal regulations do not limit appeals to those persons identified in paragraph (c). Therefore, subsection 3.1(k)(3) is no less effective than 30 CFR 778.14(c)(3) and further clarification is not necessary.

8. *Comment:* NWF notes that, while the Federal regulations at 30 CFR 773.13(a)(1)(iv) require that permit application advertisements indicate where written objections and comments may be sent, subsection 3.2(b) of the State regulations fails to mention comments. The commenter also notes that subsection 3.2(b)(12) fails to require that the advertisement identify the approximate timing of any road closures, as required by 30 CFR 773.13(a)(1)(v).

Response: West Virginia has revised paragraphs (b)(8) and (b)(13) of subsection 3.2 to include the provisions sought by the commenter.

9. *Comment:* NWF states that subsection 3.2(b)(11) should be revised to require that permit application advertisements identify landowners based on the distance from the permit area rather than from the coal removal area.

Response: Since the Federal rule concerning permit application advertisements do not require that any landowners be listed, the Secretary has no basis on which to require that West Virginia make the change sought by the commenter.

10. *Comment:* NWF states that subsection 3.3(a) should be revised to clarify that a waiver is needed in circumstances where underground mining causes surface effects within 300 feet of an occupied dwelling. NWF notes that, while OSM has proposed a rule providing that only material damage qualifies as a surface effect, the proposal is being contested.

Response: Until a final Federal rule is promulgated, OSM cannot require a State to amend its program. As discussed in Finding 3.3, subsection 3.3 is no less effective than the existing Federal rule at 30 CFR 761.12(e).

11. *Comment:* NWF states that all structures within 1,000 feet of the proposed permit area should be shown on the map regardless of whether they are owned or leased. The commenter expresses concern that subsection 3.4(d)(7), which requires the identification of owned or leased structures to be used in the mining operation and which are to be exempt from design requirements, might be used to exempt these or other structures from the mapping requirement.

Response: Subsection 3.4(d)(1) requires that the application identify the location and current use of all structures within 1,000 feet of the proposed permit area, a requirement substantively

identical to that of the corresponding Federal rules at 30 CFR 779.24(d) and 783.24(d). The provisions of paragraph (d)(7) are independent of and do not supersede those of paragraph (d)(1). Neither the State nor the Federal rules contain a mapping exclusion for structures based on ownership or lease.

12. *Comment:* NWF states that subsection 3.4(d)(7) should be rewritten to clarify that its provisions are limited to exempted structures.

Response: Since this rule has no Federal counterpart and does not itself exempt any structures, the Secretary finds that it is not inconsistent with any Federal requirements. Therefore, he cannot require the changes sought by the commenter.

13. *Comment:* NWF argues that, to be no less effective than the Federal regulations at 30 CFR 780.11 (a) and (b), West Virginia must restore certain requirements relating to operation plans and specifications.

Response: West Virginia has revised subsection 3.6 to require more detailed information relating to operation plans. As discussed in Finding 3.4, subsection 3.6 is now no less effective than 30 CFR 780.11 and 784.11.

14. *Comment:* NWF states that, to be no less effective than the Federal regulation at 30 CFR 761.12, the phrases "and affected landowners" must be restored to paragraphs (a)(2) and (a)(4) of subsection 3.9, "appropriate advance notice" to subsection 3.9(a)(3), and "written finding based upon information received at the public hearing" to subsection 3.9(a)(4). Also, NWF notes that the proposed regulations completely omit a paragraph relating to mining within 100 feet of a road as set forth in 30 CFR 761.12.

Response: West Virginia has revised subsection 3.9 to ensure that the interests of affected landowners will be protected. The other revisions are not necessary because, as discussed in Finding 3.8, the provisions of subsection 3.9, when read with the statutory provisions of section 22A–3–22(d)(3) of WVSCMRA, are no less effective than 30 CFR 761.12(d).

15. *Comment:* NWF argues that the State failed to identify the nature of the editorial error it corrected in subsection 3.9(b), thereby depriving the public of a meaningful opportunity to comment on its adequacy.

Response: The State merely moved paragraph (b) from subsection 3.9, where it was out of place, to subsection 3.8, its proper location. The wording did not change from that previously reviewed by NWF.

16. *Comment:* NWF states that subsection 3.10(d) must be revised to provide that no application for an experimental practice under this section shall be approved until the regulatory authority makes certain written findings and obtains OSM concurrence, as required by 30 CFR 785.13(d).

Response: As discussed in Finding 3.9, subsections 3.10 and 3.32(d)(8), when read with section 22A–3–10 of WVSCMRA, include the written finding and OSM concurrence requirements sought by the commenter in a manner no less effective than the Federal requirements at 30 CFR 785.13(d).

17. *Comment:* NWF states that subsection 3.12 omits the requirement that the subsidence control plan map identify the location and extent of planned subsidence, as found in the Federal regulations at 30 CFR 784.20(b). Also, the commenter notes that the requirement regarding the anticipated effects of planned subsidence, as found in 30 CFR 784.20(f), has been omitted.

Response: West Virginia has revised paragraphs (a)(3) and (d)(3) of subsection 3.12 to include the provisions sought by the commenter.

18. *Comment:* WVMRA and NWF recommend that language be restored to subsection 3.12(a)(1) to allow the initial subsidence control survey map to be based on a critical deformation angle of less than 15 degrees if the operator can demonstrate the lesser angle is appropriate.

Response: Since the Federal rules at 30 CFR 784.20 do not specify a critical deformation angle, establishment of a minimum angle is left to the discretion of the regulatory authority, provided the angle selected is technically sound. Fifteen degrees has received broad technical acceptance.

19. *Comment:* NWF states that West Virginia's proposed regulations on removal and reprocessing of coal waste are plainly inconsistent with the Federal standards.

Response: Under the revised State rules in subsection 3.14, reprocessing activities must comply with all normal permitting and bonding requirements and meet all performance standards. A reprocessing facility is considered to be a surface coal mining and reclamation operation within the meaning of section 701(28) of SMCRA. As discussed in Finding 3.13, because the requirements at subsection 3.14 are now applicable only to the removal and reclamation of abandoned coal waste piles and since all activities involving the reprocessing or disposal of coal mine waste must comply with the State's normal permitting requirements and performance standards, the Secretary finds subsection 3.14 to be no less stringent than SMCRA and no less effective than the Federal regulations to the extent that the refuse being removed does not meet the definition of coal in 30 CFR 700.5.

20. *Comment:* WVMRA states that the revision of subsection 3.14, which formerly applied to the reprocessing as well as the removal of abandoned refuse piles, is unjustified

Response: The justification for these changes is discussed in Finding 3.13.

21. *Comment:* NPS recommends that subsection 3.15(a)(3) be revised to state that adverse impacts to any publicly-owned park and any place listed on the National Register of Historic Places will be minimized, even where an applicant has valid existing rights to mine. According to NPS, the regulation, as written, implies that adverse impacts need to be minimized only where joint agency approval is obtained.

Response: West Virginia has revised subsection 3.17(c) to clarify that adverse impacts to any publicly-owned park or any place listed on the National Register of Historic Places must be minimized. As discussed in Finding 3.16, the revised State requirements are no less effective than 30 CFR 780.31(a) and 784.17(a).

22. *Comment:* NWF notes that subsection 3.16 limits the area for which fish and wildlife resource information is required and fails to include several specific provisions of the Federal rules such as minimum protective and enhancement measures.

Response: West Virginia has extensively revised its fish and wildlife resource information requirements. As discussed in Finding 3.15, subsection 3.16 is now no less effective than the Federal requirements at 30 CFR 780.16 and 784.21.

23. *Comment:* WVMRA suggests that subsection 3.16(a)(1) be revised to allow the Commissioner to consult with either State or Federal wildlife agencies, rather than requiring consultation with both, when determining the scope of the fish and wildlife resource information needed in the permit application. The commenter also states that consultation with such agencies should be limited to those with responsibilities for fish and wildlife resources in the area of the proposed operation, and further recommends deletion of the requirement that the information in the application be adequate to develop the protection and enhancement plan.

Response: The corresponding Federal rules at 30 CFR 780 16(a)(1) and 784.21(a)(1) require that the scope and level of detail of fish and wildlife resource information needed for permit applications be determined in consultation with those State and

Federal agencies with fish and wildlife responsibilities. They do not allow either State or Federal agencies to be excluded. Also, limiting this requirement to those agencies with responsibilities in the area of the proposed operation would require that consultation occur on a permit-specific basis and would prevent the State from consulting these agencies to develop program-wide guidelines, a result which, while not inconsistent with the Federal regulations, would significantly restrict the regulatory authority's freedom of operation. Finally, the Federal rules require that the resource information be adequate to develop the protection and enhancement plan. Therefore, deletion of this requirement from the State rules would render subsection 3.16(a) less effective than the Federal rules.

24. *Comment:* WVMRA suggests that subsection 3.16(a)(2) be modified to (1) delete the requirement that the Commissioner provide for coordination of permit approval pursuant to the Fish and Wildlife Coordination Act and (2) require that permit review pursuant to that Act be conducted only upon request. The commenter states that granting another agency permit approval authority can be done only by statute, not by regulation.

Response: Section 702(a)(7) of SMCRA requires that surface coal mining and reclamation operations be conducted in accordance with the Fish and Wildlife Coordination Act, and 30 CFR 773.12 requires that each regulatory program provide for coordination of the review and issuance of mining permits in accordance with the applicable requirements of that Act. Therefore, adoption of the commenter's suggestions would render the State rule less stringent than SMCRA and less effective than the Federal rules.

25. *Comment:* WVMRA states that subsection 3.16(a)(3)(C) should be deleted as it is not required by 30 CFR 780.16 and 784.21.

Response: The Federal regulations at 30 CFR 780.16(a)(2)(iii) and 784.21(a)(2)(iii) require that permit applications include site-specific fish and wildlife resource information whenever the permit area or adjacent area is likely to include species or habitats identified through agency consultation as requiring special protection under State or Federal law. Subsection 3.16(a)(3)(C) includes identical language and further specifies that these Federal laws include the Migratory Bird Treaty Act of 1918 and the Bald Eagle Protection Act. The additional language is intended to ensure compliance with 30 CFR 773.12, which requires that each regulatory program provide for coordination of the review and issuance of permits in accordance with the applicable requirements of those Federal statutes. Hence, adoption of the commenter's suggestion would render the State program less effective than the Federal rules.

26. *Comment:* NWF states that West Virginia's regulations regarding parks and historic lands do not appear adequate to place West Virginia in compliance with section 106 of the National Historic Preservation Act since they do not adequately provide for the identification of historic properties, the assessment of effects on such properties, the resolution of adverse effect situations, or consultation with the West Virginia State Historic Preservation Officer (SHPO). The commenter notes that the language of the regulations is totally permissive on the part of the West Virginia regulatory authority and leaves considerable discretion to the Commissioner, who "may require" identification, evaluation, protection, and appropriate mitigation and treatment measures, apparently without criteria for such decisions or consultation with the West Virginia SHPO or other concerned parties. NWF also states that these regulatory changes have not been developed in consultation with or approved by the Council and therefore should not stand in place of the Council's regulations at 36 CFR part 800

Response: The National Historic Preservation Act is not directly applicable to State actions. As discussed in Finding 3.16, the Secretary finds subsection 3.17 to be no less effective than the corresponding OSM requirements concerning protection of historic properties and SHPO consultation at 30 CFR 779.12(b), 783.12(b), 780.31 and 784.17. As mentioned in the introduction to this section, OSM solicited comments from the SHPO and the Advisory Council on Historic Preservation, but neither elected to comment on any of the proposed State amendments.

27. *Comment:* WVMRA states that subsection 3.19 should be revised to delete the protection it provides for archeological sites not listed on the National Register of Historic Places. It also states that the requirement for joint agency approval of any operations affecting publicly owned parks or sites listed on the Register is inconsistent with 30 CFR 784.17 and that only joint agency review should be required.

Response: While 30 CFR 761.11(c) and 761.12(f) do not require protection of archeological sites not listed on the National Register of Historic Places, section 505(b) of SMCRA allows States to impose requirements more stringent than those of the Federal rules if desired. With respect to the second comment, 30 CFR 761.12(f)(1), 780.31 and 784.17 all require joint agency approval. Hence, modification of the State rule in the manner suggested by the commenter would render it less effective than the Federal regulations.

28. *Comment:* WVMRA suggests changing the language of subsection 3.21 pertaining to prohibitions and limitations on mining by referencing only formal National Park Service guidelines concerning wild and scenic study rivers, rather than any guidelines issued pursuant to the Wild and Scenic Rivers Act.

Response: Since the language of the proposed State rule is identical to that found in 30 CFR 761.11(a), it is no less effective than that Federal rule. West Virginia subsequently modified this rule to reference only any "official" guidelines, a change which the Secretary finds nonsubstantive since the Federal rules are not intended to require adherence to unofficial guidelines.

29. *Comment:* NWF states that West Virginia proposes to improperly limit the scope of its hydrologic information requirements in subsection 3.22 by adding the qualifiers "significant" or "currently used or significant" and by substituting the phrase "likely to be contaminated, diminished or interrupted" for "adverse impacts * * * may occur" and "may proximately result in". The commenter is concerned that an aquifer supplying only one or a few homes or agricultural activities might not be considered significant.

Response: The terms "significant" or "currently used" and the phrase "likely to be contaminated, diminished or interrupted" are used in paragraphs (a), (b)(3), (b)(4), (c)(4) and (h) of subsection 3.22 in connection with aquifer protection and water supply replacement. Subsection 2.109 of the State rules defines "significant aquifer" as a stratum or group of strata that can store and transmit water in significant quantities for a specific use. Therefore, even if only one person is using the aquifer, it would be considered significant. Sections 507(b)(11), 508(a)(13), 515(b)(8)(F), 515(b)(10), 517(b)(2) and 717(b) of SMCRA only require the protection of those aquifers being used in some fashion. Furthermore, the Federal regulations at 30 CFR 780.21(f)(3) and 784.14(e)(3) provide that the determination of probable hydrologic consequences (PHC) must include a finding as to

whether the proposed operation could proximately result in contamination, or, for surface mines, diminution or interruption of water sources used for a legitimate purpose; 30 CFR 780.21(i) and 784.14(h) allow the waiver of groundwater monitoring requirements if the regulatory authority determines that each water-bearing stratum for which a waiver is proposed is not one that significantly ensures the hydrologic balance; and 30 CFR 780.21(e) only requires information on water availability and alternative water sources if the PHC determination indicates that the proposed operation may contaminate, diminish or interrupt a water source currently in use. Therefore, the State's use of the term "significant aquifer" in paragraphs (b)(3) and (h) of subsection 3.22 is no less effective than the language used in 30 CFR 780.21(i) and 784.14(h). For the same reasons, the other State provisions concerning significant water sources that serve a legitimate purpose which may be contaminated, diminished or interrupted are no less effective than the Federal requirements at 30 CFR 780.21(f)(3), 784.14(e)(3), and 780.21(e).

30. *Comment:* Hobet states that, since localized variations in coal seam topography cannot be anticipated prior to mining and thus will not be mapped, subsection 3.22(f) must be revised to allow the hydrologic reclamation plan to take the form of either maps or descriptions, rather than requiring both.

Response: The Federal rules at 30 CFR 780.21(h) and 784.14(g) require that the hydrologic reclamation plan include both maps and descriptions to ensure that it is adequately specific to local hydrologic conditions. The plan must be prepared based on available geologic information, including the core drillings or other onsite geological investigations conducted as part of the permit application process. Any localized variations discovered during the mining process can be reflected in subsequent plan revisions.

31. *Comment:* WVMRA recommends that subsection 3.22(f)(6) be revised to specify that approximate premining groundwater recharge capacity need be restored only if required by section 22A–3–24 of WVSCMRA.

Response: Section 22A–3–24 of WVSCMRA deals with water supply replacement, not groundwater recharge capacity. Hence, adoption of the commenter's suggestion would render the State rule less effective than the corresponding Federal rules at 30 CFR 816.41(b)(2), which requires that, in surface mining operations, groundwater quantity be protected by handling earth materials in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, and 30 CFR 780.21(h), which requires that the hydrologic reclamation plan include the steps to be taken to restore approximate premining recharge capacity.

32. *Comment:* EPA states that, to ensure compliance with settleable solids effluent limitations, inspectors should be required to obtain effluent samples immediately after precipitation events at least once per quarter. EPA recommends that the State's rules be amended to require periodic monitoring of solids after storms.

Response: Since neither SMCRA nor its implementing regulations specifically require that inspectors periodically sample point source discharges after storms, OSM cannot require that the State amend its program to do so. However, it is standard practice for State and Federal inspectors to take samples whenever it is believed that a discharge may be violating effluent limitations. Furthermore, inspectors are encouraged to sample discharges following precipitation events.

33. *Comment:* NWF states that, while there is no restriction in the Federal regulations on where surface water monitoring may occur, West Virginia has taken the position that it cannot require monitoring upstream from the mining operation.

Response: Like the Federal rules at 30 CFR 780.21(j) and 784.14(i), subsection 3.22(g) of the State rules requires that surface water monitoring sites be located both upstream and downstream of the operation in such surface water bodies as streams, lakes and impoundments that are potentially impacted or into which water will be discharged. Therefore, subsection 3.22(g) is no less effective than 30 CFR 780.21(j) and 784.14(i).

34. *Comment:* WVMRA suggests that subsection 3.22(g) be modified by deleting the requirement that surface water monitoring sites be located upstream and downstream of the operation in those surface water bodies potentially impacted by the operation or into which water is discharged from the operation. WVMRA also states that monitoring requirements should be identical to those of the NPDES permit.

Response: The Federal rules at 30 CFR 780.22(j)(2)(i) and 784.14(i)(2)(i) contain requirements virtually identical to those of the State rule. Hence, deletion would render the State rule less effective than the Federal rules. Contrary to the commenter's assertion, surface water monitoring requirements under SMCRA and the cited Federal rules clearly are not limited to those established under the NPDES permit.

35. *Comment:* WVMRA states that Subsection 3.22(i) should be deleted as it has no basis in the Federal rules.

Response: Like this State rule, the Federal rules at 30 CFR 780.22(b)(3) and 784.14(b)(3) require that the applicant provide supplemental information if the determination of probable hydrologic consequences indicates that the operation may cause adverse impacts to the hydrologic balance or that acid-forming or toxic-forming material is present that could result in groundwater or surface water contamination. Therefore, deletion of this requirement would render the State program less effective than the Federal rules.

36. *Comment:* NWF states that subsections 3.25 and 3.26 omit certain important terms and conditions relating to the transfer, assignment or sale of permit rights that are found in the Federal regulations at 30 CFR 774.17.

Response: Except as discussed in Findings 3.23 and 3.24, West Virginia has revised subsections 3.25 and 3.26 to be no less effective than 30 CFR 774.17.

37. *Comment:* NWF states that 30 CFR 774.17 require more information in advertisements of applications for the transfer, sale or assignment of permit rights than subsection 3.25(a)(3), e.g., the geographic location of the permit and the address to which written comments may be sent.

Response: Subsection 3.25(a)(2) of the State rules requires that the application for transfer, assignment or sale of permit rights be set forth on forms prescribed by the Commissioner and include the information required in paragraphs (1) through (6) of section 22A–3–9(a) of WVSCMRA. Since section 22A–3–9(a)(6) of WVSCMRA contains advertisement requirements substantively identical to those of 30 CFR 774.17(b)(2), paragraphs (a)(2) and (a)(3) of subsection 3.25 are no less effective than the cited Federal requirements.

38. *Comment:* NWF states that subsection 3.27 omits certain permit renewal application requirements and procedures that are required under the Federal regulations at 30 CFR 774.15. The commenter also states that the rules omit certain provisions relating to approval, burden of proof, alluvial valley floor variance, renewal term, notice of decision and administrative and judicial review found in 30 CFR 774.15.

Response: Although subsection 3.27 may appear to be incomplete to the commenter, when it is read in conjunction with the State's statutory permit renewal provisions at sections

22–3–18(a) and 22A–3–19 of WVSCMRA, the State program includes counterparts to all pertinent Federal requirements and is no less effective than the Federal requirements at 30 CFR 773.11(a), 773.19 and 774.15. The State regulations lack the alluvial valley floor variance provision because there are no alluvial valley floors in West Virginia.

39. *Comment:* WVMRA suggests that a reference to the definition of "active surface mining operation" be included in subsection 3.27(a). The commenter also recommends that this paragraph be revised to require permit renewal only under those circumstances in which it would be required by the Federal rules at 30 CFR 773.11(a).

Response: While the reference to the definition might provide added clarity, it is not needed since this term is used and defined only in terms of this subsection. With respect to the commenter's second recommendation, as discussed in Findings 2.2 and 3.25, the Secretary finds that the rule as proposed by the State is no less effective than the Federal rules at 30 CFR 773.11(a). The change sought by the commenter is therefore unnecessary.

40. *Comment:* WVMRA recommends deletion of subsection 3.27(c), which provides for informal conferences on permit renewal applications, because such conferences are intended for the initial permit application, not renewals. The commenter also argues that such conferences are optional under the State statute, which also requires that conferences be held in the locality of the mining operation.

Response: The Federal rules at 30 CFR 774.15(b)(3) provide that applications for permit renewal are subject to the public participation requirements of 30 CFR 773.13, which includes the opportunity for an informal conference. Furthermore, under 30 CFR 773.13(c)(2), as under the State rule, a conference must be held if one is requested. Therefore, adoption of the commenter's recommendations would render the State program less effective than the Federal rules. Both the State rule (subsection 3.27(c)(2)(A)) and the Federal rules (30 CFR 773.13(c)(2)(i)) already require that the conference be held in the locality of the mining operation.

41. *Comment:* Hobet requests that subsection 3.28(b)(1)(E), which establishes criteria for significant permit revisions, be revised to clarify that a person's right to receive legal notice differs from the public notice required by 30 CFR 773.13.

Response: While such a distinction might be useful, the Secretary finds it to be unnecessary since the Commissioner will be making all such determinations and it is apparent from the introductory language to this rule that a difference is intended.

42. *Comment:* Hobet and WVMRA recommended deletion of the acreage limitations on incidental boundary revisions in subsection 3.29, stating that such limitations are not required by 30 CFR 774.13(d) and are impractical given the size of surface mining operations and the geology of West Virginia.

Response: While neither SMCRA nor the Federal rules impose a specific acreage limitation on incidental boundary revisions, such a limitation is a reasonable interpretation of the term "incidental." Other acreage always can be added by applying for a new permit.

43. *Comment:* NWF notes that the Federal regulation at 30 CFR 774.13(d) provides that any extension to the area covered by the permit except for incidental boundary revisions shall be made by a new application for a permit. According to the commenter, this regulation plainly intends incidental boundary revisions to be limited to minor adjustments to the permit boundary, an intent not in accord with the State rules at subsection 3.29.

Response: West Virginia has revised its incidental boundary revision requirements at subsection 3.29 to provide that coal extraction cannot be the primary purpose of any incidental boundary revision. As discussed in Finding 3.27, the revised requirements are not inconsistent with any Federal requirements.

44. *Comment:* NPS states that West Virginia's proposed incidental boundary revision provisions are confusing, provide for too great an area to be mined without requiring the collection of additional baseline environmental data, and inappropriately exempt underground mining operations from the acreage limitations.

Response: As discussed in Finding 3.27, West Virginia has completely revised its requirements governing incidental boundary revisions. As revised, subsection 3.29 is not inconsistent with any Federal requirements.

45. *Comment:* Hobet objects to the revisions to subsection 3.30, stating that they would limit variances from contemporaneous reclamation requirements for combined surface and underground mining operations to underground mine face-up areas and would require the use of draglines.

Response: The Secretary can find no such limitations or requirements in the State rule. However, to be consistent with the provisions and purpose of 30 CFR 785.18, any variance under subsection 3.30 would have to be limited to that portion of the operation necessary to facilitate underground mining.

46. *Comment:* WVMRA suggests deletion of the last sentence of subsection 3.30(b), which requires that operations granted a variance from contemporaneous reclamation requirements apply for inactive status under subsection 14.11 if the underground mine has not commenced operations within three years of the date of permit issuance, since some of the information requirements of subsection 14.11 would be inapplicable.

Response: Although there is no direct Federal counterpart, this State rule is consistent with 30 CFR 785.18(f), which provides that the regulatory authority may grant such a variance only if it has promulgated specific rules to govern the granting of such variances in accordance with 30 CFR 785.18 and any more stringent requirements deemed necessary.

47. *Comment:* WVMRA suggests that subsection 3.32(b) pertaining to the compliance review databases and procedures be deleted in its entirety.

Response: As discussed in Finding 3.30, subsection 3.32(b) is not inconsistent with any Federal requirements.

48. *Comment:* NWF states that subsection 3.32(c) must be revised to require consideration of past violations as well as current violations when it reviews mining applications.

Response: The meaning of this comment is unclear. Subsection 3.32(c) is substantively identical to its Federal counterpart at 30 CFR 773.15(b) and is therefore no less effective than that rule. Both the State and Federal rules use the phrase "currently in violation".

49. *Comment:* EPA states that the proposed State rules must provide that permit applications will be denied unless there is convincing documentation that postmining acid drainage will not occur.

Response: Subsection 3.22(b), as revised, provides that, in areas where prior mining experience has shown acid-production to be a possibility, or in acid, producing seams in areas with no prior mining history, site-specific data and water sampling and analysis shall be required as part of the application. Subsection 3.22(i) also requires that, if the determination of probable hydrologic consequences indicates that adverse impacts to the hydrologic balance may occur or that acid-forming or toxic-forming material is present that may result in contamination of surface or groundwater supplies, additional information be provided to evaluate

such probable hydrologic consequences and to plan remedial and reclamation activities. Furthermore, subsection 3.32(d) requires that, prior to permit issuance, the Commissioner find that an assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made. Based on this information, he cannot approve the permit unless he determines that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area and that the applicant has demonstrated that reclamation, as required by WVSCMRA and the regulations, can be accomplished under the reclamation plan contained in the permit application. These requirements will effectively achieve the results sought by the commenter.

Section 38–2–4: Haulageways and Access Roads

1. *Comment:* NWF states that subsection 4.1 omits the requirements of 30 CFR 816.150(d) and 817.150(d) concerning protection of streams and should be revised to specify that natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority.

Response: The cited Federal rules prohibit placement of any part of a road in an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with certain procedures and criteria. They also require that roads be located to minimize downstream sedimentation and flooding. As noted in Item E–6 of the March 6, 1990, Regulatory Reform III part 732 notification, OSM is seeking clarification from the State that it will interpret section 22A–3–12(b)(17) of WVSCMRA, which requires that roads be constructed so as to control or prevent erosion, siltation and property damages; section 22A–3–12(b)(18) of WVSCMRA, which requires that operators refrain from constructing roads and access ways in streams or drainage channels or in such proximity to the channel so as to significantly alter its normal flow; and subsection 5.2 of these regulations, which provides that no land within 100 feet of a perennial or intermittent stream shall be disturbed unless authorized by the Commissioner after making certain findings, in a manner no less effective than the Federal regulations cited by the commenter. Finding 5.1 discusses the changes needed in subsection 5.2 of the State's regulations.

2. *Comment:* Hobet objects to the provision in subsection 4.2(b) stating that all linear measurements associated with road construction shall be subject to a 2-percent tolerance.

Response: While the Federal rules contain no such provision, the Secretary finds the establishment of measurement tolerances to be consistent with the regulatory authority's responsibility to ensure uniform enforcement of program requirements.

3. *Comment:* SCS states that, if strictly interpreted, subsection 4.3(a)(3), which provides that in no event shall the sediment load of the stream be significantly increased or stream water quality significantly decreased during road construction, would end all mining, related road construction activities, even those using extensive erosion and sediment control practices.

Response: While the Secretary agrees this result is possible, he finds it unlikely since the purpose of regulating surface coal mining is to minimize its adverse environmental impacts, not to prohibit mining. Use of the term "significantly" implies that some increase in sediment load and decrease in water quality is expected and allowable, although any such increase must be minimized.

4. *Comment:* NWF states that West Virginia's road surfacing requirements at subsection 4.6 do not include durability standards based upon the anticipated weight, speed and volume of traffic, as required by 30 CFR 816.151(e) and 817.151(e).

Response: Item E–13 of OSM's Regulatory Reform III part 732 notification dated March 6, 1990, requires that the State correct this deficiency.

5. *Comment:* NWF states that, unlike 30 CFR 816.150(b)(1) and 817.150(b)(1), subsection 4.7 of the State rules does not require an air pollution control plan for roads.

Response: Neither the cited Federal rules nor the Federal permitting requirements for roads at 30 CFR 780.37 and 784.24 specifically require an air pollution control plan for roads, although roads must be included in the general air pollution control plan required by 30 CFR 780.15 and 784.26. Regardless, subsection 4.7 of the State rules does in fact require a plan for fugitive dust control specific to roads; it also establishes performance standards for dust control no less effective than those of the Federal rules.

6. *Comment:* Hobet argues that the provisions of subsection 4.10 concerning infrequently used access roads should be extended to include roads used only to service and monitor sedimentation ponds.

Response: As proposed by the State, subsection 4.10 already appears to allow the inclusion of such roads. However, as noted in Item E–5 of OSM's Regulatory Reform III part 732 notification dated March 6, 1990, further changes in this rule are needed for it to be no less effective than the corresponding Federal rules at 30 CFR 816.150 and 817.150

7. *Comment:* NWF states that West Virginia's road abandonment rules in subsection 4.11 do not provide for reclamation in a manner no less effective than that required by 30 CFR 816.150(f) and 817.150(f).

Response: Item E–8 of the Regulatory Reform III part 732 notification dated March 6, 1990, requires that the State correct this deficiency.

8. *Comment:* NWF states that the proposed West Virginia standards for transportation facilities other than roads at subsection 4.13(a)(1) fail to require control or prevention of water pollution in accordance with the Federal requirements at 30 CFR 816.181 (b)(1) and 817.181 (b)(1). Also, the commenter notes that subsection 4.13(a)(3) should be revised, consistent with 30 CFR 816.181 (b)(2)(ii) and 817.181 (b)(2)(ii), to specify that such facilities must not contribute suspended solids to streamflow in excess of any limitations established by State or Federal law.

Response: Subsection 4.13(a)(4) requires that transportation facilities other than roads neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards. This requirement addresses the NWF concerns and is no less effective than the corresponding Federal rules at 30 CFR 816.181 (b)(1) and (b)(2)(ii) and 817.181 (b)(1) and (b)(2)(ii). However, as noted in Item E–4 of OSM's Regulatory Reform III part 732 notification dated March 6, 1990, the State may need to expand the scope of these rules to include support facilities other than other transportation facilities to be consistent with the scope of the Federal rules.

9. *Comment:* NWF states that subsection 4.14 does not require that completed roads be certified by a qualified registered engineer or land surveyor, as do the corresponding Federal rules at 30 CFR 816.151(a) and 817.151(a).

Response: Item E–9 of the Regulatory Reform III part 732 notification dated March 6, 1990, requires that the State correct this deficiency.

Section 38–2–5: Drainage and Sediment Control Systems

1. *Comment:* Hobet requests clarification that subsection 5.2, which establishes requirements concerning mining activities within 100 feet of an

intermittent or perennial stream, will not be construed to allow the Commissioner to reject valley or head-of-hollow fills proposed for areas containing an intermittent stream because the normal flow or gradient of the stream within the boundaries of the fill could be adversely affected.

Response. Since the finding questioned by Hobet is not required by the Federal rules at 30 CFR 816.57(a)(1) and 817.57(a)(1), its interpretation is a matter of State discretion.

2. *Comment:* NWF states that subsection 5.4 must specify that its requirements apply to all temporary and permanent impoundments regardless of usage.

Response: To address this concern, West Virginia has revised subsection 5.4(a) to require that all sedimentation control systems and "other water-retaining structures used in association with a mining operation" be designed, constructed, located, maintained, and used in accordance with the criteria set forth in the Handbook or other approved criteria. While the revised provision effectively regulates all impoundments regardless of usage, it does not specifically provide that impoundments other than sediment control structures must comply with the requirements of subsection 5.4, as is necessary to be no less effective than the Federal rules at 30 CFR 816.49 and 817.49, which do not distinguish between those impoundments used for sediment control and those used for other purposes. The Secretary expects West Virginia to resolve this deficiency in concert with the related revisions of this subsection that he is requiring, as discussed in Finding 5.3(d). In any event, the Regulatory Reform III part 732 notification of March 6, 1990, requires correction of this deficiency.

3. *Comment:* SCS objects to subsection 5.4(b)(3), which states that discharges from sediment control structures and bench control systems shall comply with State and Federal water quality standards and meet effluent limitations. The agency states that sedimentation pond discharges cannot meet turbidity standards unless the total runoff volume is stored and the discharge filtered, an unreasonably expensive practice.

Response: The Secretary agrees that the wording of the State rule is confusing in that it could be read as requiring discharges to meet water quality standards. However, he does not believe this is the State's intent. Water quality standards apply only to receiving water bodies, not to discharges, which are instead subject to effluent limitations. While surface mining operations must be conducted so as not to cause or contribute to a violation of water quality standards, discharges themselves need not meet those standards. Therefore, the Secretary interprets the phrase "comply with" in the State rules to mean "not cause or contribute to a violation of." Since there are no effluent limitations for turbidity, the situation causing the SCS concern generally should not arise unless the pond is placed in the stream, a practice which is not encouraged.

4. *Comment:* EPA expresses concern that the State's sedimentation pond design standard of 0.125 acre-foot of sediment storage volume per acre of disturbed area may not assure compliance with the effluent limitations, especially suspended solids and settleable solids. EPA recommends that subsections 4.4 and 5.4(b)(4) of the State's rules be revised to require larger ponds or the inclusion of settling aids such as baffles if necessary to meet effluent limitations.

Response: As discussed in Finding 5.3(d), West Virginia maintains that the 0.125 acre-foot standard, coupled with the requirements of subsection 5.4(b)(7) that all structures be cleaned out when sediment accumulation reaches 60 percent of the design capacity, will provide adequate sediment storage volume and detention time to meet effluent limitations. Because the State has not submitted any technical data to support its claim, the Secretary is directing OSM to conduct a study to determine whether changes are needed for the State program to be no less effective than the Federal requirements at 30 CFR 816.46(c)(1)(iii) and 817.46(c)(1)(iii). In the interim, the definition of "sediment control structure" and "sediment pond" at subsection 2.07 of the State rules requires that all such structures be designed, constructed and maintained to meet effluent limitations.

5. *Comment:* SCS observes that the reference to detention time in subsection 5.4(b)(5)(B) is unclear since the term is not used elsewhere.

Response: The State subsequently deleted this reference. As noted in Finding 5.3(d), OSM will be conducting a study to determine whether West Virginia's sediment control structure design and maintenance requirements provide adequate detention time.

6. *Comment:* MSHA states that paragraphs (b)(9)(A), (b)(9)(D) and (g) of subsection 5.4 contain requirements for embankment-type structures inconsistent with the MSHA requirements for such structures.

Response: These concerns are adequately addressed by paragraph (b)(9)(G) of this subsection, which requires that all structures meeting the criteria of the MSHA regulations at 30 CFR 77.216(a) be designed, constructed, inspected and abandoned in accordance with 30 CFR 77.216.

7. *Comment:* NWF states that the subsection 5.4(d) must be revised to require that inspection reports for structures not meeting MSHA criteria include information regarding the depth and elevation of any impounded waters, existing storage capacity and any existing or required monitoring procedures and instrumentation, as specified at 30 CFR 816.49(a)(10) and 817.49(a)(10).

Response: Subsection 5.4(d)(2)(B) requires that impoundment inspection reports contain the information requested by the commenter regardless of whether the impoundment meets MSHA criteria.

8. *Comment:* Hobet states that removal of non-impounding sediment control structures undermines the environmental protection goals of SMCRA and that the requirement of subsection 5.4(g)(1) that such structures be removed should, therefore, be deleted.

Response: Retention of sedimentation ponds can provide environmental benefits; however, this is not always the case. Also, public safety and land use concerns sometimes dictate removal. Accordingly, blanket retention of such structures is undesirable and would render the State program less effective than 30 CFR 816.56 and 817.56, which require removal and reclamation of temporary structures and renovation of permanent structures to meet permanent impoundment standards.

9. *Comment:* NWF states that subsection 5.4(g) must be revised to require that, prior to bond release, all temporary sediment control structures and temporary impoundments be removed, revegetated and reclaimed in accordance with the approved reclamation plan and postmining land use, as required by the Federal regulations at 30 CFR 816.46(b) (5) and (6), 817.46(b) (5) and (6) and 30 CFR 816.56 and 817.56.

Response: Subsection 5.4(g)(1) contains the requested requirements for completely incised impoundments. Also, subsection 5.4(g)(2) requires that temporary sediment control structures and temporary embankment-type impoundments be removed, while paragraph (g)(4) of this subsection requires that these areas be seeded and mulched immediately. Although there is no express requirement that areas from which embankment-type impoundments

are removed be revegetated in accordance with the reclamation plan, this rule also does not exempt such areas from the revegetation and reclamation requirements of section 9. The Secretary is approving this rule on the condition that it not be interpreted as providing such an exemption.

10. *Comment:* NWF states that West Virginia's regulations must require that any sedimentation pond or earthen structure that will remain on the proposed permit area as a permanent impoundment be designed to comply with the Federal regulations at 30 CFR 77.216–1, 77.216–2, 816.49(b), and 817.49(b).

Response: Except for the apparent exclusion of non-embankment-type structures discussed in Finding 5.3(d), the State regulations at subsections 5.4(g)(3) and 5.5 pertaining to permanent impoundments are no less effective than the corresponding Federal requirements at 30 CFR 800.40(c)(2), 816.49(b), and 817.49(b), as discussed in Finding 5.5. As provided in 30 CFR 780.25(c)(2) and 784.16(c)(2), only impoundments meeting MSHA criteria need comply with MSHA's impoundment design and construction requirements at 30 CFR 77.216–1 and 77.216–2. Although 30 CFR 780.25(b) and 784.16(b)(2) require that sedimentation pond plans comply with MSHA requirements, these rules do not apply to sedimentation ponds not meeting MSHA criteria since there are no MSHA requirements for such structures. Therefore, subsection 5.4(b)(9)(G) of the State rules, which requires that all embankment-type structures meeting MSHA criteria be designed, constructed, inspected and abandoned in accordance with 30 CFR 77.216, is substantively identical to these Federal rules. In addition, the other requirements of subsection 5.4, which correspond to those of 30 CFR 816.49 and 817.49, also apply to such structures. Therefore, except as noted in Findings 5.3(d) and 5.4, the State rules are no less effective than the Federal rules in this respect.

11. *Comment:* MSHA finds subsection 5.4(g)(3)(C) to be in conflict with MSHA requirements because it fails to acknowledge that the operator must apply to MSHA for permission to abandon an impounding structure. The commenter further states that the Commissioner should obtain MSHA concurrence before relieving the operator of responsibility for permanent impoundments.

Response: Since subsection 5.4(b)(9)(G) requires that all structures subject to MSHA requirements be abandoned in accordance with those requirements, MSHA's concerns are unfounded. Also, while the Secretary encourages interagency cooperation and coordination, he can find no basis for requiring MSHA concurrence before DOE relieves an operator of responsibility for a permanent impoundment. There is no requirement for concurrence in the Federal rules concerning permanent impoundments at 30 CFR 800.40(c)(2), 816.49(b) and 817.49(b), and the regulatory authority's actions in this respect would not interfere with or preclude MSHA from enforcing any additional requirements it deems appropriate

Section 38–3–6: Blasting

1. *Comment:* WVMRA suggests replacing the 24-hour notice requirement for surface blasting activities at underground mines in subsection 6.3(b) with language that would allow weekly announcements no less than 24 hours before blasting occurs.

Response: While the suggested revision parallels the language of the corresponding Federal rule at 30 CFR 817.64(a), the language proposed by the State is also no less effective than the Federal rule.

2. *Comment:* MSHA recommends that, due to inconsistencies in interpretations of the term "charged holes," West Virginia revise subsection 6.5(b)(3) to require that all boreholes containing explosives be guarded or posted against unauthorized entry.

Response: Because the Federal regulations at 30 CFR 816.66(a)(2) and 817.66(a)(2) also use the term "charged holes," the Secretary finds the proposed State rule no less effective than its Federal counterparts.

3. *Comment:* WVMRA suggests repunctuating subsection 6.5(d) to clarify its meaning.

Response: The Secretary agrees that the suggested modifications would greatly improve this rule's clarity. In the interim, to be no less effective than 30 CFR 816.67(c) and 817.67(c), he is requiring that the State interpret this rule as if a comma exists between "structure" and "beyond". That is, the rule must be interpreted as prohibiting the casting of flyrock either more than halfway to the nearest dwelling or occupied structure or beyond the area of control, not more than halfway to the nearest dwelling or structure located beyond the area of control.

4. *Comment:* WVMRA suggests deleting all of subsection 6.6(a)(3), which requires the permittee to obtain the owner's approval of the proposed measures to be taken to protect structures other than protected structures.

Response: Since there is no Federal counterpart to this rule and it does not adversely affect other Federal requirements, its presence or absence has no impact on program effectiveness. However, its inclusion may assist in the protection of all structures.

5. *Comment:* NWF states that subsection 6.7 should be revised to clarify that certified blasters must be familiar with all site-specific performance standards, as required by 30 CFR 816.61(c)(4)(i) and 817.61(c)(4)(i).

Response: West Virginia has revised this rule to require that blasters be familiar with the blasting plan and blasting-related performance standards for the operation at which they are working. Although the Federal rules require knowledge of all site-specific performance standards, this requirement appears in the context of the standards concerning the use of explosives. It would serve no useful purpose to require the certified blaster to be familiar with performance standards which are irrelevant to his or her function and for which he or she is not responsible for ensuring compliance. Therefore, the Secretary finds the language of the revised State rule to be no less effective than the corresponding Federal requirements. Inclusion of the word "all" before "blasting-related performance standards" as subsequently requested by the commenter is unnecessary since it is implicit in the context of the rule.

6. *Comment:* WVMRA suggests revising subsection 6.7 by deleting the requirement that the blaster be familiar with all site-specific performance standards.

Response: Modification of this rule in the manner suggested would render it less effective than 30 CFR 816.61(c)(4)(i) and 817.61(c)(4)(i), which require that blasters be familiar with these standards. The State has revised the language of the rule slightly to clarify that the blaster need only be familiar with the blasting plan and blasting-related performance standards for the operation at which he or she is working. As discussed in the response to the preceding comment, the Secretary finds the revised language no less effective than the Federal rules.

7. *Comment:* WVMRA suggests adding a new paragraph to subsection 6.8(a) to provide a waiver of the requirements for preblast survey notification if the applicant had previously notified these owners or residents pursuant to a previous permit application.

Response: SMCRA and the Federal rules at 30 CFR 816.62 and 817.62 allow

no such waiver. Owners and residents may change their minds about the desirability of a survey in the time between receipt of the notifications for the first and second permits.

Section 38–2–7: Premining and Postmining Land Use

1. *Comment:* WVMRA suggests that subsection 7.1(c) be revised by deleting the sentence requiring information concerning previous mining activities.

Response: West Virginia has adopted the commenter's suggestion. Since the deleted information continues to be required by subsection 3.4(d)(11), the deletion does not render the State program less effective than 30 CFR 779.22(b) and 783.22(b), which require that such information be included in the permit application.

Section 38–2–8: Fish and Wildlife Considerations

1. *Comment:* WVMRA suggests adding language to subsection 8.1(e) to make the fish and wildlife protection measures of that paragraph optional.

Response: If this provision were limited to subparagraphs (1) and (3) of this State rule, it would not render the rule less effective than the corresponding Federal rules at 30 CFR 816.97(e) and 817.97(e), which contain similar language. However, these Federal rules contain no waiver provisions for the requirements of subparagraphs (2) and (4) concerning haul roads and toxic ponds.

2. *Comment:* NWF recommends that subsection 8.1(e)(4), which requires that wildlife be excluded from ponds containing hazardous concentrations of toxic-forming materials, be expanded to include streams, wetlands and other bodies of water.

Response: The corresponding Federal requirements at 30 CFR 816.97(e)(3) and 817.97(e)(3) only apply to ponds. Therefore, subsection 8.1(e)(4) is no less effective than the Federal rules. However, both the State and Federal rules also contain a requirement that operators use the best technology currently available to protect wildlife.

Section 38–2–9: Revegetation

1. *Comment:* NWF objects to deletion of the words "interference with" in subsection 9.2(e).

Response: The deleted words are a relict of the previous version of this rule. They had no meaning and their removal corrects a syntax error.

2. *Comment:* WVMRA suggests deleting the last sentence of subsection 9.3(c), which allows the submission of separate planting reports when trees are a part of the revegetation plan.

Response: Since there is no Federal counterpart to the State requirement for planting reports, adoption or rejection of this suggestion would have no impact on the Secretary's determination of program adequacy.

Section 38–2–10: Prime Farmland

No comments were received on this section.

Section 38–2–11: Insurance and Bonding

1. *Comment:* WVMRA suggests revising subsection 11.1(a) to provide that liability insurance need be maintained only for the "active" life of an operation

Response: Revising the State rule in this fashion would render it less effective than its Federal counterpart at 30 CFR 800.60(b), which requires that the policy be maintained in full force during the life of the permit and the liability period necessary to complete all reclamation responsibilities.

2. *Comment:* NWF states that subsection 11.1(a) must be revised to require that the insurance policy be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations, as required by the Federal regulations at 30 CFR 800.60(b).

Response: West Virginia has revised its regulations at subsection 3.33(j) to require that all permits contain a condition specifying that the performance bond and liability insurance must remain in effect throughout the life of the permit, any renewal thereof, and the liability period necessary to ensure completion of reclamation. However, as discussed in Finding 11.2, subsection 11.1(a) is inconsistent with subsection 3.33(j) in that it only requires that the insurance policy be maintained during the life of the permit. Therefore, the Secretary is requiring that the State amend subsection 11.1(a) to correct this deficiency and ensure that insurance coverage is not allowed to lapse before the end of the liability period.

3. *Comment:* NWF argues that the State regulations, like the Federal regulations at 30 CFR 800.16(e)(2), must provide that, upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and must promptly notify the regulatory authority, which must then take certain actions.

Response: West Virginia has revised paragraphs (b) through (d) of subsection 11.2 to include the provisions sought by the commenter.

4. *Comment:* The West Virginia Insurance Department recommends that the term "assignment," as used in subsection 11.4(a)(9) be defined. According to the Department, the regulations should clearly provide that the Commissioner becomes the owner or beneficiary of any whole life insurance policy assigned to him or her as a collateral bond.

Response: The State interprets its rules as meaning that the Commissioner becomes the sole owner or beneficiary of any whole life insurance policy assigned to him until the purchaser's reclamation obligations under the bond are completed. The Commissioner will not accept policies as performance bonds under any other conditions. Furthermore, the Department of Energy plans to tailor the standard policy assignment form used by most insurance companies to State program requirements, thereby further clarifying the term in question.

5. *Comment:* The West Virginia Life and Health Guaranty Association notes that, under State law, it can guarantee only $300,000 of death protection, not the net cash surrender value of whole life insurance policies. Furthermore, if an insurance company files for bankruptcy after writing this type of policy, the Association would not be able to compensate the Commissioner until the purchaser (permittee) dies.

Response: As discussed in Finding 11.4, the Department of Energy chose to limit the net cash surrender value of each whole life insurance policy posted as a performance bond to $300,000 to limit the State's liability and to ensure protection by the West Virginia Life and Health Guaranty Association. Although the Association will not compensate the State for defunct policies prior to the death of the insured, this is still an extra measure of protection not afforded to other forms of collateral bonds.

6. *Comment:* The West Virginia Insurance Department states that a whole life insurance policy with a guaranteed interest rate and a net cash surrender value of $300,000 would require a face amount of one million dollars. According to the Department, such a policy would cost a 50 year-old person between $35,000 and $40,000 per year and thus would be an expensive form of bond.

Response: The Secretary acknowledges that some coal operators may not be able to afford to use whole life insurance policies as performance bonds; however, affordability is not one of the criteria used to determine whether a particular form of bond is acceptable. As discussed in Finding 11.4, under the

conditions established by West Virginia, whole life insurance policies present a risk no greater than that inherent in other forms of collateral bonds authorized under 30 CFR 800.5.

7. *Comment:* NWF argues that West Virginia must revise subsection 11.6 to require that, with respect to self-bond applications, officers who are authorized to bind their corporations provide the regulatory authority a copy of such authorization; an affidavit certifying that the self-bond indemnity agreement is valid under all applicable Federal and State laws; and a corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement, as required by the Federal regulations at 30 CFR 800.23(e)(2).

Response: Subsection 11.6(e) has been revised to include the provisions sought by the commenter.

8. *Comment:* NWF states that subsection 11.6 must be revised to provide that, if the permittee fails to post an adequate alternative bond upon losing self-bonding eligibility, the provisions of 30 CFR 800.16(e) will apply.

Response: The Federal self-bonding regulations at 30 CFR 800.23(g) state that, if the permittee no longer qualifies for a self-bond and is unable to obtain a substitute bond, the provisions of 30 CFR 800.16(e) pertaining to cessation of mining and initiation of reclamation shall apply. In lieu of using a cross-reference like the Federal rule, West Virginia has elected to spell out the relevant requirements in subsection 11.6(h), tailoring them to self-bonding situations. The Secretary finds that paragraphs (g) and (h) of subsection 11.6 are substantively identical to and hence no less effective than their Federal counterpart in 30 CFR 800.23(g).

Section 38–2–12: Bond Release and Forfeiture

1. *Comment:* NWF states that the advertisement and inspection requirements of subsection 12.2 for bond release applications are far less comprehensive than the Federal regulations at 30 CFR 800.40 (a)(2) and (b) and must be revised accordingly.

Response: The missing requirements can be found in section 22A–3–23 of WVSCMRA. Unlike the Federal rules, the State rules do not repeat statutory provisions.

2. *Comment:* NWF states that, like 30 CFR 800.40(c)(2), the State regulations must be revised to specify that when a silt dam is to be retained as a permanent impoundment, a Phase II bond release may be granted only if provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

Response: Subsections 5.4(g)(3)(C) and 12.2(c)(2)(D) of the State rules and section 22A–3–23(c)(3) of WVSCMRA all contain the provision sought by the commenter.

3. *Comment:* NWF states that the State regulations must be revised to require that, at Phase II bond release, the regulatory authority retain an amount of bond sufficient to cover the cost of reestablishing revegetation by a third party for the revegetation responsibility period specified in section 515 of SMCRA, as provided by 30 CFR 800.40(c)(2).

Response: West Virginia has an approved alternative bonding system under 30 CFR 800.11(e) in which bond amounts are not based on the cost of reclamation. Hence, the Federal rule cited by the commenter, which bases bond release amounts on reclamation costs, is not applicable. No State counterpart is necessary. Nevertheless, the Secretary notes that subsection 12.2(c)(2)(E) of the State rules requires that the bond remaining after a Phase II release be sufficient to cover the cost of reestablishing vegetation and drainage control structures.

4. *Comment:* NWF states that the West Virginia regulations must be revised to require that, when any application for total or partial bond release is filed with the regulatory authority, the permittee notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond, as stipulated by 30 CFR 800.40(e).

Response: Section 22A–3–23(e) of WVSCMRA contains this notification requirement.

5. *Comment:* NWF states that the State regulations must be revised to require that, if there is an objection to a proposed bond release, a public hearing be held in the locality of the surface coal mining operation for which bond release is sought, at the regulatory authority office, or in the State capital, at the option of the objector, as required by the Federal regulations at 30 CFR 800.40(f) and section 519 of SMCRA.

Response: The State's regulations at subsection 12.2(e) and section 22A–3–23(f) of WVSCMRA specifically provide that the public hearing or informal conference shall be held in the locality of the surface coal mining operation from which bond release is sought. These provisions have not been changed from those originally approved by the Secretary.

6. *Comment:* NWF argues that, for bond release hearings, the State regulations must be revised to vest the regulatory authority with the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including but not limited to, inspection of the land affected and other coal mining operations of the applicant in the general vicinity. Furthermore, the commenter states that the rules must require that a verbatim record be made of each hearing and that a transcript be made available on the motion of any party or by order of the Commissioner.

Response: Section 22A–3–23(h) of WVSCMRA contains the provisions sought by the commenter.

7. *Comment:* NWF states that subsection 12.3, which pertains to bond adjustments, allows for bond release without public participation.

Response: As discussed in Finding 12, the proposed State rule is no less effective than 30 CFR 800.15, which allows bond release on undisturbed land without public participation.

8. *Comment:* NWF states that the State regulations, unlike the Federal regulations at 30 CFR 800.50(b)(1), fail to require the regulatory authority to collect the forfeited amount as provided by applicable State laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken or if rights of appeal, if any, have not been exercised within a time established by the regulatory authority, or if such appeal, if taken, is unsuccessful,

Response: Subsection 12.4(b) of the State's rules requires the Commissioner to collect the forfeited amount whenever bond forfeiture is necessary. Section 22A–3–17(b) of WVSCMRA specifies the bond forfeiture collection procedures to be followed. Since the Federal rule provides that the collection procedures for forfeited bonds shall be in accordance with applicable State law, the Secretary finds the State rule to be no less effective than the Federal rule.

9. *Comment:* NWF states that, unlike 30 CFR 800.50(c), the State regulations do not provide that, upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete the reclamation for which the bonds were posted, and that, unless specifically limited, bond liability must extend to the entire permit area under conditions of forfeiture.

Response: Subsection 12.4(a)(1) of the State rules and section 22A–3–17(b) of WVSCMRA provide that bond liability extends to the entire permit area under forfeiture. Subsection 12.4(a) further provides that the Commissioner shall

take action to forfeit the bond upon default. Therefore, the State rule is no less effective than the Federal requirements at 30 CFR 800.50(a).

10. *Comment:* NWF states that, unlike 30 CFR 800.50(d)(1), the State rules fail to provide that, in the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs and that the regulatory authority may complete, or authorize completion of, reclamation of the bonded area and recover from the operator all costs of reclamation in excess of the amount forfeited.

Response: Subsection 12.4(d) has been revised to provide that, when the proceeds of bond forfeiture used by the Commissioner to complete reclamation are less than the actual cost of reclamation, the permittee shall be liable for all reclamation costs, and the Commissioner shall collect from the permittee all costs in excess of the amount forfeited. Furthermore, under the State's approved alternative bonding system, if the proceeds from the site-specific bond are insufficient to complete the reclamation plan, monies from the Special Reclamation Fund must be used to do so. Therefore, except as discussed in Finding 12, subsection 12.4(d) is no less effective than the Federal requirements at 30 CFR 800.50(d)(1).

11. *Comment:* WVMRA states that, to be consistent with the Federal requirements at 30 CFR 800.50(d)(1), West Virginia should revise subsection 12.4(d) to provide that, in the event the Commissioner is unable to collect reclamation costs in excess of the amount forfeited from the operator, the Commissioner may, rather than shall, use monies in the Special Reclamation Fund to complete the reclamation.

Response: Although the Federal regulations provide that completion of reclamation by the regulatory authority is discretionary under these circumstances, this rule is based on the assumption that the original bond amount was calculated and established to cover full reclamation costs. Since West Virginia uses an alternative bonding system unrelated to reclamation costs, this assumption is not valid in the instant case. As stated in 30 CFR 800.11(e)(1), one of the basic tenets of approval of any alternative bonding system is the assurance that the regulatory authority will have available sufficient funds to complete the reclamation plan for any areas which may be in default at any time. Hence, under an approved alternative bonding system, the regulatory authority always has an obligation to complete the reclamation plan. Therefore, although the State made the change suggested by the commenter, the Secretary is not approving it and, as discussed in Finding 12, he is requiring that the State return to its former wording or otherwise revise it to clarify the Commissioner's obligations.

Section 38–2–13: Notice of Intent to Prospect

1. *Comment:* WVMRA argues that section 13 is inconsistent with and must be replaced by the Federal regulations at 30 CFR 772.11 governing coal exploration removing fewer than 250 tons of coal.

Response: Except for the lack of one mapping requirement, as discussed in Finding 13.2, the Secretary finds the State regulations in section 13 to be no less effective than and consistent with the Federal requirements for coal exploration in 30 CFR parts 772 and 815. Revision in the manner suggested by the commenter would render the program less effective than the Federal rules since it would no longer include either provisions for operations removing more than 250 tons of coal or performance standards for any type of coal exploration.

2. *Comment:* NWF notes that section 13 must be revised to require that applications to prospect include a description of any endangered or threatened species identified within the prospecting area and the location of their critical habitats, as required by 30 CFR 772.12(b).

Response: As discussed in Finding 13.2, although subsections 13.1(a)(12) and 13.2(a)(5) require a description of any endangered or threatened species and their critical habitats, the State rules do not require a map showing habitat locations. Therefore, the Secretary is requiring that the State amend its rules to correct this deficiency.

3. *Comment:* NWF states that the Federal regulations at 30 CFR 772.12(b)(12) include much more comprehensive map requirements for prospecting than the State regulations.

Response: Except as discussed in Finding 13.2, the State's map content requirements in subsections 13.1(c) and 13.2(d) include all items contained in the Federal mapping requirements at 30 CFR 772.12(b)(12).

4. *Comment:* NWF argues that subsection 13.2 must be revised to provide that any person having an interest which is or may be adversely affected by a proposed prospecting operation shall have the right to file written comments on the application within reasonable time limits, as required by the Federal regulations at 30 CFR 772.12(c)(3)

Response: Subsection 13.2(e)(3) has been revised to provide that any person whose interest is or may be adversely affected has the right to submit written comments on the application, as requested by the commenter. Subsection 13.2(e)(2) requires a minimum public comment period of 15 days, a length of time that the Secretary finds to be within both the letter and intent of the Federal regulations, which require only that affected parties have a reasonable amount of time to submit comments.

5. *Comment:* NPS recommends that subsection 13.9 be revised to clarify that its provisions apply to all prospecting activities on areas designated as unsuitable for mining pursuant to section 22A–3–22 of WVSCMRA.

Response: West Virginia has revised subsection 13.9 to clarify the issue in the manner desired by the commenter.

Section 38–2–14: Performance Standards

1. *Comment:* NWF argues that the State regulations must be revised to require that all signs and markers be durable; maintained during the conduct of all activities to which they pertain, displayed at each point of access to the permit area from public roads, and retained until after the release of all bonds for the permit area; and that blasting signs be conspicuously placed, as required by the Federal regulations at 30 CFR 816.11 and 817.11.

Response: Subsection 14.1 of the State rules requires that signs and markers be erected and maintained throughout the life of the permit or the term of the specified activities for which they are intended. Subsection 14.1(a) requires that the sign be constructed of wood, metal or other suitable material; subsection 14.1(a) requires that a permanent monument (permit identification sign) constructed of wood, metal or other suitable materials be posted at the primary points of ingress and egress to and from the permit area from all public roads and highways. Subsection 14.1(b) requires that perimeter markers be made of durable material. Subsection 14.1(e) requires all blasting signs to be conspicuously placed along haul roads and the blasting area. These provisions are either substantively identical to or more specific than, and therefore no less effective than, the corresponding Federal requirements at 30 CFR 816.11, 817.11 and 816.66 and 817.66.

2. *Comment:* WVMRA recommends deleting the requirement for permanent perimeter markers in subsection 14.1(b) and replacing it with a requirement to

mark the beginning and endpoint of the permit area.

Response: The Federal regulations at 30 CFR 816.11(d) and 817.11(d) require that the perimeter of the permit area be marked before beginning mining activities; 30 CFR 816.11(a)(3) and 817.11(a)(3) require that the markers be made of durable material. Hence, adoption of the change suggested by the commenter would render the State program less effective than the Federal rules.

3. *Comment:* NWF states that subsection 14.1(b) must be revised to require that the entire perimeter of the permit area, not just its beginning and ending points, be clearly marked prior to the start of mining activities, as required by the Federal regulations at 30 CFR 816.11(d) and 817.11(d).

Response: Subsection 14.1(b) has been revised to require that, prior to initial disturbance, suitable markers made of durable material be established to permanently mark the perimeter of the area under permit. This provision is substantively identical to and therefore no less effective than the Federal perimeter marker requirements at 30 CFR 816.11(d) and 817.11(d).

4. *Comment:* NWF states that subsection 14.1(e) must be revised to require that, at all entrances to the permit area from public roads or highways, conspicuous signs be placed which state "Warning! Explosives in Use" and clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use and explain the marking of blasting areas and charged holes awaiting firing within the permit area, as required by the Federal regulations at 30 CFR 816.66 and 817.66.

Response: West Virginia has revised its regulations at subsection 14.1(e) to include the changes sought by the commenter.

5. *Comment:* WVMRA suggests modifying subsection 14.1(e)(1) by deleting the minimum size specifications for blasting warning signs.

Response: Although the corresponding Federal rules at 30 CFR 816.66(a) and 817.66(a) do not include minimum size requirements for blasting warning signs, they do require that the signs be conspicuous. Regulatory authorities clearly have authority under sections 503 and 505 of SMCRA to establish requirements more specific than their Federal counterparts in defining the term "conspicuous".

6. *Comment:* NWF argues that subsection 14.3 must be revised to require that topsoil be redistributed in a manner that prevents excess compaction of materials and protects the materials from wind and water erosion before and after seeding and planting, as required in the Federal regulations at 30 CFR 816.22(d)(1) (ii) and (iii).

Response: Subsection 14.3(b) has been revised by the State to require that topsoil be redistributed in a manner that prevents excess compaction and is protected from wind and water erosion. The revised State rule is substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 816.22(d)(1) and 817.22(d)(1).

7. *Comment:* WVMRA suggests revising subsection 14.3(b) by deleting the last sentence or rewording it to clarify that redistributed topsoil need be protected from erosion only "as soon as weather conditions permit."

Response: Deletion would render the State program less effective than 30 CFR 816.22(d)(1)(iii) and 817.22(d)(1)(iii), which require that topsoil be redistributed in a manner that protects it from wind and water erosion. Similarly, rewording it as suggested by the commenter would render it inconsistent with the Federal rules in that topsoil should not be redistributed under weather conditions that do not permit the taking of protective measures.

8. *Comment:* Hobet questions the addition of subsection 14.3(c)(2), which requires that a qualified laboratory certify that the use of any proposed topsoil substitutes would result in the best soil medium available in the permit area.

Response: The Federal rules at 30 CFR 816.22(b) and 817.22(b) require that the operator demonstrate to the regulatory authority that the soil medium resulting from the use of topsoil substitutes is the best available in the permit area to support vegetation. Therefore, the State rule is needed to be no less effective than the Federal rules. Although the Federal rules do not necessarily require that this demonstration be a laboratory certification, the regulatory authority would be unable to document the necessary findings unless the demonstration included a suitably detailed analysis of all potential topsoil substitute materials present in the permit area.

9. *Comment:* NWF argues that the State's requirements in subsection 14.3(c) for topsoil substitutes and supplements must be rejected as less effective than the Federal regulations at 30 CFR 816.22(b) because they do not provide that selected overburden materials may only be substituted for or used as a supplement to topsoil if the operator demonstrates that the resulting soil medium would be equal to or more suitable for sustaining vegetation than the existing topsoil, and that it is the best available in the permit area to support vegetation.

Response: West Virginia has revised its regulations at subsection 14.3(c) to require that a qualified laboratory certify, on the basis of a detailed analysis, that the proposed substitute material is equally suitable for sustaining vegetation as the existing topsoil and that the resulting soil medium is the best available in the permit area to support vegetation. As revised, the State's rule no less effective than the Federal requirements at 30 CFR 816.22(b) and 817.22(b) as summarized in the comment.

10. *Comment:* WVMRA suggested revising subsection 14.5 by replacing the requirement for protection or replacement of water supplies with a requirement for compliance with section 22A–3–24 of WVSCMRA.

Response: Since, as noted in Finding 14.5, the water supply replacement provisions of section 22A–3–24 of WVSCMRA are not fully consistent with those of section 717(b) of SMCRA, adoption of this change would render the State rule less stringent than SMCRA.

11. *Comment:* WVMRA suggests deleting the word "rights" in subsection 14.5(h) when discussing water supply replacement requirements.

Response: The suggested change would have no substantive effect on the rule. As discussed in Finding 14.5, section 717(b) of SMCRA requires that operators replace all water supplies adversely affected by surface mining activities.

12. *Comment:* NWF states that subsection 14.6 is much less complete and less effective than the Federal requirements for treating acid- and toxic-forming materials at 30 CFR 816.41(f) and must therefore be rejected.

Response: As discussed in Finding 14.6, the State rules are not identical to the Federal rules, but the Secretary finds them no less effective than the Federal requirements.

13. *Comment:* Hobet notes that subsection 14.7(b), which pertains to groundwater monitoring, requires the reporting of all violations of standards established under Section 22A–3–24 of WVSCMRA. However, the commenter notes, the referenced statutory provision pertains only to water supply replacement rights; it does not contain any groundwater standards.

Response: The corresponding Federal rules at 30 CFR 816.41(c)(2) and 817.41(c)(2) require that the operator report all violations of any applicable

permit conditions, not a failure to replace water supplies. Although the State rule does not specifically require reporting of violations of permit conditions, it does require that all monitoring results be submitted to the Commissioner within five days of receipt of the analysis, whereas the Federal rules only require that those indicating noncompliance with permit conditions be reported "promptly." By requiring prompt submittal of all reports, the State is ensuring that the Commissioner will have the information he needs to make a determination as to whether the operator is in noncompliance with any permit conditions, a decision he is best able to make, given the complexities and uncertainties associated with groundwater. Furthermore, there are no standard permit conditions relating specifically to groundwater and, apart from the non-degradation, non-diminution requirements of section 717(b) of SMCRA with respect to water supplies, there are no Federal groundwater quality standards for mining operations. Therefore, while the commenter is correct in noting that section 22A–3–24 of WVSCMRA does not establish any groundwater quality standards, inclusion of this statutory reference does not render the State program less effective than the Federal rules.

14. *Comment:* NWF argues that subsection 14.7(c) allows a groundwater monitoring waiver that has no basis in the Federal regulations.

Response: The Federal regulations at 30 CFR 780.21(i)(2) and 784.14(h)(2) provide that, if a particular water-bearing stratum in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of the stratum can be waived by the regulatory authority. The State's groundwater monitoring waiver provisions at subsection 14.7(c) are substantively identical to and therefore no less effective than these Federal rules.

15. *Comment:* NWF argues that subsection 14.8(a)(1) must be revised to provide that waste materials of any type, debris (including that from clearing and grubbing), and abandoned or disabled equipment cannot be placed on the downslope, as required by the Federal regulations at 30 CFR 816.107(b) and 817.107(b).

Response: West Virginia has revised subsection 14.8(a)(1) to prohibit the placement of spoil, debris or abandoned or disabled equipment on the downslope. Furthermore, section 22A–3–12(d) of WVSCMRA contains a similar requirement. Except as discussed in Finding 2.11, the State's requirements regarding downslope placement of material are no less effective than the Federal requirements at 30 CFR 816.107(b) and 817.107(b).

16. *Comment:* NWF states that subsection 14.8 fails to prohibit placement of woody materials in the backfilled area unless the regulatory authority determines that it will not deteriorate the stable condition of the backfilled area, as required by 30 CFR 816.107(d).

Response: Subsection 14.8(a)(4) is intended to be the State counterpart to this Federal requirement. However, as discussed in Finding 14.8, the State rule in effect lacks this prohibition and thus is less effective than 30 CFR 816.107(d) and 817.107(d). The Secretary is requiring the State to amend its program to correct this deficiency.

17. *Comment:* WVMRA suggests deleting subsection 14.9(a), which specifies when, in addition to the circumstances outlined in section 22A–3–12(b)(9) of WVSCMRA, the Commissioner may prohibit auger mining, and replacing it with the language of 30 CFR 819.11(a), which requires that auger mining be conducted in accordance with all performance standards applicable to surface mining operations.

Response: This suggestion may have merit in that there is no Federal counterpart to subsection 14.9(a), while subsection 14.9 currently has no counterpart to 30 CFR 819.11(a). However, since the State has assured OSM that it interprets the requirements of subsection 14.9 as being supplemental to, rather than in place of, the other provisions of its regulations except as otherwise stated in that subsection, the Secretary finds that the suggested change is not essential for the State program to be no less effective than the Federal rules.

18. *Comment:* NWF states that subsection 14.9 must be revised to require that auger holes be sealed as contemporaneously as practicable if the holes are not discharging water containing acid- or toxic-forming materials, as required by the Federal regulations at 30 CFR 819.15(b)(2).

Response: As discussed in Finding 14.9, subsection 14.9(b)(2) has been revised to require the contemporaneous sealing of all auger holes not discharging water containing acid- or toxic-forming materials. Therefore, the State rule is now no less effective than the Federal requirements at 30 CFR 819.15(b)(2)

19. *Comment:* WVMRA suggests revising subsection 14.9(b)(1) by deleting the 72-hour requirement for treating discharges from auger holes and replacing it with a requirement that such discharges be treated prior to leaving the permit area.

Response: The Secretary finds that the suggested change would have no impact upon the program's effectiveness, since, under both the version of this rule proposed by the State and that suggested by the commenter, all discharges would be required to meet effluent limitations prior to leaving the permit area.

20. *Comment:* WVMRA suggests deleting subsection 14.9(d) and replacing it with 30 CFR 819.13(c).

Response: The State rule is virtually identical to the proposed Federal substitute except for omission of the Federal requirement that this determination be based upon appropriate technical evidence supplied by the operator. This omission does not render the State rule less effective than the Federal rule since States need not restrict their decision basis in this fashion.

21. *Comment:* WVMRA suggests deleting subsection 14.11 and replacing it with 30 CFR 816.131. Alternatively, it suggests adding language to subsection 14.11(d) to waive the requirement for information updates if there are no changes in the information previously provided.

Response: As discussed in Finding 14.11, subsection 14.11 is no less effective than the Federal rules at 30 CFR 816.131 and 817.131 governing the temporary cessation of operations. The new provisions to which the commenter objects result from settlement of a State judicial proceeding; they are not inconsistent with any Federal requirements.

22. *Comment:* NWF states that, unlike the Federal temporary cessation of operations requirements at 30 CFR 816.131(a) and 817.131(a), the State's inactive status provisions at subsection 14.11 do not specify that temporary abandonment shall not relieve a person of the obligation to comply with the provisions of the approved permit.

Response: West Virginia has amended its regulations at subsection 14.11(a)(9) to clarify that the granting of inactive status does not relieve an operator of his or her responsibility for complying with the State Act, regulations or approved permit. As discussed in Finding 14.11, the State's inactive status provisions are no less effective than the Federal requirements at 30 CFR 816.131 and 817.131.

23. *Comment:* Hobet objects to the 3-year limitation subsection 14.11(d)

imposes on the length of time a surface mine may remain in inactive status.

Response: Although the corresponding Federal rules at 30 CFR 816.131 and 817.131 do not establish a maximum time for temporary cessation of operations, the Secretary finds that the State rule is not inconsistent with any Federal requirements and is in keeping with section 102(e) of SMCRA, which establishes the reclamation of surface areas as contemporaneously as possible with mining operations as one of SMCRA's basic purposes. Congress did not intend to condone indefinite delays in reclamation. The 3-year standard also is consistent with 30 CFR 773.19(e), which provides that a permit shall terminate if the operation has not begun within three years of issuance.

24. *Comment:* Hobet recommends that subsection 14.11(d) be revises to exempt sites that have been fully reclaimed from the 3-year limitation on inactive status.

Response: Such a revision would serve no purpose since inactive status, which, under the West Virginia program confers nothing more than a delay in completion of reclamation because of the presence of unrecovered coal reserves, is not applicable to fully reclaimed sites.

25. *Comment:* Hobet objects to subsection 14.11(e) to the extent that it allows only coal preparation plants and load-out facilities associated with a surface coal extraction permit to qualify for an exemption from the 3-year limitation on inactive status.

Response: The Secretary agrees that the reason for this restriction is not readily apparent. He believes that it may be a result of the inadvertent omission of the word "not" in the phrase "if [not] associated with a surface coal extraction permit" and therefore recommends that the State correct this omission. However, since there is no Federal counterpart to this provision and since it is not inconsistent with any Federal requirements, he has no basis for requiring a change.

26. *Comment:* WVMRA recommends that a new paragraph be added to subsection 14.14 to allow the approval of alternative excess spoil disposal structure designs.

Response: The State has added the suggested language to its excess spoil disposal structure design requirements in subsection 3.7(a). However, as discussed in Finding 3.6, the Secretary finds this provision to be inconsistent with SMCRA and the Federal regulations and he is not approving it.

27. *Comment:* WVMRA comments that, to be consistent with 30 CFR 816.72, subsection 14.14(e)(1) must be revised to delete the requirement that underdrains meet any design criteria established by the Commissioner.

Response: The Federal design requirements for underdrains in excess spoil disposal structures (which are set forth in 30 CFR 816.71(f)(3) and 817.71(f)(3), not 30 CFR 816.72 and 817.72 as alleged by the commenter) allow the regulatory authority to specify other design criteria for underdrains. Therefore, inclusion of this provision in subsection 14.14(e)(1) is consistent with the Federal regulations.

28. *Comment:* Hobet requests that subsection 14.14(e)(1) be reworded to distinguish between pipe and rock underdrains, clarify that piping cannot occur in valley fills or underdrains, specify that rock cores are not required on durable rock fills, and exempt oversized underdrains from the requirement that underdrains be protected by a filter system.

Response: The Secretary agrees that the wording of this subparagraph may not be a model of clarity; however, he finds that its meaning is clear when viewed in the context of the other subparagraphs in subsection 14.14(e). Revisions are therefore unnecessary. He does not agree with the commenter's statement that piping cannot occur in valley fills or underdrains. Piping can occur along any conduit lacking adequate compaction or other preventive measures. Also, both the State and Federal rules require that rock cores and underdrains be protected by a filter system, although the State rules allow an exemption for rock cores (but not underdrains) if they are oversized to allow for partial plugging. As discussed in Finding 14.14(c)(5), OSM will be conducting a study to evaluate whether oversized cores are indeed no less effective than a filter system in ensuring the long-term stability of the fill. Finally, the comment pertaining to durable rock fills is not germane since this State rule applies only to valley and head-of-hollow fills. Specifications for durable rock fills are set forth in subsection 14.14(g).

29. *Comment:* NWF argues that, unlike the Federal regulations at 30 CFR 816.71(e) and 817.71(e), which require that "all vegetative and organic materials be removed from the disposal area prior to placement of the excess spoil," paragraphs (e)(8), (f)(5) and (g)(6) of subsection 14.14 of the State rules require the removal of these materials only if they would affect the stability of the fill.

Response: At OSM's request, West Virginia deleted the offending language from its proposed rules. However, the State later revised them to require only the removal of organic material which is above ground level. As discussed in Finding 14.14(c)(6), the Secretary finds this limitation to be inconsistent with SMCRA and the Federal regulations, and he is not approving it to the extent that it would apply to critical foundation areas. He is also requiring the State to amend these rules to require the removal of all organic material, including stumps and roots, from the critical foundation areas of fills.

30. *Comment:* WVMRA requests that paragraphs (e)(8), (f)(5) and (g)(6) of subsection 14.14 be revised to provide that organic material need be removed from excess spoil disposal sites prior to spoil placement only when failure to remove such materials would affect stability.

Response: As discussed in Finding 14.14(c)(6), the Secretary finds the State rules as originally proposed and subsequently revised less effective than the Federal rules and less stringent than SMCRA because they do not require the removal of subsurface organic matter from critical foundation areas, and he is not approving them to the extent that they contain this exemption. Adoption of an additional exemption for above-ground organic material as suggested by the commenters would be unapprovable for the same reasons.

31. *Comment:* WVMRA requests that paragraphs (f)(10) and (g)(10) of subsection 14.14 be revised to allow small depressions to remain on side hill and durable rock fills under the conditions set forth in the Federal regulations.

Response: The State has revised its rules to incorporate the suggested changes.

32. *Comment:* WVMRA suggests that subsection 14.14(g) be revised to allow drainage originating above a durable rock fill to be directed through the fill, but not through the fill mass.

Response: The State has revised the proposed rule to allow all surface drainage to be directed through the fill. However, as discussed in Finding 14.14(c)(4), the Secretary finds the revised rule to be less effective than the corresponding Federal rules at 30 CFR 816.73(f) and 817.73(f), which prohibit direction of surface drainage through the fill, and he is requiring the State to amend its rule to delete this provision.

33. *Comment:* NWF argues that subsection 14.14(g) lacks a cross-reference requiring compliance with the general excess spoil disposal requirements corresponding to 30 CFR 816.71 and 817.71, as required by 30 CFR 816.73(a) and 817.73(a).

Response: Although the State rule lacks a cross-reference, the specific requirements cross-referenced in the Federal rules have been added to the State rules in subsection 14.14(g), thus eliminating the need for cross-reference.

34. *Comment:* NWF argues that the State's regulations governing durable rock fills at subsection 14.14(g) are seriously inadequate and must undergo fundamental change, both because they are inconsistent with the Federal regulations in certain respects and because they are otherwise inadequate to assure the environmental integrity of such structures.

Response: Except for deficiencies regarding the removal of organic material from critical foundation areas and the diversion of surface drainage as discussed in Findings 14.14(c) (4) and (6), the Secretary finds the State's durable rock fill requirements to be substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.73 and 817.73. Without further information regarding the nature of the commenter's concern about fill integrity, the Secretary is unable to respond to the second portion of this comment.

35. *Comment:* NWF states that the Federal regulations at 30 CFR 816.73 and 817.73 only allow the construction of durable rock fills if the excess spoil consists of at least 80 percent "durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material." The State regulations at subsection 14.14(g), on the other hand, use the term "material" in place of "rock" and do not include the requirement that any materials used as durable rock not degrade to soil material.

Response: At present, there are no generally accepted tests or criteria for determining a rock's propensity to degrade soil materials in mining situations. The Secretary is currently considering whether additional criteria and tests for durable rock are needed. For this reason, omission of the degradation criterion from the State rules does not render it less effective than the Federal rules at 30 CFR 816.73(b) and 817.73(b). The Secretary notes, however, that this decision does not mean slake durability test results cannot be questioned or that such results override the basic requirement that the rock used in durable rock fills be durable at all times and under all conditions. Furthermore, the Secretary does not find a substantive difference between the terms "material" and "rock". In the context in which it is used in the State rules, "material" clearly means "rock". In addition, all materials proposed for use must qualify as durable rock under the required engineering tests.

36. *Comment:* NWF states that shale is not now and has never been a durable rock and therefore should not be considered durable rock for the purposes of subsection 14.14(g).

Response: Neither the State nor the Federal rules specifically exclude all shales from being considered durable rock. If the engineering tests required by subsection 14.14(g)(1) (A) and (B) and 30 CFR 816.73(b) and 817.73(b) determine a rock to be durable, it is acceptable fill material.

37. *Comment:* NWF notes that, while the State regulations at subsection 14.14(g)(1)(A) require an examination of core borings and the geologic column of the permit area to determine the extent of durable rock in the overburden, they do not include any minimum numerical or basic data requirements for core drilling, nor do they require that all cores taken be used in determining durability. According to NWF, the State regulations should be changed to require enough core drilling to get an accurate picture of the geologic structure over the entire area to be mined and to require that all core drilling data be analyzed in determining whether the 80 percent durable rock minimum exists.

Response: Both the regulations at subsection 14.14(g)(1)(A) and the Federal rules at 30 CFR 816.73(b) and 817.73(b) grant the regulatory authority broad discretion in determining what tests must be performed and whether the engineering analyses are adequate. The commenter's recommendations represent prudent engineering practices and the Secretary expects the State to establish such standards as part of the permit review process. The permit application must contain information adequate to enable the regulatory authority to make an informed decision as to the durability of the proposed material. However, since the Federal rules lack the specific programwide standards urged by the commenter, the Secretary cannot require that the State amend its program to include them unless it is demonstrated to be necessary for resolution of a program implementation program or to achieve other program requirements.

38. *Comment:* WVMRA requests that subsection 14.14(g)(1)(A) be revised to delete the requirement that the Commissioner approve the tests performed by the operator to demonstrate that no more than 20 percent of the volume of a durable rock fill is not durable rock.

Response: Adoption of this comment would render the State program less effective than the corresponding Federal rules at 30 CFR 816.73(b) and 817.73(b), which require that such tests be approved by the regulatory authority.

39. *Comment:* Hobet recommends deletion of the reference to the foundation of the fill in subsection 14.14(g)(4), which requires that both the foundation of the fill and the fill be designed to meet a static safety factor of 1.5.

Response: The Secretary agrees that separate reference to the foundation of the fill may not be necessary since the foundation usually is encompassed by the term "fill;" however, its inclusion does not render the State program less effective than the corresponding Federal rules at 30 CFR 816.73(d) and 817.73(d), which apply the safety factor requirements to the fill as a whole. The Secretary also notes that 30 CFR 816.71(b)(2) and 817.71(b)(2) separately require that the foundation and abutments of the fill be stable under all conditions of construction.

40. *Comment:* Hobet requests that subsection 14.14(g)(6) be modified to clarify that organic materials that do not affect stability, especially herbaceous vegetation which appear after clearing, need not be cleared again from excess spoil disposal sites prior to spoil placement.

Response: As discussed in Finding 14.14(c)(6), the Secretary finds the removal of all organic materials from critical foundation areas to be necessary to ensure long-term fill stability and to be no less stringent than SMCRA. Grasses and other herbaceous vegetation may not present a stability problem in other areas of the fill, but brush and other woody plant regrowth would. Since virtually all areas to be mined in West Virginia are forested, vegetative regeneration without a woody component would be extremely rare.

41. *Comment:* Hobet argues that subsection 14.14(g)(7) should be revised to eliminate the requirement that durable rock fills comply with the underdrawn requirements of subsection 14.14(e)(1).

Response: The Federal rules at 30 CFR 816.73(a) and 817.73(a) require that durable rock fills comply with all the general excess spoil disposal requirements of 30 CFR 816.71 and 817.71 (including underdrains), except as otherwise specified. Paragraph (e) of 30 CFR 816.73 and 817.73 allows underdrains to be constructed by natural segregation of dumped materials in lieu of the requirements of 30 CFR

876.71 and 817.71, but it does not require that they be so constructed. Subsection 14.14(g)(7) of the State rules contains a similar provision, which is intended to be interpreted in a similar fashion.

42. *Comment:* Based on historical experience, Hobet recommends deletion of that portion of subsection 14.14(g)(8) which requires that runoff from the area above the fill be diverted around the fill.

Response: West Virginia subsequently adopted this suggestion; however, as discussed in Finding 14.14(c)(4), this change renders the State program less effective than the Federal rules, and the Secretary is requiring that the original language or its equivalent be restored.

43. *Comment:* Hobet argues that subsection 14.14(g)(10), which prohibits the construction of permanent impoundments other than small depressions on durable rock fills, is inconsistent with 30 CFR 816.71(e)(4).

Response: The State has since revised this subparagraph to be identical to the cited Federal rule.

44. *Comment:* Hobet states that subsection 14.15(b)(4), which establishes distance standards for the backfilling and grading of operations using the area method of mining, should be revised to include a time standard. Hobet also recommends that the distance standard be four spoil ridges rather than two and that the 3,000-foot limitation on pit length be deleted.

Response: The corresponding Federal rule at 30 CFR 816.100, which lacks specific time or distance standards, was remanded in *In re: Permanent Surface Mining Regulation Litigation II* (C.A. 79–1144. D.D.C. October 1, 1984) because it failed to include such standards. In the absence of a new Federal rule, the Secretary cannot require the State to adopt specific standards, but neither can he approve the deletion of existing ones. Since the State rule in question contains distance standards and is identical to the corresponding State rules approved on November 16, 1983, and July 11, 1985, the Secretary finds it to be in accordance with the court's decision, which did not specify what form such standards should take.

45. *Comment:* NWF notes that subsection 14.15(b)(5) no longer includes separate contemporaneous reclamation standards for mountaintop removal operations. According to NWF, this makes no sense because the otherwise applicable standards for area and contour operations are different and neither can be applied intelligently to mountaintop removal operations. NWF also suggests the development of additional standards for mountaintop removal operations.

Response: As discussed in Finding 14.15, West Virginia has reinstated its previously approved contemporaneous reclamation standards for mountaintop removal operations at subsection 14.15(b)(5). However, unless and until Federal standards for mountaintop removal operations are promulgated, the Secretary cannot require a State to adopt the additional standards suggested by the commenter.

46. *Comment:* NWF states that subsection 14.16 allows preexisting highwalls to remain and requires only that they be eliminated to the maximum extent practicable. According to NWF, while it is true that highwalls in existence as of August 3, 1977, do not have to be eliminated if reasonably available spoil does not exist, the State's regulation appears to allow highwalls to remain where "excess spoil" exists, i.e., where there is more than sufficient spoil to eliminate all highwalls and return the land to its approximate original contour.

Response: Consistent with 30 CFR 816.106 and 817.106, subsection 14.16 requires that all spoil generated by a remining operation and any other reasonably available spoil in the vicinity of the operation be used to eliminate highwalls on previously mined areas to the maximum extent technically practical. As discussed in Findings 14.15, 14.16 and 15.2, West Virginia's backfilling and grading requirements otherwise require complete highwall elimination.

47. *Comment:* EPA notes that, while subsection 14.16(n) recognizes the relief available to remining operations under section 301(p) of the Clean Water Act, it does not and cannot authorize issuance of modified NPDES permits for such operations. The State must first propose and receive EPA approval of an amendment to its NPDES regulations to do so.

Response: As discussed in Finding 14.16, since the Secretary has no jurisdiction over the NPDES program, he is not rendering a decision on subsection 14.16(n). However, in deference to EPA's comment, he does not expect the State to issue any modified NPDES permits for remining operations pursuant to subsection 14.16(n) without EPA approval.

Section 38–2–15: Underground Mining Operations

1. *Comment:* Hobet objects to subsection 15.1(c), which requires that topsoil and spoil storage areas be promptly seeded and mulched, because it could be interpreted as requiring seeding during inappropriate seasons.

Response: The Secretary does not believe that this is the State's intent. Rather, he expects "promptly" to be interpreted in the context in which it is used. Furthermore, seasonal variations are not a consideration with respect to mulch application.

2. *Comment:* WVMRA states that subsection 15.1(e) should be amended to include a list of examples of noncoal wastes like that provided in 30 CFR 817.89.

Response: States need not include lists of examples in their rules to be no less effective than the corresponding Federal rules since such lists serve an illustrative purpose only. However, as discussed in Finding 15.1, the State has revised its rule to include the suggested list.

3. *Comment:* EPA states that the in situ processing standards at subsection 15.3 should be revised to require that any process recovery fluids injected into geological zones during in situ processing comply with the applicable Federal Underground Injection Control (UIC) regulations.

Response: West Virginia has revised its regulations at subsection 15.3(b)(2) to provide that the injection of process recovery fluids into geologic zones must be approved by the Commissioner and comply with applicable State and Federal UIC regulations. As discussed in Finding 3.10, subsections 3.11, 15.3 and 15.4 of the proposed State rules are no less effective than 30 CFR 785.22 and 30 CFR parts 817 and 828.

Section 38–2–16: Subsidence Control

1. *Comment:* Hobet argues that subsection 16.2(c) should not be entitled "Material Damage" because it makes the rule more stringent than the corresponding Federal rule at 30 CFR 817.121(c).

Response: The Secretary does not agree. Furthermore, even if it were more stringent, States have the authority to adopt such provisions under section 505(b) of SMCRA.

Section 38–2–17: Small Operator Assistance Program

No comments were received on this section.

Section 38–2–18: Citizen Actions

1. *Comment:* NWF states that subsection 18.2 should be revised to apply to prospecting operations as well as surface mining and reclamation operations.

Response: West Virginia has revised subsection 18.2 to do so.

2. *Comment:* NWF states that, in addition to allowing a citizen to request

an inspection if a violation exists, subsection 18.2(a) of the State regulations must be revised to also allow a request for an inspection if there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, as required by the Federal regulations at 30 CFR 842.11(b)(1)(i) and referenced in 30 CFR 842.12(a).

Response: As discussed in Finding 18.2, West Virginia has revised subsection 18.2 to allow a citizen to request an inspection if a situation exists which could create an imminent danger or result in imminent environmental harm.

3. *Comment:* NWF states that subsection 18.3 must be revised to forbid disclosure of the name of the person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law, as required by 30 CFR 842.15(d).

Response: West Virginia has revised subsection 18.3 to include the provisions sought by the commenter.

4. *Comment:* WVMRA requests that subsection 18.3(c) [now 18.3(b)] be revised to limit appeal rights to those persons aggrieved by the Commissioner's decision, rather than stating that "any person" has such rights. Furthermore, paragraph (a) of this subsection limits its applicability to any person who is or may be adversely affected.

Response: SMCRA does not authorize the Secretary to require that States place limitations of this nature on appeal rights. Furthermore, the change appears unnecessary since any person who lacks standing would be excluded from the appeal process automatically.

5. *Comment:* NWF argues that subsection 18.4 must be revised to require that copies of all records, reports, inspection materials and other information be made "immediately" available to the public, as required by the Federal regulations at 30 CFR 842.16(a).

Response: West Virginia has revised subsection 18.4 to require that such records, reports, etc., be made available to the public immediately, as required by 30 CFR 840.14(b).

6. *Comment:* NWF states its support of subsection 18.4, which requires that permit applications and other related materials be made immediately available at county courthouses or other public offices in the county in which the proposed mining operation is located, but the commenter requests that these documents also be maintained and preserved at these locations in accordance with subsection 18.4(b)

Response: The Federal regulations at 30 CFR 840.14(b), like the State rules at subsection 18.4(b), require that documents be made immediately available to the public in the area of mining until at least five years after final bond release. West Virginia intends to maintain records at its regional offices, which are in the area of mining, for a period of five years after bond release. The State cannot be expected to maintain records at both locations as requested by the commenter, nor is such dual maintenance required by Federal regulations.

Section 38–2–19: Designation of Areas Unsuitable for Mining

1. *Comment:* NWF argues that section 19 must be revised to require that petitioners requesting termination of designations for areas previously and unsuccessfully proposed for termination present significant new allegations of facts and supporting evidence. Furthermore, allegations and supporting evidence must be specific to the basis on which the designation was made and tend to establish why it should be terminated, as required by the Federal regulations at 30 CFR 764.13(c)(1)(iv).

Response: The State has revised subsection 19.1 by adding a new paragraph (c)(5) requiring that termination petitions of the type described above include significant new allegations of facts and supporting evidence, as requested by the commenter. Also, subsection 19.1(c)(2) requires that all allegations of facts and supporting evidence for termination petitions be relevant to and based upon the criteria for termination and establish why the designation should be terminated, a provision which the Secretary finds to be equivalent in meaning to 30 CFR 764.13(c)(1)(iv). Although the State rule does not expressly require that allegations of facts and supporting evidence be specific to the basis upon which the designation was made, the Secretary finds this to be implicit in the State requirement that the allegations and evidence support termination on the basis of one or more of three criteria, which are substantively identical to those of the Federal rule.

2. *Comment:* NWF states that subsection 19.2 fails to include petition notice provisions consistent with those of 30 CFR 764.15(b)(1).

Response: As explained in Finding 19.1, West Virginia has revised its regulations to include the formerly missing notice provisions at subsection 19.2(h), The revised rules are substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 764.15(b)(1).

3. *Comment:* NWF states that, with respect to public hearings on a petition to designate areas unsuitable for mining, subsection 19.3 must be revised to specify that no person shall bear the burden of proof or persuasion, and to require that all relevant parts of the data base and inventory system and all public comments received during the public comment period be included in the record and considered by the regulatory authority in its decision on the petition, as required by the Federal regulations at 30 CFR 764.17(a).

Response: Subsection 19.2(c) provides that no party shall bear any burden of proof in the petition decision process, a provision which extends to the public hearing provided for in subsection 19.3 and 30 CFR 764.17. Subsection 19.2(k) requires that the Commissioner compile and maintain a record consisting of the petition and all petition-related documents filed with or prepared by the Department of Energy. Since the Department prepares the data base and inventory system (DBIS) and since all public comments must be filed with the Department, both the DBIS and the comments would be included in the record. Furthermore, subsection 19.4(a) requires that both the DBIS and all public comments be considered by the Commissioner in reaching a decision on the petition. Therefore, the lack of these provisions in subsection 19.3 does not render that rule less effective than the corresponding Federal rule at 30 CFR 764.17.

4. *Comment:* NWF states that subsection 19.4 must be revised to require that the Commissioner include in the record of the administrative proceeding all relevant portions of the data base and inventory system and all comments received during the public comment period, as required by the Federal regulations at 30 CFR 764.19(c).

Response: As discussed in the response to the preceding comment, subsection 19.2(k) requires that these materials be included in the record Therefore, the omission of this provision from subsection 19.4 does not render that State rule less effective than the corresponding Federal rule at 30 CFR 764.19(c).

Section 38–2–20: Inspection and Enforcement

1. *Comment:* NWF argues that subsection 20.1 must require monthly partial inspections for all abandoned sites. The issue of whether an exemption for abandoned sites is permissible is being litigated by the Federation and other organizations in *NWF et al.* v. *Lujan*, No. 88–2416–TAF (D.D.C., filed August 26, 1988).

Response: Neither WVSCMRA nor subsection 20.1 of the State regulations exempts abandoned sites from the monthly inspection requirement. However, the fact that the Federal rule authorizing reduced inspection frequencies for such sites is in litigation would not prohibit the State from proposing, or OSM from approving, a program amendment to establish separate standards for abandoned sites.

2. *Comment:* WVMRA suggests that subsection 20.1(a)(2) be revised to define an inactive operation as one that has requested and received approval to temporarily cease operations pursuant to subsection 14.11 or one that has been granted Phase I bond release.

Response: Addition of the reference to subsection 14.11 would be helpful, especially since the terminology used in subsections 14.11 and 20.1 differs somewhat ("temporarily cease operations" in subsection 20.1 versus "inactive status" in subsection 14.11). However, since the State's rules provide no other means of requesting or receiving approval to cease operations prior to the completion of reclamation, the Secretary finds that this change is not essential. His approval of these rules is conditioned upon the State's interpretation of the phrase "approval to temporarily cease operations" in subsection 20.1(a)(2) as referring only to the "inactive status" obtained pursuant to Subsection 14.11.

Adoption of the suggestion that only Phase I bond release be required for an operation to be considered inactive would render the State rule less effective than the Federal rule at 30 CFR 840.11(f)(2), which requires completion of Phase II reclamation requirements before an operation can be considered inactive for inspection frequency purposes

3. *Comment:* WVMRA requests that subsection 20.1(a)(3) be revised to delete the requirement for quarterly inspections of prospecting operations intending to remove fewer than 250 tons of coal.

Response: The Federal rules at 30 CFR 840.11(c) require that coal exploration operations be inspected as necessary to ensure compliance with the regulatory program. As discussed in Finding 20.1, the Secretary has found the State's quarterly inspection frequency requirement to be consistent with this rule.

4. *Comment:* WVMRA states that subsection 20.1(a) should be amended to remove language providing that, except for buildings, no search warrant is necessary.

Response: The Federal rules at 30 CFR 840.12(a) require that State regulatory programs provide that, except for buildings, no search warrant shall be required for regulatory program personnel to enter any coal exploration site or surface coal mining and reclamation operation. Therefore, adoption of the suggested change would render the State program less effective than the Federal rule.

5. *Comment:* NWF argues that, for the State regulations to be no less effective than the Federal regulations at 30 CFR 843.12, "shall" must be replaced with "may" in subsection 20.2(c) and "may" must be replaced with "shall" in subsection 20.2(f)(5)(K).

Response: West Virginia has revised its regulations at subsection 20.2(c) to state that the Commissioner "may", rather than "shall", extend the time set for abatement. West Virginia also has deleted former subsection 20.2(f)(5)(K) as redundant.

6. *Comment:* NWF states that subsection 20.2 must be revised to provide that a permittee may request a further extension of a violation abatement period under paragraph (f)(5)(J) in accordance with paragraph (h).

Response: West Virginia has completely revised and reorganized these regulations, incorporating the commenter's suggested changes in the process Paragraphs (e) through (i) of subsection 20.2 are now substantively identical to and procedurally similar to the Federal violation abatement period extension provisions of 30 CFR 843.12 (f) through (j), as required by 30 CFR 840.13(b).

7. *Comment:* WVMRA recommends that subsection 20.2(d) be revised to provide for the termination of individual violations within a notice of violation (NOV). The rule currently requires termination only when all violations within the NOV are abated.

Response: Since the corresponding Federal rule at 30 CFR 843.12(e) contains language virtually identical to that of the State rule, no change is necessary. However, neither the State nor the Federal rules prohibit earlier termination of individual violations within the NOV as they are abated; both rules merely require termination of the NOV when all violations contained therein are abated. Therefore, the suggested revision would likely be approvable, although its usefulness is somewhat uncertain since it is the Secretary's understanding that the State currently issues a separate NOV for each violation.

8. *Comment:* WVMRA requests that subsection 20.2(h) be revised to clarify that the appropriate appellate body is the Reclamation Board of Review (RBR).

Response: Although such clarifying language might prove useful, the Secretary finds that its absence does not render the State program inconsistent with any Federal requirements. It is generally understood that the RBR is the proper appellate body. In addition, all enforcement-related documents contain an explanation of how and to whom the subject action may be appealed.

9. *Comment:* NWF states that subsection 20.3 is woefully incomplete and poorly written, and that the provisions of 30 CFR 843.11 should be substituted for the proposed language.

Response: West Virginia has completely revised subsection 20.3. As discussed in Finding 20.3, the State's revised provisions concerning cessation orders are no less effective than those of 30 CFR 843.11, as required by 30 CFR 840.13.

10. *Comment:* NWF states that subsection 20.3 does not require that a cessation order remain in effect until the condition, practice or violation resulting in the issuance of the order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Commissioner, or until the order expires.

Response: West Virginia has revised subsection 20.3(a)(2) to require that any cessation order issued pursuant to section 22A–3–16 of WVSCMRA remain in effect until the violation has been abated or until modified, vacated or terminated by the Commissioner or the Reclamation Board of Review or by a court. The revised State provisions are substantively identical to and therefore no less effective than 30 CFR 843.11(c), as required by 30 CFR 840.13(b).

11. *Comment:* NWF states that the term "pattern of violations" in subsection 20.4(a) must be revised to read "pattern of violations of any requirements of the Act, these rules and regulations, or the terms and conditions of the permit," as required by the Federal regulations at 30 CFR 843.13(a)(1).

Response: West Virginia has revised subsection 20.4(a) to include language substantively identical to that sought by the commenter.

12. *Comment:* NWF argues that, to be no less effective than the Federal regulations at 30 CFR 843.13(a)(3), subsection 20.4(a) must be revised to require that, if the Commissioner, after a review of the history of violations of any permittee cited for violations of the same or related requirements, determines that a pattern of violations exists or has existed, he or she issue an order to show cause as provided in subsection 20.4(a)(1).

Response: West Virginia has revised subsection 20.4 to require that the Commissioner issue a show cause order whenever a pattern of violations is identified. The corresponding Federal rules at 30 CFR 843.13(a) do not identify any other circumstances under which a show cause order must be issued. Also, the State rules require that the Commissioner conduct a pattern of violations review in all cases in which one would be required under the Federal rules, except as specified in the Code of Violations previously approved on July 11, 1985 (Finding 20, 50 FR 28336–28337). Therefore, the State program is in compliance with 30 CFR 840.13 with respect to the issues raised by the commenter.

13. *Comment:* NWF states that subsection 20.4 fails to provide that violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee unless the permittee establishes that they were acts of deliberate sabotage.

Response: Subsection 20.4(d) of the State regulations contains the language sought by the commenter.

14. *Comment:* NWF notes that subsection 20.4 of the State rules does not require that the Director promptly file a copy of any order to show cause with the Office of Hearings and Appeals and the State regulatory authority. as required by 30 CFR 843.13.

Response: The State rules do not have to contain the requirements specified in 30 CFR 843.13(a)(1) and cited by the commenter since these are applicable only to OSM.

15. *Comment:* NWF states that subsection 20.5 is woefully incomplete and inconsistent with the Federal regulations and should be rewritten. Especially noteworthy, according to NWF, is the absence of procedures for assessment conferences consistent with those found in the Federal regulations at 30 CFR 845.18.

Response: The State has substantially revised its civil penalty rules in subsections 20.5, 20.6 and 20.7. The revised rules include procedures for assessment conferences. As discussed in Finding 20.5, the revised State civil penalty procedures are the same as or similar to the Federal procedures in 30 CFR part 845, as required by 30 CFR 840.13(c)

16. *Comment:* EPA states that subsection 20.5, which does not require mandatory assessment of a civil penalty if the amount is less than $1,000, lessens the incentive for complying with permit requirements, including effluent limitations. EPA recommends that this exemption either be eliminated or be designated as the maximum cumulative penalty amount allowed to be exempted during a calendar year.

Response: The proposed State exemption is similar to the Federal rules in 30 CFR 845.12(c), which also do not require assessment of a penalty under $1,000. However, like the Federal rules, the State rules provide that the Commissioner may assess a civil penalty under these circumstances. In addition, subsection 20.5(a) provides that all notices of violation with a seriousness rating of four or greater shall be assessed regardless of the amount. These provisions are in addition to the civil penalty assessment policy approved in a previous rulemaking (50 FR 28336–28337, July 11, 1985), which requires the assessment of a civil penalty for any enforcement action with an operator negligence rating of three or above. As discussed in Finding 20.5, the State's civil penalty provisions are no less stringent than those specified in section 518 of SMCRA.

17. *Comment:* EPA recommends that civil penalties be assessed for effluent limitation violations reported by permittees in their NPDES discharge monitoring reports.

Response: Before any violation can be assessed for civil penalty purposes under an approved State program, the regulatory authority must cite it in a notice of violation or cessation order. To sustain a citation, the regulatory authority must be able to prove that a violation has been committed. Such a demonstration would require the regulatory authority to conduct its own inspection, rather than relying on the quarterly monitoring reports submitted by the operator. Otherwise, the operator could claim that the report contained a mistake, the sampling methods were faulty or the laboratory analysis was inaccurate. Failure of the regulatory authority to submit independent proof that a violation existed would most likely result in the dismissal of charges against the operator Therefore, rather than trying to cite a violation or assess a civil penalty for such a violation simply on the basis of a discharge monitoring report, it would be more appropriate for the regulatory authority to conduct an immediate inspection of the mine in response to any effluent limitation violation identified in an NPDES discharge monitoring report. If the inspector finds the discharge is still in violation, appropriate enforcement action would then be taken.

Section 38–2–21: Reclamation Board of Review

No comments were received on this section.

Section 38–2–22: Coal Refuse

1. *Comment:* SCS states that the classifications and design event requirements for coal mine waste embankments in section 22 should correspond to those of the State's dam safety regulations.

Response: The Secretary does not agree. Under SMCRA, the State's mining regulations, of which section 22 is a part, must be consistent with the Federal rules at 30 CFR 816.81 through 816.84 and their counterparts in 30 CFR part 817. Adoption of State dam safety classifications and standards would, in some cases, result in regulations less effective than the Federal rules. However, subsection 22.4(a) provides that, in addition to the requirements of section 22, coal refuse sites subject to the State's Dam Control Act must comply with the requirements of that Act and any regulations promulgated pursuant thereto.

2. *Comment:* NWF argues that section 22 must be revised to require design certification of coal refuse disposal facilities, as stipulated by 30 CFR 816.81(c) and 817.81(c).

Response: As discussed in Finding 22.1, subsections 22.1 and 22.2 contain certification requirements for coal refuse disposal facilities that are no less effective than the Federal requirements at 30 CFR 816.81(c) and 817.81(c).

3. *Comment:* SCS states that, by allowing a waiver of the requirement for a subsurface geologic investigation based on obvious site conditions, section D.05(f)(1)(a) of the State's emergency coal refuse disposal regulations is arbitrary and incompatible with the other design requirements of the regulations.

Response: As discussed in Finding 22.2, West Virginia has completely revised its coal refuse disposal regulations and recodified them as section 22 of its surface mining reclamation regulations. Subsection 22.3(h)(1) now requires that a sufficient subsurface investigation be performed for all coal refuse disposal areas regardless of site conditions.

4. *Comment:* NWF states that, to be no less effective than 30 CFR 816.81(c) and 817.81(c). Subsection 22.2 should be modified to require that coal mine refuse disposal facilities also meet any design criteria established by the regulatory authority.

Response: The phrase in the Federal regulations cited by the commenter is intended to clarify that States have the authority to establish additional requirements beyond those of the Federal rules and that they are encouraged to do so to meet their needs and respond to conditions found within the State. States need not include generic enabling phrases of this nature in their programs to be no less effective than these Federal rules since they are not affirmative obligations subject to oversight. Furthermore, West Virginia has included numerous provisions in section 22 that expand upon the core requirements of the Federal rules, thus complying with the intent of the phrase cited by the commenter.

5. *Comment:* WVMRA recommends revising subsection 22.3(p) to retain language proposed for deletion that would allow the Commissioner to approve the construction of coal mine refuse piles using layers exceeding two feet in thickness and slopes exceeding 2h:1v.

Response: The introductory paragraph to the Federal rules at 30 CFR 816.83 and 817.83 requires that refuse piles comply with the requirements of 30 CFR 77.214 and 77.215. Paragraph (h) of the latter rule provides that refuse piles shall be constructed in compacted layers not exceeding two feet in thickness and shall not have any slope exceeding 2h:1v unless the MSHA District Manager approves a greater thickness or steeper slope based upon engineering data demonstrating that a minimum 1.5 static safety factor will be attained. Therefore, revision of the State rule in the manner suggested by the commenter would render it less effective than the Federal rules since prior MSHA approval of any greater lift thickness or steeper slope would not be a prerequisite for State approval. OSM also notes that Item C–1 of the Regulatory Reform III Part 732 notification dated March 6, 1990, requires the State to revise this paragraph to clarify its safety factor requirements, although the letter erroneously refers to subsection 22.2 rather than 22.3.

6. *Comment:* WVMRA requests that subsection 22.5(d), which requires clearing and grubbing of coal mine waste disposal areas, be revised to delete the grubbing requirement and authorize a waiver of the clearing requirement.

Response: The corresponding Federal rules at 30 CFR 816.83(c)(1) and 817.83(c)(1) require that all vegetative and organic materials be removed from the disposal area prior to placement of coal mine waste. As discussed in Finding 14.14(c)(6) concerning a similar provision in the Federal excess spoil disposal regulations, the Secretary interprets this language as including both surface and subsurface organic matter. Therefore, adoption of the suggested changes would render the State program less effective than the Federal rules.

7. *Comment:* WVMRA suggests that the term "impounding structures" be substituted for the phrase "an embankment which impounds water" in subsection 22.5(j)(1).

Response: The Secretary finds these terms and phrases to be identical in meaning in the context of mining, provided the phrase "which impounds water" is interpreted as including slurry and all coal mine waste structures that could impound water. Furthermore, the introduction to subsection 22.5(j) clarifies that these requirements apply to impounding structures. Therefore, no change is necessary.

Section 38–2–23 Code of Violations

No comments were received on the proposed revisions to the Code of Violations.

Miscellaneous

1. *Comment:* On July 10, 1989, NWF submitted a list of unresolved issues from OSM's issue letter of October 12, 1989 (Attachment B), and requested that OSM reject the State provisions cited in that letter as being inconsistent with the Federal regulations.

Response: It is not necessary to address these issues in this portion of this notice. Any inconsistencies between the proposed State rules and the Federal regulations which have existed or still exist are addressed in the Secretary's findings in the **Federal Register** decision document published on May 23, 1990 (55 FR 21304–21340). As required by law, the Secretary, in making his decision, considered not only OSM comments, but also comments from other Federal agencies and the public.

2. *Comment:* SCS states that the regulations should include an index to be more user-friendly.

Response: The State has since developed an extensive table of contents to assist users.

List of Subjects in 30 CFR Part 948

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

Dated: June 6, 1990.

Dave O'Neal,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 90–13521 Filed 6–11–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[Regulation 90–05]

Safety Zone Regulations; Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 603.2 to 604.3. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by the Showcase of Greater Louisville. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 4 July 1990. It terminates on 4 July 1990 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG M.R. Stalker (502) 582–5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is LTJG M.R. Stalker, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 4 July 1990 at 2130 EDST and end on 4 July 1990 at 2300 EDST. The fireworks display will take place at mile 603.5 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0240 is added to read as follows:

§ 165.T0240 Safety Zone: All waters of the Ohio River from Mile 603.2 to 604.3.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 603.2 to 604.3.

(b) *Effective Date.* This regulation becomes effective at 2130 EDST on 4 July 1990. It terminates at 2300 EDST on 4 July 1990, unless sooner terminated by the Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representatives may be contacted on VHF radio Channel 16 during the event.

Dated: May 24, 1990.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 90–13491 Filed 6–11–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[Regulation 90–06]

Safety Zone Regulations; Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 608.0 to 608.7. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by the River Heritage Overlook Culture. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 4 July 1990. It terminates on 4 July 1990 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG M.R. Stalker (502) 582–5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is LTJG M.R. Stalker, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 4 July 1990 at 2130 EDST and end on 4 July 1990 at 2300 EDST. The fireworks display will take place at mile 608.5 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T0241 is added to read as follows:

§ 165.T0241 Safety Zone: All watersof the Ohio River from Mile 608.0 to 608.7.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 608.0 to 608.7.

(b) *Effective Date.* This regulation becomes effective at 2130 EDST on 4 July 1990. It terminates at 2300 EDST on 4 July 1990, unless sooner terminated by the Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: May 24, 1990.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 90–13942 Filed 6–11–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[Regulation 90–07]

Safety Zone Regulations; Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 469.4 to 469.8. The zone is needed to protect all vessels and spectators from a safety hazard associated with the All American Birthday Party Fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 4 July 1990. It terminates on 4 July 1990 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG M.R. Stalker (502) 582–5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is LTJG M.R. Stalker, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 4 July 1990 at 2100 EDST and end on 4 July 1990 at 2230 EDST. The fireworks display will take place at mile 469.6 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0245 is added to read as follows:

§ 165.T0245 Safety Zone: All waters of the Ohio River from Mile 469.4 to 469.8.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 469.4 to 469.8.

(b) *Effective Date.* This regulation becomes effective at 2100 EDST on 4 July 1990. It terminates at 2230 EDST on 4 July 1990, unless sooner terminated by the Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: May 31, 1990.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 90–13493 Filed 6–11–90; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AA29

Electronic Records Management; Correction

AGENCY: National Archives and Records Administration.

ACTION: Final rule; correction.

SUMMARY: NARA is correcting the heading for subpart C of the final rule concerning electronic records management for Federal agencies published at 55 FR 19216 on May 8, 1990.

EFFECTIVE DATE: June 7, 1990.

FOR FURTHER INFORMATION CONTACT: John A. Constance or Nancy Allard at 501–5110 (FTS 241–5110).

The heading for subpart C of part 1234, appearing in the Table of Contents in the second column on page 19218 and after the fifth full paragraph in the second column on page 19219 of the May 8, 1990, **Federal Register**, is corrected to read as follows:

Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

Dated: June 7, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90–13555 Filed 6–11–90; 8:45 am]

BILLING CODE 7515–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AD31

Loan Guaranty; Lenders Appraisal Processing Program; Effective Date Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations; correction.

SUMMARY: On May 22, 1990, on pages 21015–21021, the Department of Veterans Affairs published a final rule to amend its loan guaranty regulations (38 CFR part 36) to implement a system for delegating to certain lenders, the review of appraisal reports and the determination of reasonable value of properties to be purchased with VA guaranteed loans. In the preamble (page 21015), the effective date given for these regulations is May 22, 1990, the date of publication. The correct effective date is June 22, 1990.

VA regrets the error which is hereby corrected by this notice.

EFFECTIVE DATE: The correct effective date of the regulations published at 55 FR 21015 is June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Burke, (202) 233–2691.

Dated: June 6, 1990.

Donald R. Howell,

Records Management Service.

[FR Doc. 90–13515 Filed 6–11–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3780–8]

Approval and Promulgation of Air Quality Implementation Plans, Oklahoma; Tulsa County Ozone Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: This notice approves a revision to the Oklahoma ozone State Implementation Plan (SIP) for Tulsa County. This revision; 1) Establishes a regulation allowing the State to issue an alternate reasonably available control technology (RACT) determination for the aerospace industries located in Tulsa County, Oklahoma and 2) approves four source specific RACT determinations for Rockwell International, McDonnell Douglas-Tulsa, American Airlines, and Nordam. This SIP revision was submitted by the Governor on March 9, 1990, in response to EPA's SIP call of May 26, 1988. The intended effect of this action is to establish legally enforceable Volatile Organic Compound (VOC) emission limits for new and existing facilities in Tulsa County.

These limits are being determined by EPA to represent RACT for each of the Tulsa aerospace facilities. These alternate RACT determinations are approvable because the four industries have demonstrated that it is not cost effective to control their VOC emissions to the presumptive norm set forth in EPA's Control Technique Guideline document (EPA 450/2–78–015).

EFFECTIVE DATES: This action will become effective on August 13, 1990. Unless notice is received by July 12, 1990 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section of the EPA Region 6, Air Programs Branch (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Dallas, Texas 75202

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Gregg Guthrie, telephone (214) 655–7214 or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION:

Background

Part D of the Clean Air Act requires ozone nonattainment plans to include regulations providing for VOC emission

reductions from existing sources through the adoption of RACT. For 1979 plans that demonstrated attainment of the ozone National Ambient Air Quality Standard (NAAQS) by December 31, 1982, RACT regulations are required for major sources (i.e., those emitting greater than 100 tons per year) of VOC that are covered by a Control Technique Guideline (CTG) Document. The 1979 ozone SIP for Tulsa County was conditionally approved by EPA on February 13, 1980, at 45 FR 9733. After additional submittals by the State, EPA removed the conditions on November 11, 1980, at 45 FR 79051.

On February 24, 1984, EPA notified the Governor of Oklahoma that Tulsa County had failed to attain the ozone NAAQS by December 31, 1982. For the areas that failed to meet the December 31, 1982, deadline, EPA also required plan revisions that establish RACT for both major and minor sources of VOC that are covered by a CTG Document.

On October 23, 1987, EPA Region 6 notified the Oklahoma State Department of Health (OSDH), Air Quality Service (AQS) that their existing surface coating regulation for miscellaneous metal parts and products no longer met RACT since it did not control major and minor sources to the level recommended by EPA. The State was directed to the EPA CTG document "Surface Coating of Miscellaneous Metal Parts and Products" (EPA–450/2–78–015) for guidance on how to develop an acceptable regulation.

On May 26, 1988, EPA further notified the Governor of Oklahoma that the Tulsa ozone SIP had failed to attain the NAAQS (based on 1985–1987 data) by December 31, 1987, and therefore, required further revision. In response to this notification, one item the State was requested to amend was its miscellaneous metal parts and products surface coating regulation. However, since the existing regulation applied statewide the OSDH chose to write a new regulation that is specific to Tulsa County.

During the rulemaking process, the OSDH considered several proposed regulations for the miscellaneous metal parts and products coating operations in Tulsa. After analysis of comments and discussions with all affected parties, including the Tulsa aerospace industries and EPA, the State chose to determine RACT on an individual basis for each of the four aerospace companies in Tulsa County.

EPA defined RACT in a September 17, 1979, **Federal Register** notice (44 FR 53762) as:

> The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

Through the publication of CTG documents, EPA has identified pollution control levels that EPA presumes to constitute RACT for various categories of sources. Where the State finds the presumptive norm applicable to an individual source or group of sources, the State typically adopts requirements consistent with the presumptive norm. However, States may develop case-by-case RACT determinations. EPA will approve these RACT determinations as long as the State demonstrates they will satisfy the Clean Air Act's RACT requirements based on adequate documentation of the technical and economic circumstances of the particular source being regulated.

EPA Region 6 developed a guidance document titled "Guidance for Developing an Alternate Reasonably Available Control Technology (RACT) Demonstration for the Tulsa Aerospace Industry." This document was issued for the state and industries to follow in developing documents to justify deviation from the recommended CTG approach.

Tulsa Air Quality and Reasonable Further Progress

Even though EPA determined that Tulsa County had failed to attain the ozone NAAQS by December 31, 1987 (based on 1985–1987 data) current air quality data (1987–1989) indicate that Tulsa County has attained the NAAQS for ozone. EPA examined the 1987–1989 air quality data and found that they were collected in accordance with all EPA requirements. Monitoring sites have indicated a calculated maximum annual average expected number of exceedances of 0.37. The data collected reveal the area has monitored attainment since EPA requires a 1.0 or lower value for an annual average expected exceedance to demonstrate attainment.

The Reasonable Further Progress (RFP) curve submitted with the Tulsa Post 82 ozone SIP predicted sufficient reductions would be achieved consistently with the implementation of the State regulations and the continuation of the Federal Motor Vehicle Control Program to attain to the ozone NAAQS. The curve shows that a decrease of 19.7 percent was to occur in Tulsa County between 1984 and 1986. This was without the reductions from regulating the aerospace industries. The OSDH demonstrated that a 12 percent decrease of VOCs was required to attain the ozone standard. The RFP curve projected an attainment date of December 31, 1986. Since December 31, 1987, no violations of the ozone NAAQS have occurred in Tulsa County. Therefore, the added VOC reductions from the alternate RACT determinations for the Tulsa aerospace industries will provide continued assurance of maintenance of the ozone NAAQS.

EPA intends to act on the Tulsa Post-82 SIP in the near future. Currently, EPA is expecting to propose approval of both the SIP and a redesignation request for the Tulsa area. Should maintenance of the ozone NAAQS become a problem in the future, the State regulation will require revisitation of the determinations discussed in this notice.

The remainder of this notice discusses the Oklahoma Air Pollution Control Regulation (OAPCR) 3.7.5–4(h) "Control of VOS Emissions from Aerospace Industries Coatings Operations" and its accompanying Oklahoma Commissioner of Health Orders adopted for each of the four Tulsa companies.

Definition of Volatile Organic Compound

One EPA requirement for developing an approvable surface coating regulation is properly defining the term Volatile Organic Compound (VOC). Oklahoma's regulation for controlling organic substances that lead to ozone formation is structured somewhat differently than EPA had originally envisioned. The State regulates "Organic Materials" through OAPCR 3.7 "Control of Emissions of Organic Materials." The State's definition of organic materials includes all compounds containing carbon atoms with the exception of carbon monoxides, carbon dioxide, carbonic acid, metallic carbides, metal carbonates and ammonium carbonates. Organic materials is subdivided into specific categories defined by the terms VOC, organic solvents, petroleum liquid and volatile organic solvent (VOS).

Oklahoma's existing definition of VOC was originally written specifically for the petroleum marketing industry. EPA notified the State that if VOC was to be used in surface coating regulations it would require revising their definition to be consistent with EPA guidance. Oklahoma informed EPA that redefining VOC in the OAPCR 3.7 would require substantial restructuring of the entire OAPCR 3.7. The State chose to define a new term "VOS" to be used in surface coating regulations. The State's definition of VOS is consistent with EPA's definition of VOC. Throughout the remainder of this notice the reader

should note that the term VOS is consistent with EPA's definition of VOC.

Oklahoma's Aerospace Regulation

OAPCR 3.7.5–4(h) is written as a directional tool for those aerospace industries in Tulsa that wish to obtain permission to deviate from the recommended CTG miscellaneous metal parts and products regulation. OAPCR 3.7.5–4(h) reads very similar to the Region 6 guidance document for Tulsa in that it requires sources to go through an extensive review of available options for reducing emissions. Sources are required to investigate the availability and economic and technical feasibility of reformulation, add-on control equipment, facility redesign and improved application techniques. OAPCR 3.7.5–4(h) applies to all new and existing aerospace facilities in Tulsa County. Those sources with the potential to emit less than ten tons per year are exempt.

Individual coatings may be exempt provided their total volume for the facility does not exceed 55 gallons per year. Additionally, new coatings that are not included in the source specific RACT determination may be exempt on one of two conditions. First the new coating must contain a VOS content less than or equal to 3.5 pounds of VOS per gallon of coating (less water and exempt solvents), or second, the total usage of the new coating does not exceed 55 gallons per year per facility. Those coatings that do not meet either of the above two conditions are required to obtain permits through the State's permitting regulation (OAPCR 1.4). These permits will then be submitted to EPA for approval as source specific SIP revisions.

Compliance with the Orders issued pursuant to OAPCR 3.7.5–4(h) is determined on a coating by coating basis. The Orders require the sources to keep material data sheets for each coating and daily records of coatings issued to each coating operation within the facility. The material data sheets are required to list formulation data such as the VOS content, composition, solids content, and solvent density. These data sheets will be used for normal compliance purposes, however, should EPA or the State determine the need for closer scrutiny, sources will be required to perform the New Source Performance Standard (NSPS) test Method 24 found at 40 CFR part 60, Appendix A. If an NSPS Method 24 test is performed, the legally binding compliance determination will be based on the Method 24 test results, not the material data sheets. No averaging of coating limitations is allowed.

No averaging is allowed for those sources wishing to comply through the installation of control equipment. Sources will calculate the maximum VOS content that a coating may contain based on the efficiency of the control device. This calculation will be performed on a solids basis and will represent a reduction of emissions that is equivalent to the emissions that would result from the use of coatings that meet the applicable limit of the source specific Order.

Alternate RACT Analysis

Each company investigated the options available for reducing emissions from its surface coating operations. Among those were coating reformulation, enhanced application techniques that would improve transfer efficiency, facility redesign and add-on control equipment to reduce VOC emissions.

All four companies investigated the use of low-solvent coating technologies. Among those were high-solids coatings, water-borne coatings, and powder coatings. The companies contacted many of the leading coating manufacturers to determine if such coatings were either currently available or could be expected to become available in the near future.

Those low VOC coatings that were identified to be currently available or soon to be available, mainly primers and topcoats, are regulated in the source specific Order for each company. Please refer to EPA's technical support document for a copy of each order which contains a precise listing of those coatings.

Each company investigated the use of add-on control equipment in its operations. The companies contacted vendors to determine if such equipment could be suitable for its particular operation.

Cost Effectiveness of Add-on Control Equipment

Cost estimates for add-on control equipment were prepared using methodology presented in the EPA document "EAB Control Cost Manual", third edition, February 1987 (EPA–450/5–87–001A). Each company developed cost estimates for tons of VOC removed. The aircraft industry in general typically designs its coating booths to accommodate the largest part requiring coating. The larger the booth the greater the airflow through the booth, and therefore the lower the VOC concentration. The actual concentration of VOC in the exhaust stream and the total volume of air to be treated are primary factors in determining cost effectiveness. Typically the industry not only coats parts in the booths, but also uses the booths as a flash off and/or cure area. This intermittent use of the booths leads to low VOC concentrations in the exhaust streams. While EPA strongly believes that these problems can be overcome by measures such as spray booth air recirculation, facility redesign, and product scheduling, the particular application of these measures to the Tulsa facilities is not cost effective. This is due to the low total VOC emissions from the coating operations from each of the four Tulsa industries. EPA reviewed the information developed by the four companies and, with the exception of McDonnell Douglas' chemical mill maskant operation, EPA agrees that these costs should not be considered cost effective in this situation relative to the cost effectiveness assumed in the CTG for miscellaneous metal parts and products.

Source Specific RACT Determinations

Oklahoma uses the term Volatile Organic Solvent (VOS) in their surface coating regulation. This term is identical to EPA's definition of VOC.

Individual coating limits have been established for each type of coating in use. The majority of limits have compliance dates of January 1991, although some coating limits are further reduced to lower limits that have a compliance date of January 1993.

In an effort to obtain reductions similar to those that would be obtained through adoption of a regulation as suggested in EPA's CTG document for miscellaneous metal parts and products, the OSDH has regulated the coating of both metal and non-metal parts and products (i.e., plastics and composites). The OSDH regulates all surface coatings used at each particular facility.

Rockwell International

This section discusses the determination made for Rockwell International—Tulsa (Rockwell). Rockwell operations occupy three contiguous sites in Tulsa County. The company is a contractor fabricating aerostructures for the commercial and military markets. Rockwell emits roughly 70 TPY of VOCs from its coating operations, which include approximately 20 separate spray booths. No one booth emits greater than 15 TPY and most are below 5 TPY.

Coating limits are set in the Rockwell Order for 22 coating types of which 7 are at or below the 3.5 pounds VOS per gallon of coating (less water and exempt solvents) recommended by the CTG

document. Specifically, coating limits for primers are specified at 3.0 pounds of VOS per gallon of coating (less water and exempt solvents) and topcoats are specified at 3.5 pounds of VOS per gallon of coating (less water and exempt solvents) with the exception of those discussed in the following paragraphs.

Rockwell's source specific Order specifies two categories of primers, domestic commercial and foreign commercial. Domestic commercial primers are limited to 3.0 pounds of VOS per gallon of coating (less and water and exempt solvents) and foreign commercial primers limited to 5.4 pounds of VOS per gallon of coating (less water and exempt solvents). The company explained that they were actively bidding on aerostructures work for foreign airplane manufacturers in Europe, Canada, and Asia. The manufacturing specifications for aircraft coatings in these countries is based on formulations developed in the late 1940s. Rockwell expressed that for foreign manufacturers coating substitution would require full recertification of the airframe. Rockwell felt that it was necessary to either furnish coatings as specified or be excluded from the bidding process. EPA neither agrees nor disagrees with this justification, but is raising it to the attention of any interested parties.

Rockwell's source specific alternate RACT also specifies two categories of topcoats, commercial and military, with phase-in reductions occurring two years after initial compliance. For January 1, 1991, pigmented topcoats are limited to 5.2 pounds of VOS per gallon of coating and clear topcoats are limited to 5.7 pounds of VOS per gallon. For January 1, 1993, commercial topcoats, both clear and pigmented, are limited to 3.5 pounds VOS per gallon and military topcoats remain at 1991 levels. The company explained that the commercial aircraft industry is further in the stages of evaluating low VOS coatings than the military, and therefore more willing to allow their use. In addition the company currently has military contracts in place that require the use of the higher VOS content coatings. EPA neither agrees nor disagrees with this justification, but is raising it to the attention of interested parties. EPA staff is in contact with the Department of Defense (DOD) and is discussing the issues associated with military specification modifications to allow the use of low VOC coatings.

McDonnell Douglas-Tulsa

This section discusses the determination made for McDonnell Douglas—Tulsa (McDonnell Douglas). McDonnell Douglas' operations occupy a portion of Air Force Plant number three in Tulsa County. The company is a contractor fabricating aerostructures for the commercial and military markets. McDonnell Douglas emits roughly 60 TPY for VOCs from three separate spray booths.

Coating limits are set in the Order for 14 coating types of which 8 are at or below the 3.5 pounds VOS per gallon (less water and exempt compounds) recommended by the CTG document. Specifically, January 1991 coating limits for primers are specified at 3.0 pounds of VOS per gallon (less water and exempt compounds) and topcoats are specified at 3.5 pounds VOS per gallon (less water and exempt compounds), with the exception of the topcoat DPM 110 which is specified at 3.5 pounds of VOS per gallon (less water and exempt compounds) in January 1993.

McDonnell Douglas' largest source of coating emissions is its chemical mill maskant operation. McDonnell Douglas agreed to a phased-in emission limit strategy for this operation. By January 1, 1993, McDonnell Douglas will either 1) Reformulate its maskant to meet a 3.5 pounds of VOS per gallon of coating (less water and exempt solvents) limit, or 2) install add-on control equipment to obtain a minimum of 85 percent overall control and sufficient VOS reductions so that emissions are equivalent to what would result from use of a maskant which contains 3.5 pounds of VOS per gallon (less water and exempt solvents). McDonnell Douglas expects their reformulated maskant to contain a 1.0 pound per gallon VOS (less water and exempt solvents) content. Since this coating is still in the developmental stages, the State chose a 3.5 limit rather than a 1.0 limit.

American Airlines

This section discusses the determination made for American Airlines' Tulsa facility (American). American's Tulsa facility is the maintenance and repair center for the company's fleet of commercial aircraft. As the company's maintenance facility, it is required to perform recoating and touch up coating of various parts of the aircraft. American emits roughly 60 TPY of VOCs from its coating operations.

The facility operates approximately 10 separate spray booths where parts are removed from the aircraft and recoated. No one booth emits greater than 10 TPY and most are below 5 TPY.

The primary maintenance activities are performed in large hangers. Each hanger has several docks at which aircraft are serviced. This activity is the largest source of coating emissions at the facility (27 TPY) and is attributable to the fugitives from touch up coating of fully assembled aircraft during the maintenance activities.

Coating limits are set forth in the Order for 10 coating types of which 8 are at or below the 3.5 pounds VOS per gallon of coating (less water and exempt solvents) recommended by the CTG document. The remaining two coatings, adhesive both primer and fuel tank coating, are set at 6.8 and 6.1 pounds of VOS per gallon of coating (less water and exempt solvents), respectively.

Nordam

This section discusses the determination made for Nordam's Lansing Street facility. Nordam operates three separate sites in Tulsa County. All three facilities are located several miles apart and are operated under separate management. Two of the facilities have potential emissions of less than 10 TPY and are therefore not subject to OAPCR 3.7.5–4(h). The third facility, located on Lansing Street, is operated by a contractor fabricating and repairing aerostructures for the commercial and military markets. The Lansing Street facility emits roughly 10 TPY of VOCs from its coating operations.

Nordam's source specific alternate RACT Order specifies two categories of topcoats, epoxy and polyurethane, with phase-in reductions occurring two years after initial compliance for the epoxy topcoats. For January 1, 1991, epoxy topcoats are limited to 4.0 pounds of VOS per gallon of coating (less water and exempt solvents) and polyurethane topcoats are limited to 3.5 pounds of VOS per gallon of coating (less water and exempt solvents). For January 1, 1993, epoxy topcoats are further limited to 3.5 pounds VOS per gallon of coating (less water and exempt solvents). The company explained that they currently have military contracts in place that require the use of the epoxy topcoats. EPA neither agrees nor disagress with this justification, but is raising it to the attention of any interested parties.

The remaining regulated surface coatings in use by Nordam are primers, adhesive bond primer and a special heat insulation coating. Limits are forth in Nordam's Order for the above mentioned coatings are 3.0, 6.6 and 4.8 pounds of VOS per gallon of coating (less water and exempt solvents), respectivley.

Summary

EPA's review of the information submitted by the four companies indicates that, at this time, low VOC coatings for certain applications and processes are not commercially

available for Rockwell International, McDonnell Douglas, American Airlines, and Nordam, located in Tulsa County. Furthermore, the cost effectiveness of controls on emissions from certain processes at these facilities are inconsistent with the presumptive norm for cost effectiveness assumed in the CTG for miscellaneous metal parts and products. EPA finds that the requirements in the recommended CTG are not reasonable for certain processes and that the proposed source specific Alternate RACT determinations in the Oklahoma Commissioner of Health Orders should be considered RACT in these cases. EPA, therefore, approves OAPCR 3.7.5–4(h) and the corresponding Oklahoma Commissioner of Health Orders for each of the four facilities.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 13, 1990, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective (insert 60 days from date of publication).

Final Action

The EPA is today approving OAPCR 3.7.5–4(h) which allows for source specific RACT determinations as adopted December 5, 1989, by the Oklahoma Air Quality Council and February 8, 1990, by the Oklahoma Board of Health. OAPCR 3.7.5–4(h) was signed as an emergency rule by the Governor of Oklahoma on February 12, 1990, and submitted to EPA as a SIP revision on March 9, 1990.

EPA is also today approving Oklahoma's source specific RACT determination Orders issued by the Oklahoma Commissioner of Health on February 21, 1990, for the Rockwell International, McDonnell Douglas-Tulsa, American Airlines, and Nordam facilities in Tulsa.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 13, 1990. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the **Federal Register** on July 1, 1982.

Dated May 9, 1990.

Robert E. Layton, Jr.,

Regional Administrator.

40 CFR part 52, subpart LL, is amended as follows:

Subpart LL—Oklahoma

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

§ 52.1920 [Amended]

2. Section 52.1920 is amended by adding paragraph (c)(36) to read as follows:

* * * * *

(c) * * *

(36) On March 9, 1990, the Governor submitted Oklahoma Air Pollution Control Regulation 3.7.5–4(h) "Control of VOS Emissions from Aerospace Industries Coatings Operations". This regulation was adopted by the Oklahoma Air Quality Council on December 5, 1989, and by the Oklahoma Board of Health on February 8, 1990. The regulation became effective when it was signed by the Governor as an emergency rule on February 12, 1990. Also on March 9, 1990, the Governor of Oklahoma submitted four source specific alternate RACT determination Orders issued by the Oklahoma Commissioner of Health for the Rockwell International, McDonnell Douglas-Tulsa, American Airlines and Nordam facilities in Tulsa County.

(i) *Incorporation by reference.* (A) Oklahoma Air Pollution Control Regulation 3.7.5–4(h) "Control of VOS Emissions from Aerospace Industries Coatings Operations" as adopted by the Oklahoma Air Quality Council on December 5, 1989, and the Oklahoma Board of Health on February 8, 1990, and approved by the Governor on February 12, 1990.

(B) Oklahoma Commissioner of Health Order issued and effective February 21, 1990, for Rockwell International, Tulsa approving an Alternate Reasonably Available Control Technology (ARACT).

(C) Oklahoma Commissioner of Health Order issued and effective February 21, 1990, for McDonnell Douglas-Tulsa approving an Alternate Reasonably Available Control Technology (ARACT).

(D) Oklahoma Commissioner of Health Order issued and effective February 21, 1990, for American Airlines approving an Alternate Reasonably Available Control Technology (ARACT).

(E) Oklahoma Commissioner of Health Order issued and effective February 21, 1990, for Nordam's Lansing Street facility approving an Alternate Reasonably Available Control Technology (ARACT).

(ii) *Additional material*—(A) *Rockwell International Tulsa.* (*1*) The document prepared by Rockwell International titled "Rockwell International NAA-Tulsa Alternate RACT Determination" dated October 30, 1989.

(*2*) The document prepared by Rockwell titled "Rockwell International NAA-Tulsa Alternate RACT Determination Supplemental Submittal" dated November 22, 1989.

(B) *McDonnell Douglas.* (*1*) The document prepared by McDonnell Douglas-Tulsa titled "Source Specific RACT Determination" dated October 30, 1989.

(*2*) The document prepared by McDonnell Douglas-Tulsa titled "ARACT/Follow-up Submission" dated November 20, 1989.

(C) *American Airlines.* (*1*) The document prepared by American Airlines titled "American Airlines Tulsa Alternate RACT" dated October 30, 1989.

(*2*) The document prepared by American Airlines titled "ARACT/

Follow-up Submission" dated November 22, 1989.

(D) *Nordam. (1)* The document prepared by Nordam titled "Source Specific RACT Determination" dated November 29, 1989.

(*2*) The document prepared by Nordam titled "ARACT/Follow-up Submission" dated January 10, 1990.

[FR Doc. 90-13550 Filed 6-11-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[NC-035; FRL 3777-6]

Approval and Promulgation of Implementation Plans; North Carolina; Minor Regulatory Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 15, 1987, the North Carolina Division of Environmental Management submitted regulatory amendments for incorporation into their federally approved State Implementation Plan (SIP). The submittal included changes to five different regulations. One of the changes has been processed in another notice. The other four are the subject of this notice.

The changes in the four regulations, 2D.0525, 2D.0530, 2D.0531, and 2D.0532, incorporate cross-referencing revisions that arose from the repeal, by the State, of part of another regulation. The changes also adopt the 1986 recodification of 40 CFR part 51. Another change in 2D.0530 adopts the new air quality modeling guidelines for Prevention of Significant Deterioration (PSD) as required by EPA. Today, we are approving the revisions to 2D.0530, 2D.0531, and 2D.0532. No action will be taken on 2D.0525, because it is not governed by section 110 of the Clean Air Act.

DATES: This action will be effective August 13, 1990, unless notice is received by July 12, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Air Quality Section, North Carolina Department of Environment, Health and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina 27611

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washinton, DC 20560.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes of EPA Region IV at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On July 15, 1987, the State of North Carolina submitted revisions to five of their regulations to be incorporated into their SIP. The revisions went to public hearing on May 15, 1987, and were later adopted by the Environmental Management Commission on July 9, 1987. The change to regulation 2D.0524, New Source Performance Standards, was addressed in a separate delegation of authority notice.

The changes to regulations 2D.0525, 2D.0530, 2D.0531, and 2D.0532 are now being acted upon. The amendments are described below.

2D.0525, National Emission Standards for Hazardous Air Pollutants. This section was originally approved by EPA as part of the SIP, but should not have been because NESHAP pollutants are not governed by section 110 of the Act. For this reason we cannot process the proposed cross-reference revisions as SIP changes, but EPA will use the revised version as the basis for future NESHAP delegations.

2D.0530, Prevention of Significant Deterioration (PSD). This regulation is being amended to incorporate cross-reference revisions, the 1986 recodification of the Code of Federal Regulations (CFR), and adopt new PSD modeling guidelines. The cross-referencing revisions were required after the State, in an earlier hearing, repealed paragraph (a) of 16 NCAC 2H.0601, Purpose and Scope. The withdrawal of paragraph (a), renumbered the remaining paragraphs and the need for cross-referencing revisions arose.

The recodification of 40 CFR part 51 was promulgated by EPA on November 7, 1986 (51 FR 40656). EPA recodified its existing regulations for SIP development in a new, shorter, more organized format.

The new modeling guidelines for PSD that are being adopted are those published by EPA September 9, 1986 (51 FR 32176) and January 6, 1988 (53 FR 392). All states that have a PSD program are required to adopt the provisions.

2D.0531 Sources in Nonattainment Areas and 2D.0532 Sources Contributing to an Ambient Violation. The revisions to these sections are the same as in 2D.0530. Cross-reference revisions, which were a result of the repeal of paragraph (a) 15 NCAC 2H.0601, and the recodification of 40 CFR part 51 were adopted.

Also, PM_{10} revision to 2D.0530, 2D.0531, and 2D.0532, which were mentioned in the "**SUPPLEMENTARY INFORMATION**", but omitted from the CFR cite in the January 16, 1990 (55 FR 1419) **Federal Register** notice, are included in this action.

Final Action

Since the revisions to North Carolina regulations 2D.0530, 2D.0531, and 2D.0532 are consistent with EPA policy and requirements, they are hereby approved. No action will be taken on the revision to 2D.0535 since EPA does not process NESHAP as a part of SIP. The new version, however, will be considered in all future NESHAP delegations.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 13, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Under 5 U.S.C. section 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See FR 8709).

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

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and

environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 4, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1770 is amended by adding paragraph (c)(64) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

c. * * *

(64) Revisions to the North Carolina State Implementation Plan which were submitted on July 15, 1987 and May 25, 1988.

(i) Incorporation by reference.

(A) Revisions to North Carolina Administrative Code effective as of July 1, 1988, are as follows:

2D.0530, Prevention Of Significant Deterioration, except (h).

2D.0531, Sources In Nonattainment Areas, except (d).

2D.0532, Sources Contributing To An Ambient Violation, except (d).

(ii) Additional information—none.

[FR Doc. 90–13549 Filed 6–11–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 185

[FAP OH5593/R1074; FRL–3742–1]

Pesticide Tolerances for Pirimiphos-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide pirimiphos-methyl and its metabolites in or on the processed food wheat flour when present therein as a result of application to the stored grains. The regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by ICI Americas, Inc.

DATES: This regulation becomes effective June 12, 1990.

ADDRESSES: Written objections, identified by the document control number, [FAP OH5593/R1074], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 12, Registration Division (H7505C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 22, 1990 [55 FR 6311), which announced that ICI Americas, Inc., Agricultural Products, Wilmington, DE 19879, had submitted food additive petition (FAP) OH5593 to EPA proposing to amend 40 CFR part 185 by establishing a permanent tolerance for residues of the insecticide pirimiphos-methyl [0-[2-diethylamino-6-methyl-4-pyrimidinyl]0,0-dimethyl phosphorothioate) and its metabolite 0-(2-ethylamino-6-methyl-pyrimidine-4-yl)0,0-dimethyl-phosphorothioate and, in free and conjugated forms, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on the imported processed food wheat flour at 1.5 parts per million (ppm) when present therein as a result of application to stored grains. The Agency reviewed the residue data and determined that a tolerance of 8.0 ppm is appropriate. The petitioner subsequently amended the petition by proposing a tolerance of 8.0 ppm. This revision was announced in the Federal Register of April 12, 1990 [55 FR 13830).

No requests for referral to an advisory committee were received in response to the notices of filing.

The Agency received comments from the National Pasta Association (NPA). NPA expressed concern over consumer exposure to pesticides in general, and consumer perception of the risks associated with the use of pesticides. EPA has considered these comments carefully in reaching its decision on the final rule, and has determined that a tolerance of 8 ppm for the combined residues of pirimiphos-methyl and its metabolites in or on processed wheat flour will protect the public health.

NPA's particular concern was that in a previous petition (PP 3F2897; 3H5399), a tolerance for pirimiphos-methyl on wheat was denied because it would have exceeded the acceptable daily intake (ADI). In that petition, ICI Americas, Inc., sought tolerances for corn, sorghum, and rice, as well as wheat. In evaluating the petition, EPA assumed 100 percent of these crops would be treated. Under such an assumption well over 100 percent of the ADI would be exceeded. Thus, ICI Americas, Inc., withdrew the petition with regard to wheat and rice. The new tolerance for wheat flour will not result in the ADI being exceeded for several reasons. New data indicate that only about 10 percent of corn and sorghum are actually treated with pirimiphos-methyl (as opposed to the 100 percent assumed to be treated in the previous petition). Moreover, imported wheat flour products only account for about 2 percent of total wheat flour products. Finally, subsequent to the decision on the previous petition EPA determined that only the parent compound, not its metabolites, poses a human health concern. Thus, although the tolerance expression includes both parent compound and metabolites, the anticipated residue data used in the dietary risk assessment included only the active parent compound. Previous analyses included the metabolites in anticipated residue estimates. For the current petition, it has been determined that established tolerances and the proposed tolerance on imported wheat flour will result in a total utilization of only 6.5 percent of the ADI.

Pirimiphos-methyl is used primarily as a postharvest insecticide. There are Codex Maximum Residue Levels (MRL's) established for stored grains. In the U.S., use of pirimiphos-methyl is limited to postharvest use only on corn and sorghum, although there is a U.S. registration which allows wheat intended for export only to be treated. In the absence of a tolerance on wheat grain, pirimiphos-methyl cannot be used on stored grains intended for domestic consumption.

The toxicological data considered in support of the proposed tolerance include two oral administration human studies each of which showed a slight plasma ChE inhibition at the single dose tested (0.25 mg/kg/day); a 2-year dog feeding study with a brain acetylcholinesterase (AChE) lowest-effect-level (LEL) of 0.5 mg/kg/day (by capsule) and a systemic NOEL of 2.0 mg/kg/day; a 2-year rat feeding/carcinogenicity study with a NOEL for ChE inhibition of 10 ppm (0.5 mg/kg/

day) and a systemic NOEL of 300 ppm (15 mg/kg/day, highest dose tested, HDT); and an 18-month mouse carcinogenicity study (HDT = 500 ppm). Neither the rat nor mouse carcinogenicity study was considered to demonstrate positive evidence of carcinogenicity. Additional studies considered were: A rat teratology study with a NOEL of 15 mg/kg/day for maternal toxicity and of 150 mg/kg/day (HDT) for teratogenic and fetotoxic effects; a rabbit teratology study with a NOEL of 16 mg/kg/day (HDT) for maternal, teratogenic, and fetotoxic effects; a three-generation rat reproduction study with a NOEL of 100 ppm (5 mg/kg/day); and a 90-day neurotoxicity study in hens with a NOEL of 10 mg/kg/day (HDT). Mutagenicity studies included an Ames test, a structural chromosomal aberration study, and other studies which did not demonstrate mutagenicity or genotoxicity.

Based on the slight plasma cholinesterase (ChE) inhibition observed at 0.25 mg/kg/day in the oral administration human studies and using an uncertainty factor of 25, the ADI is calculated to be 0.01 mg/kg of body weight (bwt)/day. The Agency used an uncertainty factor (UF) of 10 X 2.5 or 25 instead of the usual 10 that is used for human studies because some individuals had slight transient plasma ChE inhibition at the only dose tested (0.25 mg/kg) in the two human studies, and a UF of 10 would not protect sensitive individuals. The World Health Organization has also used an additional UF of 2.5 for pirimiphos-methyl based on the same data as evaluated by the Agency. EPA therefore concluded that an overall UF of 25 is appropriate for pirimiphos-methyl.

Consumption of the pesticide was calculated based on percent of crop treated and anticipated residue values for the parent compound. On percent crop treated, information indicates 10 percent of corn and sorghum grain are treated. Two percent of total wheat flour products are imported, and it is assumed that all imports are treated.

The Agency also evaluated single-day exposure to pirimiphos-methyl in order to estimate risk to the "highest consumer." The "highest consumer" is an individual consuming all commodities with permissible residues of pirimiphos-methyl at the highest national food consumption in 1 day. Inhibition of plasma cholinesterase in humans at a dose level of 0.25 mg/kg/day was not observed for the first 3 weeks of a 56-day study, and a single-day exposure under the conditions of the proposed use of pirimiphos-methyl is not expected to exceed 0.25 mg/kg/day. For these reasons, the Agency considers the additional risk from the wheat flour tolerance to be within acceptable limits. Any new tolerance to be submitted for pirimiphos-methyl will be evaluated on a case-by-case basis to determine if the acute exposure is within acceptable limits.

The nature of the residue is adequately understood. Adequate analytical methods, gas chromatography/flame photometry (parent compound plus its phosphorus-containing metabolites) and gas chromatography/mass spectrometry (hydroxypyrimidine metabolites), are available for enforcement purposes. The methodology has been sent to the Food and Drug Administration (FDA) for publication in the Pesticide Analytical Manual (PAM) II, but has not yet been published. In the interim, copies of the enforcement methodology are available to interested parties from the Field Operations Division of EPA.

Based on the above information, the Agency has concluded that the tolerance would protect the public health and that the residue of pirimiphos-methyl in processed wheat flour commodities resulting from use on stored wheat grain would be safe. 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. 96–54, 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 185

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

Dated: May 25, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore 40 CFR part 185 is amended as follows:

PART 185—[AMENDED]

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

Authority: 21 U.S.C. 348.

b. In § 185.4950, by adding paragraph (b), to read as follows:

§ 185.4950 Pirimiphos-methyl; tolerances for residues.

* * * * *

(b) A food additive tolerance of 8.0 parts per million is established for residues of the insecticide pirimiphos-methyl (0-[2-diethylamino-6-methyl-4-pyrimidinyl]0,0-dimethyl phosphorothioate) and its metabolite 0-(2-ethylamino-6-methyl-pyrimidine-4-yl)0,0-dimethylphosphorothioate and, in free and conjugated forms, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol,2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methylpyrimidin-4-ol in or on the processed commodity wheat flour as a result of application to stored wheat grain. There are no United States registrations for use of pirimiphos-methyl on wheat, as of June 12, 1990.

[FR Doc. 90–13667 Filed 6–11–90; 8:45 am]

BILLING CODE 6560–50–D

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40 CFR Part 280

[FRL—3785–9]

Underground Storage Tanks; Technical Requirements

AGENCY: Environmental Protection Agency.

ACTION: Technical amendment; correction notice.

SUMMARY: This is a correction by the Environmental Protection Agency to a technical amendment to the underground storage tank regulations that was announced on April 27, 1990 in the **Federal Register**. The previous announcement included a technical amendment to 40 CFR 280.40(c) that included a typographical error. Today's notice corrects that mistake.

EFFECTIVE DATE: The technical correction is effective today, June 12, 1990.

ADDRESSES: The Docket for this rulemaking [Docket No. UST 2–1] is

located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The Docket is open from 9:30 am to 3:30 pm Monday through Friday, except for federal holidays. You may make an appointment to review materials in the Docket by calling (202) 475–9720.

FOR FURTHER INFORMATION CONTACT: Dave O'Brien (202) 382–7815 or call the RCRA/Superfund Hotline at (800) 424–9346. (toll free) or 382–3000 (in Washington, DC).

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 1990 (55 FR 17753), EPA announced a minor technical change to the schedule for phasing in release detection for piping at UST systems storing hazardous substances. The brief preamble discussion that accompanied this technical correction on April 27 accurately discussed the Agency's intent, but unfortunately there was a typographical error in the rule amendment itself. As stated in the April 27 preamble discussion, in defining "P" in a note to the table in § 280.40, the regulations should now read: "P=Must begin release detection for all pressurized piping as defined in § 280.41(b)(1)."

The technical amendment mistakenly cited "280.40(b)(1)", which does not exist. This typographic error is addressed by today's action to correctly read "§ 280.41(b)(1)". The Agency is not soliciting comments on today's rule correction because it believes notice and comment procedures are unnecessary under 5 U.S.C. 553(b) due to the nonsubstantive nature of the technical correction being promulgated. Also, the Agency has good cause to dispense with the delayed effective date requirement of 5 U.S.C. 553(d).

II. Compliance With Executive Order 12291

As was discussed in the preamble to the April 27, 1990 technical correction, today's rule is not "major" as contained in the Office of Management and Budget's Interim Regulatory Impact Analysis Guidance.

Dated: May 25, 1990.

Mary A. Gade,

Acting Assistant Administrator.

For this reason set out in this document, 40 CFR part 280 is amended as set forth below:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h).

2. In § 280.40, paragraph (c) is amended by revising the first note immediately after the table entitled "Schedule for Phase-in of Release Detection" to read as follows:

§ 280.40 General Requirements for all UST systems.

* * * * *

(c) * * *

P=Must begin release detection for all pressurized piping as defined in § 280.41(b)(1).

* * * * *

[FR Doc. 90–13439 Filed 6–11–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 434 and 435

[BPD–306–F]

RIN 0938–AB–54

Waiver of Certain Membership Requirements for Certain Health Maintenance Organizations (HMOs), and State Option for Disenrollment Restrictions for Certain HMOs Under Medicaid

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

ACTION: Final rule.

SUMMARY: These regulations revise current Medicaid rules to bring them into conformity with statutory changes that (1) expanded the waiver authority of the Secretary to permit certain health maintenance organizations (HMOs) meeting specified requirements to exceed the composition of enrollment limit, (2) permitted certain organizations to contract on a risk basis, (3) permitted continuation of benefits to recipients enrolled in certain organizations after they have lost entitlement to Medicaid, and (4) granted States the option of restricting a Medicaid enrollee's right to disenroll from certain types of risk HMOs and other organizations. The statutory changes that are reflected in these regulations were enacted in section 2364 of the Deficit Reduction Act of 1984, as amended by section 9517 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and section 4113 of the Omnibus Budget Reconciliation Act of 1987. We are also making a technical correction concerning HMO and PHP contracts.

EFFECTIVE DATE: This final rule is effective July 12, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas Saltz, (301) 966–4641.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1903(m) of the Social Security Act (the Act), organizations that contract on a risk basis with State Medicaid agencies to provide services to recipients are subject to certain statutory requirements. One requirement for these contracts is that the organization have an enrollment that is less than 75 percent Medicare or Medicaid. Waivers of the Medicare/Medicaid enrollee composition of enrollment percentage limit are available under section 1903(m)(2)(C) during the first 3 years of a contract with a State, if the Secretary is satisfied that the HMO has made and continues to make efforts to meet the enrollment limits. Section 1903(m)(2)(D) provides for a waiver of indefinite duration to an HMO that is a public entity (i.e., owned or operated by a State, county, or municipal health department or hospital) if the Secretary determines the waiver is warranted by special circumstances, and the public HMO is making reasonable efforts to meet the enrollment limit by enrolling persons not entitled to Medicare or Medicaid.

In addition to the above waiver authority, section 1903(m)(2)(B) of the Act exempts certain organizations altogether from the composition of enrollment requirement, as well as all other requirements in section 1903(m)(2)(A) pertaining to organizations contracting with the State on a prepaid capitation risk basis to provide comprehensive services. These organizations must have been recipients of grants of at least $100,000 in 1976 under certain sections of the Public Health Service Act or the Appalachian Regional Development Act, and must either continue to be grantees under such legislation for the duration of the contract with the State or, in the case of Appalachian Regional Development grantees, have a contract that was entered into while the organization was still a grantee. Other restrictions apply to contracts with Public Health Service grantees.

Section 1903(m)(2)(A)(vi) of the Act requires that enrollees of risk-basis HMOs be permitted to disenroll without cause at any time. Disenrollment is effective beginning the first calendar month following a full calendar month after the disenrollment request was made.

Section 1902(e)(2) of the Act permits States to continue to provide Medicaid to enrolled recipients for periods up to 6 months from the date of enrollment in federally qualified HMOs, even if the enrollee loses Medicaid eligibility before the enrollment period ends.

II. Legislative Changes

For the convenience of the reader we are repeating selected pertinent material published previously in the proposed rule on January 12, 1988 at 53 FR 744.

A. Eligibility of New Organizations

Section 9517(a)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amended section 1903(m)(2) of the Act by adding a new subparagraph (G). This change permits a State to contract on a prepaid risk capitation basis for the scope of services described in section 1903(m)(2)(A) of the Act with entities that have been receiving during the previous 2 years a grant of at least $100,000 under section 329(d)(1)(A) or 330(D)(1) of the PHS Act or have been receiving $100,000 by grant, subgrant, or subcontract under the Appalachian Regional Development Act of 1965. Unless they have been receiving such grants since 1976, and therefore are exempt from section 1903(m)(2)(A) altogether pursuant to section 1903(m)(2)(B), subparagraph (G) entities are subject to all requirements in section 1903(m)(2)(A) except the requirements (1) that the entity be determined an HMO by the Secretary, and (2) that less than 75 percent of its membership be Medicare beneficiaries or Medicaid recipients.

B. Composition of Enrollment

Section 2364 of the Deficit Reduction Act of 1984 (DRA) added subparagraph (E) to section 1903(m)(2) of the Act. This subparagraph expanded the waiver authority of the Secretary to permit States to receive Federal financial participation in expenditures to an HMO meeting certain requirements and exceeding the composition requirements of section 1903(m)(2)(A)(ii) of the Act, which requires that fewer than 75 percent of its enrollees are Medicare or Medicaid beneficiaries. To be eligible for this waiver, the HMO must (a) be a nonprofit organization with at least 25,000 members, (b) have been a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) for a period of at least 4 years, (c) provide basic health services through members of the staff of the organization, (d) be located in an area designated as medically underserved under section 1302(7) of the Public Health Service Act, and (e) have previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1115 of the Social Security Act. The Secretary also must determine whether special circumstances justify a waiver, and whether the HMO has or is taking reasonable efforts to enroll persons not entitled for Medicare or Medicaid.

C. Termination of Enrollment

Section 2364 of the DRA amended section 1903(m) of the Act to provide an exception to the requirement at section 1903(m)(2)(A)(vi)(I). This exception is set forth in section 1903(m)(2)(F) of the Act. The exception gave a State the option of restricting a Medicaid enrollee's right to disenroll freely from certain risk HMOs during the second through the sixth month of each period of enrollment in such organizations. During the first month of enrollment an enrollee may request termination of enrollment without having any cause for this decision. However, for the remaining months of the period, requests for termination must be for good cause. Termination of enrollment becomes effective no later than the beginning of the first calendar month following a full calendar month after the termination request is made. In order to restrict the right to request termination without cause to the first month of enrollment, the State must notify enrollees of the disenrollment restrictions at least twice per year. The restricted disenrollment option is applicable only to members of Federally qualified HMOs (as defined in section 1310(d) of the PHS Act) with fewer than 75 percent Medicare and Medicaid enrollees or entities described in section 1903(m)(2)(G).

The Conference Report that accompanied the DRA added clarification and guidance concerning implementation of restrictions upon disenrollment from an HMO. Examples of "good cause" for disenrollment during the restricted period (months two up through six) suggested by the report were "poor quality care or lack of access to needed speciality services". The States were expected to establish procedures to review "cause" disenrollment requests promptly.

In addition, the report set forth Congressional expectations that "current Federal regulatory requirements" for HMOs, including those which relate to "grievance procedures and quality assurance systems" at 42 CFR 434.32 and 434.34 respectively, would apply to this new provision of the law.

D. Continuation of Benefits

Section 9517(b) of COBRA amended section 1902(e)(2) of the Act, identifying organizations which may retain as members individuals who would otherwise lose entitlement to Medicaid, but whom the State may deem eligible for continuation of benefits during the remainder of a period of enrollment not exceeding 6 months from the date of enrollment in the organization. That group is described in section 1903(m)(2)(G) to the Act which was added by section 9517(a)(3) of COBRA. That section also permitted these organizations, to contract with the State agency for comprehensive services on a risk basis without satisfying the requirements in section 1903(m)(2)(A) (i) and (ii).

III. Notice of Proposed Rulemaking

On January 12, 1988 we published a proposed rule with a 60 day comment period (53 FR 744) that would revise §§ 434.20, 434.26, 434.27, 435.212, and 435.326 in subchapter C of title 42. These proposed changes to the regulations would bring the regulations into conformity with statutory amendments. We are repeating, again for the convenience of the reader, certain pertinent material published previously in the preamble to the proposed rule.

A. Eligibility of New Organizations

We proposed adding paragraph (a)(4) to § 434.20 to describe the group of organizations that are eligible to contract to provide comprehensive services on a risk basis without satisfying the enrollment composition requirements or the requirement that the Secretary determine that the entity is an HMO. These organizations are entities which receive, and have received during the previous 2 years, a grant of at least $100,000 under sections 329(d)(1)(A) or 330(d)(1) of the PHS Act or which receive and have received at least $100,000 during the previous 2 years by grant, subgrant, or subcontract under the Appalachian Regional Development Act of 1965. We proposed adding a new paragraph (b)(5) to § 434.26 that would reflect the fact that this group of organizations is exempt from the composition of enrollment requirement. However, unless they qualify for a total exemption under section 1903(m)(2)(B) of the Act, these organizations would be

required to meet all other HMO statutory requirements.

B. Composition of Enrollment

We proposed revising regulations located at § 434.26 to reflect the fact that the Secretary may waive the composition of enrollment requirement for an HMO which meets certain statutory criteria. Current § 434.26(b)(3) would be redesignated as (b)(4) and we would add a new paragraph § 434.26(b)(3) to specify the statutory criteria for a waiver.

We also proposed amending the regulations to reflect the statutory exemption from the composition of enrollment standard for certain Community, Migrant, and Appalachian Health Centers. In the preamble of the proposed rule, we noted that some of these exempt centers had joined to form larger organizations in order to operate an HMO of adequate size. Under simple arrangements, several community health centers had established an HMO that enrolls members who are then provided primary care services through the same community health centers. The HMO served simply as the corporate vehicle allowing the centers to combine their efforts. In this circumstance, we suggested that, consistent with Congressional intent, the HMO formed by centers that are exempt from the composition of enrollment requirement may join with another organization, such as a nonexempt center or a hospital, to form the HMO. In addition, there may be arrangements in which not all of the primary services are provided through exempt centers. In these circumstances, we believed that it would be consistent with Congressional intent to recognize the continuing force of the exemption if the exempt centers control the HMO and if substantially all the primary care services are provided through the exempt centers.

C. Termination of Enrollment

We proposed to revise paragraph (b) of § 434.27 to include provision for restrictions on disenrollment rights in certain HMO risk comprehensive contracts. The revised regulations would provide that a State either could require that a Medicaid enrollee of an HMO be free to disenroll at any time, or permit certain entities to restrict disenrollment after the first month of enrollment unless there was good cause. We proposed to revise and add paragraphs to § 434.27 that would specify the conditions to be met if a Medicaid agency chose to limit disenrollment rights of Medicaid enrollees of certain HMOs. New § 434.27(d) would specify that the disenrollment restriction would apply only to federally qualified HMOs and certain other entities identified in section 1903(m)(2)(G) of the Act and the proposed regulations at § 434.26(b)(5)(ii). Federally qualified HMOs whose Medicare and Medicaid enrollment constitutes 75 percent or more of its total enrollment are not eligible for the disenrollment restriction.

New § 434.27(e) would describe the requirements that an enrollee, an organization, and a State agency must meet for restricted disenrollment to occur. The regulations would permit the States flexibility in developing the procedures under which their restricted disenrollment program would operate. Under these provisions, an enrollee could only disenroll if the requirements for cause were met. An enrollee would need to request disenrollment in writing to the State agency and the HMO, citing the reasons why he or she wishes to leave the HMO. Examples of reasons may include poor quality care, or lack of access to specialty services covered under the State plan or other reasons that a State may establish. The HMO would be required to provide the State with whatever information the State may require to make a decision.

States could require recipients seeking to disenroll for cause to use an organization's grievance process prior to the State agency deciding the case. We were particularly interested in comments on this proposal that would permit a State to require use of the current grievance procedure regulations at 42 CFR 434.32 in the disenrollment process.

If the termination of an enrollment for good cause were approved by the HMO it would take place no later than the first day of the month after the month in which the recipient had requested termination in writing. We proposed that if the State agency made the determination about termination of enrollment for good cause, it would be required to take final action within 15 days after receipt of the request for disenrollment, or within 30 days after such receipt if the State determined that additional information were needed.

New § 434.27(f) would provide for automatic disenrollment of a requesting enrollee if the State failed to take final action within 15 days, or if additional information was requested by the State, within 30 days after the request to disenroll was made. We believed the delays beyond these timeframes for a final decision would deny a recipient timely action in remedying a possibly serious problem.

Finally, new § 434.27(g) would give an enrollee the right to appeal a decision by a State agency to deny a request to disenroll for good cause. The appeal procedure would be left to the State to develop and implement. An organization also would be required to inform potential enrollees of their disenrollment rights prior to enrollment, and at least 30 days before the start of a new enrollment period and at least twice per year.

D. Continuation of Benefits

We proposed revising our regulations at §§ 435.212 and 435.326 to reflect the fact that certain Community, Migrant, and Appalachian Health Centers are included in the provision permitting States to allow recipients to continue to receive Medicaid benefits for periods up to 6 months after they have lost entitlement. These sections of the proposed regulations also would permit HMOs owned and controlled by certain Community, Migrant, and Appalachian Health Centers to participate in the continuation of benefits rule.

Also, though not part of the proposed regulations, we presented in the preamble the recent policy decision that an "entity" that is a corporation owned and controlled by a Community, Migrant, or Appalachian Health Center, and meets certain conditions, should be permitted to limit disenrollment rights and be exempt from the 75/25 composition of enrollment rule.

IV. Analysis of And Responses to Public Comments

In response to the January 12, 1988 proposed rule, we received six timely items of correspondence. The comments were from State and county social services, health and human services offices, and an HMO which serves Medicaid recipients. We received one comment that favored the proposed regulation and noted that the flexibility in the proposed rule is vital to the continuing development of the Medicaid capitation program in that State. The remaining comments and our responses to them are discussed below:

A. Termination of Enrollment

Comment: One commenter expressed concern that restricting the recipient's right to disenroll without cause would likely bring criticism from community groups and other organizations interested in preserving unrestricted access to health care.

Response: As discussed above, authority for limits on recipients' right to disenroll without cause was created by statute, and not by these regulations. In any event, we did not receive critical comments from community

organizations, which leads us to believe the statute and regulations as proposed contain sufficient protection for the rights of Medicaid recipients. The protection includes: a requirement that enrollees be advised of their disenrollment rights prior to and during a period of enrollment; provision for enrollees to notify the State agency as well as the HMO of the reasons for which disenrollment is sought; and a requirement that the State agency act upon disenrollment requests within a specific timeframe. The review authority of the State agency should serve to not only protect an individual enrollee, but also serve as an "early warning" system to alert the State agency of possible larger problems with a contractor.

Comment: One commenter suggested that the description of organizations eligible to participate in the restricted disenrollment rule in § 434.27(d)(1) be expanded to include publicly-operated prepaid health plans that operate under a waiver of the 75/25 composition of enrollment rule. Another commenter suggested that their organization should be included as one of the organizations eligible to restrict disenrollment.

Response: We recognize the special role that publicly-operated HMOs and similar organizations play in the health care system serving the Medicaid population. Congress affirmed this role by permitting these organizations to more easily obtain a continuing waiver of the 75/25 rule. However, in adding section 1903(m)(2)(F) of the Act, Congress also decided that only certain specific entities would be allowed to restrict disenrollment. We have no authority to permit any other organizations to participate in the restricted disenrollment provision.

Comment: One commenter recommended that the regulations address disenrollment of recipients based on a request made by an HMO.

Response: HMOs contracting with Medicaid already have the authority to seek to terminate a recipient's enrollment. Our regulations at § 434.27(a)(1) provide that HMO contracts with the State must specify the reasons for which an HMO may seek to terminate a Medicaid recipient's enrollment. The reasons for termination of enrollment of a recipient must be approved by the State agency and the Regional HCFA Administrator (as part of the HMO contract prior approval process). Reasons for termination could include misuse of the HMO membership card, a move outside the area served by the HMO, or other reasons agreed to in the contract. A change in the recipient's health status or health care needs is not, by statute and regulations, an acceptable reason for an HMO to terminate a Medicaid enrollee.

Comment: Several commenters were concerned that timeframes proposed for the State to act upon a request for disenrollment for cause as specified in § 434.27(f) were too short. One commenter felt that the 15 day period was insufficient for an adequate investigation of a recipient complaint in a cause case. Another commenter challenged the proposed timeframes by describing the experience of that State in processing cause disenrollment requests. The commenter stated that the proposed 15 days allowed for grievance proceedings, and the 30 days for the State to act after receiving a recipient's request, were likely to place an unnecessary strain upon the State's current system which the commenter contended had proven workable. The commenter claimed that this State's system accomplishes the proposed rules' objectives of utilizing the grievance process and completing the disenrollment procedures within a timeframe as brief as 15 days, even though it sometimes requires as much as 45 days from the date of request to complete action. In the commenter's view, the proposed timeframes would only harm an effective State disenrollment process while offering no apparent benefit to the Medicaid program. The commenter urged that States with effective disenrollment systems be permitted to keep their systems without imposition of additional Federal requirements.

Response: A major concern in the development of the disenrollment for cause regulations was protection of the recipient through prompt action by the HMO and the State agency. We felt that a recipient's request to disenroll for cause required a quick response, since presumably the request would be based upon a serious problem in need of timely resolution (such as inability to obtain services).

We also recognize that a State may sometimes be in a better position than HCFA to develop disenrollment for cause procedures that could serve well the needs of the recipient, HMO, and State agency. The commenter's experience and suggestions caused us to reexamine this rule and we now conclude that the proposed timeframes were unnecessarily rigid. Therefore, we are revising the timeframes as specified in proposed § 434.27 (e) and (f) to give the States flexibility in carrying out the restricted disenrollment program, although we are maintaining certain time limits within which a State must act. The recipient will still be protected through rules requiring that he or she be informed of the disenrollment rights and rules before and during an enrollment period, and by requiring that an enrollee who does disenroll from an HMO for cause will be able to do so by no later than the first day of the second month following the month of the termination request. This disenrollment date enables a recipient to disenroll from an HMO that restricts disenrollment by a date at least no later than the date by which an enrollee of an organization that does not restrict disenrollment may do so. Further, because the State is informed from the start by the requesting disenrollee of the reason why disenrollment is sought, the State is in a position to act swiftly to protect the needs of an enrollee whose health and well-being appears to be at risk. Finally, if a State fails to complete action timely on a cause disenrollment case, the recipient's request will be deemed approved as of the date that action would have otherwise been required.

Comment: In the proposed rule, we specifically asked for comments on the provisions in § 434.27(e)(3) permitting the States the option of requiring the use of an organization's grievance process prior to a State making a determination in a disenrollment for cause case. One commenter responded that it required, in most cases, the use of an HMO's grievance procedure as part of the State's disenrollment process for cause. In that State, the HMOs were required and able to meet this requirement within a timeframe that permitted the State to process the disenrollment so that termination took place in accordance with current Federal requirements. This State's experience was that the HMO tried to resolve grievances within 2 days, but if necessary, could take up to 30 days to do so. However, the State was informed of these disenrollment requests on a daily basis and could begin its own disenrollment process in time for its activities to be completed on a timely basis, as needed.

Response: The one commenter who responded to our request for comments described a mandatory grievance procedure. However, we believe that it is in the best interest of this State-administered program that the State have the authority to decide whether to require the use of the HMO's grievance procedure as part of a disenrollment for cause. We believe that States will prefer that HMOs use the less formal procedure as the initial (and perhaps only) step necessary to resolve a disenrollment for cause request. However, since we require in § 434.27(e)(2)(i) that the State agency be informed of all cause requests that the

HMO does not immediately permit, the State will be able to begin its own processes in time to complete its work.

B. Continuation of Benefits

Comment: One commenter opposed allowing States to extend the enrollment period of recipients who lose their Medicaid eligibility. The commenter believed the proposed regulation would cause an increased workload for county eligibility workers who would need to maintain recipient enrollment in the HMO even though the recipient lost Medicaid eligibility.

Response: Congress provided that the extended benefit rule should be a State option. If a State determines that implementation of the rule would harm its Medicaid program in anyway, it is free to not implement it. If the State believes the increased workload for its eligibility staff outweighs the advantage of the extended benefits to recipients who lose eligibility, then the State may exercise its option to not implement the provision.

Comment: One commenter suggested that the Federal government pay 100 percent of the additional costs associated with the continuation of benefits proposal.

Response: There is no provision in the law for full payment by the Federal government of any additional State costs for this program. Payment is based upon the normal Federal-State matching rates and rules for the Medicaid program. By extending the period during which a recipient would be eligible to continue to receive benefits from an HMO following a loss of Medicaid eligibility, the State (and the Federal government as well) does incur additional program costs. However, the purpose of the regulation is to help States attract HMOs to participate in the Medicaid program by making the Medicaid population a more stable enrollment group. Medicaid recipients normally present a degree of uncertainty to an HMO due to the unpredictability of continuing Medicaid eligibility for some members of that group. This regulation helps make the group a more stable population which an HMO needs to plan its program. Additionally, the regulation may also help lower program costs over the long term, through such things as recipients seeking care for illness from their HMO physicians as opposed to more costly hospital emergency room visits for recipients without a source of regular medical care.

Comment: One commenter pointed out that section 4113 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), Pub. L. 100–203, which was enacted on December 22, 1987, amended the Act by adding certain organizations to those which qualify for the extended eligibility benefit. The commenter requested that these changes be added to the regulation.

Response: While the proposed rule was being prepared, legislation affecting subject matter included in the proposal also was under consideration by Congress. The legislation, Public Law 100–203, OBRA 87, was enacted on December 22, 1987, after the Department had completed its clearance of the proposal but before the publication date of January 12, 1988. The changes necessitated by section 4113 of OBRA 87 do not alter the policies we proposed. Rather, they are prescriptive in nature. Therefore, we are revising the final regulations to reflect these statutory changes. The revised regulations, located at § 434.27(d)(1) (iv) and (v), add two additional entities that may qualify for the restricted disenrollment benefit, and at §§ 435.212 and 435.326 add three entities which may qualify for the extended eligibility benefit.

Comment: One commenter suggested that the continuation of benefits provision would be difficult to implement. The commenter felt the possible different combinations of HMO services would cause problems in system changes.

Response: We are not certain why the different combination of services provided by different HMOs would create severe systems difficulties. The services provided to a Medicaid enrollee of an HMO would be the same for the period following loss of eligibility as it was for the period prior to the loss. Section 435.212(b) restricts the benefit package to benefits the enrollee receives in the HMO, and the major systems issue would appear to be a continuation of the HMO eligibility period for the State determined number of months following ineligibility benefit is an optional program, and a State may act in accordance with its own particular needs.

V. Provisions of the Final Regulations

After consideration of the comments received and our further analysis of specific issues and changes in the Medicaid HMO law made by OBRA 87, we are publishing as final the January 12, 1988 proposed regulations with a number of revisions.

We are revising § 434.20(a)(4) to clarify that entities described in section 1903(m)(2)(G) are only subject to regulations implementing section 1903(m)(2)(A) requirements if they are not exempt from such requirements altogether pursuant to section 1903(m)(2)(B).

In § 434.27(d)(1) we are making minor editorial changes for clarity and are adding new paragraphs (d)(1)(iv) and (d)(1)(v). These new paragraphs describe two organizations described in sections 4113(a)(1)(B) and (d)(1) of OBRA 87 as qualifying for the restricted disenrollment rule.

We are revising § 434.27(e)(3) to permit States greater control over the timeframes within which the use of an HMO's grievance procedure may occur, and also to give the States a more reasonable period of time within which to complete the disenrollment process. We are revising the second sentence in paragraph (3) to allow the optional use of the grievance procedure, but requiring the process (if it is used) to be completed in time to permit disenrollment no later than the first day of the second month following the month the disenrollment request is made. We believe this satisfies the needs of all interested parties: recipients, HMOs and State agencies.

We are also revising § 434.27(f), to remove the references to specific numbers of days for State actions to take place in a disenrollment for cause. Again, the protection of recipients along with administrative needs of HMOs and State agencies are met within the flexibility of a timeframe that still requires that the disenrollment for cause request be received and acted upon within a reasonable period of time. We will require that a recipient's disenrollment for cause request be deemed approved if the State fails to act within the required timeframe.

We are revising §§ 435.212 and 435.326 by adding three entities as qualified to participate in the extended eligibility benefit as specified in section 4113 of OBRA 87. We are also revising §§ 435.212 and 435.326 to clarify that entities specified in § 434.20(a)(3) qualify for deemed continued °eligibility. (Entities described in section 1903(m)(2)(B) (i) and (ii) necessarily constitute entities described in section 1903(m)(2)(G).)

VI. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HMOs with risk comprehensive contracts under the Medicaid program are considered small entities.

We revised and amended certain provisions of the proposed regulations in this final rule based on statutory changes and in response to public comment.

The provision expanding the waiver authority for the composition of enrollment limit (that is, no more than 75 percent of enrollees are Medicare or Medicaid participants) is already in place (we are merely conforming regulations to statutory provisions) and has not had a consequential impact on Federal or State expenditures under the Medicaid program. We do not expect that more than a few HMOs will ever be affected.

We do not know how many Community, Migrant, and Appalachian Health Centers satisfy the statutory qualifying requirements reflected in this final rule. Because these organizations are already eligible for a waiver of section 1903(m)(2)(A) (i) and (ii), the revisions to the regulations should have no impact.

The provision granting States the option of establishing Medicaid rules restricting disenrollments during the second to sixth month period following enrollment also was enacted by statute, and is already in effect. It has not and will not have a consequential effect on costs.

In response to public comments, we revised the timeframes for processing, by a prepaid health care organization, beneficiary requests for termination of enrollment under the organization's grievance process. The proposed rule specified that the grievance process must be completed within 15 days of the enrollee's request for disenrollment. Under the final rule, the reference to 15 days has been removed. The regulation now indicates that the grievance process must be completed in time to permit the enrollee to disenroll no later than the first day of the second month after the month the disenrollment request was made.

We also revised the timeframes for the State agency to process requests for disenrollment. The proposed rule specified that the State agency must process requests for disenrollment within 15 days of receipt unless additional information is needed. In that case, the proposed rule specified the State agency must process the disenrollment request no later than 30 days from the initial request. Under the final rule, the reference to the specific number of days (15 and 30) has been removed. The final regulation requires final action on the disenrollment request by the State agency to take place so that disenrollment occurs no later than the first day of the second month after the month of the request.

Based on these changes, States will have increased flexibility in controlling the timeframes within which the use of an HMO's grievance procedure may occur, and for the final action on disenrollment requests. As indicated in the proposed rule, under these provisions Medicaid recipients will continue to be assured of being disenrolled promptly within the State's disenrollment timeframes. This was the case regardless of when HMOs and States completed their administrative processes.

The provision to permit States to continue Medicaid benefits to recipients who lose entitlement to the program but who are enrolled in certain Community, Migrant, and Appalachian Health Centers will affect only a very small number of persons.

The effects of the provisions of the proposed rule published on January 12, 1988 and this final rule thus are primarily minor changes which will affect only a small number of persons and organizations.

The provisions concerning termination of enrollment and disenrollment for cause will make the Medicaid regulations consistent with the timeframes indicated in section 1903(m)(2)(A)(vi) of the Act. That section is related to the termination of enrollment by Medicaid recipients in prepaid health plans in which no restrictions on termination of enrollment apply. Thus, we are applying the timeframes contained in section 1903 (m)(2)(A)(vi) of the Act to those organizations for which restrictions on disenrollments can apply. These provisions will also have only minor effects.

For the reasons discussed under the provisions of the proposed and final rules, we believe this rule does not meet the criteria of a major rule under E.O. 12291. Therefore, we have determined that a regulatory impact analysis is not required. For the same reasons, we have determined and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis consistent with the RFA.

VII. Information Collection Requirements

Sections 434.27 (b), (c), (e), and (g) (2) and (3) of these final rules contain information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. These final regulations apply to certain federally qualified HMOs, certain Community, Migrant, and Appalachian Health Care Centers (and qualifying HMOs owned and controlled by such organizations), and certain organizations described in section 1903(m)(6) of the Act and 42 CFR 434.26(b)(3) of the regulations.

The paperwork burden necessary to carry out statutory and regulatory requirements apply to all organizations who participate in the restricted disenrollment rule, enrollees of these organizations who seek to disenroll for cause, and State agencies responsible for administering the disenrollment program and processing disenrollment applications.

Respondents who provide the information include organizations and State agencies which may participate in the program.

Public reporting burden for this collection of information is estimated to be approximately 12,000 hours. We do not know how many States will choose to implement the restricted disenrollment program or how many organizations will decide to participate in those States. We believe that the major part of the burden will be the requirement that organizations inform recipients prior to enrollment and reenrollment of their rights under the program. Further, we believe the majority of enrollees of participating organizations who wish to disenroll will do so during the first month of enrollment, when disenrollment is unrestricted. There likely will be few enrollees who seek to disenroll later for cause, and we suspect that organizations will generally not wish to engage in lengthy proceedings as to the appropriateness of a cause complaint, but will prefer to resolve the complaint quickly on an informal basis, or permit the member to leave the organization. There are approximately 750,000 recipients in organizations which are eligible to qualify for the restricted disenrollment rule. We estimate that

perhaps one-third of this number may be affected by it. Informing recipients of their rights will presumably be done through a mailing, but with automated systems this should impose a minimal time burden estimated at 8,000 hours annually. The other 4,000 hours is our estimate for processing cause disenrollment cases, which should generally be settled quickly.

A notice will be published in the **Federal Register** after OMB approval is obtained.

List of Subjects

42 CFR Part 434

Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements, Grant programs-health.

42 CFR Part 435

Aid to families with dependent children, Grant programs-health, Medicaid, Supplemental security income (SSI).

42 CFR part 434, subpart C is amended as set forth below:

PART 434—CONTRACTS

Subpart C—Contracts With HMOs and PHPs: Contract Requirements

1. The authority citation for part 434 continues to read as follows:

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

2. In § 434.20, paragraph (a) is revised to read as follows, and in paragraphs (b) and (c) the citation "§ 434.21" is revised to read "§ 434.21(b)."

General Requirements

§ 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract, for the scope of services specified in § 434.21, only with an entity that—

(1) Is a federally qualified HMO, including a provisional status federally qualified HMO;

(2) Meets the State plan's definition of an HMO, as specified in paragraph (c) of this section;

(3) Is one of several entities identified in section 1903(m)(2)(B) (i), (ii) and (iii) of the Act, and considered as a PHP; or

(4) Is one of certain Community, Migrant and Appalachian Health Centers identified in section 1903(m)(2)(G) of the Act. Unless they qualify for a total exemption under section 1903(m)(2)(B), these entities are subject to the regulations governing HMOs under this part, with the exception of the requirements of section 1903(m)(2)(A) (i) and (ii) of the Act.

* * * * *

3. In § 434.26, paragraph (b) is amended by redesignating paragraph (b)(3) and (b)(4) and new paragraphs (b)(3) and (b)(5) are added to read as follows:

§ 434.26 Composition of enrollment.

* * * * *

(b) * * *

(3) *Waiver for certain nonprofit HMOs with risk comprehensive contracts.* The Regional Administrator may approve waiver or modification of the requirement of paragraph (a) of this section, for a nonprofit HMO which has a minimum of 25,000 members, is and has been federally qualified for a period of at least 4 years, provides basic health services through members of its staff, is located in an area designated as medically underserved under section 1302(7) of the Public Health Service Act, and has previously received a waiver under section 1115 of the Act of the requirement described in paragraph (a) of this section, if—

(i) There are special circumstances that justify modification or waiver; and

(ii) The HMO has made and continues to make reasonable efforts to enroll individuals who are not eligible for Medicare or Medicaid.

* * * * *

(5) *Special exemption.* (i) Community, Migrant and Appalachian Health Centers identified in section 1903(m)(2)(G) of the Act are exempt from the basic rule; and

(ii) Health maintenance organizations (as defined in section 1903(m)(1)(A) of the Act) that are primarily owned and controlled by centers specified in paragraph (b)(5)(i) of this section are exempt from the basic rule if they furnish primary care services substantially through such centers.

4. Section 434.27 is amended by revising paragraph (b) and adding paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 434.27 Termination of enrollment.

* * * * *

(b) An HMO risk comprehensive contract must specify either—

(1) That an enrollee of an organization with a risk comprehensive contract may terminate enrollment freely at any time, effective no later than the first day of the second month after the month in which he or she requests termination; or

(2) If an agency chooses to restrict disenrollment rights under paragraph (d) of this section, that an enrollee may terminate enrollment freely during the first month of any period of enrollment up to 6 months, and may terminate enrollment during the remainder of the enrollment period only as provided under paragraph (c) of this section. Termination of enrollment during the first month of period of enrollment is effective no later than the first day of the second month after the month in which he or she requests termination. Termination of enrollment during the remainder of a period of enrollment is in accordance with paragraph (f) of this section.

(c) An HMO risk comprehensive contract under paragraph (b) of this section must specify that the HMO will inform each recipient at the time of enrollment, of the right to terminate enrollment.

(d) A State plan may provide for contracts with certain organizations which restrict disenrollment rights of Medicaid enrollees under paragraph (b)(2) of this section if the following conditions are met—

(1) The organization is—

(i) A federally qualified HMO whose Medicare and Medicaid enrollment constitutes less than 75 percent of its total enrollment; or

(ii) One of the entities identified in section 1903(m)(2)(G) of the Act; or

(iii) One of the entities described in § 434.26(b)(5)(ii); or

(iv) The entity described in section 1903(m)(6) or the Act; or

(v) An entity described in § 434.26(b)(3); and

(2) The disenrollment requirements of paragraphs (e), (f) and (g) of this section are met.

(e) An agency choosing to restrict enrollee disenrollment rights under paragraph (b)(2) of this section in its contract with the organization—

(1) Must permit the enrollee to request disenrollment without cause during the first month of any enrollment period (an enrollment period may not exceed 6 months);

(2) Must permit an enrollee to disenroll during the remainder of any period of enrollment following the first month, if (in accordance with the organization's contract with the State agency) the organization approves the enrollee's request to disenroll, or if all of the following requirements are met—

(i) An enrollee requests in writing to the State agency and the organization disenrollment for good cause;

(ii) The request cites the reason(s) why he or she wishes to disenroll, such as poor quality care, lack of access to necessary specialty services covered under the State plan, or other reasons satisfactory to the State agency;

(iii) The organization provides information that the agency may require; and

(iv) The agency determines that good cause for disenrollment exists.

(3) May require that the recipient seek to redress the problem through use of the organization's grievance process prior to a State agency determination in a disenrollment for cause request, except in cases in which immediate risk of permanent damage to the recipient's health is alleged. The grievance process, when utilized, must be completed in time to permit the enrollee to disenroll no later than the first day of the second month after the month the disenrollment request was made. If the organization, as a result of the grievance process, approves an enrollee's request to disenroll, the State agency is not required to make a determination in the case.

(f) The State agency must make a determination and take final action on the recipient's request so that disenrollment occurs no later than the first day of the second month after the month the request was made. If the agency fails to act within the specified timeframe, the recipient's request to disenroll is deemed to be approved as of the date that agency action was required.

(g) An agency which restricts disenrollment under paragraph (b)(2) of this section must also—

(1) Establish an appeal procedure for enrollees who disagree with the agency's finding that good cause does not exist for disenrollment.

(2) Require the organization to inform recipients who are potential enrollees prior to enrollment of their disenrollment rights; and

(3) Require the organization to notify enrollees of their disenrollment rights under this section—

(i) At least 30 days before the start of each new period of enrollment; and

(ii) No less than twice per year.

42 CFR part 435, subpart C is amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

Subpart C—Options for Coverage as Categorically Needy

1. The authority citation for part 435 continues to read as follows:

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

2. Section 435.212 is revised to read as follows:

§ 435.212 Individuals who would be ineligible if they were not enrolled in an HMO.

The agency may provide that a recipient who is enrolled in a federally qualified HMO (under a risk contract as specified in § 434.20 (a)(1) of this chapter) or in an entity specified in § 434.20 (a)(3) and (a)(4), § 434.26(b)(3), § 434.26(b)(5)(ii) or section 1903(m)(6) of the Act (which provides services as described in § 434.21(b) of this chapter) and who becomes ineligible for Medicaid is deemed to continued to be eligible—

(a) For a period specified by the agency, ending no later than 6 months from the date of enrollment; but

(b) Only for benefits provided to him or her as an enrollee of the organization or entity described above.

3. Section 435.326 is revised to read as follows:

§ 435.326 Individuals who would be ineligible if they were not enrolled in an HMO.

If the agency provides Medicaid to the categorically needy under § 435.212, it may provide Medicaid under the same rules to medically needy recipients who are enrolled in a federally qualified HMO or in an entity specified in § 434.20 (a)(3) and (a)(4), § 434.26(b)(3), § 434.26(b)(5)(ii) or section 1903(m)(6) of the Act which provides services as described in § 434.21(b) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: January 22, 1990.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: March 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–13543 Filed 6–11–90; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 900239–0148]

Groundfish of the Gulf of Alaska

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

ACTION: Emergency interim rule; amendment; and modification of notice of closure.

SUMMARY: An extension to an emergency interim rule provides quarterly allocations of Pacific halibut bycatch to hook-and-line and trawl gear and is in effect from May 16, 1990, through August 13, 1990. The Secretary of Commerce (Secretary) amends the emergency interim rule from June 5, 1990 through August 13, 1990. This amendment to the emergency interim rule is necessary to promote effective management of the groundfish fishery. Specifically, this amendment to the emergency rule (1) further reduces the likelihood of a premature closure of the trawl groundfish fisheries by spreading the halibut prohibited species catch (PSC) limits for trawl gear over a longer period of time; and (2) allows for the retention of groundfish caught as bycatch in the hook-and-line fisheries for salmon and halibut. A notice of closure of the Gulf of Alaska to retention of groundfish caught by hook-and-line gear, effective on May 29, 1990, through June 30, 1990, is modified accordingly. This action will allow for a greater opportunity to harvest established groundfish quotas.

EFFECTIVE DATES: Effective from June 5, 1990 through 2400 hours Alaska Daylight Time, August 13, 1990.

ADDRESSES: Copies of the supplemental environmental assessment may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Susan Salveson (Fishery Management Biologist, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION: Under Section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule that allocated PSC limits for Pacific halibut for hook-and-line and trawl gear on a quarterly basis in the Gulf of Alaska (GOA), as recommended by the North Pacific Fishery Management Council (Council) (55 FR 5994, February 21, 1990). That rule was effective for 90 days, from February 15, 1990, through May 15, 1990. With the agreement of the Council, the Secretary extended the emergency interim rule for another 90 days under section 305(e)(3)(B), because conditions warranting the emergency still existed (55 FR 20465, May 17, 1990). In addition to the extension of the emergency interim rule, the Council also recommended a 50-percent reduction of the trawl gear PSC allocation for Pacific halibut, originally intended to be available on July 1, 1990, from 800 to 400 mt. The remaining 400 mt of PSC allocation for Pacific halibut for trawl gear would be made available beginning

August 13, 1990. This amendment to the emergency interim rule subdivides the PSC limit for Pacific halibut for trawl gear in the manner recommended by the Council. This rulemaking is necessary because of two events expected to occur in the bottom trawl fishery for Alaskan groundfish. High bycatch rates of Pacific halibut in the bottom trawl fishery in the Bering Sea and Aleutian Islands Area (BSAI) are expected to cause a premature closure of that fishery this year, thereby redirecting effort by these fishermen from the BSAI to the GOA. Also, high bycatch rates of halibut are expected in the summer trawl fishery for Pacific cod in the GOA due to migration by halibut into shallower waters. If these events are uncontrolled, a premature closure of the trawl fishery would occur in the Gulf of Alaska before traditional fall fisheries could begin.

The Secretary amends the emergency rule by adjusting the trawl gear allocation for groundfish trawl gear fishermen in the manner recommended by the Council. Furthermore, the Secretary modifies the closure notice published on June 1, 1990, to allow for the retention of groundfish caught as bycatch in the directed hook-and-line fisheries for halibut and salmon, provided that allowable quota amounts for retained groundfish species have not been reached. This amendment is necessary (1) to maintain halibut bycatch mortality at established levels while spreading PSC limits over the year to increase the opportunity to harvest groundfish TAC amounts, (2) to prohibit directed fishing for groundfish and minimize halibut bycatch by vessels using bottom trawl or hook-and-line gear once either trawl gear or hook-and-line gear reaches the portion of the PSC mortality limit allocated to that gear type during a calendar quarter, and (3) to provide fishermen in the directed halibut and salmon hook-and-line fisheries an opportunity to retain incidental catch of groundfish, if the TAC for that groundfish species has not yet been reached.

Existing regulations close the Gulf of Alaska to fishing for groundfish with bottom trawl or hook-and-line gear once that gear type has reached its halibut PSC mortality limit. As a result, bycatch of sablefish, rockfish, and other groundfish species in the directed hook-and-line fisheries for halibut and salmon cannot be retained, unnecessary waste of fishery resources occurs, and hook-and-line fishermen suffer loss of revenue normally generated from exvessel landings of groundfish caught as bycatch. Under the amended emergency interim rule, only the directed groundfish fisheries using bottom trawl gear or hook-and-line gear are prohibited once these gear types have reached the quarterly PSC mortality limit apportioned to each gear type. The directed hook-and-line fisheries for halibut and salmon may retain bycatch amounts of groundfish species provided that (1) established quota amounts for these species have not been reached, and (2) retained amounts of groundfish species are consistent with regulations that define acceptable levels of groundfish bycatch (55 FR 9887, March 16, 1990).

Given the above, the closure of the Gulf of Alaska to fishing for groundfish on May 29, 1990, through June 30, 1990 published on June 4, 1990 (55 FR 22794), is modified to prohibit directed fishing for groundfish, while allowing the retention of groundfish caught as bycatch in other directed fisheries for non-groundfish species.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that reasons justifying the promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553 (b) and (d) of the Administrative Procedure Act. Furthermore, to avoid the imposition of an unnecessary restriction on retention of incidentally-caught groundfish while fishing for Pacific halibut, this action is being made retroactively effective on June 5, 1990.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This emergency rule amendment is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

The Regional Director prepared a supplemental environmental assessment for this rule and the Assistant Administrator for Fisheries concluded that no significant impact will occur on the human environment. A copy of the supplemental environmental assessment is available from the above address.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: June 7, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.20, paragraphs (f)(4)(i), (f)(4)(ii), and (f)(5)(ii) are revised to read as follows, effective from June 5, 1990, through August 13, 1990:

§ 672.20 General limitations.

* * * * *

(f) * * *

(4) *Gear closures*—(i) *Trawl gear.* If during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using trawl gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using trawl gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the quarterly allocation of the halibut PSC limit provided for under paragraph (f)(5) of this section, the Regional Director will publish a notice in the Federal Register prohibiting directed fishing for groundfish by JVP or DAP vessels, as appropriate, with trawl gear other than pelagic trawl gear for the remainder of the quarter to which the PSC allocation applies.

(ii) *Hook-and-line gear.* If, during the year, the Regional Director determines that the catch of halibut by operators of

vessels using hook-and-line gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using hook-and-line gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the quarterly allocation of the halibut PSC limit provided for under paragraph (f)(5) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting directed fishing for groundfish by JVP or DAP vessels, as appropriate, with hook-and-line gear for the remainder of the quarter to which the PSC allocation applies.

* * * * *

(5) * * *

(ii) The PSC limits expressed in metric tons (mt) established for trawl and hook-and-line gear are allocated on a quarterly basis in the following manner, subject to modification under paragraphs (f)(5)(iii) and (f)(5)(iv) of this section:

	Trawl gear	Hook-and-line gear
	Percent (PSC allocation)	Percent (PSC allocation)
Jan. 1–Mar. 31.	30% (600 mt)	20% (150 mt)
Apr. 1–June 30.	30% (600 mt)	60% (450 mt)
July 1–August 13.	20% (400 mt)	
July 1–remainder of year.		20% (150 mt)
Aug. 14–remainder of year.	20% (400 mt)	
Total	100% (2,000 mt)	100% (750 mt)

* * * * *

[FR Doc. 90–13560 Filed 6–11–90; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 113
Tuesday, June 12, 1990

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1714

Federal Pre-emption in Rate Making in Connection With Power Supply Borrowers and REA Electric Borrowers in Bankruptcy

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Rural Electrification Administration (REA) on April 2, 1990 published in the Federal Register two proposed rules to amend 7 CFR chapter XVII, by adding part 1714, Electric Rates, Services and Contracts. These proposed subparts are, subpart E—Federal Pre-emption in Rate Making in connection with Power Supply Borrowers, at 55 FR 12194, and subpart I—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy, at 55 FR 12199.

These new subparts will establish policies and procedures to implement certain provisions of (a) the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"); and (b) REA loan documents, including wholesale power contracts between the power supply borrowers and their members, which provide, among other matters, for the establishment of rates for the sale of electric power and energy by power supply borrowers. These subparts will address the pre-emption under certain circumstances of the regulation by State Regulatory Authorities of REA borrowers' rates and the assumption of exclusive jurisdiction over rates by REA.

On May 29, 1990, REA received a number of requests from the public for a 30 day extension of the comment period. Since these requests were received just prior to the June 1, 1990 scheduled end of the 60 day comment period for these proposed rules, REA did not extend the comment period. In order to be responsive to these requests and to give other interested parties an additional opportunity to comment, REA is reopening the public comment period on these proposed rules for an additional 30 days.

DATES: Written comments must be received by REA no later than July 12, 1990.

ADDRESSES: Submit written comments to Mr. Archie W. Cain, Director, Electric Staff Division, Rural Electrification Administration, room 1246, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments may also be inspected at room 1246 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–9558.

SUPPLEMENTARY INFORMATION: The comments that REA received on these proposed rules during the period April 2, 1990 through June 1, 1990 will continue to be available for public inspection in room 1246, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments may also be inspected at room 1246 between 8:15 a.m. and 4:45 p.m.

Additionally, interested parties may obtain copies of the comments received by REA through June 1, 1990, by sending a written request to the Director, Legislative and Public Affairs Staff, Rural Electrification Administration, room 4042, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Telephone (202) 382–1255. Parties requesting copies, will be notified and charged for the reproduction costs incurred. After the expiration of the reopened comment period, interested parties may request copies of any additional comments REA received.

Dated: June 6, 1990.

Gary C. Byrne,

Administrator.

[FR Doc. 90–13546 Filed 6–11–90; 8:45 am]

BILLING CODE 3410–15–M

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 90–100]

Animal Welfare; Standards for Horses and Other Farm Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are extending the comment period for our advance notice of proposed rulemaking regarding establishment of standards designed specifically for the humane care of horses used for biomedical or other nonagricultural research, and for the humane care of other farm animals used for biomedical or other nonagricultural research, or for nonagricultural exhibition. This extension will provide interested persons with additional time to prepare comments regarding such standards.

DATES: Consideration will be given only to written comments on Docket No. 90–006 received on or before July 12, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90–006. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 269, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7833.

SUPPLEMENTARY INFORMATION: On April 5, 1990, we published in the Federal Register a final rule (55 FR 12630–12631, Docket No. 89–223) giving notice of our intent to regulate under the Animal Welfare Act horses used for biomedical or other nonagricultural research, and other farm animals used for biomedical or other nonagricultural research, or for nonagricultural exhibition. In the same issue of the Federal Register, we published an advance notice (55 FR 12667, Docket No. 90–006) that we are considering proposing standards designed specifically for the humane care of such animals, and we requested comments on appropriate specific standards. We stated in Docket No. 90–006 that until standards designed specifically for the animals in question are added to the regulations, we intend to regulate those animals in accordance with the standards set forth in 9 CFR part 3, subpart F, "Specifications for the Human Handling, Care, Treatment, and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Marine Mammals."

Comments regarding Docket No. 90–006 were required to be received on or before June 4, 1990. During the comment period, we received three requests that we extend the period for accepting comments. One of the requests came from a national trade association, the Animal Health Institute (AHI). The AHI stated that an extended comment period would allow its members sufficient time to examine the current standards of practice and the available literature regarding the subjects being considered. The other requests came from private individuals, one of whom stated that an extended comment period would allow time for interested parties in the exotic and domestic livestock businesses to learn about and comment on the advance notice of proposed rulemaking.

In response to these requests, we are reopening and extending the comment period for Docket No. 90–006 through July 12, 1990. This will allow time for the requestors and other interested persons to secure the information they believe is necessary to comment on the advance notice of proposed rulemaking.

Authority: 7 U.S.C. 2131–2157; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC., this 6th day of June, 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–13544 Filed 6–11–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–90–13]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 13, 1990.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. 26221, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 5, 1990.

Jean Neely,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26221.

Petitioner: Sierra Academy of Aeronautics.

Regulations Affected: 14 CFR parts 141, appendix F.

Description of Petition: The petitioner proposes to amend part 141, appendix F to allow for the substitution of 80 hours of flight instruction and 70 hours of directed solo training instead of the 50 hours of flight instruction and 100 hours of directed solo training as is currently required under part 141, appendix F for the helicopter commercial pilot course.

Petitioner's Reason for the Request: The petitioner states that this request for an additional option involves the exclusive use of helicopters for all 150 hours of approved school training, and is directed at enhancing safety while adding to both the quality and quantity of relevant training.

[FR Doc. 90–13499 Filed 6–11–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–CE–24–AD]

Airworthiness Directives; Dornier Luftfahrt GmBH, Models Do28D and Do28D–1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to Dornier Luftfahrt GmbH, Models Do28D and Do28D–1 airplanes, which would require inspection of riveted connections between the L-section and formed sheet on the left-hand and right-hand engine supports. The FAA has received reports of loose rivets due to engine mount vibration. The actions contained in this proposal will preclude failure of the engine support and possible loss of the airplane.

DATES: Comments must be received on or before July 31, 1990.

ADDRESSES: Dornier Service Bulletin (S/B) No. 1131–1613, dated August 2, 1989, applicable to this AD, may be obtained from Dornier Luftfhart GmbH, P.O. Box 3, D–8031 Wessling, Federal Republic of Germany (FRG). This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–24–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this

location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Aerospace Engineer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy; Telephone (322) 513.38.30, or Mr. Herman C. Belderock, Aerospace Engineer, Aircraft Certification Service, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRMs

Any person may obtain a coy of this NPRM by submitting a request to the FAA, Central Region Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–24–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Dornier Luftfahrt GmbH, the manufacturer, has become aware that the riveted connections between the L-section and the formed sheet on the right-hand and the left-hand engine mounts can become loose due to engine vibration on Do28D series airplanes. The movement between the parts will permit increased engine vibration induced movement and further degradation of the riveted connections. This loose condition, if not corrected, will result in a rupture of the engine support and possible loss of the airplane.

As a result, Dornier has issued S/B No. 1131–1613, dated August 2, 1989, which requires initial and repetitive visual inspections of the riveted connection between the L-section and the formed sheet on the right-hand and left-hand engine supports on these airplanes. If any damaged or loose rivets are found, prior to further flight remove and replace any damaged rivets plus replace all universal and Huck blind rivets having a diameter of 3.2mm (.126 in) with rivets having a diameter of 4.0mm in accordance with the manufacturer's instructions. The German Civil Airworthiness Authority (LBA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Federal Republic of Germany, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under LBA registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the LBA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Dornier Service Bulletin No. 1131–1613, dated August 2, 1989, and the mandatory classification of this service bulletin by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Dornier S/B No. 1131–1613, dated August 2, 1989, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require an initial and repetitive visual inspections of the riveted connection between the L-section and the formed sheet on the right-hand and left-hand engine supports on these airplanes. Prior to further flight, if any damaged or loose rivet is found, all universal and Huck blind rivets with a diameter of 3.2mm (.126 in) must be removed and replaced in accordance with the manufacturer's service bulletin instructions.

The FAA has determined there are approximately 3 airplanes affected by the proposed AD. The cost of inspecting these airplanes as required by the proposed AD is estimated to be $80 per airplane. The total cost is estimated to be $240 per inspection. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes. The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Dornier: Applies to Models Do28D and Do28D–1 (all serial numbers) airplanes, certificated in any category. Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS, unless already accomplished.

To prevent engine mount failure, accomplish the following:

(a) Inspect the riveted connection between the L-section and formed sheet of the right-hand and left-hand engine mounts. If any loose or damaged rivets are found, prior to further flight remove and replace any damaged rivets plus replace all universal and Huck blind rivets with a diameter of 3.2mm (.126 in) with rivets having a diameter of 4.0mm in accordance with the instructions contained in Dornier Service Bulletin No. 1131–1613, dated August 2, 1989.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

Note.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Dornier Luftfahrt GmbH, P.O. Box 3, D–8031 Wessling, Federal Republic of Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 31, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–13503 Filed 6–11–90; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Rel. Nos. 33–6866; 34–28093; International Series Rel. No. 127; File No. S7–10–90]

Concept Release on Multinational Tender and Exchange Offers

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of possible commission action and request for public comment.

SUMMARY: The Commission is seeking comment on a conceptual approach designed to encourage foreign bidders to extend multinational tender and exchange offers to their U.S. securityholders on the basis of foreign disclosure, procedural and accounting requirements, where U.S. investors own a small percentage of the securities sought. The release also requests suggestions as to additional or alternative approaches to facilitate extension of cross border tender and exchange offers into the United States. In particular, the Commission requests comments from non-U.S. issuers, broker-dealers, investment bankers, regulatory authorities and associations. The Commission will review comments received in response to this release to determine whether rulemaking is appropriate.

DATES: Comments should be received by September 21, 1990.

ADDRESSES: Comment letters should refer to File S7–10–90 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Catherine Dixon or Richard A. Silfen at (202) 272–3097, Office of Tender Offers, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("Commission") is soliciting public comment on a conceptual approach intended to encourage foreign bidders for foreign target companies, as well as foreign issuers conducting issuer tender offers, to extend offshore cash tender and exchange offers to securityholders residing in the United States. The Commission is concerned that, where U.S. investors comprise a small portion of a foreign company's securityholder base, foreign bidders and issuers may attempt to avoid jurisdiction and to exclude the U.S. investors from multinational offers based on a determination that the costs of compliance with U.S. laws and regulations outweigh the benefit of U.S. securityholder participation. Investors in the United States thus may be denied the opportunity to realize value on their investments in foreign securities. They also may be relegated to choosing, without the disclosure and procedural safeguards available under either the U.S. or foreign regulatory scheme, whether to sell into the secondary market at less than the full offering price and incur transactional costs that would not be imposed upon a tender, or to remain minority securityholders subject to the possibility of being cashed out in a subsequent "freeze-out" merger.

As one of a number of initiatives designed to minimize discriminatory treatment of U.S. securityholders in foreign-based tender and exchange offers, the Commission is exploring a potential regulatory framework for that class of transactions where the U.S. securities holdings constitute a small portion of the transaction and where it may be appropriate to allow offers for these securities to proceed in accordance with foreign tender offer rules and practices. This conceptual approach would allow U.S. securityholders who otherwise may be excluded from tender and exchange offers to participate on equal terms with foreign securityholders, with the protections accorded by the foreign regulatory scheme and U.S. antifraud provisions.

II. Background

Securities markets rapidly are becoming global, as foreign issuers expand their use of the U.S. capital markets and U.S. issuers seek access to foreign markets.[1] As companies increasingly have raised capital outside their home markets and investors have pursued opportunities in foreign markets, many corporations have developed multinational securityholder bases. Acquirors, whether proceeding on a hostile or friendly basis, and regardless of how the target's securities came to be held overseas, are faced with the prospect of conducting the acquisition pursuant to the rules of a number of different and potentially conflicting regulatory schemes and practices. The same difficulties are presented with respect to issuer tender and exchange offers.

To date, foreign persons considering a tender or exchange offer for securities held in several countries have responded in a number of instances by attempting to avoid jurisdiction and excluding securityholders residing in a country where compliance with an additional regulatory system has been viewed as particularly costly and where the holdings in that country may not be important to effecting the transaction. Foreign bidders and issuers may be dissuaded form extending cash and exchange offers to U.S. securityholders by the expense and time typically required to comply with the disclosure and procedural standards of the federal securities laws. This is particularly true with respect to exchange offers, where

[1] As of March 1990, there were approximately 480 foreign issuers with equity securities registered under section 12 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 781.

the registration provisions of the Securities Act of 1933 ("Securities Act") must be satisfied before the offer may commence. One of the most significant barriers to inclusion of U.S. securityholders in an offshore exchange offer has been the need for adherence to, or reconciliation with, U.S. generally accepted accounting principles ("GAAP") and auditing standards, as well as concern over continuing reporting requirements under the Exchange Act.

Exclusion or discriminatory treatment of U.S. holders in connection with multinational cash tender and exchange offers is of particular concern to the Commission. U.S. investors not only can be deprived of the opportunity to realize significant value on their investments in foreign securities by tendering into a favorable offer, they also must decide whether to retain their securities or sell into the secondary market without the disclosure and procedural safeguards afforded by the regulatory scheme applicable in the U.S. or in the relevant foreign jurisdiction.

The Commission has been addressing the practice of excluding U.S. securityholders in two principal ways: first, by asserting its regulatory jurisdiction, where applicable,[2] and second, by recognizing the need to accommodate foreign tender offer regulations and practices where necessary and consistent with the interests and protection of U.S. investors. These accommodations are intended to secure, to the greatest extent possible, the equal treatment of all securityholders wherever located, without compromising fundamental securityholder protections mandated by the federal securities laws for U.S. securityholders.[3]

The Commission's recently proposed multijurisdictional disclosure system ("MDS") would create a procedure for mutual recognition of home-country disclosure by U.S. and Canadian securities authorities.[4] Pursuant to the MDS, tender and exchange offers for a Canadian company could proceed in the United States under Canadian disclosure and procedural rules where less than 20 percent of the target's securities were held in the United States. In the case of an exchange offer, a Canadian bidder listed on the Montreal Exchange or Toronto Stock Exchange and meeting certain float and reporting history criteria also could register the securities offered using the disclosure documents prescribed by Canadian law. Both U.S. and Canadian law would require extension of the offers to all securityholders. The bidder or issuer would continue to be subject to the civil liability and antifraud provisions of the Securities Act and the Exchange Act.

The Commission anticipates extending the MDS to other countries where the applicable regulatory scheme is determined to provide U.S. securityholders with basic protections comparable to those mandated by the federal securities laws. Unlike Canada and the United States, a number of countries define tender offer jurisdiction in terms of the domicile of the target rather than the location of the securityholders of the target. Thus, under the MDS, it appears to be more likely that the U.S. would accept compliance with foreign law in place of compliance with the Williams Act requirements than for the foreign jurisdiction to accept compliance with the Williams Act in place of its own regulations; it is unlikely that less than 20 percent of the shares would be held by investors of the target company's domicile.

In the interim, the Commission has sought to administer its rules in a flexible manner to accommodate foreign tender offer rules and practices. The key policies in tailoring such accommodation have been to provide for the equal treatment of shareholders, U.S. and foreign, to the greatest extent feasible, and to provide U.S. investors the basic protections of the Williams Act regulatory scheme.

The recent Ford Motor Company Ltd. offer for Jaguar plc highlighted the problems presented by conflicting regulation in multijurisdictional offers. With over 25% of the Jaguar shares held by U.S. investors, either directly or in American Depositary Receipt ("ADR") form, compliance with the Williams Act was required. However, given the inconsistent approach to withdrawal rights of the Williams Act regulatory scheme (withdrawal rights throughout the offer) and the City Code on Take-overs and Mergers ("City Code") (no withdrawal rights until the 42nd day of a conditional offer [5]), a single offer could not proceed in compliance with both jurisdictions' regulations. To resolve the problem raised by this regulatory conflict, Ford proceeded with two offers, one to U.S. residents, complying with Williams Act procedures, including withdrawal rights throughout the minimum offering period, and one to the rest of Jaguar's shareholders, complying with the City Code. To accord U.S. and foreign investors equal treatment, the Commission permitted U.S. shares to be purchased upon expiration of the minimum offering period and the U.K. offer becoming unconditional. In accordance with U.K. tender offer practice, both the U.S. and U.K. offers remained open for 14 days following the first purchase of shares. The Commission issued an order permitting the U.S. offer to remain open for this additional period without extension of

[2] The tender offer provisions of the Williams Act are extraterritorial in scope. Even in the absence of an affirmative act of a foreign bidder to invoke U.S. jurisdiction, "the requisite use of jurisdictional means can be established . . . where it is reasonably foreseeable that U.S. shareholders of a foreign issuer that have been excluded from an offshore offer will sell their shares into the market in response to that offer." Release No. 33-6841 (July 24, 1989) [54 FR 32226, 32243], citing *Schmuck* v. *United States*, 109 S. Ct. 1443 (1989); *Carpenter* v. *United States*, 484 U.S. 19 (1987). *See also Consolidated Gold Fields plc* v. *Minorco, S.A.*, 871 F.2d 252 (2d Cir.), *cert. dismissed*, 110 S. Ct. 29 (1989). *Cf. Plessey Co. plc* v. *General Electric Co.*, 628 F.Supp. 477 (D. Del. 1986).

Moreover, the application of the antifraud provisions of the federal securities laws, including section 14(e) of the Exchange Act, does not depend upon whether U.S. securityholders are included in an offer, or whether the tender offer is required to comply with Regulation 14D or 14E. *See Consolidated Gold Fields, plc* v. *Minorco, S.A.*, 871 F.2d 252. The antifraud provisions have been broadly applied by the courts to protect U.S. investors where either significant conduct occurs in the United States, *see, e.g., SEC* v. *Kasser*, 548 F.2d 109 (3rd Cir.), *cert. denied*, 431 U.S. 938 (1977); *IIT* v. *Vencap Ltd.*, 519 F.2d 1001 (2d Cir. 1975); *Leasco Data Processing Equipment Corp.* v. *Maxwell*, 468 F.2d 1326 (2d Cir. 1972), or the conduct takes place outside the United States but has a significant effect within the United States or on the interests of U.S. investors. *See, e.g., Consolidated Gold Fields*, 871 F.2d 252; *Des Brisay* v. *Goldfield Corp.*, 549 F.2d 133 (9th Cir. 1977); *Schoenbaum* v. *Firstbrook*, 405 F.2d 200, *rev'd on other grounds*, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert. denied*, 395 U.S. 908 (1969).

[3] To the extent that the Commission accommodates foreign tender offer regulations and practices with respect to offers made to U.S. investors, thereby reducing the potential delay and cost of compliance with U.S. regulatory requirements, it would become less necessary for the Commission to abstain from asserting jurisdiction in the interests of international comity. This is true even where the vast majority of a target company's securityholders reside outside the United States.

[4] *See* Release No. 33-6841 (July 24, 1989) [54 FR 32226].

[5] Withdrawal rights generally are unavailable under the U.K. City Code unless the offer fails to go "unconditional, as to acceptances" after 42 days following posting of the offer document (City Code Rule 34, [1988] Fin. Ser. Rep. (CCH Ltd.), M-12 at 140,902), whereas in the United States withdrawal rights must be maintained throughout the offer (section 14(d)(5), 15 U.S.C. 78n(d)(5), and rule 14d-7, 17 CFR 240.14d-7). In the United Kingdom, however, the offer must remain open for a minimum of 14 days after the offer goes "unconditional, as to acceptances" during which time the bidder must purchase all tendered shares. City Code Rule 31.4, [1988] Fin. Ser. Rep. (CCH Ltd.), m-6 at 140,864.

withdrawal rights.[6] Shares tendered during this period were accepted for purchase immediately, and no prompt payment issue was raised. Security holders in both the United States and the United Kingdom therefore were paid at the same time and were given an equal amount of time in which to tender.[7]

The problems raised by transnational exchange offers also were clearly demonstrated in the recent exchange and cash offers of Aktiebolaget Volvo ("Volvo"), a Swedish company with shares traded on NASDAQ, and Procordia Aktiebolag ("Procordia"), a company controlled by the Swedish government, for all shares of another Swedish company, Pharmacia Aktiebolag ("Pharmacia"), a Swedish company reporting in the U.S. and affiliated with Volvo. Approximately 7.9 percent of Pharmacia's share capital was held in the United States, either directly or through ADRs, at the time the offers were announced. Not only was registration of the Procordia shares under the Securities Act necessary, compliance with the Commission's going private rules was required as a result of Volvo's affiliation with Pharmacia.[8] Procordia, a non-reporting company, therefore was required to reconcile its Swedish financial statements to U.S. GAAP, a significant undertaking because of the differences in U.S. and Swedish accounting standards, particularly with respect to business combinations and foreign currency receivables and payables. Procordia also faced the prospect of a Section 15(d) reporting obligation stemming from its registered offering of shares to U.S. holders.[9]

In addition, Swedish tender offer regulation, similar to the City Code, conflicted with the Williams Act withdrawal rights. Swedish business and tender offer practices made compliance with Regulations 14D and 14E's prompt payment, prompt extension and notice requirements not reasonably practicable. Recognizing the problems associated with the dual jurisdictional compliance effort, the Commission undertook to accommodate the transaction, where it concluded U.S. investors would not be adversely affected.[10] With respect to the registration statement, the Commission permitted Item 17 reconciliation [11] and allowed Procordia to forgo entirely reconciliation of the last two years of selected financial data. Payment and extensions of the offer were permitted to proceed in accordance with the Swedish time schedule. [12] Withdrawal rights were permitted to be closed following the minimum offering period and any mandated extensions under U.S. law, notwithstanding that the offer was to be voluntarily extended for several weeks, and acceptance for payment of the shares affected only upon expiration. Prorationing, necessitated by the cash and share composition of the consideration, was done on an aggregated basis for the U.S. and foreign offers.[13] All holders and rule 10b–13 relief comparable to the Ford-Jaguar offer was provided to permit the dual offer structure.[14]

A significant number of foreign equity securities held in the U.S. are exempt from registration under section 12 of the Exchange Act [15] pursuant to Exchange Act Rule 12g3–2(b).[16] Offers for those securities are thus not subject to section 14(d) of the Exchange Act and Regulation 14D thereunder.[17] Regulation 14E, however, applies to all tender offers and imposes certain requirements with respect to minimum offering and extension time periods,[18] as well as prompt payment and notice of extensions of the offer requirements.[19] The Commission does not believe that the minimum time period requirements have imposed substantial burdens on foreign offers extended to U.S. holders. In addition, the Commission has construed the prompt payment and notice requirements in light of the customary clearing and settlement practices of the home country.

III. Parameters of the Conceptual Approach

The Commission recognizes that, even where substantial accommodations are made, as in the case of the offers for Pharmacia, foreign issuers and bidders nonetheless may find the costs arising from extension of an offshore tender or exchange offer to U.S. investors to be inordinately high in comparison with the significance of the holdings of these investors to the transaction. Accordingly, the Commission is considering a regulatory framework for facilitating the inclusion of U.S. securityholders in transnational offers where these investors hold a small amount of the securities sought, as a complement to the multijurisdictional disclosure proposal. Comment is sought as to the appropriateness of a conceptual approach that would permit foreign bidders and offerors to make multinational tender and exchange offers in the United States on the basis of the foreign disclosure, procedural and accounting requirements, where U.S. holdings constitute a small portion of the transaction. Comment is also sought as to whether there are other more attractive conceptual approaches.

At these limited levels of U.S. ownership, the key issue is whether the Commission should facilitate extension of foreign offers into the U.S. by permitting use of whatever disclosure documents and regulatory safeguards are made available to foreign securityholders, rather than leaving U.S. investors to fend for themselves without the protection of U.S. or foreign regulations in those instances where a bidder can successfully avoid jurisdiction. In the Commission's view, this issue should be resolved in favor of

[6] Release No. 34–27425 (Nov. 7, 1989). The Commission also granted relief under rule 10b–13, 17 CFR 240.10b–13, which bars a bidder from purchasing target shares during a tender offer, to allow the U.K. offer to proceed separately from the U.S. offer. The Commission also concurred that limiting the U.S. offer to U.S. persons did not violate the allholders rule, 17 CFR 240.14d–10.

[7] The Commission anticipates formalizing the procedures for conducting dual cash tender offers under the federal securities laws and the City Code, so that Commission exemptive orders eventually will not be necessary for each offer.

[8] Rule 13e–3, 17 CFR 240.13e–3.

[9] 15 U.S.C. 78*o*(d).

[10] Release No. 34–27671 (Feb. 2, 1990).

[11] Item 17 and Item 18 both allow presentation of financial statements in accordance with the accounting principles of a foreign country so long as, *inter alia*, a discussion of material variances from U.S. principles is included, and quantified reconcilation is made as to material variances between net income as presented and net income under U.S. principles. Item 18 differs from Item 17 in that it further calls for all other information required by U.S. GAAP, including segment information.

[12] Under Swedish practice, determination of the results of the offer could require approximately five business days and issuance of new Procordia shares as payment could require an additional three weeks.

[13] 15 U.S.C. 78n(d)(6) and 17 CFR 240.14d–8.

[14] Volvo requested an exemption from rule 10b–6, 17 CFR 240.10b–6, which prohibits any person engaged in a distribution from bidding for or purchasing any such security during the distribution, to permit purchases of Pharmacia shares in the U.S. and pursuant to foreign offers, and to allow purchases of Procordia shares in exhcnage for shares of Pharmacia and Provendor Aktiebolag, a wholly owned subsidiary of Volvo. Both Volvo and Procordia sought an exemption from rule 10b–13, 17 CFR 240.10b–13, to acquire Pharmacia shares in the foreign offers during the pendency of the U.S. offer.

[15] 15 U.S.C. 78*l*.

[16] 17 CFR 240.12g3–2(b).

[17] Issuer tender offers for rule 12g3–2(b) exempt securities are not subject to the requirements of rule 13e–4 unless the issuer is subject to a section 15(d) reporting requirement.

[18] Rule 14e–1 (a) and (b), 17 CFR 240.14e–1 (a) and (b).

[19] Rule 14e–1 (c) and (d), 17 CFR 240.14e–1 (c) and (d). Regulation 14E also imposes an obligation on the target company to respond to an offer within 10 business days of commencement. Rule 14e–2, 17 CFR 240.14e–2.

equal and informed participation by U.S. holders either pursuant to the proposed conceptual approach or some other appropriate mechanism structured to protect U.S. investors.[20]

A fundamental issue in undertaking such an approach is whether the concept of reliance on foreign practices should extend only to those jurisdictions that require disclosure documents to be delivered to securityholders and that impose minimum procedural protections such as a minimum offering period and prorationing or other equal treatment provisions. Or would it be in U.S. investors' interests for the Commission to apply the concept to all tender offers where there are limited U.S. holdings and jurisdiction may be successfully avoided by the foreign bidder or issuer, regardless of the applicable foreign regulatory scheme?

Exchange offers requiring registration raise particularly difficult issues. Registered exchange offers present the greatest compliance costs, and thus are most likely to lead to an attempt to exclude U.S. investors. On the other hand, given the investment decision involved, and the resulting trading market in the U.S. for the securities to be issued in the offer, total reliance on foreign disclosure requirements may be warranted only for a smaller class of transactions. For example, the approach might be limited to those cases in which potential U.S. holdings following completion of the offer will be sufficiently limited to justify a section 12(h) order suspending the issuer's reporting obligation under the Exchange Act.

Another basic issue is whether eligible offers should be defined solely on the basis of the target's domicile and size of U.S. security holdings, or should depend on the domicile and/or reporting status of the bidder as well. While there would appear less need to accommodate foreign companies already reporting under the Exchange Act, and no need to accommodate U.S. bidders for foreign targets, as U.S. jurisdiction would always apply in such cases, these bidders and offerors still would bear the expense of preparing two sets of compliance documents and proceeding under two procedural schemes. Moreover, such an approach would give rise to disparate requirements among bidders in the context of competing offers for the same target.

[20] Regardless of the approach ultimately taken, of course, the antifraud, and, in the case of exchange offers, the civil liability provisions of the federal securities laws would continue to apply to the transaction.

IV. Request for Public Comment; Specific Inquiries

In addition to soliciting public comment on the broad parameters of the conceptual approach and issues outlined above, the Commission is requesting suggestions as to other possible approaches that might facilitate multinational tender and exchange offers consistent with the goal of protecting U.S. investors. Commenters are requested to provide the Commission with empirical data concerning offers made excluding U.S. investors, including the size of U.S. holdings, whether a cash or an exchange offer, and the jurisdiction of the regulation applicable. Commenters also should address the following questions with respect to the conceptual approach.

1. Do the benefits of full participation by U.S. investors in foreign based tender offers that otherwise might be closed to them outweigh any risks to such investors attendant to the use of documentation and procedures of a foreign jurisdiction? Should the conceptual approach extend to transactions only from those jurisdictions that require disclosure documents and minimum procedural protections such as a minimum offering period and prorationing or other equal treatment provisions? Should the concept be limited to foreign transactions where private remedies are available for violation of disclosure and procedural requirements? Alternatively, should the Commission continue to assess the need to accommodate foreign laws and practices on a case-by-case basis?

2. What level of U.S. ownership threshold should be used to define eligible levels of holdings for a transaction, *e.g.*, 3%, 5%, 10% of the shares of the class sought? Should the threshold depend upon the level of any minimum tender condition or the percentage of total shares sought? Should there be a market value ceiling, in addition to percentage of shares to determine eligibility, *e.g.*, $500 million of $1 billion? Should the calculation be based on the total amount of securities outstanding in the class or the U.S. percentage of the public float? Are there alternative measures, *e.g.*, percent of market capitalization, public float or number of U.S. investors, that should be used in determining offers eligible for the conceptual approach? At different thresholds, should different rules apply?

3. Should the proposed approach be limited to cash offers? If not, should eligible exchange offers required to be registered be limited to those with fewer than 5% of shares in the U.S. and fewer than 500 shareholders, in view of the section 15(d) reporting obligation? If not, should foreign bidders making registered exchange offers comply with the section 15(d) obligation or should different rules apply? Should the approach distinguish among types of securities offered, *i.e.*, investment grade debt and preferred securities, subordinated debt, or common stock? Would the concept be useful, if a reconciliation of the financial statements to U.S. GAAP were required, in any event, in the case of a third party exchange offer? Alternatively, should the Commission continue to assess the need to accommodate foreign laws and practices on a case-by-case basis?

4. Should the tender offer documents provided to securityholders be filed with the Commission (registered exchange offers would have to be filed)? If so, how should the mechanics of filing foreign disclosure documents with the Commission be accomplished? For example, should the approach be patterned on the proposed multijurisdictional system with wraparound forms accompanied by foreign documents? Should the tender offer documents be submitted to, rather than filed with, the Commission? Should use of foreign tender offer documents be permitted without any submission to the Commission?

5. Would it be necessary or appropriate for the Commission to provide exemptions from the provisions of Rules 10b–6 and 10b–13 under the Exchange Act [21] for offshore tender and exchange offers? If so, under what circumstances and conditions?

6. How should Trust Indenture Act obligations that might arise in respect of an exchange offer be addressed pursuant to the proposed approach?

7. Would it be appropriate to permit reliance wholly on foreign procedures in the case of all tender offers subject only to Regulation 14E if extended to U.S. holders without regard to the size of U.S. holdings, or should there be some eligibility criteria for acceptance of foreign procedures; should the criteria be different than those applicable to section 12 registered equity securities; and if so, what criteria would be appropriate?

8. Would the conceptual approach outlined actually encourage foreign bidders and issuers to forgo attempts to avoid jurisdiction and to discriminate against U.S. investors? Or, will U.S. civil liability and antifraud liability continue to deter foreign bidders and issuers?

9. To what extent does state regulation applicable to covered tender and exchange offers frustrate the conceptual approach as a practical matter?

Dated: June 6, 1990.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–13455 Filed 6–11–90; 8:45 am]

BILLING CODE 8010–01–M

[21] *See* Release No. 34–21958 (April 18, 1985) [50 FR 16302].

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[IA-130-86]

RIN: 1545-AJ28

Look-Back Method for Long-Term Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of proposed rulemaking relating to the look-back method of section 460 (b) of the Internal Revenue Code for long-term contract income reported under the percentage of completion method of accounting. The look-back method was enacted by the Tax Reform Act of 1986 (the "1986 Act"), Public Law No. 99-514, and amended by the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act"), Public Law No. 100-647, and the Revenue Reconciliation Act of 1989 (the "1989 Act"), Public Law No. 101-239. The purpose of the look-back method is to compensate for deferral or acceleration of contract income that results from the use of estimated, rather than actual, total contract price and contract costs in applying the percentage of completion method. Taxpayers are required to pay interest if long-term contract income is deferred, and are entitled to receive interest if long-term contract income is accelerated, under the percentage of completion method. These proposed regulations provide guidance as to how interest is computed under the look-back method and also include simplified methods to reduce the complexity of computing interest under the look-back method.

DATES: In general, these proposed regulations are proposed to be effective with respect to contracts entered into after February 28, 1986. However, § 1.460-6(d) (regarding the application of the simplified marginal impact method to domestic contracts of widely held pass-through entities) does not apply to any contract completed in a tax year for which the due date (determined with regard to extensions) of the return is before November 10, 1988, and § 1.460-6(g) (regarding the application of the look-back method if there is a mid-contract change in a taxpayer reporting income from a contract) applies only to changes in the taxpayer after June 12, 1990.

Written comments must be received by August 13, 1990. Outlines for persons wishing to speak at the public hearing scheduled for August 24, 1990, must be delivered by August 3, 1990. *See* the Notice of Public Hearing published elsewhere in this issue of the **Federal Register.**

A Treasury Decision adopting the proposed regulations with respect to the simplified marginal impact method in § 1.460-6(d), and the delayed reapplication method in § 1.460-6(e), is expected to be issued no later than September 17, 1990.

ADDRESSES: Send comments and requests to speak at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attn: CC:CORP:T:R room 4429 (IA-130-86). In the alternative, comments and requests may be hand-delivered to: Internal Revenue Service, Attn: CC:CORP:T:R (IA-130-86), room 4429, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carol Conjura, (202) 535-9363, not a toll-free call, Internal Revenue Service, room 5530, 1111 Constitution Ave. NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in proposed § 1.460-6 (f) and (g). This information is required by the Internal Revenue Service to verify the amount of interest a taxpayer is required to pay or is entitled to receive under the look-back method. The likely respondents are corporations, partnerships, and individuals.

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

Estimated total annual reporting and recordkeeping burden: 69,550 hours.

The estimated average annual reporting burden per respondent is 5 hours and 32 minutes.

The estimated average annual recordkeeping burden per recordkeeper is 8 hours and 22 minutes.

Estimated number of respondents/recordkeepers: 5,000.

Estimated annual frequency of responses: 1.

Background

This document proposes to add new § 1.460-6 to part 1 of title 26 of the Code of Federal Regulations. The proposed regulations conform the Income Tax Regulations to the requirements of section 460(b) of the Code, as enacted by section 804(a) of the 1986 Act and as amended by sections 1008(c)(2) and 5041(d) of the 1988 Act, and sections 7621(b)and 7811(e) of the 1989 Act.

Explanation of Provisions

In General

Section 460 (b) of the Code provides that, upon the completion of any long-term contract, the look-back method is applied to amounts reported under the contract using the percentage of completion method. The percentage of completion method requires the use of estimates of total contract price and total contract costs for reporting income in years prior to the year of contract completion. The look-back method is intended to offset the time-value effects of using estimates during the life of a contract that differ from the actual amounts determined upon the completion of the contract.

Under the look-back method, taxpayers are required to pay interest if tax liability is deferred as a result of underestimating the total contract price or overestimating total contract costs. Conversely, taxpayers are entitled to receive interest if tax liability is accelerated as a result of overestimating the total contract price or underestimating total contract costs. The amount of interest a taxpayer is required to pay or is entitled to receive under the look-back method is computed by applying the overpayment rate established by section 6621(a)(1), compounded daily, to the difference between the tax liability reported and the tax liability that would have been reported if the taxpayer had reported income on the basis of the actual contract price and the actual contract costs instead of the estimated contract price and costs (the "hypothetical underpayment" or "hypothetical

overpayment"). Congress provided the look-back method to prevent harsh results that would otherwise be produced by the percentage of completion method if, for example, an overall loss is experienced on a contract. H.R. Rep. No. 426, 99th Cong., 1st Sess. 626 (1985), 1986-3 (Vol. 2) C.B. 626.

The look-back method involves only the computation of interest with respect to hypothetical underpayments of overpayments of tax liability attributable to the use of estimated, rather than actual, contract price and contract costs and, accordingly, has no effect on the amount of tax liability reported for a previous tax year. For example, if the tax rates in effect during the second year of a 2-year contract are lower than tax rates in effect during the first year, and if contract income was accelerated to the first year of the contract because estimated contract costs were lower than actual contract costs, interest is credited to the taxpayer on the hypothetical overpayment of tax for the first year based on the tax rate actually in effect for that year. The taxpayer would not be entitled, however, to a refund representing the amount of tax that wou1d have been saved by applying the lower tax rate in effect for the second tax year to the amount of income accelerated to the first year of the contract. The look-back method, therefore, by design only corrects for timing differences, not permanent differences in tax liability that result from over- or underestimation of contract price and costs. Accordingly, the look-back method does not replace the requirement to properly estimate total contract price and contract costs in reporting income under the percentage of completion method for each year of a contract. For this reason, taxpayers' estimates remain subject to verification upon audit. See Notice 89-15, 1989-1 C.B. 634, Q&A 24 through Q&A 27, for rules for estimating the total contract price and total contract costs.

Operation of the Look-Back Method

The amount of interest charged or credited to a taxpayer under the look-back method is generaliy computed in three steps. The first step is to reapply the percentage of completion method to completed contracts using the actual, rather than estimated, contract price and contract costs. Income from the contract is thus reallocated among prior tax years. The second step is to compare what the tax liability for each affected year would have been if income had been reported as reallocated under the look-back method with the tax liability that was previously determined. If, for any year, there is a difference between these two amounts, the difference is treated as a hypothetical underpayment or overpayment of tax. The third step is to apply the rate of interest on overpayments established by section 6621 of the Code, compounded daily, to the hypothetical underpayment or overpayment of tax, from the year of the underpayment or overpayment until the year the contract was completed. The result is the amount of interest to be paid by or credited to the taxpayer. The proposed regulations illustrate the three steps involved in applying the look-back method.

Simplified Method

The proposed regulations provide a "simplified marginal impact method," which generally simplifies the application of Step Two of the look-back method by eliminating the requirement to determine what a taxpayer's tax liability would have been if income were reported on the basis of actual contract price and actual contract costs. Under the simplified marginal impact method, a taxpayer reapplies the percentage of completion method, using the actual, rather than estimated, total contract price and total contract costs, to all contracts that are completed or adjusted in a particular year. The taxpayer then computes the aggregate marginal increase or decrease in income, from those contracts only, for each tax year affected by those contracts. This increase or decrease in income for each affected tax year is generally deemed to give rise to a hypothetical overpayment or underpayment of tax determined at the highest statutory tax rate in effect for that year under section 1, in the case of an individual, and section ll, in the case of a corporation (currently 28 percent and 34 percent, respectively).

In accordance with section 460(b)(4) of the Code, as added by section 5041(d) of the 1988 Act, the simplified marginal impact method must be used with respect to income from domestic long-term contracts of a widely held partnership, S corporation, or trust. With respect to this required application, the simplified marginal impact method is applied at the entity rather than at the owner level. In addition, hypothetical overpayments or underpayments of tax liability are deemed to arise at the highest statutory tax rate in effect for the majority of the entity's owners without regard to the actual tax rates or tax attributes of each of the owners.

The Internal Revenue Service has concluded that the simplified marginal impact method should be made available in the case of contracts that are not subject to the statutory simplified method. The Service is concerned about the administrative burdens that would be imposed on taxpayers in the absence of this simplified method. Considerable complexity arises because a taxpayer otherwise must fully recompute tax liability for several years at a time and, in addition, recompute tax liability multiple times for the same year when the look-back method is applied to a year for which the tax liability has previously been recomputed under the look-back method. Additional complexity results because the time period for determining the amount of interest charged or credited to a taxpayer must be adjusted when the look-back method affects tax attributes such as net operating loss or credit carryovers and carrybacks that change the time period that a hypothetical underpayment or overpayment of tax was actually available to the taxpayer or the government.

The simplified marginal impact method simplifies the computation of hypothetical overpayments and underpayments and, in some cases, the time period for charging or crediting interest. Therefore, the proposed regulations also permit C corporations, owners of widely held pass-through entities with respect to foreign contracts, owners of closely held passthrough entities, and sole proprietors to elect the simplified marginal impact method. The simplified marginal impact method is made available to these taxpayers under the authority of section 460(h), which provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 460.

A taxpayer that either is required to or that elects to use the simplified marginal impact method must apply the method to all of the taxpayer's completed long-term contracts. If, however, the amount of income originally reported with respect to a long-term contract for any redetermination year exceeds the amount of income reallocated under the look-back method with respect to that contract for that year (*i.e.*, using actual contract price and contract costs) by the lesser of $1,000,000 or 20 percent of the amount of income reallocated under the look-back method with respect to that contract for that year, the proposed regulations provide that the Commissioner may require a taxpayer that uses the simplified marginal impact method to apply the look-back method to that contract as if the simplified

method did not apply. In determining whether to exercise this authority, the district director may take into account whether the taxpayer overreported income for a purpose of receiving interest on a hypothetical overpayment determined at the highest statutory tax rate. The district director also may take into account whether the taxpayer underreported income for the year in question with respect to other contracts. Moreover, if the Form 8697 is examined for any completion year and a year in which income was overreported is open under the statute of limitations, an adjustment to tax, rather than to look-back interest, will be made if the taxpayer did not properly estimate contract price and contract costs and the taxpayer would otherwise be permitted to obtain a permanent tax benefit. In addition, to prevent the running of interest in a taxpayer's favor on amounts in excess of the taxpayer's actual tax liability for any year, a hypothetical overpayment in the case of a taxpayer electing the simplified marginal impact method is limited to the taxpayer's actual tax liability for the year, taking into account net operating losses carried to that year.

Form 8697

The amount of interest due or to be refunded as a result of applying the look-back method is computed and reported on Form 8697 (Interest Computation Under the Look-back Method for Completed Long-term Contracts) for any tax year in which one or more long-term contracts are completed, or in which the contract price or contract costs are adjusted for one or more long-term contracts that were previously completed. Form 8697 is due no later than the due date (including extensions) of the tax return for the year of completion or adjustment. Form 8697 is filed with the same Internal Revenue Service Center with which a taxpayer's income tax return is filed.

In general each taxpayer that reports income from a long-term contract, or adjusts amounts attributable to a completed long-term contract, is required to file Form 8697 to apply the look-back method. In the case of a pass-through entity, such as a partnership or an S corporation, however, the proposed regulations clarify that the owners or shareholders generally are required to file Form 8697 and are liable for, or entitled to receive, interest with respect to their distributive shares of income from a contract. However, widely held pass-through entities are required to apply the look-back method at the entity level with respect to income from domestic contracts.

Mid-Contract Change in Taxpayer

The proposed regulations identify which taxpayer is responsible for applying the look-back method and which taxpayer is liable for paying (or is entitled to receive) interest computed under the look-back method if, prior to the completion of a long-term contract, there is a change in the taxpayer that reports income from the contract. The proposed regulations generally require the completing taxpayer to apply the look-back method with respect to all years of the contract, including tax years of a predecessor taxpayer. This approach is consistent with the assumption that a successor taxpayer reporting income from a contract, by assuming other rights and liabilities under the contract, should also be viewed as assuming the requirement to apply the look-back method upon completion. The proposed regulations reject an approach that would treat a mid-contract change in the taxpayer as a constructive completion of the contract for purposes of the look-back method. This approach would increase the complexity of the look-back method by increasing the number of times the look-back method is applied to a single contract. Moreover, a constructive completion would require the look-back method to be applied before actual completion of the contract and on the basis of estimates or, in the case of a sale of an entire business, on the basis of an allocation of the purchase price of the business, thereby producing results that may conflict with the purpose of the look-back method. For these reasons, the proposed regulations do not provide for a mid-contract application of the look-back method in the case of a change in the taxpayer and, in requiring the look-back method to be applied at the time of final completion, provide that overpayments and underpayments must be computed with respect to both pre-transaction and post-transaction years, and that interest runs on these amounts until final completion. Accordingly, only amounts paid by the customer (and not amounts transferred between the parties) are treated as contract revenue in applying the look-back method. Amounts transferred between the parties that represent gain or loss on the contract relative to the amount of income previously included under the percentage of completion method are disregarded for purposes of the percentage of completion method and the look-back method.

The proposed regulations also identify which taxpayer is required to apply the look-back method at the time of final completion and what information another taxpayer must provide to enable the responsible taxpayer to apply the look-back method. Because it could be unfair to require a taxpayer that previously reported income from a contract (the "predecessor") to pay interest based on changes in contract price and costs that are beyond its control after that taxpayer has terminated its interest in a long-term contract, the proposed regulations make the completing taxpayer primarily responsible for the payment of all interest due under the look-back method. This approach also insures that interest is ultimately paid under the look-back method with respect to all years of the contract, even if the predecessor has gone out of existence by the time the contract is completed. Secondary liability for interest due under the look-back method for the pretransaction period is imposed on the taxpayer that has transferred or otherwise discontinued its interest in the contract, to prevent use of contract transfers to avoid the requirements of the look-back method. Since it would be unduly intrusive to require the predecessor to provide the detailed information about its tax returns that would be necessary to apply the look-back method precisely, the completing taxpayer must determine underpayments of tax in pre-transaction years under the simplified marginal impact method.

In order to prevent a related taxpayer from receiving interest on hypothetical overpayments using a tax rate that exceeds the related predecessor's actual marginal tax rate, however, the successor taxpayer is not permitted to receive interest on overpayments with respect to pre-transaction tax years, other than in a taxable sale to an unrelated party of a contract or an interest in a flow-through entity. Instead, the predecessor may apply the look-back method with respect to pre-transaction years and receive interest to the extent that the predecessor's application of the look-back method results in hypothetical overpayments for any of these tax years.

Scope of Look-Back Method

The proposed regulations describe the scope of the look-back method, which generally includes all long-term contracts entered into after February 28, 1986, that are reported under the percentage of completion method or the percentage of completion-capitalized cost method. In the case of any long-term contract capitalized cost method, interest is charged or credited to the taxpayer with respect to the percentage

(40, 70, or 90, whichever applies) of the contract reported under the percentage of completion method.

Section 56(a)(3) provides that, in determining the amount of the alternative minimum taxable income for any tax year, the percentage of completion method of accounting (as modified by section 460(b)) is used in lieu of the method of accounting that is used for purposes of computing the regular tax. The proposed regulations clarify that the look-back method accordingly applies to alternative minimum taxable income computed using the percentage of completion method as well as to regular taxable income.

De Minimis Exception

The 1988 Act amended section 460(b) to exempt from the look-back method certain long-term contracts that are not otherwise exempt from the required use of the percentage of completion method (or the percentage of completion-capitalized cost method). Under section 460(b)(3)(B), the look-back method does not apply to any contract completed within 2 years if the gross contract price does not exceed the lesser of $1,000,000 or 1 percent of the taxpayer's average annual gross receipts. The proposed regulations clarify that this de minimis exception is mandatory, even if income from the contract was accelerated as a result of the use of inaccurate estimates of contract price and contract costs, so that the taxpayer would otherwise be entitled to receive interest on the resulting hypothetical overpayment of tax. If the de minimis exception applies to a contract for regular taxable income, then the exception also applies for alternative minimum taxable income. Because of the adjustments required for computing alternative minimum taxable income a taxpayer's gross receipts for alternative minimis tax purposes may differ from gross receipts for regular income tax purposes. Thus, if the criteria for meeting the de minimis exception were applied separately for alternative minimum tax purposes using alternative minimum tax gross receipts, a difference between alternative minimum tax gross receipts and regular tax gross receipts could cause a contract to qualify for the de minimis exception for regular tax purposes, but not for alternative minimum tax purposes, or vice versa. To prevent this result, the proposed regulations provide that gross receipts are determined for purposes of section 460(b)(3)(B) by reference only to regular taxable income.

The de minimis exception was enacted in 1988, effective for qualifying contracts entered into after February 28, 1986, and, therefore, may apply to contracts for which a taxpayer has already applied the look-back method. Since the de minimis exception was enacted retroactively, taxpayers are permitted to file an amended Form 8697 to reverse the application of the look-back method to qualifying contracts.

Treatment of Look-Back Interest

In accordance with section 460 (b)(1), interest required to be paid by a taxpayer is treated as an increase in tax for purposes of subtitle F of the Code (other than the estimated tax penalty); however, interest received by a taxpayer is not treated as a reduction in tax liability. Under the proposed regulations, the determination of whether interest computed under the look-back method is treated as tax for this purpose is determined on a "net" basis for each filing year. Thus, if a taxpayer computes for the current filing year both hypothetical overpayments and hypothetical underpayments for prior years, the taxpayer has an increase in tax only if the interest computed on the underpayments for all those prior years exceeds the interest computed on the overpayments for all those prior years.

For purposes of determining taxable income under subtitle A of the Code, however, any amount of interest required to be paid by the taxpayer under the look-back method is treated as interest expense arising from an underpayment of income tax. Thus, any look-back interest paid by an individual (determined on a net basis) is treated as personal interest in accordance with § 1.163–9T(b)(2), even if that interest arises from long-term contract income that is allocated to an investment, passive, or trade or business activity. Similarly. for purposes of subtitle A, any amount of interest refunded to the taxpayer under the look-back method is taxable interest income.

For proposed regulations clarify that interest computed under the look-back method at the entity level under the simplified marginal impact method is allocated among the owners (or beneficiaries) in the same manner that interest income and interest expense are allocated to owners (or beneficiaries) and subject to the requirements of section 704 and any other applicable rules. Consequently, under the proposed regulations, look-back interest expense allocated to an individual owner (or beneficiary) is treated as personal interest expense, even though paid by the pass-through entity under the simplified marginal impact method.

Treatment of Change Orders

The proposed regulations clarify that the look-back method is applied to all amounts attributable to a single long-term contract. Section 460(f), which defines the term "long-term contract," authorizes the Secretary to prescribe regulations that require (1) two or more contracts that are interdependent (by reason of pricing or otherwise) to be treated as a single contract, and (2) a single contract that is properly severed to be treated as multiple contracts. Notice 89–15, Q & A 37 and 38, provides that the rules for severing and aggregating contracts in § 1.451–3(e) determine what constitutes a single long-term contract for purposes of reporting income and allocating costs to long-term contracts under section 460. These rules apply for determining whether a change order or other similar agreement is treated as a separate contract or as part of the original contract. Cf. Notice 89–15, Q & A 11. Because the look-back method involves a hypothetical reapplication of the percentage of completion method (as modified by section 460), the same rules apply in determining what constitutes a single long-term contract for purposes of the look-back method. Accordingly, under the proposed regulations, if a contract change order does not constitute a separate contract under the rules for severing and aggregating contracts, the revenue and expenses attributable to the change order are allocable under the look-back method to all tax years of the underlying contract.

Time at Which, Look-Back Method is Applied

Section 460(b)(1)(B) of the Code requires the look-back method to be applied upon completion of a long-term contract, and then to be reapplied in any tax year in which there are post-completion adjustments to the contract price or contract costs.

Completion

The proposed regulations define the term "completion" for this purpose to mean final completion and acceptance within the meaning of § 1.451–3(b)(2). With respect to any long-term contract' therefore, the look-back method generally is applied no later than the year in which the subject matter of the contract has been delivered and is available for use by the customer, even if the taxpayer expects to incur additional contract costs in a year subsequent to the completion year.

Although § 1.451–3(b)(2) determines the "time" for completion, the provisions in § 1.451–3(b)(2), and § 1.451–3(d)(which

separate contract revenues and contract costs from a long-term contract in certain circumstances, such as in the case of a dispute or contract term relating to contingent compensation) do not apply for purposes of the look-back method. These provisions, which are designed to prevent inappropriate deferral of income and expenses by taxpayers using the completed contract method, are not relevant under the percentage of completion method. Moreover, these provisions are inconsistent with the requirement of section 460(b)(1)(B) to reapply the look-back method to amounts taken into account after completion, since their application would otherwise permit income from a long-term contract to be accounted for under a method of accounting that is not subject to the look-back method.

In addition, section 460(b)(1) requires any portion of the contract price not previously included in income to be included in income for the year immediately following the completion year, even if the taxpayer expects to incur additional contract costs in a year subsequent to the year immediately following the completion year. This rule does not apply for purposes of the look-back method, however. Thus, to the extent that a taxpayer incurs additional costs after the year immediately following the year of completion, the taxpayer will be entitled to receive interest under the look-back method to compensate for any acceleration of income that resulted from this requirement.

Post-completion Reapplications

The proposed regulations clarify that, after completion of a contract, section 460(b) generally requires the look-back method to be reapplied in any subsequent tax year in which additional contract revenues or contract costs are taken into account, or in which amounts previously taken into account as income or deductions are adjusted for any reason. In reapplying the look-back method when any amount is taken into account after completion, including when any amount of revenue that is taken into account in the year immediately following the year of completion by reason of section 460(b)(1), the proposed regulations provide that only costs actually incurred as of the reapplication year are included in the denominator of the percentage of completion ratio. Section 460(b)(2) provides that these amounts may be taken into account, for purposes of reapplying the look-back method, at a value that is discounted from the time the amount is taken into account to the time of completion. The proposed regulations clarify that amounts of contract revenue that are properly taken into account under the percentage of completion method at the time of, or prior to, contract completion are not discounted under this rule, even if received after contract completion. Although section 460(b)(2) permits taxpayers to discount adjustments on a contract-by-contract basis, if a taxpayer discounts any adjustments relating to a particular contract, the taxpayer must discount all contract price or contract cost adjustments arising from the contract. See H.R. Rep. No. 247, 101st Cong., 1st Sess. 1411 (1989), which provides that adjustments to costs are to be treated in the same manner as adjustments to price.

The proposed regulations provide a "delayed reapplication method" which, if elected, may reduce the number of times the look-back method is required to be reapplied for postcompletion adjustments to a taxpayer's long-term contracts. Under the delayed reapplication method, taxpayers will be permitted to wait until the cumulative amount of adjustments to either the contract price or contract costs reaches a threshold of 10 percent of these amounts prior to adjustment or, if lesser, $1,000,000. To insure that all adjustments to the contract price are ultimately taken into account under the look-back method, however, the delayed reapplication method requires an electing taxpayer to reapply the look-back method no later than 5 years after the completion of the contract or the last application of the look-back method, without regard to whether the other thresholds have been met by that year. The Internal Revenue Service invites written comments and suggestions regarding the practicality of the delayed reapplication method, including its effectiveness in reducing the administrative complexity of the look-back method.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, these proposed regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public. inspection and copying. A public hearing is scheduled for August 24, 1990. Notice of the public hearing is published in the Notice portion of this issue of the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Carol Conjura of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.441–1 through 1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

The following amendments to 26 CFR part l are adopted:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A stat. 917; 26 U.S.C. 7805. * * * Section 1.460–6 is also issued under 26 U.S.C. 460 (h).

Par. 2. New sections 1.460–0 through 1.460–8 are added under the heading "Taxable year for which deductions taken" to read as follows:

§ 1.460–0. Outline of regulations under section 460.

This section lists the paragraphs contained in §§ 1.460–1 through 1.460–8.

§ 1.460–1. Accounting for long-term contracts in general. [Reserved.]
§ 1.460–2. Definition of long-term contract. [Reserved.]
§ 1.460–3. Percentage of completion method. [Reserved.]
§ 1.460–4. Percentage of completion-capitalized cost method. [Reserved.]
§ 1.460–5. Cost allocation rules. [Reserved.]
§ 1.460–6. Look-back method.
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(5) Alternative minimum tax.
(6) Credit carryovers.
(7) Net operating losses.
(8) Alternative minimum tax credit.
(9) Period for interest.
§ 1.460–7. Exempt long-term contracts. [Reserved.]
§ 1.460–8. Changes in method of accounting. [Reserved.]

§ 1.460–1. Accounting for long-term contracts in general. [Reserved.]

§ 1.460–2. Definition of long-term contract. [Reserved.]

§ 1.460–3. Percentage of completion method. [Reserved.]

§ 1.460–4. Percentage of completion-capitalized cost method. [Reserved.]

§ 1.460–5. Cost allocation rules. [Reserved]

§ 1.460–6. Look-back method.

(a) *In general*—(1) Introduction. With respect to income from any long-term contract reported under the percentage of completion method, a taxpayer is required to pay or is entitled to receive interest under section 460(b) on the amount of tax liability that is deferred or accelerated as a result of overestimating or underestimating total contract price or contract costs. Under this look-back method, taxpayers are required to pay interest for any deferral of tax liability resulting from the underestimation of the total contract price or the overestimation of total contract costs. Conversely, if the total contract price is overestimated or the total contract costs are underestimated, taxpayers are entitled to receive interest for any resulting acceleration of tax liability. The computation of the amount of deferred or accelerated tax liability under the look-back method is hypothetical; application of the look-back method does not result in an adjustment to the taxpayer's tax liability as originally reported, as reported on an amended return, or as adjusted on examination. Thus, the look-back method does not correct for differences in tax liability that result from over- or underestimation of contract price and costs and that are permanent because, for example, tax rates change during the term of the contract.

(2) *Overview.* Paragraph (b) explains which situations require application of the look-back method to income from a long-term contract. Paragraph (c) explains the operation of the three computational steps for applying the look-back method. Paragraph (d) provides guidance concerning the simplified marginal impact method. Paragraph (e) provides an elective method to minimize the number of times the look-back method must be reapplied to a single long-term contract. Paragraph (f) describes the reporting requirements for the look-back method and the tax treatment of look-back interest. Paragraph (g) provides rules for applying the look-back method when there is a transaction that changes the taxpayer that reports income from a long-term contract prior to the completion of a contract. Paragraph (h) provides examples illustrating the three computational steps for applying the look-back method.

(b) *Scope of look-back method*—(1) *In general.* The look-back method applies to any income from a long-term contract within the meaning of section 460(f) that is required to be reported under the percentage of completion method (as modified by section 460) for regular income tax purposes or for alternative minimum tax purposes. If a taxpayer uses the percentage of completion-capitalized cost method for long-term contracts, the look-back method applies for regular tax purposes only to the portion (40, 70, or 90 percent, whichever applies) of the income from the contract that is reported under the percentage of completion method. The requirements of section 460 also apply to income and expenses attributable to activities that benefit any long-term contract entered into by a party related to the taxpayer within the meaning of section 707(b) or 267(b), determined without regard to section 267(f)(1)(A) and by substituting

"80 percent" for "50 percent" with regard to the ownership of the stock of a C corporation. Therefore, to the extent that the percentage of completion method is required to be used with respect to income and expenses that are attributable to activities that benefit a related party's long-term contract, the look-back method also applies to these amounts, even if those activities are not performed under a contract entered into directly by the taxpayer.

(2) *Exceptions from section 460.* The look-back method generally does not apply to the regular taxable income from any long-term construction contract within the meaning of section 460(e)(4) that

(i) Is a home construction contract within the meaning of section 460(e)(1)(A), or

(ii) Is not a home construction contract but is estimated to be completed within a 2-year period by a taxpayer whose average annual gross receipts for the 3 tax years preceding the tax year the contract is entered into do not exceed $10,000,000 (as provided in section 460(e)(1)(B)). These contracts are not subject to the look-back method for regular tax purposes, even if the taxpayer uses a version of the percentage of completion method permitted under § 1.451–3, unless the taxpayer has properly changed its method of accounting for these contracts to the percentage of completion method as modified by section 460(b). The look-back method, however, applies to the alternative minimum taxable income from a contract of this type, unless it is exempt from the required use of the percentage of completion method under section 56(a)(3).

(3) *De minimis exception.* Notwithstanding that the percentage of completion method is otherwise required to be used, the look-back method does not apply to any long-term contract that (i) Is completed within 2 years of the contract commencement date, and (ii) has a gross contract price (as of the completion of the contract) that does not exceed the lesser of $1,000,000 or 1 percent of the average annual gross receipts of the taxpayer for the 3 tax years preceding the tax year in which the contract is completed. This de minimis exception is mandatory and, therefore, precludes application of the look-back method to any contract that meets the requirements of the exception. The de minimis exception applies for purposes of computing both regular taxable income and alternative minimum taxable income. Solely for this purpose, the determination of whether a long-term contract meets the gross receipts test for both alternative minimum tax and regular tax purposes is made based only on the taxpayer's regular taxable income.

(4) *Alternative minimum tax.* For purposes of computing alternative minimum taxable income, section 56(a)(3) generally requires long-term contracts within the meaning of section 460(f) (generally without regard to the exceptions in section 460(e)) to be accounted for using only the percentage of completion method as defined in section 460(b), including the look-back method of section 460(b), with respect to tax years beginning after December 31, 1986. However, section 56(a)(3) (and thus the look-back method) does not apply to any long-term contract entered into after June 20, 1988, and before the begining of the first tax year that begins after September 30, 1990, that meets the conditions of both section 460(e)(1)(A) and clauses (i) and (ii) of section 460(e)(1)(B), and does not apply to any long-term contract entered into in a tax year that begins after September 30, 1990, that meets the conditions of section 460(e)(1)(A). A taxpayer that applies the percentage of completion method (and thus the look-back method) to income from a long-term contract only for purposes of determining alternative minimum taxable income, and not regular taxable income, must apply the look-back method to the alternative minimum taxable income in the year of contract completion and other filing years whether or not the taxpayer was liable for the alternative minimum tax for the filing year or for any prior year. Interest is computed under the look-back method to the extent that the taxpayer's total tax liability (including the alternative minimum tax liability) would have differed if the percentage of completion method had been applied using actual. rather than estimated, contract price and contract costs.

(5) *Effective date.* The look-back method, including the de minimis exception, applies to longterm contracts entered into after February 28, 1986. With respect to activities that are subject to section 460 solely because they benefit a long-term contract of a related party, the look-back method generally applies only if the related party's long-term contract was entered into after June 20, 1988, unless a principal purpose of the related-party arrangement is to avoid the requirements of section 460.

(c) *Operation of the look-back method*—(1) *Overview*—(i) *In general.* The amount of interest charged or credited to a taxpayer under the look-back method is computed in three steps. This paragraph (c) describes the three steps for applying the look-back method. These steps are illustrated by the examples in paragraph (h). The first step is to hypothetically reapply the percentage of completion method to all long-term contracts that are completed or adjusted in the current year (the "filing year"), using the actual, rather than estimated, total contract price and contract costs. Based on this reapplication, the taxpayer determines the amount of taxable income (and alternative minimum taxable income) that would have been reported for each year prior to the filing year that is affected by contracts completed or adjusted in the filing year if the actual, rather than estimated, total contract price and costs had been used in applying the percentage of completion method to these contracts, and to any other contracts completed or adjusted in a year preceding the filing year. If the percentage of completion method only applies to alternative minimum taxable income for contracts completed or adjusted in the filing year, only alternative minimum taxable income is recomputed in the first step. The second step is to compare what the tax liability would have been under the percentage of completion method (as reapplied in the first step) for each tax year for which the tax liability is affected by income from contracts completed or adjusted in the filing year (a "redetermination year") with the most recent determination of tax liability for that year to produce a hypothetical underpayment or overpayment of tax. The third step is to apply the rate of interest on overpayments designated under section 6621 of the Code, compounded daily, to the hypothetical underpayment or overpayment of tax for each redetermination year to compute interest that runs, generally, from the due date (determined without regard to extensions) of the return for the redetermination year to the due date (determined without regard to extensions) of the return for the filing year. The net amount of interest computed under the third step is paid by or credited to the taxpayer for the filing year. Paragraph (d) provides a simplified marginal impact method that simplifies the second step—the computation of hypothetical underpayments or overpayments of tax liability for redetermination years—and, in some cases, the third step—the determination of the time period for computing interest.

(ii) *Post-completion revenue and expenses*—(A) *In general.* The look-back method is applied upon the completion of any long-term contract and (unless the taxpayer elects the delayed reapplication method of this section) is

applied in any subsequent tax year for which there are taken into account any increases or decreases in either total contract price or total contract costs allocable to the contract under section 460(c) ("allocable contract costs") to the extent those increases or decreases were not previously taken into account under the percentage of completion method. Any year in which the look-back method must be reapplied is treated as a filing year. See Example (3) of paragraph (h)(4) for an illustration of how the look-back method is applied to postcompletion adjustments.

(B) *Completion.* A contract is considered to be completed for purposes of the look-back method no later than the year in which final completion and acceptance within the meaning of § 1.451–3 (b)(2) have occurred. Accordingly, determination of the completion year for any long-term contract is based on an analysis of all the relevant facts and circumstances, including the manner in which the parties to the contract deal with each other and with the subject matter of the contract and the nature of any work or costs remaining to be performed or incurred on the contract. Therefore, the first application of the look-back method must occur no later than the tax year in which the subject matter of the contract has been delivered and is available for use by the customer, even if the taxpayer reasonably expects at that time to incur additional allocable contract costs.

(C) *Discounting of contract price and contract cost adjustments subsequent to completion; election not to discount—(1) General rule.* The amount of any post-completion adjustment to the total contract price or contract costs is discounted, solely for purposes of applying the look-back method, from its value at the time the amount is taken into account in computing taxable income to its value at the completion of the contract. The discount rate for this purpose is the Federal mid-term rate under section 1274(d) in effect at the time the amount is properly taken into account. For purposes of applying the look-back method for the completion year, no amounts are discounted, even if they are received after the completion year.

(2) *Election not to discount.* Notwithstanding the general requirement to discount post-completion adjustments, a taxpayer may elect not to discount contract price and contract cost adjustments with respect to any contract. The election not to discount is to be made on a contract-by-contract basis and is binding with respect to all post-completion adjustments that arise with respect to a contract for which an election has been made. An election not to discount with respect to any contract is made by stating that an election is being made on the taxpayer's timely filed federal income tax return (determined with regard to extensions) for the first tax year after completion in which the taxpayer takes into account (i.e., includes in income or deducts) any adjustment to the contract price or contract costs. See § 5h.6.

(3) *Year-end discounting convention.* In the absence of an election not to discount, any revisions to the contract price and contract costs must be discounted to their value as of the completion of the contract in reapplying the look-back method. For this purpose, the period of discounting is the period between the completion date of the contract and the date that any adjustment is taken into account in computing taxable income. Although taxpayers may use the period between the months in which these two events actually occur, in many cases, these dates may not be readily identifiable. Therefore, for administrative convenience, taxpayers are permitted to use the period between the end of the tax years in which these events occur as the period of discounting provided that the convention is used consistently with respect to all post-completion adjustments for all contracts of the taxpayer the adjustments to which are discounted. In that case, the taxpayer must use as the discount rate the Federal mid-term rate under section 1274(d) as of the end of the tax year in which any revision is taken into account in computing taxable income.

(D) *Revenue acceleration rule.* Section 460(b)(1) imposes a special rule that requires a taxpayer to include in gross income, for the tax year immediately following the year of completion, any previously unreported portion of the total contract price (including amounts that the taxpayer expects to receive in the future) determined as of that year, even if the percentage of completion ratio is less than 100 percent because the taxpayer expects to incur additional allocable contract costs in a later year. At the time any remaining portion of the contract price is includible in income under this rule, no offset against this income is permitted for estimated future contract costs. To achieve the requirement to report all remaining contract revenue without regard to additional estimated costs, a taxpayer must include only costs actually incurred through the end of the tax year in the denominator of the percentage of completion ratio in applying the percentage of completion method for any tax years after the year of completion. The look-back method also must be reapplied for the year immediately following the year of completion if any portion of the contract price is includible in income in that year by reason of section 460(b)(1). For purposes of reapplying the look-back method as a result of this inclusion in income, the taxpayer must only include in the denominator of the percentage of completion ratio the actual contract costs incurred as of the end of the year, even if the taxpayer reasonably expects to incur additional allocable contract costs. To the extent that costs are incurred in a subsequent tax year, the look-back method is reapplied in that year (or a later year if the delayed reapplication method is used), and the taxpayer is entitled to receive interest for the post-completion adjustment to contract costs. Because this reapplication occurs subsequent to the completion year, only the cumulative costs incurred as of the end of the reapplication year are includible in the denominator of the percentage of completion ratio.

(2) *Look-back Step One*—(i) *Hypothetical reallocation of income among prior tax years.* For each filing year, a taxpayer must allocate contract total contract income among prior tax years, by hypothetically applying the percentage of completion method to all contracts that are completed or adjusted in the filing year using the rules of this paragraph (c)(2). The taxpayer must reallocate income from those contracts among all years preceding the filing year that are affected by those contracts using the total contract price and contract costs, as determined as of the end of the filing year ("actual contract price and costs"), rather than the estimated contract price and contract costs. The taxpayer then must determine the amount of taxable income and the amount of alternative minimum taxable income that would have been reported for each affected tax year preceding the filing year if the percentage of completion method had been applied on the basis of actual contract price and contract costs in reporting income from all contracts completed or adjusted in the filing year and in any preceding year. If the percentage of completion method only applies to alternative minimum taxable income from the contract, only alternative minimum taxable income is recomputed in the first step. For purposes of reallocating income (and costs if the 10-percent year changes for a taxpayer using the 10-

percent method) under the look-back method, the method of computing the percentage of completion ratio is the same method used to report income from the contract on the taxpayer's return. (Thus, an election to use the 10-percent method or the simplified cost-to-cost method is taken into account.) See Example (1) of paragraph (h)(2) for an illustration of Step One.

(ii) *Treatment of estimated future costs in year of completion.* If a taxpayer reasonably expects to incur additional allocable contract costs in a tax year subsequent to the year in which the contract is completed, the taxpayer includes the actual costs incurred as of the end of the completion year plus the additional allocable contract costs that are reasonably expected to be incurred (to the extent includible under the taxpayer's percentage of completion method) in the denominator of the percentage of completion ratio. The completion year is the only filing year for which the taxpayer may include additional estimated costs in the denominator of the percentage of completion ratio in applying the look-back method. If the look-back method is reapplied in any year after the completion year, only the cumulative costs incurred as of the end of the year of reapplication are includible in the denominator of the percentage of completion ratio in reapplying the look-back method.

(iii) *Interim reestimates not considered.* The look-back method cannot be applied to a contract before it is completed. Aocordingly, for purposes of applying Step One, the actual total contract price and contract costs are substituted for the previous estimates of total contract price and contract costs only with respect to contracts that have been completed in the filing year and in a tax year preceding the filing year. No adjustments are made under Step One for contracts that have not been completed prior to tho end of the current filing year, even if, as of the end of this year, the estimated total contract price or contract costs for these uncompleted contracts is different from the estimated amount that was used during any tax year for which taxable income is recomputed under the look-back method for the current filing year.

(iv) *Tax years in which income is affected.* In general, because income under the percentage of completion method is generally reported as costs are incurred, the taxable income and alternative minimum taxable income is recomputed only for each year in which allocable contract costs were incurred. However, there will be exceptions to this general rule. For example, a taxpayer may be required to cumulatively adjust the income from a contract in a year in which no allocable contract costs are incurred if the estimated total contract price or contract costs was revised in that year. However, in applying the look-back method, no contract income is allocated to that year. Thus, there may be a difference between the amount of contract income originally reported for that year and the amount of contract income as reallocated. Similarly, because of the revenue acceleration rule of section 460(b)(1), income may be reported in the year immediately following the completion year even though no costs were incurred during that year and, in applying the look-back method in that year or another year, if additional costs are incurred or the contract price is adjusted in a later year, no income is allocated to that year.

(v) *Costs incurred prior to contract execution; 10-percent method*—(A) *General rule.* There are two situations in which allocable contract costs may be incurred without causing contract income to be reported under the percentage of completion method. First, allocable contract costs that are incurred in tax years prior to the tax year the contract is entered into are deductible in the tax year the contract is entered into, and no contract income is required to be reported in any of these prior tax years. The look-back method does not require allocation of contract income to tax years before the contract was entered into. Costs incurred prior to the year a contract is entered into are similarly first taken into account in the numerator of the percentage of completion ratio in the year the contract is entered into. Second, under the elective 10-percent method of section 460(b)(5), a taxpayer takes no contract revenues or contract costs into account until the tax year as of the close of which at least 10 percent of the total estimated contract costs are incurred (the 10-percent year). Instead, contract costs incurred in a tax year preceding the 10-percent year are deferred until the 10 percent year, at which time they are included in the numerator of the percentage of completion ratio and deducted from gross income. A taxpayer using the 10-percent method must also use the 10-percent method in applying the look-back method, using actual total contract costs to determine the 10-percent year. Thus, contract income is never reallocated to a year before the 10-percent year as determined on the basis of actual contract costs. If the 10-percent year is earlier as a result of applying Step One of the look-back method, contract costs incurred up to and including the new 10-percent year (as determined based on actual contract costs), are reallocated from the original 10-percent year to the new 10-percent, and costs incurred in later years but before the old 10-percent year are reallocated to those years. If the 10-percent year is later as a result of applying Step One of the look-back method, contract costs incurred up to and including the new 10-percent year are reallocated from all prior years to the new 10-percent year. This is the only case in which costs are reallocated under the look-back method.

(B) *Example.* The application of the look-back method by a taxpayer using the 10-percent method is illustrated by the following example:

Example. Z elected to use the 10-percent method of section 460(b)(5) for reporting income under the percentage of completion method. Z entered into a contract in 1990 for a fixed price of $1,000*x*. During 1990, Z incurred allocab1e contract costs of $80*x* and estimated that it would incur a total of $900*x* for the entire contract. Since $80*x* is less than 10 percent of total estimated contract costs, Z reported no revenue from the contract in 1990 and deferred the $80*x* of costs incurred. In 1991, Z incurred an additional $620*x* of contract costs, and completed the contract. Accordingly, in its 1991 return, Z reported the entire contract price of $1,000*x*, and deducted the $620*x* of costs incurred in 1991 and the $80*x* of costs incurred in 1990.

Under section 460(b)(5), the 10-percent method applies both for reporting contract income and the look-back method. Under the look-back method, since the costs incurred in 1990 ($80*x*) exceed 10 percent of the actual total contract costs ($700*x*), Z is required to allocate $114*x* of contract revenue ($80*x*/$700*x* × $1,000*x*) and the $80*x* of costs incurred to 1990. Thus, application of the look-back method results in a net increase in taxable income for 1990 of $34*x*, solely for purposes of the look-back method.

(vi) *Amount treated as contract price*—(A) *General rule.* The amount that is treated as total contract price for purposes of applying the percentage of completion method and reapplying the percentage of completion method under the look-back method under Step One includes all amounts that the taxpayer expects to receive from the customer. Thus, amounts are treated as part of the contract price as soon as it is reasonably estimated that they will be received, even if the all-events test has not yet been met.

(B) *Contingencies.* Any amounts related to contingent rights or obligations, such as incentive fees or amounts in dispute, are not separated from the contract and accounted for under a non-long-term contract method

of accounting, notwithstanding any provision in § 1.451–3(b)(2) (ii), (iii), (iv), and § 1.451–3(d) (2), (3), and (4), to the contrary. Instead, those amounts are treated as part of the total contract price in applying the percentage of completion method and the look-back method. For example, if an incentive fee under a contract to manufacture a satellite is payable to the taxpayer after a specified period of successfu1 performance, the incentive fee is includible in the total contract price at the time and to the extent that it can reasonably be predicted that the performance objectives will be met, for purposes of both the percentage of completion method and the look-back method. Similarly, a portion of the contract price that is in dispute is included in the total contract price at the time and to the extent that the taxpayer can reasonably expect the dispute will be resolved in the taxpayer's favor (without regard to when the taxpayer receives payment for the amount in dispute or when the dispute is finally resolved).

(C) *Change orders.* In applying the look-back method, a change order with respect to a contract is not treated as a separate contract unless the change order would be treated as a separate contract under the rules for severing and aggregating contracts provided in § 1.451–3(e). Thus, if a change order is not treated as a separate contract, the contract price and contract costs attributable to the change order must be taken into account in allocating contract income to all tax years affected by the underlying contract.

(3) *Look-back Step Two: Computation of hypothetical overpayment or underpayment of tax*—(i) *In general.* Step Two involves the computation of a hypothetical overpayment or underpayment of tax for each year in which the tax liability is affected by income from contracts that are completed or adjusted in the filing year (a "redetermination year"). The application of Step Two depends on whether the taxpayer uses the simplified marginal impact method contained in paragraph (d) or the actual method described in this paragraph. The remainder of this paragraph (c)(3) does not apply if a taxpayer uses the simplified marginal impact method.

(ii) *Redetermination of tax liability.* Under the method described in this paragraph (c)(3) (the "actual method"), a taxpayer, first, must determine what its regular and alternative minimum tax liability would have been for each redetermination year if the amounts of contract income allocated in Step One for all contracts completed or adjusted in the filing year and in any prior year were substituted for the amounts of contract income reported under the percentage of completion method on the taxpayer's original return (or as subsequently adjusted on examination, or by amended return). See Example (2) of paragraph (h)(3) for an illustration of Step Two.

(iii) *Hypothetical underpayment or overpayment.* After redetermining the income tax liability for each tax year affected by the reallocation of contract income, the taxpayer then determines the amount, if any, of the hypothetical underpayment or overpayment of tax for each of these redetermination years. The hypothetical underpayment or overpayment for each affected year is the difference between the tax liability as redetermined under the look-back method for that year and the amount of tax liability determined as of the latest of the following:

(A) The original return date;

(B) The date of a subsequently amended or adjusted return (if, however, the amended return is due to a carryback described in section 6611(f), see paragraph (c)(4)(iii); or,

(C) The last previous application of the look-back method (in which case, the previous hypothetica1 tax liability is used).

(iv) *Cumulative determination of tax liability.* The redetermination of tax liability resulting from previous applications of the look-back method is cumulative. Thus, for example, in computing the amount of a hypothetical overpayment or underpayment of tax for a redetermination year, the current hypothetical tax liability is compared to the hypothetical tax liability for that year determined as of the last previous application of the look-back method.

(v) *Years affected by look-back only.* A redetermination of income tax liability under Step Two is required for every tax year for which the tax liability would have been affected by a change in the amount of income or loss for any other year for which a redetermination is required. For example, if the allocation of contract income under Step One changed the amount of a net operating loss that was carried back to a year preceding the year the taxpayer entered into the contract, the tax liability for the earlier year must be redetermined.

(vi) *Definition of tax liability.* For purposes of Step Two, the income tax liability must be redetermined by taking into account all applicable additions to tax, credits, and net operating loss carrybacks and carryovers. Thus, the tax, if any, imposed under section 55 (relating to alternative minimum tax) must be taken into account. For example, if the taxpayer did not pay alternative minimum tax, but would have paid alternative minimum tax for that year if actual rather than estimated contract price and costs had been used in determining contract income for the year, the amount of any hypothetical overpayment or underpayment of tax must be determined by comparing the hypothetical total tax liability (including hypothetical alternative minimum tax liability) with the actual tax liability for that year. The effect of taking these items into account in applying the look-back method is illustrated in Examples (4) through (7) of paragraphs (h)(5) through (h)(8) below.

(4) *Look-back Step Three: Calculation of interest on underpayment or overpayment*—(i) *In general.* After determining a hypothetical underpayment or overpayment of tax for each redetermination year, the taxpayer must determine the interest charged or credited on each of these amounts. Interest on the amount determined under Step Two is determined by applying the overpayment rate designated under section 6621, compounded daily. In general, the time period over which interest is charged on hypothetical underpayments or credited on hypothetical overpayments begins at the due date (not including extensions) of the return for the redetermination year for which the hypothetical underpayment or overpayment determined in Step Two is computed. This time period generally ends on the earlier of—

(A) The due date (not including extensions) of the return for the filing year, and

(B) The date both

(*1*) The income tax return for the filing year is filed, and

(*2*) The tax for that year has been paid in full. If a taxpayer uses the simplified marginal impact method contained in paragraph (d), the remainder of this paragraph (c)(4) does not apply.

(ii) *Changes in the amount of a loss or credit carryback or carryover.* The time period for determining interest may be different in cases involving loss or credit carrybacks or carryovers in order to properly reflect the time period during which the taxpayer (in the case of an underpayment) or the Government (in the case of an overpayment) had the use of the amount determined to be a hypothetical underpayment or overpayment. Thus, if a reallocation of contract income under Step One results in an increase or decrease to a net operating loss carryback (but not a

carryforward), the interest due or to be refunded must be computed on the increase or decrease in tax attributable to the change to the carryback only from the due date (not including extensions) of the return for the redetermination year that generated the carryback and not from the due date of the return for the redetermination year in which the carryback was absorbed. In the case of a change in the amount of a carryover as a result of applying the look-back method, interest is computed from the due date of the return for the year in which the carryover was absorbed. See Examples (8) and (9) of paragraph (h)(9) for an illustration of these rules.

(iii) *Changes in the amount of tax liability that generated a subsequent refund.* If the amount of tax liability for a redetermination year (as reported on the taxpayer's original return, as subsequently adjusted on examination, as adjusted by amended return, or as redetermined by the last previous application of the look-back method) is decreased by the application of the look-back method, and any portion of the redetermination year tax liability was absorbed by a loss or credit carryback arising in a year subsequent to the redetermination year, the look-back method applies as follows to properly reflect the time period of the use of the tax overpayment. To the extent the amount of tax absorbed because of the carryback exceeds the total hypothetical tax liability for the year (as redetermined under the look-back method) the taxpayer is entitled to receive interest only until the due date (not including extensions) of the return for the year in which the carryback arose.

Example. Upon the completion of a long-term contract in 1990, the taxpayer redetermines its tax liability for 1988 under the look-back method. This redetermination results in a hypothetical reduction of tax liability from $1,500*x* (actual liability originally reported) to $1,200*x* (hypothetical liability). In addition, the taxpayer had already received a refund of some or all of the actual 1988 tax by carrying back a net operating loss (NOL) that arose in 1989. The time period over which interest would be computed on the hypothetical overpayment of $300*x* for 1988 would depend on the amount of the refund generated by the carryback, as illustrated by the following three alternative situations:

(A) If the amount refunded because of the NOL is $1,500*x*: interest is credited to the taxpayer on the entire hypothetical overpayment of $300*x* from the due date of the 1988 return, when the hypothetical overpayment occurred, until the due date of the 1989 return, when the taxpayer received a refund for the entire amount of the 1988 tax, including the hypothetical overpayment.

(B) If the amount refunded because of the NOL is $1,000*x*: interest is credited to the taxpayer on the entire amount of the hypothetical overpayment of $300*x* from the due date of the 1988 return, when the hypothetical overpayment occurred, until the due date of the 1990 return. In this situation interest is credited until the due date of the return for the completion year of the contract, rather than the due date of the return for the year in which the carryback arose, because the amount refunded was less than the redetermined tax liability. Therefore, no portion of the hypothetical overpayment is treated as having been refunded to the taxpayer before the filing year.

(C) If the amount refunded because of the NOL is $1,300*x*: interest is credited to the taxpayer on $100*x* ($1,300*x* − $1,200*x*) from the due date of the 1988 return until the due date of the 1989 return because only this portion of the total hypothetical overpayment is treated as having been refunded to the taxpayer before the filing year. However, the taxpayer did not receive a refund for the remaining $200*x* of the overpayment at that time and, therefore, is credited with interest on $200*x* through the due date of the tax return for 1990, the filing year. See Examples (10) and (11) of paragraph (h)(9) for a further illustration of this rule.

(iv) *Additional interest due on interest only after tax liability due.* For each filing year, taxpayers are required to file a Form 8697 (Interest Computation Under the Look-back Method for Completed Long-term Contracts) at the time the return for that filing year is filed to report the interest due or to be refunded under the look-back method. Even if the taxpayer has received an extension to file its income tax return for the filing year, look-back interest is computed with respect to the hypothetical increase (or decrease) in the tax liability determined under the look-back method only until the initial due date of that return (without regard to the extension). Interest is charged (or credited) with respect to the amount of look-back interest due (or to be refunded) under the look-back method from the initial due date of the return through the date the return is filed. No interest is charged (or credited) after the due date of the return with respect to the amount of the hypothetical increases (or decreases) in tax liability determined under the look-back method.

(d) *Simplified marginal impact method*—(1) *Introduction.* This paragraph (d) provides a simplified method for calculating look-back interest based on an assumed marginal tax rate of the taxpayer. Any taxpayer may elect this simplified marginal impact method, except that pass-through entities described in paragraph (d)(4) are required to apply the simplified marginal impact method at the entity level with respect to domestic contracts and the owners of those entities do not apply the look-back method to those contracts. Under the simplified marginal impact method, a taxpayer calculates the hypothetical underpayments or overpayments of tax for a prior year based on certain simplifying assumptions.

(2) *Operation*—(i) *In general.* Under the simplified marginal impact method, income from those contracts that are completed or adjusted in the filing year is first reallocated in accordance with the procedures of Step One contained in paragraph (c)(2) of this section. Step Two is modified in the following manner. The hypothetical underpayment or overpayment of tax for each year of the contract (a "redetermination year") is determined by multiplying the applicable regular tax rate by the increase or decrease in regular taxable income (or, if it produces a greater amount, by multiplying the applicable alternative minimum tax rate by the increase or decrease in alternative minimum taxable income, whether or not the taxpayer would have been subject to the alternative minimum tax) as a result of reallocating income to the tax year under Step One. Generally, the product of the alternative minimum tax rate and the increase or decrease in alternative minimum taxable income will be the greater of the two amounts described in the preceding sentence only with respect to contracts for which a taxpayer uses the full percentage of completion method only for alternative minimum tax purposes and uses the completed contract method, or the percentage of completion-capitalized cost method, for regular tax purposes. Step Three is then applied. Interest is credited to the taxpayer on the net overpayment and is charged to the taxpayer on the net underpayment for each redetermination year from the due date (determined without regard to extensions) of the return for the redetermination year until the earlier of

(A) The due date (determined without regard to extensions) of the return for the filing year, and (B) the first date by which both

(*1*) The return is filed and

(*2*) The tax is fully paid.

(ii) *Applicable tax rate.* For purposes of determining hypothetical underpayments or overpayments of tax under the simplified marginal impact method, the applicable regular tax rate is the highest rate of tax in effect for the redetermination year under section 1 in the case of an individual and under section 11 in the case of a corporation. The applicable alternative minimum tax rate is the rate of tax in effect for the

taxpayer under section 55 (b) (1). The highest rate is determined without regard to the taxpayer's actual rate bracket and without regard to any additional surtax imposed for the purpose of phasing out multiple tax brackets or exemptions.

(iii) *Overpayment ceiling.* The net hypothetical overpayment of tax for any redetermination year is limited to the taxpayer's total federal income tax liability for the redetermination year reduced by the cumulative amount of net hypothetical overpayments of tax for that redetermination year resulting from earlier applications of look-back method. If the reallocation of contract income results in a net overpayment of tax and this amount exceeds the actual tax liability (as of the filing year) for the redetermination year, as adjusted for past applications of the look-back method and taking into account net operating loss, capital loss, or credit carryovers and carrybacks to that year, the actual tax so adjusted is treated as the overpayment for the redetermination year. This overpayment ceiling does not apply when the simplified marginal impact method is applied at the entity level by a widely held pass-through entity in accordance with paragraph (d) (4).

(iv) Example. The application of the simplified marginal impact method is illustrated by the following example:

Example. Corporation X, a calendar-year taxpayer, reports income from long-term contracts and elected the simplified marginal impact method when it filed its income tax return for 1989. X uses only the percentage of completion method for both regular taxable income and alternative minimum taxable income. X completed contracts A, B, and C in 1989 and, therefore, was required to apply the look-back method in 1989. Income was actually reported for these contracts in 1987, 1988, and 1989. X's applicable tax rate, as determined under section 11, for the redetermination years 1987 and 1988 was 40 percent and 34 percent, respectively. The amount of contract income originally reported and reallocated for contracts A, B, and C, and the net overpayments and underpayments for the redetermination years are as follows:

	1987	1988
Contract A:		
Originally reported	$5,000x	$4,000x
Reallocated	3,000x	5,000x
Increase/(Decrease)	(2,000)x	1,000x
Contract B:		
Originally reported	6,000x	2,000x
Reallocated	7,000x	1,500x
Increase/(Decrease)	1,000x	(500)x
Contract C:		
Originally reported	8,000x	5,000x
Reallocated	4,000x	7,000x
Increase/(Decrease)	(4,000x)	2,000x
Net Increase/(Decrease)	(5,000x)	2,500x

	1987	1988
Tentative (Underpayment)/Overpayment		
@ .40	2,000x	
@ .34		(850x)
Ceiling:		
Actual Tax Liability - (After Carryovers and Carrybacks)	1,500x	500x
Final (Underpayment)/Overpayment	1,500x	(850x)

Under the simplified marginal impact method, X determined a tentative hypothetical net overpayment for 1987 and a net underpayment for 1988. X determined these amounts by first aggregating the difference for contracts A, B, and C between the amount of contract price originally reported and the amount of contract price as reallocated and, then, applying the highest regular tax rate to the aggregate decrease in income for 1987 and the aggregate increase in income for 1988.

However, X's overpayment for 1987 is subject to a ceiling based on X's total tax liability. Because the tentative net overpayment: of tax for 1987 exceeds the actual tax liability for that year after taking into account carryovers and carrybacks to that year, the final overpayment under the simplified marginal impact method is the amount of tax liability paid instead of the tentative net overpayment. Since application of the look-back method for 1988 results in a tentative underpayment of tax, it is not subject to a ceiling. If the look-back method is applied in 1991, the ceiling amount for 1987 will be zero and the ceiling amount for 1988 will be $1,350.

X is entitled to receive interest on the hypothetical overpayment from March 15, 1988, to March 15, 1990. X is required to pay interest on the underpayment from March 15, 1989, to March 15, 1990.

(3) *Anti-abuse rule.* A taxpayer electing to use the simplified marginal impact method must use the method for each long-term contract for which it reports income (except with respect to domestic contracts if the taxpayer is an owner in a widely held pass-through entity that is required to use the simplified marginal impact method at the entity level for those contracts). The district director, however, may recompute interest for any contract (including domestic contracts of widely held pass-through entities) under the look-back method using the actual method (and without regard to the simplified marginal impact method) if the amount of income originally reported with respect to the contract for any redetermination year exceeds the amount of income reallocated under the look-back method with respect to that contract for that year (using actual contract price and contract costs) by the lesser of $1,000,000 or 20 percent of the amount of income as reallocated (*i.e.*, based on actual contract price and contract costs) under the look-back method with respect to that contract for that year. In determining whether to exercise this authority upon examination of the Form 8697, the district director may take into account whether the taxpayer overreported income for a purpose of receiving interest under the look-back method on a hypothetical overpayment determined at the highest statutory tax rate. The district director also may take into account whether the taxpayer underreported income for the year in question with respect to other contracts. Notwithstanding the look-back method, the district director may require an adjustment to the tax liability for any open tax year if the taxpayer did not apply the percentage of completion method properly on its original return.

(4) *Application*—(i) *Required use by certain pass-through entities*—(A) *General rule.* The simplified marginal impact method is required to be used with respect to income reported from domestic contracts by a pass-through entity that is either a partnership, an S corporation, or a trust, and that is not closely held. With respect to contracts described in the preceding sentence, the simplified marginal impact method is applied by the pass-through entity at the entity level. For determining the amount of any hypothetical underpayment or overpayment, the applicable regular and alternative minimum tax rates, respectively, are generally the highest rates of tax in effect for corporations under section 11 and section 55 (b) (1). However, the applicable regular and alternative minimum tax rates are the highest rates of tax imposed on individuals under section 1 and section 55 (b) (1) if, at all times during the redetermination year involved (*i.e.*, the year in which the hypothetical increase or decrease in income arises), more than 50 percent of the interests in the entity were held by individuals directly or through 1 or more passthrough entities.

(B) *Closely held.* A pass-through entity is closely held if, at any time during any redetermination year, 50 percent or more (by value) of the beneficial interests in that entity are held (directly or indirectly) by or for 5 or fewer persons. For this purpose, the term "person" has the same meaning as in section 7701 (a) (1), except that a pass-through entity is not treated as a person. In addition, the constructive ownership rules of section 1s63 (e) apply by substituting the term "beneficial interest" for the term "stock" and by substituting the term "pass-through entity" for the term "corporation" used in that section, as appropriate, for

purposes of determining whether a beneficial interest in a pass-through entity is indirectly owned by any person.

(C) *Examples.* The following examples illustrate the application of the rules of paragraph (d)(4)(i):

Example (1). P, a partnership, began a long-term contract on March 1, 1986, and completed this contract in its tax year ending December 31, 1989. P used the percentage of completion method for all contract income. Substantially all of the income from the contract arose from U.S. sources. At all times during all of the years for which income was required to be reported under the contract, exactly 25 percent of the value of P's interests were owned by Corporation M. The remaining 75 percent of the value of P's interests was owned in equal shares by 15 unrelated individuals, who are also unrelated to Corporation M. M's ownership of P represents less than 50 percent of the value of the beneficial interests in P, and, therefore, viewed alone, is insufficient to make P a closely held partnership. In addition, because no 4 of the individual owners together own 25 percent or more of the remaining value of P's beneficial interests, there is no group of 5 owners that together own, directly or indirectly, 50 percent or more by value of the beneficial interests in P. Therefore, P is not a closely held pass-through entity.

Because P is not a closely held pass-through entity, and because P completed the contract after the effective date of section 460 (b) (4), P is required to use the simplified marginal impact method. Any interest computed under the lookback method will be paid to, or collected from, P, rather than its partners, and will be includible or deductible in computing the partnership's ordinary income or loss on Form 1065. Further, assume that, for the redetermination years, Corporation M is subject to alternative minimum tax at the rate of 20 percent and 3 of the individuals who own interests in P are subject to the highest marginal tax rate of 33 percent in 1988. Regardless of the actual marginal tax rates of its partners, P is required to determine the underpayment or overpayment of tax for each redetermination year at the entity level by applying a single rate to the increase or decrease in income resulting from the reallocation of contract income under the look-back method. Because more than 50 percent of the interests in P are held by individuals, P must use the highest rate specified in section 1 for each redetermination year. Thus, the rate applied by P is 50 percent for 1986, 38.5 percent for 1987, and 28 percent for 1988.

Example (2). Assume the same facts as in Example (1), except that one of the individuals, Individual I, who directly owns 5 percent of the value of the interests of P, also owns 100 percent of the stock of Corporation M. Section 1563 (e) (4) of the Code provides that stock owned directly or indirectly by or for a corporation is considered to be owned by any person who owns 5 percent or more in value of its stock in that proportion which the value of the stock which that person so owns bears to the value of all the stock in that corporation. Because section 460 (b) (4) (C) (iii) and this paragraph (d) (4) provide that rules similar to the constructive ownership rules of section 1563 (e) apply in determining whether a pass-through entity is closely held, all of M's interest in P is attributed to I because I owns 100 percent of the value of the stock in M. Accordingly, because I's direct 5 percent and constructive 25 percent ownership of P, plus the interests owned by any 4 other individual partners, equals 50 percent or more of the value of the beneficial interests of P, P is a closely held pass-through entity within the meaning of section 460 (b) (4) (C) (iii). Therefore, P cannot use the simplified marginal impact method at the entity level. Accordingly, each of the partners of P must separately apply the look-back method to their respective interests in the income and expenses attributable to the contract, but each partner may elect to use the simplified marginal impact method with respect to the partner's share of income from the contract.

(D) *Domestic contracts—(1) General rule.* A domestic contract is any contract substantially all of the income of which is from sources in the United States. For this purpose, "substantially all" of the income from a long-term contract is considered to be from United States sources if 95 percent or more of the gross income from the contract is from sources within the United States as determined under the rules in sections 861 through 865.

(2) *Portion of contract income sourced.* In determining whether substantially all of the gross income from a long-term contract is from United States sources, taxpayers must apply the allocation and apportionment principles of sections 861 through 865 of the Code only to the portion of the contract accounted for under the percentage of completion method. Under the percentage of completion method, gross income from a long-term contract includes all payments to be received under the contract (i.e., any amounts treated as contract price). Similarly, all costs taken into account in the computation of taxable income under the percentage of completion method are deducted from gross income rather than added to a cost of goods sold account that reduces gross income. Therefore, allocable contract costs are not considered in determining whether a long-term contract is a domestic contract or a foreign contract, even if, under the taxpayer's facts, the allocation of contract costs to any portion of a contract not accounted for under the percentage of completion method would affect the relative percentages of United States and foreign source gross income from the entire contract if this portion of the contract were taken into account in applying the 95-percent test.

(E) *Application to foreign contracts.* If a widely held pass-through entity has some foreign contracts and some domestic contracts, the owners of the pass-through entity each apply the look-back method (using, if they elect, the simplified marginal impact method) to their respective share of the income and expense from foreign contracts. Moreover, in applying the look-back method to foreign contracts at the owner level, the owners do not take into account their share of increases or decreases in contract income resulting from the application of the simplified marginal impact method with respect to domestic contracts at the entity level.

(F) *Effective date.* The simplified marginal impact method must be applied to pass-through entities described in paragraph (d)(4)(i) with respect to domestic contracts completed in tax years for which the due date of the return (determined with regard to extensions) of the pass-through entity is after November 9, 1988.

(ii) *Elective use*—(A) *General rule.* As provided in paragraph (d)(4)(i), the simplified marginal impact method must be used by certain pass-through entities with respect to domestic contracts. C corporations, individuals, and owners of closely held pass-through entities may elect the simplified marginal impact method. Owners of other pass-through entities may also elect the simplified marginal impact method with respect to all contracts other than those for which the simplified marginal impact method is required to be applied at the entity level. This rule applies to foreign contracts of widely held pass-through entities. In the case of an electing owner in a pass-through entity, the simplified marginal impact method is applied at the owner level, instead of at the entity level, with respect to the owner's share of the long-term contract income and expense reported by the pass-through entity.

(B) *Election requirements.* A taxpayer elects the simplified marginal impact method by stating that the election is being made on a timely filed income tax return (determined with regard to extensions) for the first tax year the election is to apply. An election to use the simplified marginal impact method applies to all applications of the look-back method to all eligible long-term contracts for the tax year for which the election is made and for any subsequent tax year. The election may not be revoked without the consent of the Commissioner.

(C) *Consolidated group consistency rule.* In the case of a consolidated group of corporations within the meaning of section 1504(a), an election to use the

simplified marginal impact method is made by the common parent of the group. The election is binding on all other affected members of the group (including members that join the group after the election is made with respect to all applications of the look-back method after joining). If a member subsequently leaves the group, the election remains binding as to that member unless the Commissioner consents to a revocation of the election. If a corporation using the simplified marginal impact method joins a group that does not use the method, the election is automatically revoked with respect to all applications of the look-back method after it joins the group.

(e) *Delayed reapplication method*—(1) *In general.* For purposes of reapplying the look-back method after the year of contract completion, a taxpayer may elect the delayed reapplication method to minimize the number of required reapplications of the look-back method. Under this method, the look-back method is reapplied after the year of completion of a contract (or after a subsequent application of the look-back method) only when one of the following conditions is met with respect to the contract:

(i) The net undiscounted value of increases or decreases in the contract price occurring since the time of the last application of the look-back method exceeds the lesser of $1,000,000 or 10 percent of the total contract price as of that time,

(ii) The net undiscounted value of increases or decreases in contract costs occurring since the time of the last application of the look-back method exceeds the lesser of $1,000,000 or 10 percent of the total actual contract costs as of that time,

(iii) The taxpayer goes out of existence, or

(iv) neither condition (i), (ii) nor (iii) above is met by the end of the fifth tax year that begins after completion of the contract or, after any subsequent reapplication of the look-back method, that begins after the last year of reapplication.

(2) *Time and manner of making election.* An election to use the delayed reapplication method may be made for any filing year for which the due date of the return (determined with regard to extensions) is after June 12, 1990. The election is made by a statement to that effect on the taxpayer's timely filed federal income tax return (determined with regard to extensions) for the first tax year the election is to be effective. An election to use the delayed reapplication method is binding with respect to all long-term contracts for which the look-back method would be reapplied without regard to the election in the year of election and any subsequent year unless the Commissioner consents to a revocation of the election. In the case of a consolidated group of corporations within the meaning of section 1504(a), an election to use the delayed reapplication method is made by the common parent of the group. The election is binding on all other affected members of the group (including members that join the group after the election is made with respect to contracts adjusted after joining). If a member subsequently leaves the group, the election remains binding as to that member unless the Commissioner consents to a revocation of the election. If a corporation that has made the election joins a consolidated group that has not made the election, the election is treated as revoked with respect to contracts adjusted after joining.

(3) *Examples.* The operation of this delayed reapplication method is illustrated by the following examples:

Example (1). X completes a contract in 1987, and applies the look-back method when its return for 1987 is filed. X properly uses $600,000 as the actual contract price in applying the look-back method. In 1990, as a result of the settlement of a dispute with its customer, X redetermines total contract price to be $640,000, and includes $40,000 in gross income. On its return for 1990, X states that it is electing the delayed reapplication method. X is not required to reapply the look-back method at that time, because $40,000 does not exceed the lesser of $1,000,000 or 10 percent of the unadjusted contact price of $600,000, and 5 years have not passed since the last application of the look-back method.

Example (2). Assume the same facts as in Example (1), except that at the end of 1992, the fifth year after completion of the contract, no other adjustments to contract price or contract costs have occurred. X is required to reapply the look-back method in 1992 and, accordingly, redetermine its tax liability for each redetermination year. After redetermining the underpayment of tax for those years, X must compute the amount of interest charged on the underpayments. Although 1992 is the filing year, interest is due on the amount of each underpayment resulting from the adjustment only from the due date of the return for each redetermination year to the due date of the return for 1990 because the tax liability for the adjustment was fully paid in 1990. However, from the due date of the 1990 return until the due date of the 1992 return, when the look-back method is reapplied for the adjustment, interest is due on the amount of interest attributable to the underpayments.

(f) *Look-back reporting*—(1) *Procedure.* The amount of any interest due or to be refunded as a result of applying the look-back method is computed and reported on Form 8697 for any filing year. In general, the look-back method is applied by and Form 8697 is filed by the taxpayer that reports income from a long-term contract. See paragraph (g) to determine who is responsible for applying the look-back method when, prior to the completion of a long-term contract, there is a transaction that changes the taxpayer that reports income from the contract.

(2) *Treatment of interest on return*—(i) *General rule.* The amount of interest required to be paid by a taxpayer is treated as an income tax under subtitle A, but only for purposes of subtitle F of the Code (other than sections 6654 and 6655), which addresses tax procedures and administration. Thus, a taxpayer that fails to file Form 8697 with respect to interest required to be paid or failing to pay the amount of interest due is subject to any applicable penalties under subtitle F, including, for example, a penalty for failing to file Form 8697. However, interest required to be paid under the look-back method is treated as interest expense for purposes of computing taxable income under subtitle A, even though it is treated as income tax liability for penalty purposes. Interest received under the look-back method is treated as taxable interest income for all purposes, and is not treated as a reduction in tax liability. The determination of whether or not interest computed under the look-back method is treated as tax is determined on a "net" basis for each filing year. Thus, if a taxpayer computes for the current filing year both hypothetical overpayments and hypothetical underpayments for prior years, the taxpayer has an increase in tax only if the interest computed on the underpayments for all those prior years exceeds the interest computed on the overpayments for all those prior years, for all contracts completed or adjusted for the year.

(ii) *Accounting treatment of look-back interest.* For purposes of determining taxable income under subtitle A of the Code, any amount of interest refunded to the taxpayer under the look-back method is includible in gross income as interest income in the tax year it is properly taken into account under the taxpayer's method of accounting for interest income. Any amount of interest required to be paid by a taxpayer under the look-back method is treated as interest expense arising from an underpayment of income tax. Thus, look-back interest required to be paid by an individual, or by a pass-through entity on behalf of an individual owner (or beneficiary) under the simplified marginal impact method, is treated as

personal interest and, therefore, is disallowed in accordance with § 1.163–9T (b)(2). Interest required to be paid at the entity level under the simplified marginal impact method is allocated among the owners (or beneficiaries) for reporting purposes in the same manner that interest income and interest expense are allocated to owners (or beneficiaries) and subject to the requirements of section 704 and any other applicable rules. Look-back interest expense allocated to an individual owner (or beneficiary) in this situation accordingly is treated as personal interest.

(g) *Mid-contract change in taxpayer*—(1) *General rules*—(i) *Application of look-back method.* If, prior to the completion of a contract, there is a transaction that changes the taxpayer that is responsible for reporting income from the contract, the look-back method is not applied at the time of that transaction, but is instead appllied for the first time when the contract is completed by the successor taxpayer. For purposes of this paragraph, a contract will be treated as the same contract if the terms of the contract are not substantially changed in connection with the transaction, whether or not the customer agrees to release the predecessor from any or all of its obligations under the contract by novation. Upon completion of the entire contract, the look-back method is applied with respect to both the pre-transaction period and the post-transaction period, taking into account all amounts paid by the customer and all contract costs incurred during both periods. The successor is liable for interest computed on hypothetical underpayments for both the pre- and post-transaction years, but, in general, is entitled to receive interest only with respect to hypothetical overpayments determined for post-transaction years. The predecessor, in general, is entitled to receive interest computed on hypothetical overpayments determined for pre-transaction years. For purposes of this paragraph (g), pre-transaction years are all tax years of the predecessor in which the predecessor reported income from the contract. Post-transaction years are all tax years of the successor in which the successor reported income from the contract.

(ii) *Operation of percentage of completion method.* The predecessor and successor report income under the percentage of completion method, and apply the look-back method, using as total contract price only and all amounts expected to be received from the customer by both the predecessor and the successor. Thus, the successor reports income from the contract during the post-transaction period by "stepping into the shoes" of the predecessor with respect to the percentage of completion formula. The successor must therefore continue to use the same percentage of completion method (*i.e,* the simplified cost-to-cost method or the 10-percent method) used by the predecessor with respect to the contract for purposes of both reporting income under the percentage of completion method and recomputing income under the look-back method.

(2) *Application of look-back method to pre-transaction period*—(i) *Responsible Party.* The successor is liable for interest computed on hypothetical underpayments for both the pre- and post-transaction years, but, in general, is entitled to receive interest only with respect to hypothetical overpayments determined for post-transaction years. The existence of a hypothetical underpayment (and thus whether the successor computes interest under the look-back method) is determined separately for each year and for each contract during the pre-transaction period and without regard to any other year or any other contract. Thus, the successor does not get credit with respect to any hypothetical underpayments for any hypothetical overpayments in pre-transaction years. In the case, however, of a taxable sale of a contract or of a business or an interest in a pass-through entity the assets of which include a contract, the following rules apply. Unless the sale is to a related party within the meaning of section 707(b) or 267(b) (determined without regard to section 267(f)(1)(A) and determined by substituting "80 percent" for "50 percent" with regard to the ownership of the stock of a C corporation in subsections (b)(2), (b)(8), (b)(10)(A) and (b)(12) of section 267), the successor is entitled to receive interest on hypothetical overpayments arising in pretransaction years. In all other cases, only the predecessor is permitted to apply the look-back method to pre-transaction years to receive interest on hypothetical overpayments determined with respect to any pre-transaction year. The predecessor will be secondarily liable for any interest required to be paid with respect to the pre-transaction period (reduced by any interest on pre-transaction overpayments to which the predecessor is entitled).

(ii) *Look-back method for pre-transaction period.* For purposes of the look-back method, the total contract price (and contract costs if the 10-percent method was used by the predecessor) is reallocated to all affected pre-transaction and post-transaction years. The amount treated as total contract price includes only and all amounts received from the customer by both the predecessor and the successor. Thus, any payments between the predecessor and successor with respect to the contract are not treated as contract price or contract costs. See paragraph (c)(2)(vi) of this section. The successor must apply the look-back method to each pre-transaction year that is a redetermination year using the simplified marginal impact method described in paragraph (d) (regardless of whether or not the predecessor would have actually used that method). Any hypothetical underpayment for a redetermination year is treated as described in paragraph (g)(2)(iii).

(iii) *Interest on underpayments.* With respect to any hypothetical underpayment for a pre-transaction year, interest is charged on the underpayment from the due date of the predecessor's tax return for the year of the underpayment until the due date of the successor's return for the completion year, and the successor is primarily liable for the payment of interest on these amounts and the filing of Form 8697.

(iv) *Interest on overpayments.* With respect to any hypothetical overpayment for a pre-transaction year, the successor is not entitled to receive any interest on that overpayment, except in the case of a taxable sale to an unrelated party. In the case of a taxable sale to an unrelated party, the successor is entitled to interest on a hypothetical overpayment determined using the simplified marginal impact method (regardless of whether the predecessor used the method and without regard to the tax liability ceiling). In all other cases, only the predecessor is entitled to receive interest with respect to any hypothetical overpayment of tax for any pre-transaction year if the predecessor applies the look-back method to that contract for that year and computes an overpayment (using the simplified marginal impact method with regard to the tax liability ceiling, or the actual method, whichever applies to the predecessor). For purposes of determining the time period for computing interest on a resulting hypothetical overpayment, interest runs from that pre-transaction redetermination year to the year the contract is completed by the successor.

(v) *Information predecessor must provide.* In order to help the successor to apply the look-back method with respect to pre-transaction tax years, any

predecessor that reported income from a long-term contract as defined in section 460(f) (whether or not under the percentage of completion method) or otherwise reported income under section 460, is required to provide the information described in this paragraph to the successor by the due date (without regard to extensions) of the predecessor's return for the tax year ending with, or the first tax year ending after, a transaction that causes a change in the taxpayer. If the predecessor fails to provide this information, the district director may require the predecessor to apply the look-back method to pre-transaction tax years and pay interest on underpayments for those years. The required information is:

(A) The portion of the contract reported by the predecessor under the percentage of completion method of section 460(b) for regular and alternative minimum tax purposes (*i.e.*, whether the predecessor used the percentage of completion method, the 40/60 method, the 70/30 method, or the 90/10 method). If the predecessor did not report any income from the contract under the percentage of completion method for either regular or alternative minimum tax purposes (as modified by section 460(b)), no other information is required to be reported.;

(B) The method used to apply the percentage of completion method (i.e., the simplified cost-to-cost method or the 10-percent method, or neither);

(C) The amount of contract price reported by year;

(D) The numerator and the denominator of the percentage of completion ratio by year;

(E) The due date (without regard to extensions) of the predecessor's returns for each year in which income was required to be reported;

(F) Whether the transferor is a corporate or a noncorporate taxpayer; and

(G) Any other information required by the Commissioner by administrative pronouncement.

(vi) *Information successor must provide.* If the predecessor requests, the successor taxpayer must provide the information described in this paragraph to the predecessor by the due date of the return for the completion year or each year thereafter in which the successor is required to reapply the look-back method. This information is not required to be reported in the case of a taxable sale of a contract or of an interest in a pass-through entity to an unrelated party:

(A) The due date (without regard to extensions) of the return for any year in which the successor is required to apply the look-back method with respect to the contract;

(B) The total contract price reported by the successor;

(C) The total allocable contract costs incurred by the successor as of the filing year and required to be taken into account in computing the percentage of completion ratio under the percentage of completion method in use: and

(D) Any other information required by the Commissioner by administrative pronouncement.

(3) *Application of look-back method to post-transaction period.* With respect to post-transaction tax years, only the successor applies the look-back method. For these years, the successor uses the same look-back method it uses for other contracts (i.e., the simplified marginal impact: method or the actual method) to determine the amount of any hypothetical overpayment or underpayment of tax and the time period for computing interest on these amounts.

(4) *Examples of transactions to which this paragraph applies: meaning of "predecessor and successor"*—(i) *General rule.* For purposes of this paragraph, the term "predecessor" generally means any taxpayer that reported income from a contract before and not after any transaction that causes a change in the taxpayer that is responsible for reporting income from the contract. The term "successor" generally means any taxpayer that reported income from a contract after but not before any transaction described in the preceding sentence.

(ii) *Examples.* The following are examples of transactions to which this paragraph applies, showing the successor and predecessor in each:

Transaction	Predecessor	Successor
Section 336 corporate liquidation	Liquidating corporation	Distributee/assignee of contract.
Section 338 (qualified stock purchase)	Target corporation	Acquiring corporation.
Taxable sale of contract (including sale of business)	Seller-assignor	Purchaser-assignee.
S conversion to C (closely held or foreign contracts)	S corporation shareholders	C corporation.
C conversion to S (closely held or foreign contracts)	C corporation	S. corporation shareholders.
S conversion to C (widely held for domestic contracts)	S corporation	C corporation.
C conversion to S (widely held for domestic contracts)	C corporation	S corporation.
Separate return to consolidated return	Corporation performing contract	Parent.
Consolidated return to separate return	Parent	Corporation performing contract.
Consolidated return to different consolidated return	Old parent	New parent.
Section 351 (tax-free incorporation)	Transferor(s)	Controlled corporation.
Section 708 (termination of partnership) (widely held for domestic contracts)	Partnership	Transferees.
Section 708 (termination of partnership) (closely held or foreign contracts)	Partners	Transferees.
Section 721 (contribution to partnership) (widely held for domestic contracts)	Contributing Partner	Partnership.
Section 721 (contribution to partnership) (closely held or domestic contracts)	Contributing Partner	Partners.
Sale of partnership (interest nonterminating) (widely held for domestic contracts)	Partnership	Partnership.
Sale of partnership interest (nonterminating) closely held or foreign contracts)	Selling Partner	Purchasing Partner.
Sale of S corporation stock (widely held for domestic contracts)	S corporation	S corporation.
Sale of S corporation stock (closely held or foreign contracts)	Selling shareholder	Purchasing shareholder.

(5) *Special rules.* In the case of a mid-contract conversion from C corporation to S corporation status, the corporation (rather than its shareholders) must apply the look-back method with respect to any C corporation tax years. In doing so, the corporation must use the same look-back method (*i.e.*, the simplified marginal impact method, or the actual method) that the corporation used for other contracts prior to electing S corporation status. The corporation is entitled to receive interest on hypothetical overpayments determined for C corporation tax years. The S corporation has the right to receive look-back interest and the liability to pay look-back interest for the C corporation years, but these amounts flow through to the shareholders for purposes of subtitle A. These amounts are not treated as built-in gains or built-in losses under section 1374. A mid-contract S corporation election does not eliminate the requirement that certain S corporations use the simplified marginal impact method with respect to post-

election tax years. If an S corporation that is required to use the simplified marginal impact method terminates its S election, the successor C corporation must use the simplified marginal impact method with respect to pre-transaction tax years. In that case, the C corporation as a successor in interest is also entitled to receive interest with respect to hypothetical overpayments determined for pre-transaction years. In the case of a termination of a widely-held partnership within the meaning of section 708, the successors in interest are entitled to receive interest using the simplified marginal impact method for domestic contracts. In the case of a transaction subject to section 338, the simplified method is not applied to pretransaction years unless that was the method used by the acquired corporation.

(6) *Effective date.* In general, the rules of this paragraph apply to mid-contract changes in the taxpayer after June 12, 1990. With respect to any other mid-contract changes, taxpayers may use any reasonable method to take into account a mid-contract change in applying the look-back method, including the rules in this paragraph (g).

(h) *Examples*—(1) *Overview.* This paragraph provides computational examples of the rules of this section. Except as otherwise noted, the examples involve calendar-year taxpayers and involve long-term contracts subject to section 460 that are accounted for using the percentage of completion method, rather than the percentage of completion-capitalized cost method. If the percentage of completion-capitalized cost method were used by a taxpayer described in the examples, the amounts of contract income and expenses shown in the examples would be reduced, for purposes of determining regular taxable income, to the appropriate fraction (40, 70, or 90 percent) of contract items accounted for under the percentage of completion method. Tens of thousands of dollars ($00,000's) are omitted from the figures in the examples. The contracts described in the examples are assumed to be the taxpayers' only contracts that are subject to the look-back method of section 460. Except as otherwise stated, the examples assume that the taxpayer has no adjustments and preferences for purposes of section 55, so that alternative minimum taxable income is the same as taxable income, and no alternative minimum tax is imposed for the years involved. The examples assume that the taxpayer does not elect the 10-percent method, the simplified marginal impact method, or the delayed reapplication method.

(2) *Step One.* The following example illustrates the application of paragraph (c)(2):

Example (1). In 1989, W completes three long-term contracts, A, B, and C, entered into on January 1 of 1986, 1987, and 1988, respectively. For Contract A, W used the completed contract method of accounting. For Contract B, W used the percentage of completion-capitalized cost method of accounting, taking into account 60 percent of contract income under W's normal method of accounting, which was the completed contract method. For Contract C, W used the percentage of completion method of accounting. The total price for each contract was $1,000. In computing alternative minimum taxable income, W is required to use the percentage of completion method for Contracts B and C. W used regular tax costs for purposes of determining the degree of contract completion under the alternative minimum tax.

Contract A is not taken into account for purposes of applying the look-back method, because it is subject to neither section 460 nor section 56(a)(3). Thus, even if W had used the percentage of completion method as permitted under § 1.451–3, instead of the completed contract method, the look-back method would not be applicable because the Contract A was entered into before the effective date of section 460.

The actual costs allocated to Contracts B and C under section 460 (c) and incurred in each year of the contract were as follows:

Contract	1987	1988	1989	Total
B	$200	$400	$200	$800
C	100	300	400	800

In applying the look-back method, the first step is to allocate the contract price among tax years preceding and including the completion year. That allocation would produce the following amounts of gross income for purposes of the regular tax. Note that no income from Contract C is allocated to 1987, the year before the contract was entered into, even though contract costs were incurred in 1987:

Contract	1987	1988	1989
B	[1]$100	[2] $200	$700
C	0	[3]500	500

[1] (40% × $200/$800 × $1000)
[2] ((40% × $600/$800 × $1000) − $100)
[3] ($400/$800 × $1000)

Because the percentage of completion-capitalized cost method may not be used for alternative minimum tax purposes, the allocation of contract income would produce the following amounts of gross income for purposes of computing alternative minimum taxable income:

Contract	1987	1988	1989
B	[1]$250	[2] $500	$250
C	0	500	500

[1] ($200/$800 × $1000)
[2] (($600/$800 × $1000) − $250)

(3) *Step Two.* The following example illustrates the application of paragraph (c) (3):

Example (2). (i) X enters into two long-term contracts (D and E) in 1988. X determines its tax liability for 1988 as follows:

e = estimate
a = amount originally reported (actual)
h = hypothetical

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	8,000e	8,000e	
Total contract price	10,000e	10,000e	
1988 completion percent	37.5%e	25%e	
1988 gross income	3,750a	2,500a	
Less, 1988 costs	(3,000a)	(2,000a)	
1988 net contract income	750a	500a	$1,250a
Other 1988 net income (loss)			(2,000a)
Taxable income (NOL)			(750a)
Tax			
Refund from NOL carryback fully absorbed in 1985, at 46%			345a

(ii) X completes Contract D during 1989. X determines its taxable income for 1989 as follows:

	1989		Total
	D	E	
1989 contract costs	$1,000a	-0-a	
Total contract costs	6,000a	9,000e	
Total contract price	10,000a	10,000e	
1989 completion percent	100%a	22.2%e	
1989 gross income/ (loss)	6,250a	(278a)	
Less, 1989 costs	(3,000a)	-0-a	
1989 net contract income	3,250a	(278a)	$2,972a
Other 1989 net income (loss)			-0-a
Taxable income (NOL)	2,972a		
Tax at 34%		1,011a	

(iii) For purposes of the look-back method, X must reallocate the actual total contract D price between 1988 and 1989 based on the actual total contract D costs. This results in the following hypothetical underpayment of tax for 1988 for purposes of the look-back method. Note that X does not reallocate the contract E price in applying the look-back method in 1989 because contract E has not been completed, even though X's estimate of contract E costs has changed. The following computation is only for purposes of applying the look-back method, and does not result in the assessment of a tax deficiency.

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	6,000a	8,000e	
Total contract price	10,000a	10,000e	
1988 completion percent	50%a	25%e	
1988 gross income	5,000h	2,500a	
less, 1988 costs	(3,000a)	(2,000a)	
1988 net contract income	2,000h	500a	$2,500h
Other 1988 net income (loss)			(2,000a)
Taxable income (NOL)			500h
Tax at 34 percent			170h
Less, previously computed tax			a
Underpayment of 1988 tax			170h
Underpayment of 1985 tax from NOL carryback refund in 1988			345h
Total underpayment of tax			515h

For purposes of any subsequent application of the lookback method for which 1989 is a redetermination year, because the reallocation of contract income and redetermination of tax liability are cumulative, X will use for 1989 the amount of contract D income and the amount of tax liability that would have been reported in 1989 if X had used actual contract costs instead of the amounts that were originally reported using the estimate of $8,000. Assuming no subsequent revisions (due to, for example, adjustments to contract D price and costs determined after the end of 1989), this amount would be determined as follows:

	1989		Total
	D	E	
1989 contract costs	$3,000a	a	
Total contract costs	6,000e	$9,000e	
Total contract price	10,000a	10,000e	
1989 completion percent	100%a	22.2%e	
1989 gross income	5,000h	(278a)	
Less, 1989 costs	(3,000a)	a	
1989 net contract income	2,000h	(278a)	$1,722h
Other 1989 net income (loss)			a
Taxable income (NOL)			1,722h
Tax at 34 percent			585h

(iv) X completes contract E during 1990. X determines its taxable income for 1990 as follows:

	1990		Total
	D	E	
1990 contract costs		$7,000a	
Total contract costs		9,000a	
Total contract price		10,000a	
1990 completion percent		100%a	
1990 gross income		7,778a	
Less, 1990 costs		(7,000a)	
1990 net contract income		778a	$778a
Other 1990 net income (loss)			a
Taxable income (NOL)			778a
Tax at 34 percent			265a

(v) For purposes of the look-back method, X must reallocate the actual total contract E price between 1988, 1989, and 1990, based on the actual total contract E costs. This results in the following hypothetical overpayment of tax for 1988. Note that X uses the amount of income for contract D determined in the last previous application of the look-back method, and not the amount of income actually reported:

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	6,000a	9,000a	
Total contract price	10,000a	10,000a	
1988 completion %	50%a	22.2%a	
1988 gross income	5,000h	2,222h	
Less, 1988 costs	(3,000a)	(2,000a)	
1988 net contract income	2,000h	222h	$2,222h
Other 1988 net income (loss)			(2,000a)
Taxable income (NOL)			222h
Tax at 34 percent			75h
Less, previously computed tax (based on most recent application of the look-back method)			170h
Overpayment of 1988 tax			(95h)

In applying the look-back method to 1989, X again uses the amounts substituted as of the last previous application of the look-back method with respect to contract D. Thus, X computes its hypothetical underpayment for 1989 as follows:

	1989		Total
	D	E	
1989 contract costs	$3,000a	-0-a	
Total contract costs	6,000a	9,000a	
Total contract price	10,000a	10,000a	
1989 completion percent	100%a	22.2%a	
1989 gross income	5,000h	-0-h	
Less, 1989 costs	(3,000a)	(-0-a)	
1989 net contract income	2,000h	-0-a	$2,000h
Other 1989 net income (loss)			(-0-a)
Taxable income (NOL)			2,000h
Tax at 34 percent			680h
Less, previously computed tax			585h
Underpayment of 1989 tax			95h

For purposes of any subsequent application of the lookback method for which 1990 is a redetermination year, X will use for 1990 the amount of Contract E income, and the amount of tax liability, that was originally reported in 1990 because X's estimate of the total contract costs from $8,000 to $9,000 did not change after 1989. Without regard to any subsequent revisions, these amounts are the same as in the table in paragraph (h)(3)(iv) above:

(4) *Post-completion adjustments.* The following example illustrates the application of paragraph (c)(1)(ii):

Example (3). The facts are the same as in Example (2). In 1991, X settles a lawsuit

against its customer in Contract E. The customer pays X an additional $3,000, without interest, in 1991. Applying the Federal mid-term rate then in effect, this $3,000 has a discounted value at the time of contract completion in 1990 of $2,700. X is required to apply the look-back method for 1991 even though no contract was completed in 1991. X must include the full $3,000 adjustment (which was not previously includible in total contract price) in gross income for 1991. X does not elect not to discount adjustments to the contract price or costs. Thus, X adjusts the contract price by the discounted amount of the adjustment and, therefore, uses $12,700 (not $13,000) for total Contract E price, rather than $10,000, which was used when the look-back method was first applied with respect to Contract E.

For purposes of the look-back method, X must allocate the revised total Contract E price of $12,700 between 1988, 1989 and 1990 based on the actual total Contract E costs, and compare the resulting revised tax liability with the tax liability determined for the last previous application of the look-back method involving those years. This results in the following hypothetical underpayments of tax for purposes of the look-back method:

r = revised

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	6,000a	9,000a	
Total contract price	10,000a	12,700r	

	1988		Total
	D	E	
1988 completion percent	50%a	22.2%a	
1988 gross income	5,000h	2,822rh	
Less, 1988 costs	(3,000a)	(2,000a)	
1988 net contract income	2,000h	822rh	$2,822rh
Other 1988 net income/(loss)			(2,000a)
Taxable income			822rh
Tax at 34 percent			279rh
Less, previously computed tax			75h
Underpayment of 1988 tax			204rh

No Contract E costs were incurred in 1989, and there is no hypothetical underpayment for 1989.

	1990		Total
	D	E	
1990 contract costs		$7,000a	
Total contract costs		9,000a	
Total contract price		12,700r	

	1990		Total
	D	E	
1990 completion percent		100%a	
1990 gross income		9,878rh	
Less, 1990 costs		(7,000a)	
1990 net contract income		2,878rh	$2,878rh
Other 1990 net income (loss)			-0-a
Taxable income (NOL)			2,878rh
Tax at 34 percent			978rh
Less, previously computed tax			265h
Underpayment of 1990 tax			713rh

In 1992, X incurs an additional cost of $1,000 allocable to the contract, which was not previously includible in total contract costs. Applying the Federal mid-term rate then in effect, the $1,000 has a discounted value at the time of contract completion of $800. X deducts this additional $1,000 in expenses in 1992. Based on this increase to contract costs, X reapplies the look-back method, and determines the following hypothetical overpayments for 1988, 1989 and 1990 for purposes of the look-back method:

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	6,000a	9,800r	
Total contract price	10,000a	12,700r	
1988 completion percent	50%a	20.4%r	
1988 gross income	5,000h	2,592rh	
Less, 1988 costs	(3,000a)	(2,000a)	
1988 net contract income	2,000h	592rh	$2,592rh
Other 1988 net income (loss)			(2,000a)
Taxable income (NOL)			592rh
Tax at 34 percent			201rh
Less, previously computed tax			279rh
Overpayment of 1988 tax			(78rh)

No Contract E costs were incurred in 1989, and there is no hypothetical underpayment for 1989.

	1990		Total
	D	E	
1990 contract costs		$7,000a	
Total contract costs		9,800r	
Total contract price		12,700r	
1990 completion percent		92%a	

	1990		Total
	D	E	
1990 gross income		9,071rh	
Less, 1990 costs		(7,000a)	
1990 net contract income		2,071rh	$2,071rh
Other 1990 net income (loss)			-0-a
Taxable income (NOL)			2,071rh
Tax at 34 percent			704rh
Less, previously computed tax			978rh
Overpayment of 1990 tax			(274rh)

(5) *Alternative minimum tax.* The operation of the look-back method in the case of a taxpayer liable for the alternative minimum tax as provided in paragraph (c)(3)(vi) is illustrated by the following example:

Example (4). Y enters into a long-term contract in 1988 that is completed in 1989. Y used regular tax costs for purposes of determining the degree of contract completion under the alternative minimum tax.

(i) Y determines its tax liability for 1988 as follows:

1988 contract costs	$4,000a
Total contract costs	8,000e
Total contract price	20,000e
1988 completion percent	50%e
1988 gross income	10,000a
Less, 1988 contract costs	(4,000a)
1988 net contract income	6,000a
Other 1988 net income/(loss)	(3,400a)
Taxable income	2,600a
Regular tax at 34 percent	884a
Adjustments and preferences to produce alternative minimum taxable income	600a
Alternative minimum taxable income	3,200a
Tentative minimum tax at 20 percent	640a
Tax liability	884a

In 1989, Y determines the following amounts:

1989 contract costs	$6,000a
Total contract costs	10,000a
Total contract price	20,000a

(ii) For purposes of applying the look-back method, Y redetermines its tax liability for 1988, which results in a hypothetical overpayment of tax. This hypothetical overpayment is determined by comparing Y's original regular tax liability for 1988 with the hypothetical total tax liability (including alternative minimum tax liability) for that year because Y would have paid the alternative minimum tax if Y had used its actual contract costs to report income:

1988 contract costs	$4,000a
Total contract costs	10,000a
Total contract price	20,000a
1988 completion percent	40%a
1988 gross income	8,000h
Less, 1988 contract costs	(4,000a)
1988 net contract income	4,000h
Other 1988 net income/(loss)	(3,400a)
Taxable income	600h
Regular tax at 34 percent	204h
Adjustments and preferences to produce alternative minimum taxable income	600a
Alternative minimum taxable income	1,200h
Tentative minimum tax at 20 percent	240h
Alternative minimum tax	36h
Total tax liability	240h
Less, previously computed tax	884a
Underpayment/(overpayment)	(644h)

(6) *Credit carryovers.* The operation of the look-back method in the case of credit carryovers as provided in paragraph (c)(3)(v) is illustrated by the following example:

Example (5). Z enters into a contract in 1986 that is completed in 1987. Z determines its tax liability for 1986 as follows:

1986 contract costs	$400a
Total contract costs	1,000e
Total contract price	2,000e
1986 completion percent	40%e
1986 gross income	800a
Less, 1986 costs	(400a)
1986 net contract income	400a
Other 1986 net income	-0-a
Taxable income	400a
Tax at 46 percent	184a
Unused tax credits carried forward from 1985 allowable in 1986	350a
Net tax due	-0-a

Z determines the following amounts for 1987:

1987 contract costs	$400a
Total contract price	2,000a
Total contract costs	800a

If Z had used actual rather than estimated contract costs in determining gross income for 1986, Z would have reported tax liability of $276 (46% × $600) rather than $184. However, Z would have paid no additional tax for 1986 because its unused tax credits carried forward from 1985 would have been sufficient to offset this increased tax liability. Therefore, there is no hypothetical underpayment for 1986 for purposes of the look-back method. However, this hypothetical earlier use of the credit may increase the hypothetical tax liability for 1987 (or another subsequent year) for purposes of subsequent applications of the look-back method.

(7) *Net operating losses.* The operation of the look-back method in the case of net operating loss ("NOL") carryovers as provided in paragraph (c)(3)(v) is illustrated by the following example:

Example (6). A entered into a long-term contract in 1986, which was completed in 1987. A determined its tax liability for 1986 as follows:

1986 contract costs	$400a
Total contract costs	1,000e
Total contract price	2,000e
1986 completion percent	40%e
1986 gross income	800a
Less, 1986 costs	(400a)
1986 net contract income	400a
Other 1986 net income/(loss)	(1,000a)
Taxable income/(NOL)	(600a)
Tax	-0-a

A elected to carry this loss forward to 1987 pursuant to section 172(b)(3)(C).

For 1987, A determined the following amounts:

1987 contract costs	$400a
Total contract costs	800a
Total contract price	2,000a

If actual rather than estimated contract costs had been used in determining gross income for 1986, A would have reported $1,000 of gross income from the contract rather than $800, and thus would have reported a loss of $400 rather than $600. However, since A would have paid no tax for 1986 regardless of whether actual or estimated contract costs had been used, A does not have an underpayment for 1986 for purposes of the look-back method. If A had, instead, carried back the 1986 NOL, and this NOL had been absorbed in the tax years 1983 through 1985, it would have resulted in refunds of tax for those years in 1986. When A applies the look-back method, a hypothetical underpayment of tax would have resulted for those years due to a hypothetical reduction in the amount that would have been refunded if income had

been reported on the basis of actual contract costs. See Example (2)(iii).

(8) *Alternative minimum tax credit.* The following example illustrates the application of the look-back method if affected by the alternative minimum tax credit as provided in paragraph (c)(3)(vi):

Example (4), above, illustrates that the reallocation of contract income under the look-back method can result in a hypothetical underpayment or overpayment determined using the alternative minimum tax rate, even though the taxpayer actually paid only the regular tax for that year. However, application of the look-back method had no effect on the difference between the amount of alternative minimum taxable income and the amount of regular taxable income taken into account in that year because the taxpayer was required to use the percentage of completion method for both regular and alternative minimum tax purposes and used the same version of the percentage of completion method for both regular and alternative minimum tax purposes (*i.e.*, the taxpayer had made an election to use regular tax costs in determining the percentage of completion for purposes of computing alternative minimum taxable income).

The following example illustrates the application of the look-back method in the case of a taxpayer that does not use the percentage of completion method of accounting for long-term contracts in computing taxable income for regular tax purposes and thus must make an adjustment to taxable income to determine alternative minimum taxable income. The example also shows how interest is computed under the look-back method when the taxpayer is entitled to a credit under section 53 for minimum tax paid because of this adjustment.

Example (7). X is a taxpayer engaged in the construction of real property under contracts that are completed within a 24-month period and whose average annual gross receipts do not exceed $10,000,000. As permitted by section 460(e)(1)(B), X uses the completed contract method ("CCM") for regular tax purposes. However, X is engaged in the construction of commercial real property and, therefore, is required to use the percentage of completion method ("PCM") for alternative minimum tax ("AMT") purposes.

Assume that for 1988, 1989, and 1990, X has only one long-term contract, which is entered into in 1988 and completed in 1990. Assume further that X estimates gross income from the contract to be $2,000, total contract costs to be $1,000, and that the contract is 25 percent complete in 1988 and 75 percent complete in 1989. In 1990, the year of completion, the percentage of completion does not change but, upon completion, gross income from the contract is actually $3,000, instead of $2,000, and costs are actually $1,000.

For 1988, 1989, and 1990, X's income and tax liability using estimated contract price and costs are as follows:

Estimates	1988	1989	1990
Regular tax:			
Long-term Contract-CCM	$-0-	$-0-	$2,000
Other Income	-0-	5,000	-0-
Total Income	-0-	5,000	2,000
Tax at 34 percent	-0-	1,700	680
AMT:			
Gross Income	500	1,000	1,500
Deductions	(250)	(500)	(250)
Total long-term Contract=PCM	250	500	1,250
Other Income	-0-	5,000	-0-
Total Income	250	5,500	1,250
Tax at 20 percent	50	1,100	250
Tentative Minimum Tax	50	1,100	250
Regular Tax	-0-	1,700	680
Minimum Tax Credit	-0-	(50)	-0-
Net Tax Liability	50	1,650	680

When X files its tax return for 1990, X applies the look-back method to the contract. For 1988, 1989, and 1990, X's income and tax liability using actual contract price and costs are as follows:

Actual	1988	1989	1990
Regular tax			
Long-term Contract-CCM	$-0-	$-0-	$2,000
Other Income	-0-	5,000	-0-
Total Income	-0-	5,000	2,000
Tax at 34 percent	-0-	1,700	680
AMT:			
Gross Income	750	1,500	750
Deductions	(250)	(500)	(250)
Total long-term Contract—PCM	500	1,000	500
Other Income	-0-	5,000	-0-
Total Income	500	6,000	500
Tax at 20 percent	100	1,200	100
Tentative Minimum Tax	100	1,200	100
Regular Tax	-0-	1,700	680
Minimum Tax Credit	-0-	(100)	-0-
Net Tax Liability	100	1,600	680
Underpayment	50		
Overpayment		50	

As shown above, application of the look-back method results in a hypothetical underpayment of $50 for 1988 because X was subject to the alternative minimum tax for that year. Interest is charged to X on this $50 underpayment from the due date of X's 1988 return until the due date of X's 1990 return.

In 1989, although X was required to compute alternative minimum taxable income using the percentage of completion method, X was not required to pay alternative minimum tax. Nevertheless, the look-back method must be applied to 1989 because use of actual rather than estimated contract price in computing alternative minimum taxable income for 1988 would have changed the amount of the alternative minimum tax credit carried to 1989. Interest is paid to X on the resulting $50 overpayment from the due date of X's 1989 return until the due date of X's 1990 return.

(9) *Period for interest.* The following Examples (8) through (11) illustrate how to determine the period for computing interest as provided in paragraph (c)(4):

Example (8). The facts are the same as in Example (6), except that the contract is completed in 1988, and A determined the following amounts for 1987 and 1988:

for 1987:	
1987 contract costs	$-0-
Total contract costs	1,000e
Total contract price	2,000e
1987 completion percent	40%e
1987 gross income	-0-a
Less, 1987 costs	-0-a
Other 1987 net income	600a
Net operating loss carry forward from 1986	(600a)
Taxable income	-0-a
Tax	-0-a
for 1988:	
1988 contract costs	400a
Total contract costs	800a
Total contract price	2,000a

If actual rather than estimated contract costs had been used in determining gross income for 1986, A would have reported $1,000 of gross income from the contract for 1986 rather than $800, and would have reported a net operating loss carryforward to 1987 of $400 rather than $600. Therefore, A would have reported taxable income of $200, and would have paid tax of $80 (*i.e.*, $200×40%) for 1987. The due date for filing A's Federal income tax return for its 1988 taxable year is March 15. A obtains an extension and files its 1988 return on September 15, 1989. Under the look-back method, A is required to pay interest on the amount of this hypothetical underpayment ($80) computed from the due date (determined without regard to extensions) for A's return for 1987 (not 1986, even though 1986 was the year in which the net operating loss arose) until March 15 (not September 15), the due date (without regard to extensions) of A's return for 1988. A is required to pay additional interest from March 15 until September 15 on the amount of interest outstanding as of March 15 with respect to the hypothetical underpayment of $80.

Example (9). The facts are the same as in Example (6), except that A carries the net operating loss of $600 back to 1983 rather than forward to 1987, and receives a refund of $276 ($600 reduction in 1983 taxable income×46% rate in effect in 1983). As in Example (6), if actual contract costs had been used, A would have reported a loss for 1986 of $400 rather than $600. Thus, A would have received a refund of 1983 tax of $184 ($400×46%) rather than $276. Under the look-back method A is required to pay interest on the difference in these two amounts ($92) computed from the due date (determined without regard to extensions) of A's return for 1986 (the year in which the carryback arose rather than 1983, the year in which it was used) until the due date of A's return for 1988.

Example (10). B enters into a long-term contract in 1986 that is completed in 198B. B determines its 1986 tax liability as follows:

1986 contract costs	$400a
Total contract costs	1,000e
Total contract price	2,000e
1986 completion percent	40%e

1986 gross income	800a
Less, 1986 costs	(400a)
1986 net contract income	400a
Other 1986 net income	2,000a
Taxable income	2,400a
Tax at 46 percent	1,104a

B determines its tax liability for 1987 as follows:

1987 contract costs	$400a
Total contract costs	1,600e
Total contract price	2,000e
1987 completion percent	50%e
1987 gross income [1]	200a
Less, 1987 costs	(400a)
1987 net contract income	(200a)
Other 1987 net income/(loss)	(2,200a)
Taxable income (NOL)	(2,400a)
Tax	-0-a

[1] (=(50%×$2,000)−$800 previously reported)

Assume that B had no taxable income in either 1984 or 1985, so that the entire amount of the $2,400 net operating loss is carried back to 1986, and B receives a refund, with interest from the due date of B's 1987 return, of the entire $1,104 in tax that it paid for 1986.

In 1988, B determines the following amounts:

1988 contract costs	$800a
Total contract costs	1,600a
Total contract price	2,000a

If B had used actual contract costs rather than estimated costs in determining its gross income for 1986, B would have had gross income from the contract of $500 rather than $800, and thus would have had taxable income of $2,100 rather than $2,400, and would have paid tax of $966 rather than $1,104. B is entitled to receive interest on the difference between these two amounts, the hypothetical overpayment of tax of $138. Interest is computed from the due date (without regard to extensions) of B's return for 1986 until the due date for B's return for 1987. Interest stops running at this date, because B's hypothetical overpayment of tax ended when B filed its original 1987 return and received a refund for the carryback to 1986, and interest on this refund began to run only from the due date of B's 1987 return. See section 6611(f).

Example (11). C enters into a long-term contract in 1986, its first year in business, which is completed in 1988. C determines its tax liability for 1986 as follows:

1986 contract costs	$400a
Total contract costs	1,000e
Total contract price	2,000e
1986 completion percent	40%e
1986 gross income	800a
Less, 1986 costs	(400a)
1986 net contract income	400a
Other 1986 net income	2,000a
Taxable income (NOL)	2,400a
Tax at 46 percent	1,104a

C determines its tax liability for 1987 as follows:

1987 contract costs	$400a
Total contract costs	1,066e
Total contract price	2,000e
1987 completion percent	75%e
1987 gross income	700a
Less, 1987 costs	(400a)
1987 net contract income	300a
Other 1987 net income	(2,450a)
Taxable income (NOL)	(2,150a)
Tax	-0-a

C carries back the net operating loss to 1986, and files an amended return for 1986, showing taxable income of $250, and receives a refund of $989 (46%×$2,150). Interest on this refund begins to run only as of the due date of C's 1987 return. See section 6611(f).

In 1988, when the contract is completed, C determines the following amounts:

1988 contract costs	$800a
Total contract costs	1,600a
Total contract price	2,000a

If C had used actual contract price and contract costs in determining gross income for 1986, it would have reported gross income from the contract of $500 rather than $800, taxable income of $2,100 rather than $2,400, and tax liability of $966 rather than $1,104.

If C had used actual contract price and contract costs in determining gross income for 1987, it would have reported gross income from the contract of $500 rather than $700, and would have reported a net operating loss of $2,350, rather than $2,150, which would have been carried back to 1986.

Under the look-back method, C receives interest with respect to a total 1986 hypothetical overpayment of $138 ($1,104 minus $966). C is credited with interest on $23 of this amount only from the due date of C's 1986 return until the due date of C's 1987 tax return, because this portion of C's total hypothetical overpayment for 1986 was refunded to C with interest computed from the due date of C's 1987 return and, therefore, was no longer held by the government. However, because the remainder of the total hypothetical overpayment of $115 was not refunded to C, C is credited with interest on this amount from the due date of C's 1986 return until the due date of C's 1988 tax return.

Under the look-back method, C receives no interest with respect to 1987, because C had no tax liability for 1987 using either estimated or actual contract price and costs.

§ 1.460–7. Exempt long-term contracts. [Reserved.]

§ 1.460–8. Changes in method of accounting. [Reserved.]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding in the appropriate place in the table:

"§1.460-6 (f)	1545-1031."

Fred T. Goldberg,

Commsioner of Internal Revenue.

[FR Doc. 90–13191 Filed 6–11–90; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 602

[IA–130–86]

RIN 1545–AJ28

Look-Back Method for Long-Term Contracts; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the look-back method of section 460(b) of the Internal Revenue Code for long-term contract income reported under the percentage of completion method of accounting.

DATES: The public hearing will be held on Friday, August 24, 1990, beginning at 10 a.m. Outlines of oral comments must be delivered by Friday, August 3, 1990.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W. Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA–130–86), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn of the Regulations Unit, Assistant Chief Counsel (Corporate) room 4429,1111 Constitution Avenue N.W., Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 460(b) of the Internal Revenue Code. The look-back method was enacted by the Tax Reform Act of 1986 (the "1986 Act"), Public Law No. 99–514, and amended by the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act"), Public Law No. 100–647, and the Revenue Reconciliation Act of 1989 (the "1989 Act"), Public Law No. 101–239. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.01(a)(3) of the "Statement of Procedural Rules" (26 CF Part 601) shall apply with respect to the public hearing. Persons who have

submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, August 3, 1990, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

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

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

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

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-13352 Filed 6-11-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 45 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio initiated the amendments to eliminate existing requirements concerning reissuance of notices of violation and orders to sureties and concerning the sureties' compliance with those notices and orders.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on July 12, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on July 9, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 27, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the dispositon of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By Letter dated May 11, 1990 (Administrative Record No. OH-1310), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted Ohio Program Amendment Number 45. This amendment would revise Ohio Administrative Code (OAC) Section 1501:13-7-06 to delete requirements concerning reissuance of notices of violation and orders to sureties and concerning the sureties' compliance with those notices and orders.

The substantive changes proposed by Ohio in this rule are discussed briefly below:

1. OAC Section 1501:13-7-06 paragraph (F)(4): Ohio is deleting this paragraph which requires that a surety choosing to complete reclamation comply with all notices of violation and orders issued to the surety and with all such notices and orders issued previously to the permittee. Ohio is also deleting the requirements in this paragraph that the State reissue all outstanding notices of violation and orders to sureties and that these reissued notices and orders set forth a reasonable time for compliance by the sureties.

2. OAC Section 1501:13-7-06 paragraph (F)(6): Ohio is deleting this paragraph which requires that the State terminate the rights of a surety to complete reclamation if the surety fails to comply with the requirements of OAC Section 1501:13-7-08 paragraph (F)(4).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFOMATION CONTACT" by 4 p.m. on June 27, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM

officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

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

Dated: May 30, 1990.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 90–13457 Filed 6–11–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

Pribilof Island Fur Seal Subsistence Harvest Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: A public meeting on the subsistence harvest of North Pacific fur seals is scheduled as follows:

DATES: Monday, June 18, 1990 (2 to 4 p.m.).

ADDRESSES: Room 7115, 1335 East-West Highway, Silver Spring, Maryland (Silver Spring Metro).

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 301–427–2289.

SUPPLEMENTARY INFORMATION: At the request of representatives of the Aleut residents of the Pribilof Islands, the National Marine Fisheries Service is holding a second meeting to discuss the fur seal subsistence harvest. Pribilof Island residents are unable to attend the meeting already scheduled for June 7, which is being held in association with publication of proposed harvest levels for 1990 (see 55 FR 21630, May 25, 1990). Aleut representatives indicated that they want to explain their need for seal meat and propose an earlier start to the annual harvest season.

Dated: June 6, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–13490 Filed 6–11–90; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 113
Tuesday, June 12, 1990

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 COMMERCE

International Trade Administration

[A-403-801]

Postponement of Preliminary Antidumping Duty Determination; Fresh and Chilled Atlantic Salmon From Norway

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673(c)(1)(A)). Based on this request, we are postponing our preliminary determination as to whether sales of fresh and chilled Atlantic Salmon from Norway have occurred at less that fair value until not later than September 26, 1990.

EFFECTIVE DATE: June 12, 1990.

FOR FURTHER INFORMATION CONTACT: Tracey Oakes, Carolina Olivieri, or Louis Apple at (202) 377-3174, 377-2778 or 377-1769, respectively, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On June 1, 1990 counsel for petitioner requested that the Department postpone the preliminary determination by 50 days, i.e., until not later than 210 days after the date of receipt of the petition, in accordance with section 733(c)(1)(A) of the Act. Accordingly, we are postponing the date of the preliminary determination until not later than September 26, 1990. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act. This notice is published pursuant to section 733(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-13460 Filed 6-11-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-020]

Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from the petitioner and two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers three manufacturers, Osaka Titanium, Showa Denko K.K. and Toho Titanium, and their exports of this merchandise to the United States for the periods November 1, 1986 through October 31, 1987, and November 1, 1987 through October 31, 1988. The review indicates the existence of dumping margins during these periods.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 12, 1990.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 13403) the final results of its administrative review of the antidumping duty order on titanium sponge from Japan (49 FR 47053, November 30, 1984). The petitioner, RMI Company, and two respondents, Osaka Titantium ("Osaka") and Toho Titanium ("Toho"), requested in accordance with 19 CFR 353.22 of the Commerce Regulations that we conduct an administrative review. We published initiation notices of the antidumping administrative reviews on December 15, 1987 (52 FR 47617) for the period November 1, 1986 through October 31, 1987, and on January 31, 1989 (54 FR 4871) for the period November 1, 1987 through October 31, 1988. The Department has now conducted the administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the 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 item number(s).

Imports covered by the review are shipments of unwrought titanium sponge, which is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets.

During the review period, such merchandise was classifiable under item 629.1420 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS item 8108.10.50.10. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three firms, Osaka, Showa Denko K.K. ("Showa"), and Toho, and their exports of Japanese titanium sponge to the United States for the periods November 1, 1986 through October 31, 1987, and November 1, 1987 through October 31, 1988.

One firm, Showa, failed to respond to our questionnaire for the period November 1, 1986 through October 31, 1987. For this firm, we used the best information available for assessment and cash deposit purposes. We determined the best information available to be 2.82 percent, the highest rate for a responding firm during the

November 1, 1986 through October 31, 1987 review period. Another firm, Osaka, had no shipments during the above review periods. For this firm we used a zero percent rate, its rate from the last review.

United States Price

In calculating United States price ("USP") the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, delivered price to unrelated purchasers in the United States.

Shipments by Toho to the United States during the review period were made, in part, pursuant to a long-term contract that predates the review period. In accordance with the final results of administrative review for the preceding period (54 FR 13403, April 3, 1989), in which the same situation existed, we have determined that the date of the contract is the date of sale for the minimum quantity specified in the contract, and the date of shipment is the date of sale for any quantity sold above the minimum.

We made deductions, where appropriate, for foreign inland freight, U.S. inland freight, ocean freight, marine insurance, foreign brokerage fees, U.S. customs duty, and U.S. brokerage fees. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, we used home market price or constructed value, as defined in section 773 of the Tariff Act. Home market prices were compared to the cost of production to determine whether sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. For Showa, none of the home market sales were used as the basis for foreign market value. For Toho, we used the monthly weighted-average home market price for April 1985 to compare with U.S. sales within the minimum quantity specified in the long-term contract, for which the date of sale was the contract date. We used the monthly-weighted average home market price because there were sufficient quantities of such or similar merchandise sold in the home market at or above the cost of production during the November 15, 1984 through October 31, 1985 period to provide a basis for comparison. Home market price was based on a packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, and for differences in credit and packing costs. No other adjustments were claimed or allowed.

We used constructed value where home market sales made at prices below the cost of production constituted more than 90 percent of home market sales of such or similar merchandise. For Showa, all U.S. sales were compared with constructed value. For Toho, we used constructed value only to compare with the U.S. sales that exceeded the minimum quantity specified in the long-term contract, for which the date of sale was the shipment date. We used constructed value because more than 90 percent of home market sales made during the November 1, 1986 through October 31, 1987 and November 1, 1987 through October 31, 1988 periods were below the cost of production.

Constructed value consisted of the sum of the costs of materials, fabrication, general expenses, profit, and export packing. Where the actual cost for general expenses was below the statutory minimum of 10 percent of the cost of manufacture, we added the statutory minimum amount, in accordance with section 773(3) of the Tariff Act. Where the actual amount of general expenses was above the statutory minimum amount, we added the actual amount. Since the actual profit was less than the statutory minimum of eight percent of the sum of general expenses and cost of manufacture, we added the statutory minimum.

We made circumstance-of-sale adjustments under § 353.56 of the Commerce Regulations, where applicable, for differences in commissions and credit expenses.

Preliminary Results of Review

As a result of our review, we preliminary determine that the following margins exist:

Manufacturer/ Exporter	Period of review	Margin (percent)
Osaka Titanium/ Sumitomo	11/1/86–10/31/87	[1] 0
	11/1/87–10/31/88	[1] 0
Showa Titanium/ Showa Denko K.K.	11/1/86–10/31/87	2.82
	11/1/87–10/31/88	0
Toho Titanium/ Mitsui	11/1/86–10/31/87	2.82
	11/1/87–10/31/88	22.16

[1] No shipments during the period; rate is from the last review in which there were shipments.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above for Toho Titanium/Mitsui. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties shall be required on entries of this merchandise from Toho and Showa based on the above margins. Since the dumping margin for Osaka and Showa for the November 1, 1987 through October 31, 1988 review is zero, no cash deposit shall be required on entries of this merchandise from these firms.

For any future entries of this merchandise from a new exporter not covered in this or in prior administrative reviews, whose first shipments occurred after October 31, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 22.16 percent shall be required. These cash deposit requirements and waiver are effective for all shipments of Japanese titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22).

Dated: June 4, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration

[FR Doc. 90–13461 Filed 6–11–90; 8:45 am]

BILLING CODE 3510–05–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Claire Pappas From Objection by New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On March 13, 1990, the Secretary of Commerce received a notice of appeal from Claire Pappas (Appellant) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the New York Department of State (State) to Appellant's consistency certification for a U.S. Army Corps of Engineers permit to build a dining deck over a canal as an addition to her seafood restaurant in Hempstead, New York.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed activity satisfies the requirements of 15 CFR 930.121 or 930.122.

Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) when performed separately or when its cumulative effects are considered, the proposed activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweight its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to George R. Stafford, Special Deputy Secretary of State, New York Department of State, Albany, NY 12231–0001.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the New York Department of State and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated June 6, 1990.

Thomas A. Campbell,

General Counsel.

[FR Doc. 90–13554 Filed 6–11–90; 8:45 am]

BILLING CODE 3510–08–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7–095,838, entitled "Cloned HIV–DNA and Kit for Detecting HIV", to MicroGeneSys Inc., having a place of business at W. Haven, CT. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention provides complete molecular clone of HIV; a diagnostic kit capable of detecting HIV; and HIV proteins useful as immunogens.

The availability of the invention for licensing was published in the **Federal Register** Vol. 52, No. 247, p. 48746 (1987) and in the Government Inventions for Licensing Vol. 88, No. 17 (April 26, 1988). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Denvani, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90–13518 Filed 6–11–90; 8:45 am]

BILLING CODE 3510–04–M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,808,446 (Serial No. 6–909,433), "Electrodeposition of Chromium from a Trivalent Electrolyte" to Witco Corporation, having a place of business at Melrose Park, IL. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the

requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is an electrodeposition process and a bath for performing the electrodeposition of hard smooth coatings of trivalent chromium. The electrodeposition process is accomplished energy efficiently. The bath includes chromium (III) chloride as a source of chromium, sodium citrate and glycolic acid to complex the chromium, and a wetting agent which is preferably Triton X-100. Preferably, bromide is also provided in the solution to keep production of the hexavalent chromium at the anode at a low level. Ammonium chloride is also preferably provided to improve the conductivity and also the current distribution in the bath. Boric acid is provided to advance the reaction kinetics. The pH of the bath is maintained at approximately 4.0 and the temperature is maintained at 35 degrees C. Either a direct current or pulsed current is used for the deposition process. Hard smooth coatings of chromium are deposited through use of the process and the bath of the claimed invention.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 54, #75, p. 15964 (April 20, 1989).

A copy of the instant patent may be purchased for $1.50 from the Commissioner of Patents and Trademarks, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Center for the Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90–13517 Filed 6–11–90; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textiles and Textile Products Produced or Manufactured in Sri Lanka

June 6, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, 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) 343–6580. 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 current limit for Category 363 is being increased for swing, reducing the limit for Category 369–D.

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 54 FR 50797, published on December 11, 1989). Also see 54 FR 24731, published on June 9, 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, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 6, 1990.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 5, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on July 1, 1989 and extends through June 30, 1990.

Effective on June 13, 1990, the directive of June 5, 1989 is being amended to adjust the limits for the following categories, as provided under the provisions of the current bilaterial agreement between the Governments of the United States and Sri Lanka:

Category	Adjusted twelve-month limit [1]
363	8,146,100 numbers.
369–D [2]	555,271 kilograms.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.
[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

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. 90–13462 Filed 6–11–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Wilma Habitat Management Unit, Clarkston, WA

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of withdrawal from preparation of a DSEIS.

SUMMARY: The Walla Walla District, Corps of Engineers, is withdrawing its intent to prepare a Draft Supplement 2, originally published in the 3 January 1989 **Federal Register**, page 55, to the Lower Granite Final Environmental Impact Statement (DEIS) for a proposed land exchange at Wilma Habitat Management Unit on the Snake River near Clarkson, Washington. The Corps' environmental analyses have not identified any significant impacts associated with the proposed action, therefore, a DSEIS is not required and is hereby terminated. The Corps is preparing an Environmental Assessment for the proposed land exchange. The final environmental assessment and finding of no significant impact will be completed and available in the summer of 1990.

FOR FURTHER INFORMATION CONTACT: Comments concerning the land exchange and draft EA should be addressed to Chief, Environmental Resources Branch, Corps of Engineers, Walla Walla District, Walla Walla, WA 99362–9265. Comments or questions can be telephoned to Ms. Sandra Shelin at (509) 552–6626.

SUPPLEMENTARY INFORMATION:

1. The Port of Wilma has requested to obtain Wilma Habitat Management Unit (HMU) which is Corps of Engineers

project land (171 acres) along the north shore of the Snake River, river mile 134–135, in Lower Granite Reservoir. The parcel is currently managed to partially fulfill wildlife compensation requirements for the Lower Snake River project. In exchange, the Port proposes to offer to the Corps 742 acres of land suitable for wildlife mitigation use along the north shore of the Snake River, or other suitable property available for sale along the lower Snake River. The proposed land exchange would allow the Port to expand its facilities located immediately adjacent to and upstream of Wilma HMU. In exchange the Corps would receive land adjacent to Snake River project lands suitable for wildlife habitat development.

2. Alternatives to be investigated include:

A–No action.

B–Land exchange, Port acquires the identified 742 acres for exchange.

C–Land exchange, Port acquires property other than the identified 742 acres for exchange.

3. Issues to be addressed in the environmental assessment include effects of the alternatives on wildlife, fisheries, endangered species, existing wildlife compensation program, cultural resources, port development, and socioeconomics. The project will be reviewed under all applicable Federal, state, and local statutes.

4. The Environmental Assessment and draft FONSI will be available in July 1990.

Dated: May 25, 1990.

Donald P. Kurkjian,

Acting Commander.

[FR Doc. 90–13419 Filed 6–11–90; 8:45 am]

BILLING CODE 3710–GC–M

DEPARTMENT OF ENERGY

DOE High Priority Defense Nuclear Facilities; Design, Construction, Operation and Decommissioning Standards; Response to Recommendation of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of the response of the Secretary of Energy (Secretary) to Recommendation 90–2 of the Defense Nuclear Facilities Safety Board, 55 FR 9487–9488 (March 14, 1990), concerning high priority defense nuclear facilities; design, construction, operation, and decommissioning. DOE hereby requests public comment on the response of the Secretary to Recommendation 90–2.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before July 11, 1990.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 600 E Street NW., Suite 675, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Steven Blush, Director, Office of Nuclear Safety, Department of Energy, 1000 Indepdendence Avenue, SW., Washington, DC 20585.

Dated: June 8, 1990

Joseph E. Fitzgerald,

Acting Director, Office of Nuclear Safety.

Note.—Attachments referenced in this document will be provided upon written request to Steven Blush, Director, Office of Nuclear Safety, Department of Energy, 1000 Independent Ave., SW, Washington, DC 20585.

June 8, 1990

The Honorable John T. Conway
Chairman, Defense Nuclear Facilities Safety Board
Suite 675, 600 E Street, NW., Washington, DC 20004

Dear Chairman Conway: On March 8, 1990, the Defense Nuclear Facilities Safety Board forwarded to the Department of Energy Recommendation 90–2 regarding DOE Orders. I am enclosing the Department's response.

I want to take this opportunity to thank the Board for granting the Department's request for additional time to prepare this response. I agree with the thrust of Recommendation 90–2. There is ample documentation of the need for a through review of DOE Orders, dating back to the Crawford Report and the National Academy of Sciences studies. I was committed to undertaking this effort when I came to the Department, and have taken steps, described in our reponse, aimed at addressing this issue.

As I am sure the Board is aware, the effort to reconstruct, identify, and appropriately update DOE's site-specific nuclear facility standards presents a considerable challenge to us over the next several years. The Department's Task Force on Nuclear Safety Directives, in particular, is establishing the DOE-wide foundation of fundamental nuclear safety requirements that will be applicable to all of the Department's nuclear facilities.

As to the status of these efforts at the four sites requested, our response also indicates how the Department will approach its efforts to develop implementation plans for the three operating defense facilities. These plans will be forwarded to the Board 90 days after this submission is published in the **Federal Register.**

In accordance with Section 315(d) of the Atomic Energy Act of 1954, as amended, this response will be published in the **Federal Register** and provided to the Congress.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Enclosure.

Response of the Department of Energy to the March 8, 1990, Recommendations of the Defense Nuclear Facilities Safety Board

On March 8, 1990, the Defense Nuclear Facilities Safety Board (the Board) issued Recommendation 90–2 as follows:

(1) That the Department identify the specific standards which it considers apply to the design, construction, operation and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Departmental Orders, regulations and requirements) at the following defense nuclear facilities as follows:

- Savannah River Site: K, L and P Reactors
- Rocky Flats Plant: Buildings 371, 374, 559, 707, 771, 774, 776, 777 and 779
- Hanford Site: Plutonium Finishing Plant; Purex Facility, together with associated waste processing and storage facilities; N-Reactor (including decommissioning); and K-Reactor Storage Basins
- Waste Isolation Pilot Plant

(2) That the Department provide its views on the adequacy of the standards identified in the above process for protecting public health and safety at the defense facilities referred to, and determine the extent to which the standards have been implemented at these facilities.

DOE Response

As the Board is aware, the need to identify and assess the adequacy of standards employed in the design, construction and operation of critical facilities in the DOE defense nuclear complex is not a new issue. This issue was raised in the so-called "Crawford Report" of 1981 assessing the safety of the Department's nuclear reactors, as well as in the 1987 report of the National Academy of Sciences and "Safety Issues at the Defense Production Reactors." Unforunately, little had been accomplished in response to the discussion of these issues in the "Crawford" and National Academy Reports prior to the time I became Secretary of Energy. Therefore, shortly after I was confirmed as Secretary, I directed that efforts be initiated to address these issues as expeditiously as possible.

However, the magnitude of the task of reconstructing the design base for some of the Department's older facilities has made it clear that this is a long term effort. This is principally because the defense nuclear complex, including the Savannah River, Rocky Flats and Hanford facilities about which the Board has inquired, consists predominantly of facilities that were designed, constructed and placed in operation 30–50 years ago. The technical standards employed at that time were largely those of the operating contractor or were manufacturers' association standards. A uniform policy for application of industry engineering codes and standards was not in place. Similarly, requirements to document the particular application of standards and to retain such documentation were not in force. While the fact that current practices were not followed forty years ago with regard to design documentation does not necessarily indicate that there are inadequacies in design or performance, there is a need to reconstitute much of the information necessary to define and evaluate the standards employed. Thus, while I am not in a position to supply all of the information that the Board has requested, there are a number of initiatives which have been completed, are underway, or are planned, which will be helpful in securing much of the needed information.

First, the DOE operations offices which oversee activities at Savannah River (SRS), Hanford, and Rocky Flats (RFP) were directed to undertake a comprehensive review of facility documentation and to develop a plan for the actions necessary to respond fully to the recommendations. The SRS, Hanford site, and RFP have each completed an initial assessment of the availability of the detailed documentation needed for completion of the evaluations recommended by the Board. These activities have included preliminary efforts aimed at locating and initially evaluating existing data and documentation, as well as prototype searches. The conclusion drawn from these efforts is that despite a concerted attempt to retrieve information, including searches of offsite archive files, where available, it is certain that additional efforts will be required to locate necessary documentation. Eventual efforts may require reconsititution of the design bases for some facilities.

Second, with regard to compliance with current standards, late last year the Department initiated a program at SRS to identify the DOE orders pertinent to safety, security and quality assurance, and to verify compliance with those orders. The initial efforts under this program were carried out between January and May 1990 for the restart phase of the K, L and P Reactors. Numerous noncompliances were identified and corrective actions are being developed. The management plan and findings for this effort are provided as Attachment 1.

Third, a DOE Order Compliance Verification Program similar to that at SRS has been initiated at RFP. The onsite portion of this verification effort has been completed for the resumption of operations at RFP. The management plan used to guide this effort is provided as Attachment 2. The report of findings is nearing completion and will be provided to the Board as soon as possible.

Fourth, my early concerns regarding the degree of compliance of DOE facilities with *existing* DOE requirements and external regulations prompted me, in June 1989, to establish the "Tiger Team" appraisal program in the field. To date, the Tiger Teams have completed environmental, safety and health compliance reviews at fourteen sites, including SRS and RFP, and currently conducting such a review at Hanford. These reviews have served not only to verify the status of compliance with existing operational requirements, but have also established a baseline of environmental, safety and health requirements applicable to specific facilities and operations. This effort has already paid substantial dividends at these sites by fostering action to ensure full compliance with the applicable operational standards.

Fifth, based upon the recommendations in the "Crawford" and National Academy of Sciences Reports, as well as my own review, I directed the formation of a Task Force on Nuclear Safety Directives. The nuclear safety requirements currently applicable to the Department's facilities are contained in the DOE.

Orders listed in Attachment 3. The charter of the Task Force is to rewrite these orders to improve their specificity, consistency and enforceability, and to bring them more in line with what is required in the commercial nuclear sector. The rewritten requirements will then be issued as proposed regulations for public notice and comment as specified in the Administrative Procedure Act. In assessing the adequacy of current DOE safety requirements and standards, the Task Force will review the existing comprehensive set of nuclear safety principles embodied in Nuclear Regulatory Commission regulations and policy statements, products of international cooperative efforts, and the DOE orders listed in Attachment 3. These nuclear safety principles provide a framework for use in developing regulations specific to DOE nuclear facilities.

Finally, following the establishment in January 1990 of the Office of Nuclear Safety Policy and Standards within the Office of Nuclear Energy, the Department has implemented a revised Order concerning Unusual Occurrence Reporting, and has drafted Orders on Conduct of Operations, Maintenance Management and Training which are under Departmental review. We expect that these updated requirements will form the basis for the proposed regulations which the Task Force will draft in these subject areas.

Despite the importance of these initiatives, and consistent with the goal of achieving a more in-depth understanding of the design basis for the Department's older facilities, I believe that the Board's recommendation of May 17, 1990, regarding a design review for RFP is particularly pertinent. Specifically, the applicability and sufficiency of standards employed in the design and construction of the Rocky Flats Plant will be investigated as part of an integrated process similar to the Nuclear Regulatory Commission's Systematic Evaluation Program (SEP) for the older commercial nuclear reactor facilities. Further, the appropriateness of this process for other aging facilities in the DOE defense nuclear complex is being evaluated. I will be responding in greater detail to the Board's May 17, 1990, recommendation in the near future.

With regard to the WIPP facility, the Department's project documents contain the specific standards which apply to that facility. These documents include the WIPP Final Safety Analysis Report (FSAR), which will be issued shortly and which defines the facility's safety envelope, and the Final Supplemental Environmental Impact Statement (FSEIS). Under separate cover, we are sending a copy of the FSEIS to the Board. The FSAR will be forwarded to the Board as soon as it is issued. However, these documents do not present the standards applied in a format which we believe would be most helpful to the Board. Therefore, we intended to place the information in a computerized database for ease of presentation, sorting and retrieval. This database will list the specific systems within WIPP and the codes and standards which are applicable to each.

We expect that this effort will be accomplished and the results provided to the Board by October 1, 1990. The database will be periodically updated and provided to the Board if changes are required thereafter. WIPP's implementation of, and compliance with, these standards is being addressed as part of the ongoing readiness reviews and inspections that the facility has undergone and will continue to undergo prior to a decision to begin emplacement of waste for the test phase. The Board will be kept informed of the progress and results of that review effort.

Pursuant to section 315(e) of the Atomic Energy Act of 1954, as amended, the Department intends to transmit its implementation plan in response to the Board's recommendations within the statutorily allotted time.

[FR Doc. 90-13721 Filed 6-8-90; 2:09 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF88-360-001

Oakland County, MI; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 5, 1990.

On May 29, 1990, Oakland County, Michigan (Applicant), of 1200 North Telegraph Road, Pontiac, Michigan 48053, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The biomass municipal solid waste fired small power production facility was initially certified on September 2, 1988 (44 FERC ¶61,227 (1988)). The instant recertification is requested due to the following changes: (1) The number of waterwall combustion units and associated boilers have increased from three to four, (2) the location of the facility has changed from Pontiac, Michigan to Auburn Hills, Michigan, (3) the net electric power production has increased from 24 MW to 61.6 MW, and (4) the installation date for the facility has changed from the second quarter to the fourth quarter of 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13485 Filed 6-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3862-003, et al.]

Hydroelectric Applications, the City of LeClaire, IA, et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Material amendment of license application.

b. *Project No.* 3862-003.

c. *Dated Filed:* April 18, 1990.

d. *Applicant:* The City of LeClaire, Iowa.

e. *Name of Project:* LeClaire.

f. *Location:* On the Mississippi River in Rock Island County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Thomas M. Hayden, P.O. Box 11169, Moline, IL 61265, (309) 764-7650.

i. *FERC Contact:* Charles T. Raabe, (202) 357-0811.

j. *Comment Date:* July 27, 1990.

k. *Description of Project:* The proposed project, modified pursuant to § 4.35 of the Commission's regulations, would utilize the U.S. Army Corps of Engineers' Lock and Dam No. 14 and would consist of: (1) A 300-foot-wide, 700-foot-long intake channel; (2) a 180-foot-wide, 218-foot-long concrete powerhouse containing three horizontal pit-type turbine/generator units operated at a 9.62-foot head and at a flow of 6,700 cfs each for a total installed capacity of about 24,000-kW; (3) a tailrace channel; (4) a 4.16/161-kV transformer; (5) a 1.02-mile-long, 161-kV underground transmission line to Hubbard Road thence a 1.52-mile-long, 161-kV overhead transmission line to Iowa-Illinois Gas & Electric Company Substation No. 47; and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 156 GWh. Project power would be sold to Illinois Municipal Electric Agency.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2 a. *Type of Application:* Change of land rights.

b. *Project No.* 2016-008.

c. *Dated Filed:* May 8, 1989.

d. *Applicant:* Tacoma Public Utilities.

e. *Name of Project:* Cowlitz Hydroelectric Project.

f. *Location:* Cowlitz River, Lewis County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Mark Crisson, Tacoma Public Utilities, 3628 South 35th Street, P.O. Box 11007, Tacoma, WA 98411, (206) 383-2471.

i. *FERC Contact:* Dan Hayes, (202) 357-0670.

j. *Comment Date:* July 5, 1990.

k. *Description of Project:* Tacoma Public Utilities, licensee for the Cowlitz Project, requests Commission approval to permit a land swap with Mr. Luther Dunaway, an adjacent landowner. The areas to be swapped are triangular parcels of approximately four acres each. The purpose of the land swap is to allow Mr. Dunaway and Tacoma Public Utilities to consolidate there land holdings on their respective sides of Glenoma Road. Tacoma Public Utilities will devote the land it acquires under the proposed swap to wildlife management activities.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. *Type of Application:* Transfer of license.

b. *Project No.* 3017-009.

c. *Date filed:* May 18, 1990.

d. *Applicants:* Peter E. Smith and Henry M. Fletcher III (transferor) and Armstrong-Keta, Inc. (transferee).

e. *Name of Project:* Jetty Lake Project.

f. *Location:* On Jetty Lake in the Borough of Sitka, Alaska, near Port Alexander, within the Tongass National Forest. Cooper River Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. Henry M. Fletcher III, 323 Deermount, Ketchikan, AK 99901.

Mr. R. Bartlett Watson, Executive Director, Armstrong-Keta, Inc., P.O. Box 21990, Juneau, AK 99802, (907) 586-3443.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 357-0842.

j. *Comment Date:* June 27, 1990.

k. *Description of Proposed Action:* On July 17, 1980, a minor license was issued to Mr. Richard K. Matthews. The license was transferred June 6, 1982, and November 30, 1984. Peter E. Smith and Henry M. Fletcher III proposes to transfer the license to Armstrong-Keta, Inc.

The transferee is a non-profit corporation organized under the laws of the state of Alaska.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

4 a. *Type of Filing:* Transfer of license.

b. *Project No.* 6015–037.

c. *Date filed:* May 9, 1990.

d. *Applicants:* Bonneville Pacific Corporation and Rock Creek Hydropower, Inc. (Transferors) and BP Hydro Associates and Rock Creek Hydropower, Inc. (Transferees).

e. *Name of Project:* Rock Creek No. 2.

f. *Location:* On Rock Creek in Twin Falls County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Bonneville Pacific Corporation and BP Hydro Associates—Mark E. Rinehart, Esq., Bonneville Pacific Corporation, 257 East 200 South, suite 800, Salt Lake City, UT 84111, (801) 363–2520.

Rock Creek Hydropower, Inc.—McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005, (202) 371–5785.

i. *Commission Contact:* Mr. James Hunter, (202) 357–0843.

j. *Comment Date:* June 28, 1990.

k. *Description of Proposed Action:* On August 29, 1986, a major license was issued to Charles D. Howard for the construction, operation, and maintenance of the Rock Creek No. 2 Project, and on January 22, 1988, a transfer of the license was approved to the current Transferors. Bonneville Pacific Corporation now proposes to transfer its interests and obligations under the license to BP Hydro Associates. The proposed transfer will not result in any changes to the development. The Transferees accept all the terms and conditions of the license and agree to be bound thereby to the same extent as though they were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

5 a. *Type of Filing:* Surrender of license.

b. *Project No.:* 6046–003.

c. *Date Filed:* May 1, 1990.

d. *Applicant:* Placer County Water Agency.

e. *Name of Project:* Cape Horn Shoot Pipe Water Project.

f. *Location:* On the Lower Boardman Canal in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Edward J. Schnabel, Placer County Water Agency, P.O. Box 6570, Auburn, CA 95604, (916) 885–6917.

i. *Commission Contact:* Nanzo T. Coley, (202) 357–0840.

j. *Comment Date:* July 13, 1990.

k. *Description of Applicant's Proposed Action:* The licensee states that the project is not economically feasible to develop at this time within the time limits allowed under the license. The licensee has not commenced construction of the project.

The project would have consisted of an intake structure, a penstock, a powerhouse containing one generating unit rated at 136 kW, a tailrace, a transmission line, and appurtenant facilities.

1. This notice also consists of the following standard paragraphs: B and C.

6 a. *Type of Application:* Surrender of license.

b. *Project No.:* 7115–012.

c. *Date Filed:* March 30, 1990.

d. *Applicant:* Municipal Electric Authority of Georgia.

e. *Name of Project:* George W. Andrews.

f. *Location:* On the Chattachoochee River in Huston County, Alabama, and Early County, Georgia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Donald L. Stokley, General Manager, 1470 Riveredge Parkway, Atlanta, GA 30328, (404) 952–5445.

i. *FERC Contact:* Charles T. Raabe (202) 357–0811.

j. *Comment Date:* June 27, 1990.

k. *Description of Project:* The proposed project would have utilized the existing U.S. Army Corps of Engineers' George W. Andrews Dam and Reservoir and would have consisted of: (1) An integral headworks-powerhouse structure approximately 116 feet long and 182 feet wide located on the Alabama side of the dam and containing four turbine-generator units having a total installed capacity of 35.4 MW operating at 18 feet of hydraulic head; (2) a tailrace channel approximately 400 feet long and 197 feet wide; (3) an 18-mile-long 115–kV transmission line; (4) 13.8–kV generator leads and a 13.8/115–kV, 32–MVA transformer; and (5) appurtenant facilities.

Licensee states that the construction and operation of the project is not economically feasible. Therefore, licensee has requested that its license be terminated. The license was issued May 22, 1987, and would have expired April 30, 2037. The licensee has not commenced constuction of the project.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

7 a. *Type of Application:* 5–MW Exemption.

b. *Project No.:* 10117–002.

c. *Date filed:* September 13, 1989.

d. *Applicant:* Rock River Power and Light Corporation..

e. *Name of Project:* Lower Watertown Dam.

f. *Location:* On the Rock River in the City of Watertown, Jefferson and Dodge Counties, Wisconsin.

g. *Filed Pursuant to:* Energy Security Act of 1980, Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., P.O. Box 553, Watertown, WI 53094, (414) 261–7975.

i. *FERC Contact:* Charles T. Raabe (dmt) (202) 357–0811.

j. *Comment Date:* July 2, 1990.

k. *Description of Project:* The project would consist of: (1) An existing 225-foot-long, 10.5-foot-high concrete gravity-type dam having a spillway crest elevation 807.75 feet USGS; (2) an existing 130 acre surface area, 250 acre-foot storage capacity reservoir at normal surface elevation 808.1 feet USGS; (3) a new powerhouse containing three generating units having a total installed capacity of 289-kW; and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 1.5 GWh. The existing facilities, which are owned by the City of Watertown, Wisconsin, will be leased by the applicant. The application was filed during the term of applicant's preliminary permit.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a

8 a. *Type of Application:* Major license.

b. *Project No.:* 10395–001.

c. *Date filed:* July 22, 1988.

d. *Applicant:* The City of Augusta, Kentucky, and its Electric Plant Board.

e. *Name of project:* Meldahl.

f. *Location:* On the Ohio River in Bracken County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Edward Rudd, Esq., Miami Street, Brooksville, KY 41004, (606) 735–2950.

i. *FERC Contact:* Charles T. Raabe (202) 357–0811.

j. *Comment date:* July 25, 1990.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers Captain Anthony Meldahl Locks and Dam, and would consist of: (1) An intake channel at the left bank; (2) a 260-foot-long and 260-foot-wide concrete powerhouse containing 3 - 35,000-kW horizontal Kaplan-type turbine/generator units operated at a 30-foot head; (3) a tailrace channel; (4) a 5-mile-long, 138-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 499,000,000 kWh. Project power would be sold to nearby utilities.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D2.

9 a. *Type of Application:* Preliminary permit.

b. *Project No.:* 10867–000.

c. *Date filed:* January 2, 1990.

d. *Applicant:* Holiday Historic Restoration Associates.

e. *Name of Project:* Holliday Project.

f. *Location:* On the West Fork of White River in Hamilton County, Indiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David H. Kinloch, Soft Energy Associates, 414 South Associates, Louisville, KY 40204, (502) 589–0975.

i. *FERC Contact:* Robert Bell (202) 357–0806.

j. *Comment Date:* July 25, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An existing 300-foot-long, 10-foot-high concrete dam; (2) an impoundment with a surface area of 11 acres and neglible storage with a normal water surface elevation of 764 msl; (3) an existing intake structure; (4) the existing powerhouse containing 2 to be restored generating units having a total rated capacity of 384 kW; (5) the existing tailrace; (6) a proposed 1000-foot-long 2.4 kV transmission line; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 1,200,000 kWh. The applicant would sell the energy produced to Public Service Company of Indiana. The dam and existing facilities are owned by the Public Service Company of Indiana. The applicant estimates the cost of the studies under this permit would be $50,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary permit.

b. *Project No.:* 10068–000.

c. *Date filed:* January 17, 1990.

d. *Applicant:* Mid-Atlantic Energy Engineers, Ltd.

e. *Name of Project:* Cuffs Run Pumped Storage.

f. *Location:* On the Cuffs Run and the Susquehanna River in York and Lancaster Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kenneth R. Broome, P.O. Box 32, Reading, PA 19603, 215–373–6667.

i. *FERC Contact:* Charles T. Raabe (202) 357–0811.

j. *Comment Date:* July 6, 1990.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) An upper reservoir having a 580-acre surface area and a 26,000-acre-foot storage capacity at water surface elevation 680 feet, created by a 225-foot-high, 9,800-foot-long dam, a 95-foot-high, 700-foot-long dike, and a 35-foot-high, 1,300-foot-long dike; (2) a 300-foot-long, 110-foot-wide channel leading to a submerged intake structure; (3) a 44-foot-diameter shaft and tunnel trifurcating into three 20-foot-diameter steel-lined tunnels; (4) an underground powerhouse containing three reversible pump-turbine units rated at 283-MW each operated at a 450-foot head; (5) a 1,500-foot-long powerhouse access tunnel and an 18-foot-diameter vent and cable shaft; (6) three concrete-lined tunnels leading to an outlet structure in Lake Clarke; (7) an above-ground switchyard; (8) a three-mile-long, 500-kV transmission line; and (9) appurtentant facilities. Lake Clarke, an existing reservoir formed by the Safe Harbor Dam (FERC Project No. 1025) would be utilized as a lower reservoir.

Core boring of the foundation overburden and underlying rock formation would be required in the power tunnel, powerhouse, tailrace tunnels, outlet structure, access tunnel, dam and dikes. Disturbances would be kept to the minimum necessary to get drill rigs into the locations. The disturbed areas would be regraded and seeded. Test pits would be made in the open areas to create the least disturbance and then each filled and seeded. No wetland would be disturbed.

Applicant estimates that the cost of the studies under the terms of the permit would be $275,000. Project energy would be purchased from and sold to local utilities. A portion of the proposed project boundary for Project No. 10868 lies within the approved project boundary for licensed Project No. 1025. However, the proposed project facilities could be mutually compatible.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

11 a. *Type of Application:* Major license.

b. *Project No.:* 10896–000.

c. *Date filed:* February 15, 1990.

d. *Applicant:* City of Danville, Virginia.

e. *Name of Project:* Pinnacles Hydro Project.

f. *Location:* On the Dan River in Patrick, Henry, and Pittsylvania Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Duane S. Dahlquist, P.E., City of Danville, VA, 418 Patton Street, Danville, VA 24541, (804) 799–5270.

i. *FERC Contact:* Ed Lee (tag), (202) 357–0809.

j. *Comment Date:* July 13, 1990.

k. *Description of Project:* The proposed project would consist of two hydroelectric developments:

A. The Talbott Dam Development which consist of: (1) The existing 280-foot radius concrete arch Talbott Dam which is 143.5 feet high at the spillway section and 510 feet long at the crest of the dam; (2) the existing 165-acre Talbott Reservoir with a gross storage capacity of 8,040 acre-feet at maximum pool elevation of 2532 feet msl; (3) an existing intake structure; (4) a new powerhouse to be located at the base of the Talbott Dam and housing three 100-kW generating units for a total installed capacity of 300 kW; and (5) appurtenant facilities.

B. The Townes Dam Development which consist of: (1) The existing 240-foot radius concrete arch Townes Dam which is 575-foot-long and 133-foot-high; (2) the existing 40-acre Townes Reservoir with a gross storage capacity of 1,380 acre-feet at maximum pool elevation of 2221 feet msl; (3) an intake structure; (4) an existing 2-mile-long combination pipeline and tunnel, conveyance conduit to the existing powerhouse; (5) the existing Pinnacles powerhouse located on the west bank of the Dan River approximately 3 miles downstream of the Townes Dam and housing three 3,375-kW generating units for a total installed capacity of 10,125 kW; (6) a 52-mile-long, 69-kV transmission line; and (7) appurtenant facilities.

The primary purpose of the project is for consumption of all power generated by the project into the applicant's power system. The generation of electrical energy for the two developments has a total capacity of 10,425 kW, and an average annual generation of 31,450 MWh. The applicant owns all project works and structures. The project is existing and operating, and was found jurisdictional under UL–87–29.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12 a. *Type of Application:* Constructed minor license.

b. *Project No.:* 10898–000.

c. *Date filed:* February 28, 1990.

d. *Applicant:* Sweetwater Hydroelectric, Inc.

e. *Name of Project:* Sweetwater Project.

f. *Location:* On the Sugar River in Sullivan County, New Hampshire.

g. *Filed Pursuant to:* Federal Power, Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Matthew V. Bonaccorsi, Sweetwater Hydroelectric, Inc., HC64 Box 185C, Methodist Hill Road, Lebanon, NH 03766, (603) 448–3248.

i. *FERC Contact:* Robert Bell, (202) 357–0806.

j. *Comment Date:* July 25, 1990.

k. *Description of Project:* The constructed operating project consists of: (1) The existing 314-foot-long, 36-foot-high concrete gravity dam; (2) a reservoir having a surface area of 30-acres, with a storage capacity of 150 acre-feet, a normal water surface elevation 353.4 feet msl; (3) existing 3-foot-high flashboards; (4) existing intake structure; (5) two existing steel penstocks: the one on South Bank is 8 feet in diameter and 100 feet long, the one on the North Bank is 8 feet in diameter and 170 feet long; (6) two existing powerhouses; the one on South Bank contains 2 generating units, the one on the North Bank contains 2 generation units together having a total rated capacity of 900 kW; (7) the 2 existing tailraces; (8) an existing 150-foot-long 46-kV transmission line; and (9) appurtenant facilities. The applicant estimates the average annual generation to be 4,200,000 kWh and would be sold to the Connecticut Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

13. a. *Type of Application:* Preliminary permit.

b. *Project No.:* 10921–000.

c. *Date filed:* April 2, 1990.

d. *Applicant:* Jennings Randolph Hydro Associates.

e. *Name of Project:* Jennings Randolph Dam Project.

f. *Location:* On the North Branch of the Potomac River in Garrett County, Maryland and in Mineral County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (301) 268–8820.

i. *FERC Contact:* Ed Lee (dmt) (202) 357–0809.

j. *Comment date:* July 19, 1990.

k. *Description of Project:* The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A 2,300-foot-long penstock; (2) a powerhouse containing two generating units having a total installed capacity of 13 MW; (3) a 5,500-foot-long, 138-kV transmission line; and (4) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the terms of the permit would be $100,000 and that the project average annual energy output would be 49.5 GWh. Energy produced at the project would be sold to Potomac Edison Company.

1. This notice also consists of the following standard paragraphs : A5, A7, A9, A10, B, C, and D2.

14. a. *Type of Application:* Preliminary permit.

b. *Project No.:* 10923–000.

c. *Date filed:* April 2, 1990.

d. *Applicant:* Town of Westernport, Maryland.

e. *Name of Project:* Jennings Randolph Dam Project.

f. *Location:* On the North Branch of the Potomac River in Garrett County, Maryland and in Mineral County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mayor Lacy Tinsley, Westernport, MD 21562, (301) 359–3932.

Neal Cody, Project Manager, Sithe Energies USA, Inc., 135 East 57th Street, 23rd Floor, New York, NY 10022, (212) 755–7600.

i. *FERC Contact:* Ed Lee (dmt) (202) 357–0809.

j. *Comment date:* July 19, 1990.

k. *Competing Application:* Project No. 10921–000. Date Filed: April 2, 1990.

l. *Description of Project:* The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A 1,619-foot-long penstock; (2) a powerhouse containing two generating units having a total installed capacity of 6.2 MW; (3) a 2-mile-long, 138-kV transmission line; and (4) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the terms of the permit would be $100,000 and that the project average annual energy output would be 30 GWh. Energy produced at the project would be sold to local utility company.

m. This notice also consists of the following standard paragraphs : A8, A9, A10, B, C, and D2.

15 a. *Type of Application:* Preliminary permit.

b. *Project No.:* 10925–000.

c. *Date filed:* April 20, 1990.

d. *Applicant:* R.M. Poulin, LTD.

e. *Name of Project:* Wynantskill.

f. *Location:* On Wynantskill Creek in the City of Troy, Rensselaer County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rory M. Poulin, 432 5th Avenue, North Troy, NY 12182, (518) 235–8610.

i. *FERC Contact:* Charles T. Raabe (dmt) (202) 357–0811.

j. *Comment Date:* July 19, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An existing 10-foot-high, 100-foot-long concrete gravity dam; (2) a reservoir, Burden Pond, with a 7-acre surface area and a 50-acre-foot storage capacity at normal water surface elevation 177.0 feet MSL; (3) a new concrete intake structure at the left abutment; (4) a new 42-inch-diameter, 2,800-foot-long steel penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 225-kW and one generating unit with a capacity of 475-kW for a total installed capacity of 700-kW; (6) a new tailrace; (7) a new switchyard; (8) a new 150-foot-long, 13.2-kV transmission line, and (9) appurtenant facilities.

The applicant estimates that the average annual generation would be 2.3 million kilowatt-hours and that the cost of the studies under the terms of the permit would be $36,000. Project power would be sold to Niagara Mohawk Power Corporation. The dam is owned by the City of Troy, New York.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. *Type of Application:* Preliminary permit.

b. *Project No.:* 10926–000.

c. *Date filed:* April 23, 1990.

d. *Applicant:* Town of Gassaway.

e. *Name of Project:* Sutton Hydro Project.

f. *Location:* On Elk River near Sutton, Braxton Couty, West Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert D. Rizzo, D/R Power Company, 300 Oxford Drive, Monroeville, PA 15146, (412) 856–9700.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* June 25, 1990.

k. *Competing Application:* Project No. 10858–000.

Date Filed: December 6, 1989.

Competition Due Date: April 26, 1990.

l. Description of Project: The proposed project would utilize the existing Corps of Engineers' Sutton Dam and Reservoir and would consist of: (1) A proposed intake structure; (2) a proposed steel line penstock; (3) a proposed powerhouse housing two hydropower units rated at 5.05 MW each; (4) a concrete lined tailrace; (5) a proposed transmission line one mile long; and (6) appurtentant facilities. The estimated annual energy production is 41 GWh. Project energy would be sold to Monongahela Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $125,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

17 a. *Type of Filing:* Preliminary permit.

b. *Project No.: 10928–000.*

c. *Date filed:* May 3, 1990.

d. *Applicant:* Snoqualmie River Energy, Inc.

e. *Name of Project:* DOT Diversion Hydroelectric Project.

f. *Location:* On the South Fork Snoqualmie River in King County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Jerry Botkin, P.O. Box AP, Snoqualmie, Pass, Washington 98068, (205) 434–6316.

i. *Commission Contact:* Nanzo T. Coley, (202) 357–0840.

j. *Comment Date:* August 2, 1990.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 65-foot-long, 15-foot-high diversion dam; (2) a proposed reservoir with a surface area of four acres at an approximate elevation of 1,410 feet m.s.l.; (3) a proposed 12-foot-wide, 16-foot-high, 150-foot-long intake tunnel; (4) a proposed 12-foot-wide, 12-foot-high, 1,000-foot-long power tunnel; (5) a proposed powerhouse containing one generating unit rated at 4,725 kW; (6) a proposed 30-foot-long tailrace; (7) a proposed 4,000-foot-long access road; (8) a proposed 34.5 kV, 700-foot-long transmission line; and (9) appurtenant facilities. The estimated average annual energy output for the project is 17,000,000 kWh. The applicant estimates the cost of the work to be performed under the preliminary permit at $35,000.

l. *Purpose of Project:* Power produced at the project would be sold to Puget Sound Power and Light Company or the City of Tacoma, Washington.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

18 a. *Type of Application: Preliminary permit.*

b. *Project No.: 10930–000.*

c. *Date filed:* May 4 1990.

d. *Applicant:* L.B. Industries, Inc.

e. *Name of Project:* Kanaka Rapids.

f. *Location:* On the Snake River in Twin Falls and Gooding Counties Idaho. Township 9S Range 14E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Carl L. Myers, Myers Engineering Company, 750 Warm Springs Avenue, Boise, ID 83301, (208) 336–1425.

i. *FERC Contact:* Michael Spencer at (202) 357–0846.

j. *Comment Date:* July 18, 1990.

k. *Description of Project:* The proposed project would consist of: (1) A 15-foot-high, 50-foot-long concrete dike; (2) a 3,100-foot-long, 15-foot-deep canal; (3) a powerhouse containing two generating units with a combined capacity of 12,375 kW and an estimated average annual generation of 52 GWh; and (4) a 2,500-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $120,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

19 a. *Type of Application:* Preliminary permit.

b. *Project No.: 10931–000.*

c. *Date filed:* May 7 1990.

d. *Applicant:* Manville Dam Hydro Watt Associates.

e. *Name of Project:* Manville Dam.

f. *Location:* On the Blackstone River in Cumberland Township, Providence County, Rhode Island.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* John Lavigne, Jr., P.E., 1600 Candia Road, Manchester, NH 03103, (603) 647–8700.

i. *FERC Contact:* Charles T. Raabe (202) 357–0811.

j. *Comment Date:* August 3, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An existing 160-foot-long, 19-foot-high granite masonry dam; (2) a reservoir with a surface area of 58 acres at a surface elevation of 89.4 feet m.s.l.; (3) proposed headworks with trashracks; (4) two new 135-foot-long, 10-foot by 10-foot concrete culvert penstocks; (5) a new power house containing two generatoring units with a total installed capacity of 1,240 kW; (6) a new 220-foot-long, 50-foot-wide tailrace; (7) 13.8-kv generator leads; (8) a new 200-foot-long, 13.8-kv transmission line; and (10 appurtenant facilities.

Applicant estimates that the cost of the work to be performed under the terms of the permit would be $50,000. The project estimated average annual generation would be 5.034 GWh. Energy produced at the project would be sold to a local electric utility. The dam is currently owned by Forte Brothers, Inc.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or

before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application. allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed tto have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are required, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 5, 1990, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13463 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90-4-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 4, 1990.

Take notice that on May 31, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Twenty First Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1990. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13478 Filed 6-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

June 5, 1990.

Take notice that on June 1, 1990, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective July 1, 1990:

Original Volume No. 3
8th Revised Sheet No. 185.1
First Revised Volume No. 1
55th Revised Sheet No. 4
First Revised Volume No. 1
8th Revised Sheet No. 7A

These tariff sheets reflect AER's first quarterly PGA filing made subsequent to its annual PGA effective April 1, 1990 under the Commission's Order Nos. 483 and 483-A.

AER states that the proposed changes would decrease AER's System cost by $152,353 and its revenue from jurisdictional sales and service by $8,745 for the PGA period of July, August, and September 1990 as adjusted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13464 Filed 6-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-10-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 5, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on May 31, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.* and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets, all to volume No. 1 of CNG's FERC Gas Tariff:

Second Revised Sheet No. 43
Third Revised Sheet No. 49A
Third Revised Sheet No. 160D
Fourth Revised Sheet No. 160E
Third Revised Sheet No. 160F
Fourth Revised Sheet No. 160G
Third Revised Sheet No. 160H
Second Revised Sheet No. 160I
Fourth Revised Sheet No. 160C

CNG proposes various effective dates as indicated on each tariff sheet.

The purpose of this filing is to (1) flow through changes in take-or-pay costs allocated to CNG by its pipeline suppliers and (2) reflect changes in tariff language within § 12.9 of the General Terms and Conditions of CNG's Tariff pertaining to the recovery and allocation of certain supplier billings.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13468 Filed 6-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-32-000]

Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment

June 5, 1990.

On May 31, 1990, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect a quarterly purchased gas adjustment ("PGA"):

Second Revised Second Substitute First Revised Sheet No. 7.1
Second Revised Second Substitute First Revised Sheet No. 7.2
Second Revised Second Substitute First Revised Sheet No. 8.1
Second Revised Second Substitute First Revised Sheet No. 8.2
Seventh Revised Sheet No. 59
Fifth Revised Sheet No. 60
Original Sheet No. 60A
Fifth Revised Sheet No. 61B
Fifth Revised Sheet No. 61C
Third Revised Sheet No. 61D1.

CIG requests that these proposed tariff sheets be made effective on July 1, 1990.

The tariff rates underlying Second Revised Second Substitute First Revised Sheet Nos. 7.1 through 8.2 reflect a 0.11 cent increase in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules. The proposed rates compare with those filed by CIG on

March 1, 1990, in Docket No. TQ90–2–32, which rates were accepted by Commission Letter Order dated March 21, 1990, to become effective on April 1, 1990.

In addition, CIG states it is filing tariff sheets to implement a unit-of-sales PGA clause effective July 1, 1990, pursuant to Order 483, *et seq.*

CIG states that copies of this filing have been served upon CIG's jurisdictional customers and public bodies, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc 90–13472 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–3–2–000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 4, 1990.

Take notice that on May 31, 1990, East Tennessee Natural Gas Company (East Tennessee) filed Original Sheet No. 5B and Fourth Revised Sheet No. 144 to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1990.

East Tennessee states that the purpose of Original Sheet No 5B is to flow through the fifth demand surcharge implemented by Tennessee Gas Pipeline Company in Docket No. RP88–191. East Tennessee is flowing these charges through to its customers pursuant to Article 30 of its FERC Gas Tariff. The purpose of Fourth Revised Sheet No. 144 is to include a reference to effective Tariff Sheet Nos. 5, 5A and 5B of East Tennessee's FERC Gas Tariff.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc 90–13479 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–4–2–000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 4, 1990.

Take notice that on May 31, 1990, East Tennessee Natural Gas Company (East Tennessee) submitted for filing ten copies of Fifty-Seventh Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1990.

The purpose of the revisions to Fifty-Seventh Revised Sheet No. 4 is to reflect a Purchased Gas Adjustment (PGA) to East Tennessee's Rates for the quarterly period of July 1990—September 1990 pursuant to § 22.2 of the General Terms and Conditions of East Tennessee's Tariff.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc 90–13480 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–6–5–000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 5, 1990.

Take notice that on May 31, 1990, Midwestern Gas Transmission Company (Midwestern) filed Tenth Revised Sheet No. 5 and Fifth Revised Sheet No. 6 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1990.

Midwestern states that the purpose of this filing is to reflect a quarterly PGA rate adjustment to its sales rates for the period July 1, 1990, through September 30, 1990. The current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 5 and 6 consist of a $.0014 per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a $.00 per dekatherm adjustment applicable to the D–1 component. Midwestern seeks waiver of the Commission's Regulations to the extent necessary for acceptance of this filing effective July 1, 1990.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13475 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–3–5–000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 5, 1990.

Take notice that on May 31, 1990, Midwestern Gas Transmission Company (Midwestern) filed Third Revised Sheet No. 7 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1990.

Midwestern states that the purpose of this filing is to flow through the fifth demand surcharge implemented by Tennessee Gas Pipeline Company in Docket No. RP88–191. Midwestern is flowing these charges to its customers pursuant to Article XXIV of its FERC Gas Tariff.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; however, that any person who had previously filed a petition to intervene in this proceeding is not required to file further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13481 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–121–000]

NATGAS U.S. Inc.; Tariff Changes

June 5, 1990.

Take notice that on May 31, 1990, NATGAS U.S. INC. ("NATGAS"), 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada T2P 3V3, tendered for filing in Docket No. RP90–121–000. First Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2.

NATGAS states that it is submitting First Revised Sheet No. 4 to reflect an increase in demand charges during the forthcoming demand charge period (July 1, 1990 through December 31, 1990) for Canadian gas purchased by NATGAS from Northwest Alaskan Pipeline Company ("Northwest Alaskan") and resold to Northern Natural Gas Company ("Northern") under Rate Schedule X–1.

NATGAS requests that First Revised Sheet No. 4 become effective July 1, 1990.

NATGAS states that a copy of this filing has been served on Northern.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice & Procedure. All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13483 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ90–3–16–000]

National Fuel Gas Supply Corp.; Proposed Changes In FERC Gas Tariff

June 5, 1990.

Take notice that on May 31, 1990, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, proposed to become effective July 1, 1990, the following tariff sheets:

Thirty-Second Revised Sheet No. 4
Alternate Thirty-Second Revised Sheet No. 4

National states that the purpose of this filing is to reflect a quarterly Purchased Gas Adjustment ("PGA"). The proposed primary tariff sheet results in a 11.6 cents per dekatherm (Dth) decrease in its commodity gas cost and a 2.0 cents per dekatherm increase in the demand rate in comparison with National's April 1990 quarterly PGA, in Docket No. TQ90–2–16–000, filed on March 1, 1990. The filing reflects an average commodity cost of purchased gas of $2.5758 per Dth, and an RQ and CD sales commodity rate of $2.8872 per Dth.

National respectfully requests a waiver of § 154.305(b)(1) of the regulations to permit the primary tariff sheet to become effective July 1 as proposed. In the event that waiver is not granted, National requests that the alternative tariff sheet be accepted for filing and permitted to become effective on July 1, 1990.

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13469 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–124–000]

Northern Natural Gas Co.; Tariff Filing

June 5, 1990.

Take notice that on June 1, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 52G
First Revised Sheet No. 52G.1
Second Revised Sheet No. 52G.2
Second Revised Sheet No. 52G.3
First Revised Sheet No. 52G.4
First Revised Sheet No. 52G.5
First Revised Sheet No. 52G.6
First Revised Sheet No. 52G.7
First Revised Sheet No. 52G.8
First Revised Sheet No. 52G.9

First Revised Sheet No. 52G.10
First Revised Sheet No. 85Q
First Revised Sheet No. 85Q.1
First Revised Sheet No. 85Q.4

Northern proposes to modify its current FDD–1 tariff sheets to provide 18,000,000 MMBtu of natural gas to be delivered for Firm Deferred Delivery Service. Under this proposal, Northern would accept delivery of quantities during the Summer Period of July through October pursuant to a Firm Transportation Service Agreement or a Firm Sales Service Agreement with Northern. Northern proposes then to hold these quantities in an FDD account for Shipper pursuant to a FDD–1 Firm Deferred Delivery Service Agreement between Shipper and Northern for redelivery during the Winter Period. Quantities will be redelivered during the Winter Period of December through March pursuant to a Firm Transportation Service Agreement with Northern.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13470 Filed 6–11–90; 8:45 am]

BILLING CODE 6712–01–M

[Docket No. CP90–1451–000 et al.]

Northern Natural Gas Company, Division of Enron Corp.; Requests Under Blanket Authorization

June 4, 1990.

In the matter of: Docket Nos. CP90–1451–000, CP90–1452–000, CP90–1453–000, and CP90–1455–000.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest.

If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg, annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP90–1451–000 (5–30–90)	Northern Natural Gas Company, P.O. Box 1188, Houston, Texas 77251–1188.	Helmerich & Payne, Inc..	10,000 7,500 3,650,000	KS	TX	5–1–90, FT–1	CP86–435–000 ST90–3033–000
CP90–1452–000 (5–30–90)	Northern Natural Gas Company, P.O. Box 1188, Houston, Texas 77251–1188.	Houston Gas Exchange Corporation.	25,000 18,750 9,125,000	KS	KS, WI, IA, NE, IL, MN.	4–20–90, IT–1	CP86–435–000 ST90–3034–000
CP90–1453–000 (5–30–90)	Northern Natural Gas Company, P.O. Box 1188, Houston, Texas 77251–1188.	VenGas Marketing Company.	10,000 7,500 3,650,000	off. TX	TX	5–1–90, FT–1	CP86–435–000 ST90–3028–000
CP90–1455–000 (5–30–90)	Northern Natural Gas Company, P.O. Box 1188, Houston, Texas 77251–1188.	Sunrise Energy Company.	4,427 3,320 1,615,855	OK	TX	5–1–90, FT–1	CP86–435–000 ST90–3029–000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

[FR Doc. 90–13484 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90-122-000]

Tennessee Gas Pipeline Co.; Tariff Filing

June 5, 1990.

Take notice that on May 31, 1990, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

Fourth Revised Sheet Nos. 40 through 44

Revised Sheet Nos. 40 through 44 are filed in accord with the terms of the Stipulation and Agreement (October 14, 1987) in *Tennessee Gas Pipeline Company*, Docket No. RP86-119 (42 FERC Para. 61,175, *order on reh'g*, 43 FERC Para. 61,329 (1988)) and Article XXX of the General Terms and Conditions of Tennessee's Tariff. The Take-or-Pay Demand Rate Surcharge reflected on these sheets is based on fifty percent of the non-affiliate, non-recoupable take-or-pay and contract reformation costs (TOP Costs) paid by Tennessee on or before November 30, 1989. Revised Sheet Nos. 40 through 44 are proposed to be effective July 1, 1990.

Tennessee respectfully requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission, with the exception of Schedule 1 of the workpapers, and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13471 Filed 6-11-90; 8:45 am]

BILLING CODE 6717-01-M

Docket No. TQ90-4-9-000

Tennessee Gas Pipeline Co.; Rate Filing Pursuant to Tariff Rate Adjustments Provisions

June 5, 1990

Take notice that on May 31, 1990, Tennessee Gas Pipeline Company (Tennessee) filed the following revised tariff sheets to its FERC Gas Tariff to be effective July 1, 1990:

Second Revised Volume No. 1

Eighteenth Revised Sheet No. 20
Fifteenth Revised Sheet No. 20A
Twenty-fourth Revised Sheet No. 21
Sixth Revised Sheet Nos. 31 through 36

Original Volume No. 2

Nineteenth Revised Sheet No. 5
Eighteenth Revised Sheet No. 6

Tennessee states that the current Purchased Gas Cost Rate Adjustments reflected on Sheet Nos. 20 through 21 consist of $.0024 per dekatherm adjustment applicable to the gas component of Tennessee's sales rates and a $.01 per dekatherm adjustment applicable to the Demand D-1 component.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected stated regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13465 Filed 6-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-29-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

June 5, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 1, 1990 certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in appendix A attached hereto. Such sheets are proposed to be effective August 1, 1990.

The proposed tariff sheets reflect a rate decrease of 14.3¢ per dt related to the current gas cost portion of commodity rates (reflected in Schedule D1, Code 0, hereof) under the CD, G, OG, PS, ACQ and S-2 Rate Schedules, compared to Transco's last scheduled quarterly PGA filing which became effective May 1, 1990, and an increase of 29.5¢/dt compared to Transco's Interim PGA filing of May 4, 1990 proposed to be effective May 5, 1990. The instant PGA filing reflects an average cost of gas of 215.88¢ per dt for the quarterly period August 1, 1990 through October 31, 1990.

Transco states that November 1, 1989 it began operating under the terms of its approved Revised Stipulation and Agreement (Settlement) dated August 7, 1989 in Docket Nos. RP88-68 *et al.* Such Settlement provides for a new jurisdictional interim firm sales service under Rate Schedule IFS. Due to the nature of Transco's sales service under Rate Schedule IFS (in lieu of traditional PGA based sales service), Transco proposes that the Commission grant certain waivers of its regulations. Specifically, Transco proposes in the instant filing to (i) provide a direct refund of the current deferral subaccount credit balance of approximately $1.2 million in lieu of refunding such amount through the surcharge adjustment mechanism, (ii) calculate the commodity Current Gas Cost Adjustments to its PGA affected rate schedules based on the projected average cost of gas to seve its markets under Rate Schedule IFS and (iii) exclude the last two intervals covering the period November 1989 through March 1990 from the past performance test because Transco is required to absorb the underrecoveries for this period pursuant to the provisions of the Settlement.

Transco states that it has filed Schedules Al (actual data), B1, C1, C2, D1 and G1 in the format required by Order No. 483 and § 154.305 of the Commission's Regulations. Transco has also filed a 9-track magnetic tape as required by FERC Form 542.

Transco states that copies of the instant filing are being mailed to customers and interested State

Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13476 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–3–11–000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 5, 1990.

Take Notice that on May 31, 1990, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets:

Second Revised Volume No. 1

Fourth Revised Sheet No. 4
Fourth Revised Sheet No. 4A
Fourth Revised Sheet No. 4B
Third Revised Sheet No. 4D
Fourth Revised Sheet No. 4I

The proposed effective date of the above referenced tariff sheets is July 1, 1990. The above referenced tariff sheets are being filed pursuant to § 154.308 of the commission's regulations to reflect changes in United's purchased gas adjustment as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it has filed tariff sheets to reflect a 8.09¢ per Mcf overall decrease in gas commodity costs compared to the gas commodity cost level filed in Docket No. TQ90–2–11.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before June 12, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13466 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP86–33–013 and RP86–91–009]

Midwestern Gas Transmission Co., Viking Gas Transmission Co.; Compliance Tariff Filing and Filing of Refund Report

June 4, 1990.

Take notice that on May 31, 1990, Viking Gas Transmission Company (Viking) filed the following revised tariff sheets to its FERC Gas Tariff to be effective May 1, 1990:

Original Volume No. 1

First Revised Sheet No. 11
First Revised Sheet No. 12

Original Volume No. 2

First Revised Sheet No. 55
First Revised Sheet No. 56

Viking states that these tariff sheets reflect the elimination of the minimum bill provisions in Rate Schedules CD–2 and T–2, in compliance with the Commission's Order Denying Rehearing issued May 3, 1990 in the above-referenced dockets and pursuant to the 1987 Stipulation and Agreement approved by the Commission on January 21, 1988.

Viking also states that it is filing its report of refunds reflecting a refund to its Rate Schedule CD–2 and T–2 customer for the period July 1, 1986 to May 1, 1990 plus interest in accordance with Article IV of the 1987 Stipulation and Agreement. On May 31, 1990, Viking disbursed by check the total refund to ANR Pipeline Company.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13482 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–3–35–000]

West Texas Gas, Inc.; Filing

June 5, 1990.

Take notice that on June 1, 1990, West Texas Gas, Inc. (WTG) filed Nineteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective July 1, 1990. This tariff sheet was filed by WTG in accordance with the Commission's purchased gas adjustment regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)). All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–13473 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90-1-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

June 5, 1990.

Take notice that Western Gas Interstate Company ("Western") on June 1, 1990, tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1 which contains changes to its cost of purchased gas:

Twenty-Second Revised Sheet No. 10

The proposed effective date for the tariff sheet is August 1, 1990.

Western states that, among other things, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff, which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs.

Western further states that the proposed changes provide for:

(1) A decrease in cost under Western's Rate Schedule G-N of 13.74 cents per Mcf; and (2) an increase in cost under Western's Rate Schedule G-S of 37.43 cents per Mcf.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1990. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13467 Filed 6-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-123-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 5, 1990.

Take notice that on May 31, 1990, Williams Natural Gas Company (WNG) submitted the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 6G
Original Sheet Nos. 6H and 6I
Second Revised Sheet No. 106

WNG states that the subject tariff sheets are being filed pursuant to Article 29.2 (b) of the General Terms and Conditions of WNG's FERC Gas Tariff, Original Volume No. 1 to recover the direct bill portion of an additional $1.5 million in Settlement Costs concerning disputes which were in litigation on March 31, 1989, but which have been subsequently settled with payments made by WNG.

WNG states that confidential and proprietary material related to its Settlements with producers has been included in a non-public copy filed with the Commission and the sensitive material has been deleted from the public copies of the filing which have been mailed to WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13474 Filed 6-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-49-000]

Williston Basin Interstate Pipeline Co.; Annual Purchased Gas Cost Adjustment Filing

June 5, 1990.

Take notice that on June 1, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing its Annual Purchased Gas Cost Adjustment Filing (PGA) pursuant to 18 CFR 154.301, *et seq.* of the Commission's Regulations and Section 21 of its FERC Gas Tariff (First Revised Volume No. 1). More specifically, Williston Basin filed the following Primary tariff sheets:

First Revised Volume No. 1

Twenty-fourth Revised Sheet No. 10

Original Volume No. 1-A

Eighteenth Revised Sheet No. 11
Twenty-third Revised Sheet No. 12
Twelfth Revise Sheet No. 97A

Original Volume No. 1-B

Twelfth Revised Sheet No. 10
Twelfth Revised Sheet No. 11

Original Volume No. 2

Twenty-sixth Revised Sheet No. 10
Eighteenth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is August 1, 1990.

Williston Basin states that Twenty-fourth Revised Sheet No. 10 (First Revised Volume No. 1) and Twenty-sixth Revised Sheet No. 10 (Original Volume No. 2) reflect a negative 4.293 cents per dkt Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1, E-1 and X-1, and a negative .701 cents per dkt Surcharge Adjustment applicable to Rate Schedules G-1 and SGS-1. These changes result in an overall 51.641 cents per dkt increase in the Cumulative Adjustment applicable to Rate Schedules G-1 and SGS-1, as compared to the Primary tariff sheets filed in the Company's April 27, 1990 PGA filing in Docket Nos. TQ90-4-49-000 and RP90-113-000, to be effective May 1, 1990.

Williston Basin states it is submitting the instant filing without benefit of receipt of a Commission Order in Docket Nos. TQ90-4-49-000 and RP90-113-000. Consistent with the Company's submission of both Primary and Alternate tariff sheets in its April 27, 1990 filing in Docket Nos. TQ90-4-49-000 and RP90-113-000, Williston Basin is also submitting the following Alternate tariff sheets:

First Revised Volume No. 1

Alternate Twenty-fourth Revised Sheet No. 10

Original Volume No. 1-A

Eighteenth Revised Sheet No. 11
Twenty-third Revised Sheet No. 12
Twelfth Revised Sheet No. 97A

Original Volume No. 1-B

Twelfth Revised Sheet No. 10
Twelfth Revised Sheet No. 11

Original Volume No. 2

Alternate Twenty-sixth Revised Sheet No. 10
Eighteenth Revised Sheet No. 11B

The tariff sheets affecting transportation rates submitted in the instant filing reflect a .098 cents per dkt decrease in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the

Company's March 30, 1990 filing in Docket No. TQ90–3–49–000. Such increase in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc 90–13477 Filed 6–11–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed During Office of Hearings and Appeals During the Week of March 2 Through March 9, 1990

During the week of March 2 through March 9, 1990, the Applications for Refund and other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	name and Location of Applicant	Case No.	Type of Submission
Mar. 6, 1990	County Fuel Company, Inc., Washington, DC	LEF–0015	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR, part 205, subpart V, in connection with the resolution of a March 7, 1984 remedial order issued to the County Fuel Company, Inc.
Mar. 9, 1990	Franc Pajek Co., Walnut Creek, CA	LFA–0030	Motion to reconsider appeal to an information request denial. If granted: The February 26, 1990 Decision and Order issued by the Office of Hearings and Appeals would be modified and the Franc Pajek Company would receive access to certain contract bidding information.
Apr. 18, 1988	Grover Trucking Co., Idaho Falls, IN	RR272–54	Request for modification/rescission in the crude oil refund proceeding. If granted: The April 8, 1988 Decision and Order (RF272–5990) issued to Grover Trucking in response to the firm's application for refund in the crude oil refund proceeding would be modified.
Apr. 18, 1988	Grover Trucking Co., Idaho Falls, IN	RR272–54	Request for modification/rescission in the crude oil refund proceeding. If granted: The April 8, 1988 Decision and Order (RF272–5990) issued to Grover Trucking in response to the firm's application for refund in the crude oil refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Received	Name of Firm	Case No.
3/8/90	Paul O. Hunt	RF272–78507
9/14/89	Public Service Electric and Gas Co.	RF272–78508
1/4/88	Nell-Jean Coal Co., Inc.	RF272–78509
3/7/90	Desert Shell Service	RF315–9892
3/9/90	Irv's Shell	RF315–9893
3/9/90	Irv's Shell	RF315–9894
3/9/90	Irv's & Darrell's Shell	RF314–9895
3/2/90 thru 3/9/90	Atlantic Richfield, applications received	RF304–11475 thru RF304–11544
3/2/90 thru 3/9/90	Texaco Oil refund, applications received	RF321–1 thru RF321–713
3/5/90	Donald E. Martin	RF272–78506
3/5/90	John C. Martin	RF307–10112
3/2/90	Gilbert Seiler, Jr.	RA272–24
3/2/90	Carl Christensen	RF272–78503
3/2/90	Robert G. Stump	RF272–78504
3/2/90	Campbells Esso #7582	RF307–10109
3/2/90	Wayne's Variety	RF307–10110
3/2/90	American Can Company	RF307–10111
3/5/90	Collins Spur Station	RF309–1390
3/5/90	Bemidji Blacktop, Inc.	RF309–1391
3/5/90	Paul Summers Propane Company	RF300–11019
3/5/90	Harry L. Renyer	RF272–78505
7/20/88	John C. Martin	RF307–10112
3/6/90	Farmers Union Oil Co.	RA272–15

[FR Doc. 90–13561 Filed 6–11–90; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed During Week of April 13 Through April 20, 1990

During the Week of April 13 through April 20, 1990, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	Name and Location of Applicant	Case No.	Type of Submission
Apr. 16, 1990	Atlantic Richfield Co., Washington, DC	LEA-0001	Appeal of denial of application for permission to refile. If granted: Atlantic Richfield Company's application for permission to refile its refiner's monthly cost allocation reports with the Economic Regulatory Administration would be granted.
Apr. 17, 1990	Stephen E. Tilley, Kennewick, WA	LFA-0037	Appeal of an information request denial. If granted: The March 28, 1990 freedom of information request Denial issued by the Richland Operations Office would be rescinded, and Stephen E. Tilley would receive access to information regarding a DOE purchase order.

REFUND APPLICATIONS RECEIVED

Date received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
04/16/90	Fred Gordon Smith	RF307-10118
04/16/90	Belt Line Spur	RF307-1396
04/16/90	Dolphin Island Spur	RF307-1397
04/16/90	Watts & Durr Oil Company	RF307-11692
04/16/90	Defranca Reality	RF272-78578
04/16/90	Steven J. Hoglin	RF272-78579
04/16/90	Brunswick Pulp & Paper Corp.	RF307-10119
04/17/90	Royce Speicher	RF272-78580
04/17/90	Hector's Arco Service	RF304-11693
04/17/90	Norris Supply Co., Inc.	RF304-11694
04/17/90	Philadelphia Newspapers, Inc.	RF304-11695
04/17/90	Shippers Imperial, Inc.	RF272-84
04/18/90	Ed Moss	RF272-78581
04/18/90	Redco Corporation, Inc.	RF272-85
04/18/90	W. R. Johns	RF272-86
04/19/90	Hudson Van Oil Company	RF315-9942
04/19/90	Meadows Shell Service	RF315-9943
04/20/90	Newman's Texaco	RF321-3990
04/20/90	Lloyd T. Brown Contractors	RF272-78582
04/20/90	Maryland Auto Insurance Fund	RF307-10120
04/20/90	Moab Service	RF304-11696
04/20/90	Gordon's Arco	RF304-11697
04/20/90	Hudson Station, Inc.	RF309-1398
04/20/90	Hudson Oil Company	RF309-1399
04/20/90	Hudson Oil Co., Inc. Sta.	RF309-1400
04/13/90 thru 4/20/90	Texaco refund, application received	RF321-3680 thru RF321-4062
04/13/90 thru 4/20/90	Gulf Oil refund, application received	RF300-11093 thru RF300-11100

[FR Doc. 90-13562 Filed 6-11-90; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During Week of May 4 Through May 1, 1990

During the Week of May 4 through May 11, 1990, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	Name and Location of Applicant	Case No.	Type of Submission
May 7, 1990	Joan A. Estrada, Chevy Chase, MD	LFA-0039	Appeal of an information request denial. If granted: Joan A. Estrada would receive access to unit prices paid to Accu-bright Cleaning Services in response to her FOIA requests of March 13 and March 21, 1990.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund Proceeding/Name of Refund Application	Case Number
May 4, 1990 thru May 11, 1990	Texaco refund, applications received	RF321-4748 thru RF321-5123
May 4, 1990 thru May 11, 1990	Atlantic Richfield Refund, applications received	RF304-11825 thru RF304-11832

[FR Doc. 90-13563 Filed 6-11-90; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders During Week of March 26 Through March 30, 1990

During the week of March 26 through March 30, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

William Albert Hewgley, 3/30/90, LFA-0033

William Albert Hewgley (Hewgley) filed an Appeal from a determination issued by the Director of the Office of Safeguards and Security (Director) of the Department of Energy (DOE). The determination denied in part a Request for Information which Hewgley submitted under the Freedom of Information Act. Hewgley requested all records relating to the performance of personnel security interviews and appeal board proceedings by the DOE. In considering the Appeal, the DOE found that the Director had properly applied Exemption 2 to the DOE's Personnel Security Interview Manual, since release of the redacted portions of the document would enable individuals to circumvent DOE regulations. Accordingly, the Appeal was denied.

Refund Applications

Almare di Navigazione S.p.A., 3/28/90, RF272-25507, RD272-25507

Almare di Navigazione S.p.A. (Almare), a foreign flagship carrier operating ocean-going vessels in the foreign commerce of the United States, filed an application for refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. Rejecting arguments raised by a group of state governments, the DOE concluded that (i) Almare was eligible to receive a crude oil refund even though it was under foreign ownership and (ii) foreign ocean carriers were not automatically able to pass through increased bunker fuel costs to their customers. The DOE concurred with the States' position that the DOE price regulations did not apply to sales in the Panama Canal Zone. However, Almare certified that none of the bunker fuel for which it claimed a refund was purchased there. As an end-user of the petroleum products involved, Almare was presumed injured by the crude oil overcharges. The amount of the refund granted in this Decision is $37,921. A Motion for Discovery filed by the States was denied.

Brewer Chemical Corporation, 3/30/90, RF272-12810, RD272-12810

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Brewer Chemical Corporation based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The DOE determined that the evidence offered by a group States was insufficient to rebut the end-user injury presumption and that the applicant should receive a refund. In addition, the Motion for Discovery filed by the States was denied. The refund granted in this Decision is $7,076.

City of Cleveland—Division of Motor Vehicle Maintenance, 3/27/90, RF272-28490

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the City of Cleveland—Division of Motor Vehicle Maintenance, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The DOE rejected the portion of the claim based on purchases of anti-freeze, because that product was not covered for purposes of the crude oil refund proceeding. The applicant was an end-user of the remaining 24,300,260 gallons of products it claimed, and was therefore presumed injured by the alleged overcharges. The amount of the refund granted in this Decision is $19,440.

Exxon Corporation/Elliott Enterprises, Inc., 3/26/90, RF307-7917

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation special refund proceeding. The application was based on purchases made by four Exxon Service stations during the entire consent order period. Mr. Carroll Elliott was sole proprietor of General A.P. Exxon during the entire Exxon consent order period. However, Mr. Elliott acquired ownership of Carmel Church Exxon and Ruther Glen Exxon during the consent order period and Halls Exxon subsequent to the consent order period. The DOE determined that the rights to refunds for these three latter stations were not transferred to Mr. Elliott from the previous owners. Therefore, Mr. Elliott was found not eligible for any refund with respect to Halls Exxon or for a refund for purchases made by Carmel Church Exxon and Ruther Glen Exxon prior to his ownership of these stations. The DOE granted a refund to Mr. Elliott for purchases made while he was sole proprietor of Carmel Church Exxon, General A.P. Exxon and Ruther Glen Exxon. The refund granted was $3,140 ($2,453 principal plus $687 interest).

Home Petroleum Corporation, 3/29/90, RF272-67194

The Department of Energy (DOE) issued a Decision and Order concerning an Application for Refund submitted by the Home Petroleum Corporation in the subpart V crude oil overcharge refund

proceeding. The DOE determined that Home had previously waived its rights to a subpart V crude oil refund by participating in the Stripper Well agreement, as a claimant in the Resellers' Escrow. Accordingly, the Application for Refund was dismissed.

Spreckels Sugar Co., Inc., 3/29/90, RF272–27796, RD272–27796

Spreckels Sugar Co., Inc., a refiner of beet sugar, filed an application for refund in the subpart V crude oil refund proceeding. The Applicant certified, based on available records and reasonable estimates, that it purchased 151,199,333 gallons of petroleum products during the crude oil price control period. Rejecting the generalized economic objections filed by a group of States, the DOE found that the end-user presumption of injury should be applied to Spreckels. The refund approved was $120,959. A Motion for Discovery filed by the States was denied.

State Escrow Distribution, 3/26/90, RF302–8

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to disburse to the State governments $125,000,000 in alleged crude oil violation funds received in a March 1990 installment payment made pursuant to a consent order with Texaco Inc. These Texaco crude oil funds had been earmarked for distribution to the States in *Texaco Inc.*, 19 DOE ¶ 85,200 (1989). In addition, the OHA ordered the Controller to transfer $122,124,432.72 of the Texaco funds to the escrow account maintained for distribution to the federal government and $61,062,216.36 to the escrow account maintained for distribution to injured parties. The use of the Texaco crude oil funds by the States is governed by the Stripper Well Settlement Agreement.

The Stop & Shop Cos., Inc., 3/28/90, RF272–25983, RD272–25983

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to The Stop & Shop Cos., Inc. (Stop & Shop), based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Stop & Shop is a diversified retailer operating department stores and supermarkets. The firm also operates the Stop & Shop Manufacturing Co., which includes a bakery, carbonated beverage plant, dairy, seafood processing plant, and household chemical plant. As in previous decisions, the DOE rejected the contention raised by a group of States that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Stop & Shop were injured by crude oil overcharges. The DOE determined that Stop & Shop was an end-user of the 24,043,766 gallons of products it claimed, and was therefore presumed injured. The amount of the refund granted in this Decision is $19,235. The Motion for Discovery filed by the States was denied.

Washington Irrigation and Development Co., 3/28/90, RF272–7645, RD272–7645

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Washington Irrigation and Development Co. for purchases of refined petroleum products used in the mining of coal. The DOE determined that the general evidence offered by the States to the effect that coal mining firms were able to pass through increased energy costs was insufficient to rebut the end-user presumption of injury and that the Applicant should receive a refund. In addition, the Motion for Discovery filed by the States was denied. The amount of the refund granted in this Decision is $28,847.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following decisions and Orders:

Name	Case No.	Date
Allegheny Mining Corp.	RF272–35862.	3/27/90
City of Farmington	RF272–35488.	3/26/90
Exxon Corp./Homero R. Velasco *et al.*	RF307–7848	3/30/90
Exxon Corp./Oaks Esso S/C *et al.*	RF307–10037.	3/30/90
Exxon Corp./Seaboard Service *et al.*	RF307–97	3/26/90
Gulf Oil Corp./George Rimes Trucking Co., Inc.	RF300–8240	3/29/90
B. Lloyd's Pecan Products, Inc.	RF300–8518	
Gulf Oil Corp./Maginnis Oil Co., Inc.	RF300–5491	3/30/90
Gulf Oil Corp./Rabe Oil Company.	RF300–5052	3/29/90
LBM Distributors, Inc	RF300–5100	
Clopper Oil Company	RF300–5479	
Gulf Oil Corp./Randolph Oil Co., Inc.	RF300–4571	3/27/90
Minot Paving Co., Inc.	RF272–27625.	3/29/90
James H. Pender	RF272–8611	3/29/90
Reno County *et al*	RF272–42121.	3/30/90
Shell Oil Co./T&S Super Shell *et al.*	RF272–67268.	3/29/90
The Holmes Limestone Co..	RF272–397	3/30/90
Foster Wheeler Energy Corp.	RF272–437	3/30/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Campbells Esso #7582	RF307–10109
Carl Granitski	RF315–6561
Edney's Exxon	RF307–9800
Farco Markets	RF310–297
Farmers Gas & Oil	RF310–301
Hershey Exxon Service	RF307–6536
	RF307–638
Lovefield Exxon	RF307–9839
Ortiz Exxon Service Station #1	RF307–9847
Ron Gulf	RF300–9911
Shafer Brothers & Co	RF300–10911
Wayne's Variety 5–0856	RF307–10110
Webster Oil Company	RF300–8402
West Esplanade Shell, Inc	RF315–7930

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–13564 Filed 6–11–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Policy, Planning and Analysis

Workshops on White Papers by DOE'S National Laboratories To Support the Development of the National Energy Strategy

AGENCY: Office of Policy, Planning and Analysis; DOE.

ACTION: Notice of workshops to be conducted by the Department of Energy (DOE) in order to obtain comments on analyses conducted by DOE national laboratories and contained in three white papers, submitted by the laboratories and contained in three white papers, submitted by the laboratories to the DOE.

SUMMARY: These workshops will be held to review three "white papers," commissioned by DOE to obtain advice and counsel from the national laboratories, on a range of issues that were deemed of special importance to the development of the NES. The Laboratories submitted to DOE a series of white papers on the subject of (1) energy efficiency, (2) renewable energy,

and (3) technology transfer. The white paper titled "Energy Efficiency: How Far Can We Go?" was developed under the leadership of Oak Ridge National Laboratory in collaboration with Argonne National Laboratory, Lawrence Berkeley Laboratory, the Pacific Northwest Laboratory, and the Idaho National Engineering Laboratory. The second paper, titled "The Potential of Renewable Energy," was developed under the leadership of the Solar Energy Research Institute, in collaboration with the Idaho National Engineering Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, and Sandia National Laboratory. The third paper, titled "Energy Technology for Developing Countries," was developed by Lawrence Berkeley Laboratory in collaboration with Argonne National Laboratory, Oak Ridge National Laboratory, Sandia National Laboratory, Solar Energy Research Institute, Los Alamos National Laboratory and Pacific Northwest Laboratory.

The white papers, so named because of their advisory nature, are independent works of the national laboratories and do not necessarily reflect DOE policy. They provide technical insights for evaluating divergent views on the respective topics.

These workshops are designed to solicit information, data, and analysis related to the white papers. Oral comments by expert participants at these workshops will be presented by invitation only. Written comments on the white papers are encouraged and can be submitted by any interested party to the Department of Energy, Office of Policy, Planning and Analysis, PE–4, room 7H–062, 1000 Independence Avenue, SW., Washington, DC., 20585.

DATES, LOCATIONS AND TOPICS: The first workshop will be held on June 18, 1990, at the Department of Energy, room 1E–245, 1000 Independence Avenue, SW., Washington, DC., 20585, from 8 a.m. to 5:30 p.m. and will address the white paper titled, "Energy Efficiency: How Far Can We Go?". Issues to be examined include: What is known about the potential of energy conservation? What do we know about the economic, technological, and behavioral factors that influence energy conservation choices and investments? Is there a consensus on direction and magnitude of these effects? Where great uncertainty exists, is there a range of effects that a majority of analysts would agree upon?

The second workshop will be held on June 20, 1990, at the Department of Energy, room 4E–069, 1000 Independence Avenue, SW., Washington, DC., 20585, from 8 a.m. to 4:30 p.m. and will address the white paper titled "Energy Technology for Developing Countries: Issues for the U.S. National Energy Strategy." Issues to be examined include: What is now known about the effective transfer of knowledge and technologies to developing countries? What are examples of prior successes and failures? What technologies are most appropriate candidates for transfer, and via what institutional mechanism?

The third workshop will be held on June 25, 1990, at the Department of Energy, room 4E–069, 1000 Independence Avenue, SW., Washington, DC., 20585, from 8 a.m. to 5:30 p.m. and will address the white paper titled "The Potential of Renewable Energy." Issues to be examined include: What is the current status of renewable technologies? What do we know about the economic, technological, and institutional factors that influence their development and use? How is the market penetration of renewable energy technologies likely to be affected by different sets of future energy market conditions? How are costs, performance, and applicability of renewable technologies likely to change over time?

COPIES OF WHITE PAPERS: Copies of the three white papers may be obtained from the following points of contact at the coordinating laboratories: "Energy Efficiency: How Far Can We Go?", Roger Carlsmith, ORNL, P.O. Box 2008, Oak Ridge, TN, 37831, (615) 574–5204; "The Potential of Renewable Energy," Tom Bath, SERI, 1617 Cole Boulevard, Golden, CO, 80401, (303) 231–7306; "Energy Technology for Developing Countries," Donna Doll Nishiyama, LBL, Bldg 90, room 4000, Berkeley, CA, 94720, (415) 486–7438.

FOR FURTHER INFORMATION CONTACT: Please call or write William H. Hatch, Office of Policy, Planning and Analysis, PE–4, Department of Energy, 1000 Independence Avenue, SW., Washington, DC., 20585, (202) 586–4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis.

[FR Doc. 90–13701 Filed 6–8–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3786–6]

Public Water System Supervision Program Revision for the State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Delaware has revised its approved Public Water System Supervision (PWSS) Primacy Program. Delaware has developed: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690); and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). Edwin B. Erickson, Regional Administrator for EPA Region III, has determined that these State program revisions are no less stringent than the corresponding federal regulations and has approved these State program revisions. This determination shall become effective on July 12, 1990, and was based upon a thorough evaluation of Delaware's PWSS program which has met the requirements stated in 40 CFR 142.10.

Delaware's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before July 12, 1990. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Edwin B. Erickson, Regional Administrator, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Frivolous or insubstantial requests for

a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing, (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing, and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Delaware. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Delaware. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on July 12, 1990.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the office of the Regional Administrator and at the following location in Delaware: Division of Public Health, Department of Health and Social Services, Jesse S. Copper Memorial Building, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: George Rizzo, EPA Region III, Drinking Water section (3WM41) at the Philadelphia address given above, telephone (215) 597–0609, (FTS) 597–0609.

Dated: June 4, 1990.

Stanley L. Laskowski;

Acting Regional Administrator, EPA, Region III.

[FR Doc. 90–13548 Filed 6–11–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200365.

Title: Maryland Port Administration Cargo Incentive Agreement.

Parties: Maryland Port Administration (MPA), Nordana Line AS (Nordana).

Synopsis: The Agreement provides for MPA to pay Nordana an incentive of $3.00 per loaded container and $.40 per ton for Ro/Ro Cargo. This incentive is restricted to containers and Ro/Ro Cargo coming into or going out of the MPA marine terminals by a waterborne movement. The Agreement's term expires December 31, 1990.

Agreement No: 224–200367.

Title: Maryland Port Administration/ Pre-Delivery Service Corporation Terminal Agreement.

Parties: Maryland Port Administration (MPA), Pre-Delivery Service Corporation (Pre-Delivery).

Synopsis: The Agreement provides Pre-Delivery with a 3-year lease of 13 acres of storage space in Area 91 at the Dundalk Marine Terminal in Baltimore, Maryland. Pre-Delivery will use the premises only for storage of cargoes having a prior or subsequent movement over an MPA pier, berth or wharf.

Agreement No.: 224–200248–001.

Title: Board of Trustees of the Galveston, Wharves/Deppe Lines Terminal Agreement.

Parties: Board of Trustees of the Galveston Wharves, Deppe Lines.

Synopsis: The Agreement extends the term of the basic agreement for one year.

Agreement No.: 224–200366.

Title: Maryland Port Administration/ Moller Steamship Company, Inc. Terminal Agreement

Parties: Maryland Port Administration (MPA), Moller Steamship Company, Inc. (Moller)

Synopsis: The Agreement provides for MPA to grant Moller a cargo incentive at the Port of Baltimore. MPA will pay $3.00 per container and $0.40 per ton for Ro/Ro cargo, restricted to cargo coming into and going out of MPA's marine terminals by waterborne vessel movement.

Agreement No.: 224–010825–003.

Title: The City of Los Angeles/ Evergreen Marine Corporation (Taiwan) Ltd. Terminal Agreement

Parties: City of Los Angeles, Evergreen Marine Corporation (Tawain) Ltd. (Evergreen).

Synopsis: The Agreement amends the basic agreement to provide for an increase in the (1) size of the Evergreen premises to 118.8 acres; (2) the minimun annual guarantee to $9,263,200; and (3) the 75/25 percent revenue sharing breakpoint to $7,876,750. It also grants credits to Evergreen for the use of 4.1 acres of its assigned premises by Yang Ming Lines. In addition, the Agreement allows Evergreen to serve invitees at the premises and states that auto tariff charges will not count towards the minimum annual guarantee after July 1, 1991, with certain stated exceptions.

By Order of the Federal Maritime Commission.

Dated: June 06, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–13505 Filed 6–11–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Lakeview Financial Corp.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

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 July 2, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690.

1. *Lakeview Financial Corporation,* Lakeview, Michigan; to engage *de novo* through its subsidiary, Senior Citizen Housing Units, Lakeview, Michigan, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the trade areas of Lakeview Financial Corporation, Lakeview, Michigan.

Board of Governors of the Federal Reserve System, June 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–13494 Filed 6–11–90; 8:45 am]

BILLING CODE 6210–01–M

Lazard Freres & Co. et al.; 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. Interest 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 June 26, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lazard Freres & Co.,* New York, New York; Lazard Freres & Company, New York, New York; LFCP Corporate, New York, New York; Corporate Advisors, L.P., New York, New York; Corporate Partners, L.P., Corporate Offshore Partners, L.P., Hamilton, Bermuda; and State Board of Administration of Florida, Tallahassee, Florida; to acquire 16.7 percent of the voting shares of First Bank System, Inc., Minneapolis, Minnesota, and thereby indirectly acquire First Bank, N.A., Minneapolis, Minnesota; First Bank North, N.A., Duluth, Minnesota; First Bank Southeast, Rochester, Minnesota; First Bank Central, N.A., St. Cloud, Minnesota; First National Bank East, Grand Forks, North Dakota; First Bank of Minnesota, Virginia, Minnesota; First Bank South, N.A., Mankato, Minnesota; First Bank of North Dakota, N.A., Fargo, North Dakota; First Bank Montana, N.A., Billings, Montana; First Bank, N.A., Milwaukee, Wisconsin; and First Bank South Dakota, N.A., Sioux Falls, South Dakota; FBS Washington Bancorporation, Inc., Minneapolis, Minnesota, and thereby indirectly acquire First Bank Washington, Omak, Washington; and Central Bancorporation, Inc., Denver, Colorado, and thereby indirectly acquire Central Bank of Denver, Denver, Colorado; Central Bank Southeast, N.A., Englewood, Colorado; Central Bank of Pueblo, N.A., Pueblo, Colorado; Central Bank of North Denver, N.A., Denver, Colorado; Central Bank Centennial, Littleton, N.A., Colorado; Central Bank Westminster, Westminster, N.A., Westminster, Colorado; Central Bank Broomfield, N.A., Broomfield, Colorado; Central Bank Chatfield, N.A., Littleton, Colorado; Central Bank Grand Junction, N.A., Grand Junction, Colorado; Central Bank of Greeley, N.A., Greeley, Colorado; Central Bank Academy Blvd, N.A., Colorado Springs, Colorado; Central Bank Aspen, N.A., Aspen, Colorado; Central Bank Glenwood Springs, N.A., Nagelwood Springs, Colorado; Central Bank Garden of Gods, N.A., Colorado Springs; Central Bank of Chapel Hills, N.A., Colorado Springs, Colorado; Central Bank of Colorado Springs, N.A., Colorado Springs, Colorado; and Central Bank of Aurora, N.A., Aurora, Colorado.

2. *Dennis J. Zaun and Thomas J. Sexton;* to acquire 76 percent of the voting shares of Eden Valley Bancshares, Inc., Eden Valley, Minnesota.

Board of Governors of the Federal Reserve System, June 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–13495 Filed 6–11–90; 8:45 am]

BILLING CODE 6210–01–M

National City Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (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.

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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 2, 1990.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation,* Cleveland, Ohio; to acquire Buckeye Financial Corporation, Columbus, Ohio, and thereby engage in owning, controlling, and operating a savings and loan association that will engage only in deposit taking activities and lending and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern National Corporation,* Lumberton, North Carolina; to acquire Mutual Federal Savings and Loan Association, Elkin, North Carolina, and thereby engage in owning and operating a savings and loan that obtains funds in the form of savings deposits and invests these funds primarily in mortgage loans on residential and commercial real estate, and to a lesser extent in various types of consumer loans and investments pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. *Southern National Corporation,* Lumberton, North Carolina; to acquire Western Carolina Savings and Loan Associaton, Valdese, North Carolina, and thereby engage in owning and operating a savings and loan that obtains funds in the form of savings deposits and invests these funds primarily in mortgage loans on residential and commercial real estate, and to a leser extent in various types of consumer loans and investments pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-13496 Filed 6-11-90; 8:45 am]

BILLING CODE 6210-01-M

United Bancorp of Kentucky, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 2, 1990.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *United Bancorp of Kentucky, Inc.,* Lexington, Kentucky; to acquire 10.9 percent of the voting shares of Kentucky Community Bancorp, Inc., Maysville, Kentucky, and thereby indirectly acquire The State National Bank of Maysville, Maysville, Kentucky; Peoples First Bank of Morehead, Morehead, Kentucky; and Farmers Liberty Bank, Augusta, Kentucky.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *The Savannah Bancorp, Inc.,* Savannah, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Savannah Bank, N.A., Savannah, Georgia, a *de novo* bank.

2. *Southern Bank Group, Inc.,* Roswell, Georgia; to acquire 100 percent of the voting shares of The Southside Bank & Trust Company, Union City, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal,* Montreal, Canada; Bankmont Financial Corporation, New York, New York, and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 89 percent of the voting shares of Frankfort Bankshares, Inc., Frankfort, Illinois, and thereby indirectly acquire Frankfort State Bank, Frankfort, Illinois.

2. *First Marengo Financial Corporation,* Marengo, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Marengo, Marengo, Illinois.

3. *Palmer Bancorp, Inc.,* Danville, Illinois; to acquire 100 percent of the voting shares of The Citizens State Bank, Williamsport, Indiana.

4. *PrivateBancorp, Inc.,* Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Private Bank and Trust Company, Chicago, Illinois, a *de novo* bank.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Allegiant Bancorp, Inc.,* Kahoka, Missouri; to acquire at least 95.32 percent of the voting shares of Eagle Bank and Trust Company, St. Louis, Missouri.

2. *La Plata Bancshares, Inc.,* La Plata, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of La Plata State Bank, La Plata, Missouri.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to merge with Wyoming National Bancorporation, Casper, Wyoming, and thereby indirectly acquire Wyoming National Bank Casper, Casper, Wyoming; Wyoming National Bank Cheyenne, Cheyenne, Wyoming; Wyoming National Bank Gillette, Gillette, Wyoming; Wyoming National Bank Kemmerer, Kemmerer, Wyoming; Wyoming National Bank Lovell, Lovell, Wyoming; and Wyoming National Bank Wheatland, Wheatland, Wyoming.

Board of Governors of the Federal Reserve System, June 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-13497 Filed 6-11-90; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 28. The meeting, which will be open to public observation, will take place in the Terrace room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 4:30 p.m. with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street,

Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Mortgage Lending.* Discussion led by the Committee on Community Affairs and Housing regarding alleged discrimination in mortgage lending including the possible role of mortgage review boards, the use of testers, examiner training in discrimination issues, the examination process, and community studies.

2. *Affordable Housing.* Discussion led by the Community Affairs and Housing Committee on the effect of the affordable housing provisions contained in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 inlcuding the implementation of afforadable housing goals by the Resolution Trust Corporation.

3. *Fair Credit Reporting.* Discussion led by the Consumer Credit Committee on proposed amendments to the Fair Credit Reporting Act designed to better balance legitimate business needs for information with the consumer's right to privacy.

4. *Electronic Delivery of Government Benefits.* Discussion led by the Depository and Delivery Systems Committee on the merits of developing programs that use electronic technology to distribute government benefits to recipients and the role the Board might play.

5. *Expedited Funds Availability.* Discussion led by the depository and Delivery Systems Committee on recommended amendments to the Expedited Funds Availability Act.

6. *Members Forum.* Presentation of individual Council members views regarding (1) Consumer credit fraud, especially schemes that victimize elderly people, and suggestions for steps that could be taken to protect consumers against such schemes; and (2) Ways to insure that the public readily understands the significance of the CRA rating and the fact that it does not reflect the safety and soundness of the institution.

7. *Committee Reports.* Updates from Council Committee Chairman on Work plans for the remainder of the year.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, June 22, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2412. Telecommunications Device for the Deaf (TDD) users may contact Earnestine Hill or Dorothea Thompson, (202) 452–3544.

Board of Governors of the Federal Reserve System, June 5, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–13498 Filed 6–11–90; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[File No. 881 0020]

Central Soya Company, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a soy protein concentrate ("SPC") company based in Fort Wayne, Ind., to obtain FTC approval, for 10 years, before acquiring any SPC assets or stock of any company engaged in the manufacture of SPC within the United States.

DATES: Comments must be received on or before August 13, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katharine Alphin, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., room 1000, Atlanta, Ga. 30367.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final aproval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[File No. 881–0020]

Agreement Containing Consent order

In the matter of Central Soya Company, Inc., a corporation:

The Federal Trade Commission having initiated an investigation of the acquisition of certain assets of the A. E. Staley Manufacturing Company by Central Soya Company, Inc. ("Central"), which is controlled by Beghin-Say S.A. ("Beghin-Say"), a French corporation, and it now appearing that Central is willing to enter an Agreement Containing Consent Order ("agreement"):

It is hereby agreed by and between Central and Beghin-Say, by their duly authorized officers and attorney, and counsel for the Commission that:

1. Central is a wholly-owned subsidiary of SMRK Equity Holdings, Inc., a Delaware corporation, which is controlled by Beghin-Say, a French corporation. Central is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its executive offices being located at 1400 Fort Wayne Bank Building, Fort Wayne, Indiana 46801.

2. Beghin-Say is a corporation organized, existing and doing business under and by virtue of the laws of France with its executive offices being located at 54, avenue Hoche, BP 47108–75360 Paris Cedex 08, France.

3. Central admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Central waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is

accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Central, in which event the Commission will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Central that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Central, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order in disposition of the proceeding, and (b) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Central at its address as stated in this agreement shall constitute service. Central waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. For the purpose of the proposed complaint and order contemplated hereby, Beghin-Say recognizes Central as its agent and acknowledges that once the order has been issued, Beghin-Say will be bound by the terms of the order.

9. Central and Beghin-Say have read the proposed complaint and order contemplated hereby. Central understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Central and Beghin-Say further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this order, the following definitions shall apply:

A. "Central" means Central Soya Company, Inc., its parent, its subsidiaries, divisions, and any groups and affiliates under its control, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

B. "Commission" means the Federal Trade Commission.

C. "Person" means any natural person or any corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity.

D. "SPC" means soy protein concentrate, a product manufactured by removing from dehulled soybeans most of the oil and water-soluble non-protein components, leaving a product that is approximately 70% protein.

E. "SPC assets" means assets used in the production of SPC exclusive of raw materials.

II

It is ordered that, for a period of ten (10) years from the date this order becomes final, Central shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Commission, any stock or share capital of, or any interest in, or any of the SPC assets of any person engaged in the manufacture of SPC within the United States. Provided, however, that this paragraph shall not be deemed to prohibit: (1) upon at least 30 days advanced notice to the Commission, the taking by Central from any person, of a non-exclusive license that contains no restrictions with respect to limiting entrants into the market for SPC; (2) purchases of SPC in the ordinary course of business that do not exceed five million (5,000,000) pounds total a year and that do not result in the elimination of a competitor; and (3) upon at least 30 days advanced notice to the Commission, the purchase of used equipment with a fair market value of less than fifty thousand dollars ($50,000).

III

It is further ordered that, one year from the date this order becomes final and annually for nine (9) years thereafter, Central shall file with the Commission a verified, written report setting forth in detail the manner and form in which it is complying or has complied with this order, including but not limited to, a statement identifying each SPC purchase made, the person from whom each SPC purchase was made, and the date, quantity and price of each SPC purchase.

IV

It is further ordered that, for the purpose of determining or securing compliance with this order, upon written request and with reasonable notice to Central made to its executive offices, Central shall permit any duly authorized representative or representatives of the Commission:

A. Access, during office hours, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Central relating to any matters contained in this order; and

B. Upon five (5) days' written notice to Central, and without restraint or interference from them, to interview officers or employees of Central regarding such matters.

V

It is further ordered that Central shall notify the Commission at least thirty (30) days prior to any change in its corporate structure that may affect compliance obligations arising out of this order, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, or any other change.

IV

It is further ordered that Central shall require, as a condition precedent to the closing of the sale or other disposition of all or a substantial part of its SPC assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of the order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Central Soya Company, Inc., and its parent, Beghin-Say, S.A.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should

withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Central Soya, by purchasing the soy protein concentrate ("SPC") assets of A. E. Staley Manufacturing Company, substantially lessened competition in the SPC market within the United States in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and section 7 of the Clayton Act, 15 U.S.C. 18. The effect of the acquisition of SPC assets has lessened competition in the following ways, among others: (1) By eliminating actual competition between Central Soya and A. E. Staley; (2) by increasing Central Soya's ability to unilaterally exercise market power; and (3) by increasing the likelihood of, or facilitating, actual or tacit collusion. Any or all of the above effects increased the likelihood that firms have increased prices and restricted output or will increase prices and restrict output both in the near future and in the long term.

The proposed order requires that, for a period of ten (10) years after the order becomes final, Central Soya shall seek the prior approval of the Commission before acquiring any SPC assets or stock. The order also contains provisions allowing Central Soya the right to make certain de minimis purchases of SPC and SPC equipment and non-exclusive licenses.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-13577 Filed 6-11-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1990:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: June 2.-22, 1990, 8 a.m.

Place: Days Inn—Congressional Park Georgetown I and II, 1775 Rockville Pike, Rockville, Maryland.

Open June 20, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness or efficiency of particular methods of health services delivery and financing, for the research grants program administered by the Agency for Health Care Policy and Research.

Agenda: The open session of the meeting of June 20 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 662b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Gerald E. Calderone, Agency for Health Care Policy and Research, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Services Research Review Subcommittee.

Date and Time: June 6-8, 1990, 8 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland.

Open June 5, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research.

Agenda: The open session of the meeting on June 6 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. B. William Lohr, Agency for Health Care Policy and Research, room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Care Technology Study Section.

Date and Time: June 11-13, 1990, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland

Open June 12, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: The open session on June 12 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Administrator, AHCPR. The closed sessions of the meeting will be devoted to a review of health services research grant applications emphasizing medical care technologies and procedures, and relating to the delivery, organization, and financing of health services.

In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Acting Administrator, AHCPR, has a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Dr.

Alan E. Mayers, Agency for Health Care Policy and Research, room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Dated: June 1, 1990.

J. Jarrett Clinton,

Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 90–13530 Filed 6–11–90; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 90E–0156]

Determination of Regulatory Review Period for Purposes of Patent Extension; Synarel®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Synarel® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C 156(g)(1)(B).

FDA recently approved for marketing the human drug product Synarel® (nafarelin acetate) which is indicated for the management of endometriosis, including pain relief and reduction on endometriotic lesions. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Synarel® (U.S. Patent No. 4,234,571) from Syntex (U.S.A.), Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated May 8, 1990, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the approval of the active ingredient, nafarelin acetate, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Synarel® is 3,180 days. Of this time, 2,725 days occurred during the testing phase of the regulatory review period, while 455 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* June 2, 1981. The applicant claims May 18, 1981, as the date the investigational new drug (IND) application for Synarel® became effective. However, FDA records indicate that the IND became effective on June 2, 1981.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* November 16, 1988. The applicant claims November 22, 1988 as the date the new drug application (NDA) for Synarel® (NDA 19–886) was initially submitted. However, FDA records indicate that the application was received on November 16, 1988.

3. *The date the application was approved:* February 13, 1990. FDA has verified the applicant's claim that NDA 19–886 was approved on February 13, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 13, 1990 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, or or before December 10, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 5, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90–13509 Filed 6–11–90; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration; Program Announcement for Grants for Establishment of Departments of Family Medicine

The Health Resources and Services Administration (HRSA) announces that applications for Fiscal Year (FY) 1991 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of section 780 of the Public Health Service Act, as amended by Public Law 100–607.

Section 780 authorizes awards to schools of medicine and osteopathic medicine to meet the costs of projects to establish, maintain, or improve family medicine academic units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. Funds awarded will be used to (1) plan and develop model educational predoctoral, faculty development and graduate medical education programs in family medicine which will meet the requirements of section 786(a), by the end of the project period of section 780 support, and (2) support academic and clinical activities relevant to the field of family medicine.

The program may also assist schools to strengthen the administrative base and structure that is responsible for the planning, direction, organization, coordination, and evaluation of all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for actual operation of family medicine training programs under section 786(a).

The Administration's budget request for FY 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To be eligible to receive support for this grant program, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine.

To receive support, programs must meet the requirements of final regulations as set forth in 42 CFR part 57, subpart R.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the project requirements in § 57.1704;
2. The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;
3. The qualifications of the proposed staff and faculty of the unit; and
4. The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.
2. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Section 780 requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Funding Priority

A funding priority will be given to applications which show a representation of underrepresented minority faculty in a family medicine administrative unit which is at least twice the National average of 2.9 percent in U.S. medical schools or can document an increase in the number of underrepresented minority faculty in the unit (i.e., Black, Hispanic and American Indian/Alaskan Native), over average of the past three years.

Special Considerations

Special considerations will be given to:

- Applicants that demonstrate the potential to continue the project on a self-sustaining basis.
- Applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs, as required by section 780, as amended by Public law 100–607.

This funding priority and these special considerations were used in Fiscal Year 1990 and are extended in Fiscal Year 1991.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D32), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857. *Telephone:* (301) 443–6960.

Application materials should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Division of Medicine, Primary Care Medical Education Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–25, Rockville, Maryland 20857. *Telephone:* (301) 443–6820.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

The application deadline is September 17, 1990. Applications shall be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline date and received in time for submission to the independent review group. A legibly date receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 8, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–13510 Filed 6–11–90; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Advisory Committee on the Food and Drug Administration; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Advisory Committee on the Food and Drug Administration (FDA) will hold a meeting on Wednesday, July 11, 1990 from 9 a.m. to 5 p.m. and Thursday, July 12, 1990 from 9 a.m. to 1 p.m. The Department and the Committee intend to close the first hour of the Wednesday afternoon session (1:30–2:30 p.m.), to conduct business related to the appointments process and discuss

confidential information relating to private individuals. The remainder of the meeting is open to the public and will be held in the Dolly Madison Ballroom of the Madison Hotel located at 15th and M Streets, NW., Washington, DC 20005. Public registration will begin at 8:30 a.m. each day.

The purpose of this meeting is to review the historical trends that relate to the structure of the FDA and develop specific themes that will help direct the committee's inquiry over the remainder of its chartered life. The agenda will include a limited number of panelists from the general public to assist the committee in examining these historical trends and challenges for the future.

Dated: June 6, 1990.

Eric M. Katz,

Executive Secretary, Advisory Committee on the FDA.

[FR Doc. 90-13529 Filed 6-11-90; 8:45 am]

BILLING CODE 4110-60-M

National Institutes of Health

National Cancer Institute; Notice of Meeting; Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 25, 1990, Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Rockville, Maryland 20852.

This meeting will be open to the public on June 25 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on June 25 from 10 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (310/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496-7030) will furnish substantive program information.

Dated: June 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-13489 Filed 6-11-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Intent To Prepare an Environmental Assessment; California Desert District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The California Desert District will prepare an Environmental Assessment (EA) to process a Special Recreation Use Permit application submitted by the American Motorcycle Association (AMA) for the proposed 1990 Barstow-to-Las Vegas (B-to-V) motorcycle race.

The 1982 Plan Amendments to the California Desert Conservation Area (CDCA) Plan (1980, as amended) added th B-to-V course to the CDCA Plan. That Record of Decision required future applications for the event to be evaluated in an EA which would be based on any route modifications and on the results of compliance and monitoring of previous events. The race has been held yearly since 1983 on the Saturday following Thanksgiving.

The EA to be prepared for the proposed 1990 B-to-V will analyze the proposed action of AMA's permit application. The analysis will include any modification to the course not previously evaluated in an environmental document, the results of compliance and monitoring reports prepared on past B-to-V events, and the potential impacts to the desert tortoise which was federally listed as an threatened species on April 2, 1990 (55 Federal Register 12178-12191).

DATES: Public comments relating to this notice will be accepted through June 25, 1990.

ADDRESSES: Send comments to BLM, California Desert District, 1695 Spruce Street, Riverside, CA 92507, *Attn:* Molly Brady. Further information and copies of the EA (mid August-target completion date) may be requested through this address.

Dated: June 6, 1990.

Gerald E. Hillier,

District Manager.

[FR Doc. 90-13511 Filed 6-11-90; 8:45 am]

BILLING CODE 4310-40-M

[NM-910-GPO-407; NM NM 45132]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Laurel Corporation, petitioned for reinstatement of oil and gas lease NM NM 45132, covering the following described lands located in Eddy County, New Mexico:

New Mexico Principal Meridian

T. 24 S., R. 22 E.,
Sec. 2, lots 3, 4, S½NW¼, SW¼;
Sec. 3, lots 1, 2, 3, 5, S½N½, S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, S½.
Containing 1,606.26 acres.

It has been shown to my satisfaction that failure to make timely payments of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been made. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Dated: June 4, 1990.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 90-13519 Filed 6-11-90; 8:45 am]

BILLING CODE 4310-FB-M

[NM-910-GPO-406; TX NM 66731]

Proposed Reinstatement of Terminated Oil and Gas Lease; TX NM 66731

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Union Pacific Resources petitioned for reinstatement of oil and gas lease TX NM 66731, covering the following described lands located in

Houston County, Texas: Tract K1b-VI
Containing 2,560.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence. No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, February 1, 1990.

Dated: June 1, 1990.

Dolores L. Vigil,

Acting Chief, Adjudication Section.

[FR Doc. 90-13520 Filed 6-11-90; 8:45 am]

BILLING CODE 4310-FB-M

[CA-940-00-3110-10DTNA; CACA 23914, CACA 23834, CACA 23920, CACA 23915]

California Realty Action; Exchange of Public and Private Lands in Kern County and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance documents and opening order.

SUMMARY: The purpose of these exchanges was to acquire non-Federal lands within the designated Desert Tortoise Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of the endangered Desert Tortoise.

ADDRESSES: Inquiries concerning this land should be addressed to the Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Thomas Gey, Ridgecrest Resource Area, Bureau of Land Management, 300 South Richmond Road, Ridgecrest, CA 93555 (619) 375-7125.

1. The United States issued land exchange conveyance documents to Barton W. Welsh and Olivia W. Welsh on February 26, 1990 pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Sec. 22, W½, W½SW¼SE¼.

The area described contains 340 acres in Kern County.

2. In exchange for the lands described in paragraph 1, on February 26, 1990, the United States accepted title to the following described private lands from Barton and Olivia Welsh.

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 21, SE¼NW¼, NW¼NW¼;
Sec. 27, E½NW¼NE¼, E½SE¼, S½N½ SW¼NW¼, SE¼SW¼SW¼NW¼;
Sec. 33, NE¼NE¼, E½E½SW¼NE¼, S½NW¼, W½E½NE¼SW¼, E½E½ NE¼SW¼.

3. The value of the non-Federal land exceeded the value of the public land by $2,000. The exchange proponents, Barton and Olivia Welsh, have received an equalization payment of $2,000 from the United States.

4. The United States issued land exchange conveyance documents to Walter A. Detjen and Patricia A. Detjen on February 5, 1990 pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Sec. 22, N½NE¼, N½SE¼NE¼, SW¼SE¼NE¼.

The area described contains 110 acres in Kern County.

5. In exchange for the lands described in paragraph 4, on February 5, 1990, the United States accepted title to the following described private lands from Walter and Patricia Detjen.

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 27, NE¼SW¼, SW¼SW¼, W½NW¼SW¼, NE¼NW¼SW¼.

6. The value of the non-Federal land is equal to the value of the public land. No equalization payment was required.

7. The United States issued a land exchange conveyance document to Hans Niederberger and Elizabeth R. Niederberger on February 22, 1990 pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Sec. 14, NW¼SW¼.

The area described contains 40 acres in Kern County.

8. In exchange for the lands described in paragraph 7, on February 22, 1990, the United States accepted title to the following described private lands from Hans and Elizabeth Niederberger.

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 31, Parcel 3 of Parcel Map 2199, in the City of California City, County of Kern, State of California, as filed June 14, 1974 in Book 10 Page 109 of Parcel Maps, in the Kern County Recorder's Office.

9. The value of the non-Federal land is equal to the value of the public land. No equalization payment was required.

10. The United States issued a land exchange conveyance document to George M. Novicoff and Betty Ruth Novicoff on January 26, 1990 pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Sec. 14, SW¼SW¼.

The area described contains 40 acres in Kern County.

11. In exchange for the lands described in paragraph 10, on January 26, 1990, the United States accepted title to the following described private lands from George and Betty Novicoff.

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 31, Parcel 3 of Parcel Map 1593, in the City of California City, County of Kern, State of California, as filed November 29, 1973 in Book 8, Page 20 of Parcel Maps, in the Kern County Recorder's Office.

12. The value of the non-Federal land is equal to the value of the public land. No equalization payment was required.

13. The lands acquired through these exchanges are subject to exceptions for easements and mineral rights. A precise description of the exceptions is available in case files CACA 23834, CACA 23914, CACA 23915 and CACA 23920 in the California State Office.

14. At 10 a.m. on July 16, 1990, the lands acquired in these exchanges shall be open to operation of the public land laws and the mineral leasing laws, but not the general mining laws, subject to valid existing rights and applicable law.

By Public Land Order 5694, effective February 5, 1980, upon acceptance of title, lands acquired within the Desert Tortoise Natural Area were withdrawn from mineral entry under 30 U.S.C. chapter 2. Therefore, the lands acquired in these exchanges are not open to location under the United States mining laws.

Dated: June 4, 1990.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 90-13516 Filed 6-11-90; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Intent To Prepare Environmental Assessment for Establishment of a National Wildlife Refuge and Protection of Wetlands on or Near Stone Lakes in South Sacramento County, CA.

AGENCIES: U.S. Department of the Interior, Fish and Wildlife Service (lead agency) in cooperation with the California Department of Parks and Recreation, and the Sacramento County Department of Parks and Recreation.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an Environmental Assessment (assessment) for the establishment of a National Wildlife Refuge and protection of wetlands on or near Stone Lakes in south Sacramento, California. Public meetings and workshops will be held to solicit comments from all interested parties regarding the scope and content of the assessment. This notice is being furnished pursuant to the National Environmental Policy Act regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the assessment. In addition, the assessment will determine if the preparation of an Environmental Impact Statement is necessary.

DATES: Written comments should be received by August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Jerome, Refuge Manager, U.S. Fish and Wildlife Service, Refuges and Wildlife Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825, (916) 978–4613.

SUPPLEMENTARY INFORMATION: Persons wishing to participate in the scoping process are encouraged to contact the U.S. Fish and Wildlife Service, Refuges and Wildlife Field Office as soon as possible. Interested agencies, organizations, and individuals are encouraged to attend the scoping meetings to identify and discuss major issues, concerns, and opportunities that should be addressed in the assessment. Written comments will also be accepted. The Central Valley of California encompasses an area of over 13 million acres which included an estimated 4 million acres of wetlands in the 1850's. Today, estimates of remaining wetlands in the California Valley have ranged from slightly less than 400,000 acres to 280,000 acres. The loss of wetlands coupled with declining waterfowl populations nationwide has resulted in management concerns at the local, State, and Federal levels.

Since 1988, there has been heightened public interest in the protection of riparian areas in the Stone Lakes area. Special Congressional and State legislative appropriations resulted in widespread public support for the establishment of a National Wildlife Refuge. Other public and non-profit land managers have initiated wetland protection programs with the establishment of the Consumnes Preserve to the south of Stone Lakes.

The Stone Lakes area represents remnants of a variety of native plant communities such as willow, cottonwood, and oak riparian forests. Seasonally flooded wetlands and vernal pools occur throughout the study area. The area provides an important component of the Pacific Flyway and provides wintering, nesting, and feeding habitat for 23 species of waterfowl. In addition, the area provides habitat for several species of flora and fauna that are candidates for the endangered species list.

The purpose and need for the establishment of Stones Lakes National Wildlife Refuge is clearly demonstrated by the wildlife and habitat values that characterize the area. The location of Stone Lakes to urban populations and development create opportunities for environmental education and interpretation but threaten the future availability of the habitat. The proposed assessment will be developed as a result of broad based public involvement. The State of California and Sacramento County are cooperators in the preparation of the assessment. The identification of issues and concerns will begin during the spring of 1990. It is anticipated that an assessment will be completed by December 1990.

Dated: April 10, 1990.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–13486 Filed 6–4–90; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Working Group Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico regional technical working group (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463). The Gulf of Mexico RTWG meeting will be held July 10–11, 1990, at the Marriott Hotel, 707 North Shoreline Drive, Corpus Christi, Texas.

The RTWG business meeting will be held on July 11, 1990, beginning at 8:30 a.m. and ending at 5 p.m. Tentative agenda items are as follows:

- Roundtable discussion
- Site clearance
- Offshore inspection program
- Oil spill equipment
- Outreach program

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736–2589 by June 28, 1990. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A transcript and complete summary minutes of the meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: June 4, 1990.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 90–13526 Filed 6–11–90; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 2, 1990. 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 June 27, 1990.

Beth L. Savage,

Acting Chief of Registration, National Register.

ARIZONA

Pima County

Gunsight Mountain Archeological District, Address Restricted, Three Points vicinity, 90000996

FLORIDA

Madison County

Bishop—Andrews Hotel, 109 Redding St., Greenville, 90001002

GEORGIA

Coweta County

Platinum Point Historic District, Along Jackson St., 1/2 mi. N of downtown Newnan, Newnan, 90000997

MASSACHUSETTS

Bristol County

Border City Mill No. 2 (Fall River MPS), One Weaver St., Fall River, 90000999

NEW JERSEY

Mercer County

Lake Carnegie Historic District, Roughly bounded by Lake Carnegie shoreline from Conrail bridge at W end to dam W of Kingston at E end, Princeton, 90001000

NEW YORK

Rockland County

Big House (Palisades MPS), US 9W near jct. with Closter Rd., Palisades, 90001008
Cliffside (Palisades MPS), Lawrence Ln. S of River Rd., Palisades, 90001012
Haring—Eberle House (Palisades MPS), U.S. 9W N of Oak Tree Rd., Palisades, 90001010
Little House (Palisades NPS), US 9W N of Oak Tree Rd., Palisades, 90001009
Neiderhurst—W. S. Gilman, Jr., Estate (Palisades MPS), Ludlow Ln. S of River Rd., Palisades, 90001011
Oak Tree Road—Closter Road Historic District (Palisades MPS), Roughly, N side of Closter Rd. and S side of Oak Tree Rd. approx. 1/2 mi. W of US 9W, Palisades, 90001014
Seven Oaks Estate (Palisades MPS), End of Ludlow Ln., Palisades, 90001013
Washington Spring Road—Woods Road Historic District (Palisades MPS), Roughly, area along Washington Spring Rd. from Highland Ave. to Hudson R. and N approx. 1/2 mi. along Woods Rd., Palisades, 90001015

TENNESSEE

Blount County

Calderwood Dam (Boundary Increase) (Pre-TVA Hydroelectric Development in Tennessee, 1901—1933), Tennessee R. at end of Calderwood Rd., Calderwood vicinity, 90001016

Lawrence County

Lawrenceburg No. 2 Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee, 1907–1933), Mi. 51.7 on Shoal Cr. near old US 43, Lawrenceburg vicinity, 90001005

Lincoln County

Harms Mill Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee, 1901–1933), SR 15 at Elk R., Fayetteville vicinity, 90001007

Polk County

Ocoee No. 1 Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee, 1901–1933), Jct. of US 64 and Ocoee R., Parksville vicinity, 90001003

Putnam County

Burgess Falls Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee, 1901–1933), SR 135 over Falling Water R., Cookeville vicinity, 90001006

White County

Great Falls Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee, 1901–1933), Caney Fork R. Mi. 91.1 off US 70, Rock Island vicinity, 90001004

WISCONSIN

Kenosha County

Kenosha Light Station, 5117 Fourth Ave., Kenosha, 90000995

Lafayette County

Water Street Commercial Historic District, Roughly Water St. from Judgement to Kennedy Sts. and Gratiot St. from Water to Church Sts., Shullsburg, 90000998

WYOMING

Laramie County

Beatty, Charles L., House, 2320 Capitol Ave., Cheyenne, 90001001

[FR Doc. 90–13512 Filed 6–11–90; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31663]

The Centaur Partners Group; Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts The Centaur Partners Group (Centaur) from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, to acquire control of National Intergroup, Inc. (National). The exemption is subject to standard employee protective conditions.

DATES: This exemption is effective on July 12, 1990. Petitions for stay must be filed by June 22, 1990. Petitions for reconsideration must be filed by July 2, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31663 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representative, Fritz R. Kahn, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005–2301, (202) 371–6084.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: May 24, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–13565 Filed 6–11–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Attorney General

[Atty. Gen. Order No. 1423–90]

Certification of Attorney General; Chester County, SC

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Chester County, South Carolina. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: June 8, 1990.

Dick Thornburgh,

Attorney General of the United States.

[FR Doc. 90–1377, Filed 6–11–90; 9:48 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–23, 985]

L. P. #2 Inc., Forks, WA; Negative Determination Regarding Application for Reconsideration

By an application dated May 8, 1990 the workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 11, 1990 and published in the Federal Register on May 3, 1990 (55 FR 18686).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers claim that the company's total sales decreased and they are impacted by Canadian imports. The workers submitted evidence showing that one of the company's broker customers had increased imports during the survey period.

In order for a worker group to obtain trade adjustment assistance, it must meet all three of the Group Eligibility Requirements of the Trade Act—a significant decrease in employment, an absolute decrease in sales or production and an increase in imported articles which are like or directly competitive with those produced at the workers' firm and which "contributed importantly" to sale or production and employment declines.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers.

The Department's survey of major customers of the subject firm shows that the respondents did not purchase foreign-made cedar shakes and shingles in 1988 and 1989. Although the evidence submitted by the workers shows one of the broker customers increasing its import purchases of cedar shakes and shingles in 1989 compared to 1988, the broker customer also increased its purchases from the subject firm during the same period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this May 31, 1990.

Mary Ann Wyrsch,

Director, Office of Unemployment Insurance Service, UIS.

[FR Doc. 90–13569 Filed 6–11–90; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: May 29, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–87–251–C
FR Notice: 52 FR 45401
Petitioner: Kaiser Coal Corporation
Reg Affected: 30 FR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide monitor at each section tailpiece, and at each transfer point where coal dumps onto another belt considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–68–C
FR Notice: 53 FR 20035
Petitioner: Webster County Coal Corporation
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide monitor at each section tailpiece, and at each transfer point where coal dumps onto another belt considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–79–C
FR Notice: 53 FR 33193
Petitioner: Castle Gate Coal Company
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use 800 feet of trailing cables on shuttle cars and 650 feet of trailing cables on roof bolting machines instead of 500 feet considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–101–C
FR Notice: 53 FR 25394
Petitioner: Colorado Westmoreland, Inc.
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses instead of a heat detection system considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–102–C
FR Notice: 53 FR 25393
Petitioner: Colorado Westmoreland, Inc.
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in the belt entry and use the air in the belt haulage and/or track entries to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–108–C
FR Notice: 53 FR 34598
Petitioner: Polcovich Coal Co.
Reg Affected: 30 CFR 75.301
Summary of Findings: Proposed airflow reduction which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–127–C
FR Notice: 53 FR 29967
Petitioner: Becky Coal Company, Inc.
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–132–C
FR Notice: 53 FR 29968
Petitioner: Kerr-McGee Coal Corporation
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables (2400 volt) to supply power to permissible longwall face equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–143–C
FR Notice: 53 FR 34598
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to clean out and plug oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–144–C
FR Notice: 53 FR 33194
Petitioner: The Helen Mining Company
Reg Affected: 30 CFR 75.1100–3(b)
Summary of Findings: Petitioner's proposal to use an automatic dry pipe suppression system along the slope conveyor during severe winter weather considered accetable alternate method. Granted with conditions.

Docket No.: M–88–150–C
FR Notice: 53 FR 35130
Petitioner: Leeco, Inc.
Reg Affected: 30 CFR 75.1701
Summary of Findings: Petitioner's proposed method of drilling boreholds in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–151–C
FR Notice: 53 FR 35129
Petitioner: Golden Oak Mining Company
Reg Affected: 30 CFR 75.1710
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–88–153–C
FR Notice: 53 FR 33194
Petitioner: Granny Rose Coal Company
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–154–C
FR Notice: 53 FR 35129
Petitioner: Canada Coal Company, Inc.
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to establish two evaluation points where the quantity and quality of air will be examined by a qualified person on a daily basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–155–C
FR Notice: 53 FR 33196
Petitioner: WESCO Coal Company
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–156–C
FR Notice: 53 FR 35126
Petitioner: BethEnergy Mines, Inc.
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to establish monitoring stations in lieu of traveling the aircourse in its entirety considered acceptable alternative method. Granted with conditions.

Docket No.: M–88–157–C
FR Notice: 53 FR 33193
Petitioner: BethEnergy Mines, Inc.
Reg Affected: 30 CFR 75.1101–1(b)
Summary of Findings: Petitioner's proposal to perform functional weekly tests when blow-off dust covers are removed from nozzles attached to the branch line considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–164–C
FR Notice: 53 FR 35130
Petitioner: Old Ben Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use 2300-volt electricity to power the No. 14 longwall panel and subsequent longwall panels or components of such panels considered acceptable alternate method.Granted with conditions.

Docket No.: M–88–166–C
FR Notice: 53 FR 37069
Petitioner: Dominion Coal Corporation
Reg Affected: 30 CFR 75.1701
Summary of Findings: Petitioner's proposal method of driling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–168–C
FR Notice: 53 FR 36513
Petitioner: Hard Luck Leasing Coal Company
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–170–C
FR Notice: 53 FR 36514
Petitioner: Mercury Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Pétitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–174–C
FR Notice: 53 FR 40286
Petitioner: Kerr-McGee Coal Corporation
Reg Affected: 30 CFR 75.902
Summary of Findings: Petitioner's proposal to use 480-volt, three-phase, power distribution without the use of the ground check circuit in the No. 5 Seam Fluids Borehole and the No. 6 Seam Longwall Pump Station considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–179–C
FR Notice: 53 FR 40800
Petitioner: Quarto Mining Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to house two electrical

installations in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–180–C
FR Notice: 53 FR 37659
Petitioner: The Helen Mining Company
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to clean out and plug oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–181–C
FR Notice: 53 FR 39378
Petitioner: A & G Mining, Inc.
Reg Affected: 30 CFR 75.305
Summary of Findings: Due to adverse roof conditions, the return entries cannot be safely traveled. Petitioner's proposal to establish monitoring stations where air readings and examinations will be made by a certified person on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–182–C
FR Notice: 53 FR 37071
Petitioner: Palcovich Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–185–C
FR Notice: 53 FR 43785
Petitioner: Freeman United Coal Mining Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables (2400 volt) to supply power to the longwall mining equipment inby the last open crosscut and within 150 feet of gob areas considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–186–C
FR Notice: 53 FR 40800
Petitioner: Old Ben Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal that throughout the mine beginning with Panel No. 14, high-voltage cables would be used to supply power to longwall mining equipment inby the last open crosscut and within 150 feet of gob areas considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–193–C
FR Notice: 53 FR 40799
Petitioner: Golden Oak Mining Company
Reg Affected: 30 CFR 75.1710
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M88–200–C
FR Notice: 53 FR 45405
Petitioner: Steel Hollow Mining, Inc.
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M88–203–C
FR Notice: 53 FR 47778
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to use a submersible pump to drain water from the sump beneath the intake air shaft considered acceptable alternate method. Granted with conditions.

Docket No.: M88–207–C
FR Notice: 53 FR 45999
Petitioner: R and B Mining Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M88–214–C
FR Notice: 53 FR 48742
Petitioner: Snyder Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M88–217–C
FR Notice: 53 FR 50315
Petitioner: Shannopin Mining Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install an early warning fire detection system using a low-level carbon monoxide detection system along all belt conveyors, at each drive and at each tailpiece located in intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M88–223–C
FR Notice: 53 FR 49257
Petitioner: Summit Coal Company
Reg Affected: 30 CFR 75.301
Summary of Findings: Proposed airflow reduction which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M88–240–C
FR Notice: 54 FR 872
Petitioner: Sahara Coal Company, Inc.
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use air coursed through designated belt haulage entries to ventilate specific active working sections and to install a carbon monoxide fire detection system to monitor the belt line considered acceptable alternate method. Granted with conditions.

Docket No.: M88–242–C
FR Notice: 53 FR 3165
Petitioner: Rhen Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M88–243–C
FR Notice: 54 FR 3164
Petitioner: L & W Coal Company, Inc.
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

[FR Doc. 90–13571 Filed 6–11–90; 8:45 am]
BILLING CODE 4510–43–M

[Docket No. M–90–76–C]

Aberry Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Aberry Coal, Inc., P.O. Box 159, Thornton, Kentucky 41855 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Aberry No. 1 Mine (I.D. No. 15–02046) located in Letcher 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 the return aircourse be examined in its entirety on a weekly basis.

2. Due to roof falls and soft bottom conditions, the area adjacent to the active workings cannot be safely traveled. Rehabilitation of this area would expose miners to unnecessary hazards and permanent seals in the area would permit water buildup, thereby creating a hazard.

3. As an alternate method, petitioner proposes to establish return air (bleeder) evaluation points in lieu of traveling the return aircourse in its entirety.

4. In support of this request, petitioner states that—

(a) The evaluation points would ensure that the entire area is being effectively ventilated;

(b) The return air from the affected area would pass directly into the main return aircourse;

(c) Connecting entries would be established through the barrier block to dewater the abandoned area, if needed, thereby eliminating the danger of a water breakthrough; and

(d) If additional connecting entries through the barrier are needed, as the active section advances, the inby evaluation point would be advanced to ensure that the entire abandoned panel is effectively ventilated.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1990. Copies of the petition are available for inspection at that address.

Dated: June 1, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-13570 Filed 6-11-90; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. *Background*—Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the Federal Register (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart 0 to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart 0 sets forth the State's schedule for the adoption of Federal standards. By letters dated April 16, 1990, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.1000, subpart Z, Table Z-1-A pertaining to an amendment to the Air Contaminants Standards for General Industry as published in the Federal Register of November 15, 1989 (54 FR 47513), and (2) 29 CFR 1910.147 pertaining to Control of Hazardous Energy Source (Lockout/Tagout) as published in the Federal Register of September 1, 1989 (54 FR 36687). These standards are contained in COMAR 90.12.31. Maryland Occupational Safety and Health Standards were promulgated after a public hearing on February 9, 1990. These standards were effective on April 16, 1990.

2. *Decision*—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. *Location of the Supplements for Inspection and Copying*—A copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, Room N-3700, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 12, 1990.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this 15th day of May 1990.

Richard Soltan,

Deputy Regional Administrator.

[FR Doc. 90-13572 Filed 6-11-90; 8:45 am]

BILLING CODE 4510-26-M

Occupational Safety and Health Standards

New Mexico State Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 10, 1975, notice was published in the Federal Register (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

By letters dated July 13, 1989, and March 14, 1990, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to 29 CFR 1910.1047, Amendment to Ethylene Oxide (53 FR 11437, dated 4/6/88); 29 CFR 1910.7, Amendment to Definition and Requirements for a Nationally Recognized Testing Laboratory, including Amendment to Applicable subparts of 29 CFR part 1910 included thereunder (53 FR 1210, dated 4/12/88) (By letter dated 11/4/89, from Sam A. Rogers, Bureau Chief, New Mexico Environmental Improvement Division, to Gilbert J. Saulter, OSHA Regional Administrator, the State of New Mexico advised that it will not establish a laboratory accreditation program and will accept the Federal program as compliance with the State rules.); 29 CFR 1910.177, Amendment to Servicing of Multi-Piece and Single-Piece Rim Wheels (53 FR 34737, dated 9/8/88); 29 CFR 1910.1001, Amendments to Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite (53 FR 35625, dated 9/14/88; 54 FR 307704, dated 7/21/89 and 54 FR 52027, dated 12/20/89); 29 CFR 1910.20, Amendment to Access to Employee Exposure and Medical Records (53 FR 38163, dated 9/29/88); 29 CFR 1910.1000, Amendments; Correction to Air Contaminants (54 FR 2820, dated 1/19/89; 54 FR 28059, dated 7/5/89 and 54 FR 47513, dated 11/15/89); 29 CFR part 1926, Amendment to Concrete and Masonry Construction—Subpart Q (53 FR 22643, dated 6/16/88); 29 CFR 1926.58, Amendments to Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite (53 FR 35627, dated 9/14/88; 54 FR 30705, dated 7/21/89 and 54 FR 52027, dated 12/20/89); 29 CFR 1926.550, Addition of Final Rule; Redesignation of Cranes and Derricks (53 FR 29139, dated 8/2/88 and 54 FR 15405, dated 4/18/89); 29 CFR 1910.272, Amendment to Grain Handling Facilities; Final Rule (53 FR 17695, dated 5/18/88); 29 CFR 1910.120, Revision to Hazardous Waste and Emergency Response; Final Rule (54 FR 9317, dated 3/6/89); 29 CFR parts 1910.1048, Amendment; Correction to Formaldehyde (54 FR 29545, dated 7/13/89 and 54 FR 31765, dated 8/1/89); 29 CFR 1910.66, Revision to Powered Platforms for Building Maintenance; Final Rule (54 FR 31456, dated 7/28/89); 29 CFR 1910.150, Redesignation of Control of Hazardous Energy Source (Lockout/Tagout); Final Rule (54 FR 36687, dated 9/1/89); 29 CFR 1926.302, Correction to Powder Actuated Hand Tools (53 FR 36009, dated 9/16/88); 29 CFR 1926.800, Revision to Underground Construction; Final Rule (54 FR 23850, dated 6/2/89); 29 CFR 1926.704, Revision to Concrete and Masonry Construction (54 FR 41088, dated 10/5/89); and 29 CFR part 1926, Amendment to Occupational Safety and Health Standards—Subpart P, Excavations; Final Rule (54 FR 45959, dated 10/31/89).

These standards, contained in New Mexico Occupational Health and Safety Regulations OHSR 200 and OHSR 300, were promulgated on May 11, 1989 and February 9, 1990, in accordance with applicable State law.

The subject standards became effective July 12, 1989; July 21, 1989 and April 13, 1990, pursuant to New Mexico State Law, section 50–9–1 through 50–9–25.

2. *Decision.* The above standards have been reviewed and compared with relevant Federal standards. It has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Street, room 602, Dallas, Texas 75202; Director, Environmental Improvement Division, 1190 St. Francis Drive, room 2200-North, Santa Fe, New Mexico 87503; and the Office of State Programs, 200 Constitutiion Avenue, NW., room 3700, Washington, DC 20210.

4. Public Participation. Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reason.

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

The decision is effective June 12, 1990.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Dallas, Texas, this 19th day of April, 1990.

Gilbert J. Saulter,

Regional Administrator.

[FR Doc. 90–13573 Filed 6–11–90; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Pension Fund Investment Behavior of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m., Tuesday, June 26, 1990, in room C–2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine member Working Group was formed by the Advisory Council to study issues relating to Pension Fund Investment Behavior for employee welfare plans covered by ERISA.

The purpose of the June 26 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before June 22, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 22, 1990.

Signed at Washington, DC this 7th day of June, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90–13566 Filed 6–11–90; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Annuities of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11 a.m., Tuesday, June 26, 1990, in room C–2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine member Working Group was formed by the Advisory Council to study issues relating to Annuities for employee welfare plans covered by ERISA.

The purpose of the June 26 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before June 22, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 22, 1990.

Signed at Washington, DC this 7th day of June, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90–13567 Filed 6–11–90; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1:30 p.m., Tuesday, June 26, 1990, in room C–2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This ten member Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee welfare plans covered by ERISA.

The purpose of the June 26 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before June 22, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 22, 1990.

Signed at Washington, DC this 7th day of June, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90–13568 Filed 6–11–90; 8:45 am]

BILLING CODE 6450–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists Projects: New Forms Regional Initiative Section) to the National Council on the Arts will be held on June 27, 1990, from 9:30 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 27 from 3 p.m.–5 p.m. The topics will be guidelines and policy issues.

The remaining portion of this meeting on June 27 from 9:30 a.m.–3 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 4, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–13487 Filed 6–11–90; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview/Special Projects Section) to the National Council on the Arts will be held on June 26–28, 1990, from 9 a.m.–5 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 26 from 9 a.m.–5 p.m., on June 27 from 9 a.m.–1 p.m., and on June 28 from 3 p.m.–5 p.m. The topic will be policy issues.

The remaining portions of this meeting on June 27 from 1 p.m.–5 p.m. and on June 28 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsyvlania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 4, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–13488 Filed 6–11–90; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–445 and 50–446]

Texas Utilities Electric Co., Comanche Peak Steam Electric Station; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for the Comanche Peak Steam Electric Station from the Glen Rose-Somervell County Library, Glen Rose, Texas, to the University of Texas at Arlington, Arlington, Texas. The decision to relocate the collection was made because the library did not have the space to maintain the voluminous collection. Members of the public may now inspect and copy documents and correspondence related to the operation of the Comanche Peak Steam Electric Station at the Library—Government Publications/Maps, University of Texas at Arlington, 701 South Cooper, Arlington, Texas 76019. The Library is open on the following schedule: Monday through Thursday 7 am to 11:45 pm; Friday 7 am to 6 pm; Saturday 10 am to 6 pm; and Sunday 1 pm to 11 pm. Summer hours may differ slightly.

For futher information, interested parties in the Arlington area may contact the LPDR directly through Mrs. Pamela Morris, telephone number (817) 273–3391. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public documents room program or the availablility of documents at the Comanche Peak LPDR should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 6th day of June 1990.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 90–13527 Filed 6–11–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cancellation of Management Circulars

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Cancellation of Management Circulars FMC 74–6 and FMC 75–1.

SUMMARY: In an effort to eliminate nonessential policy direction imposed upon Federal agencies and to permit the exercise of greater managerial discretion on the part of affected agencies, the Office of Management and Budget, on February 6, 1990, published in the Federal Register a notice soliciting public comment on the proposed cancellation of three Federal Management Circulars, namely:

(1) FMC 74–6, "Operational Effectiveness of Decentralized Purchasing Activities", dated August 21, 1974;

(2) FMC 75–1, "Ensuring Consideration of Users' Experience with Federal Agency Supply Support Systems", dated February 7, 1975; and

(3) FMC 75–2, "Compatible Land Uses at Federal Airfields", dated September 30, 1975.

Comments were not received in either FMC 74–6 or FMC 75–1. However, comments were received from two agencies in regards to the proposed cancellation of FMC 75–2. The comments, from the Department of Housing and Urban Development (HUD) and the Air Force, both stated that FMC 75–2 was important to their individual missions. HUD stated that the policies outlined in the Circular helped to ensure that new residential construction, assisted by the Department, near airports and airfields is compatible with noise levels and the potential for aircraft accidents in the vicinity. The Air Force argued that FMC 75–2 plays an important role in the implementation of their Air Installation Compatible Use Zone (AICUZ) program which is designed to protect the public health, safety and welfare from the affects of noise and accident potential in the area around airports and airfields.

Upon review of the comments received, OMB has decided to cancel both FMC 74–6 and FMC 75–1. However, FMC 75–2 will remain in effect.

DATES: The cancellation of Federal Management Circular 74–6 and Federal Management Circular 75–1 is effective immediately upon publication of this notice in the Federal Register.

Dated: June 6, 1990.

Allan V. Burman,

Administrator.

[FR Doc. 90–13556 Filed 6–11–90; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Drug Advisory Council; Meeting

AGENCY: President's Drug Advisory Council; Office of National Drug Control Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix), of the second meeting of the President's Drug Advisory Council.

DATE AND TIME: June 20, 1990 from 9 a.m. to 4 p.m. (with a 90-minute lunch break at 12).

PLACE: Conference room 22, Old Executive Office Building (OEOB), Washington DC 20500.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Cooney, Staff Assistant, President's Drug Advisory Council, Executive Office of the President, Washington, DC 20503, (202) 466–3100.

SUPPLEMENTARY INFORMATION: The President's Drug Advisory Council was created by Executive Order 12696 of November 13, 1989 (54 FR 47507, November 15, 1989), with the general purpose of advising the President and the Director of the Office of National Drug Control Policy on the development, dissemination, explanation and promotion of national drug policy. At the June 20 meeting, the Council will receive reports from the National Coalition Subcommittee, the Volunteer Organizations Subcommittee, and the Private Prisons Subcommittee, and will continue the discussion of its future agenda which was begun at the first meeting on May 23, 1990. Members of the public interested in attending the meeting should contact the President's Drug Advisory Council, (202) 466–3100, at least one day prior to the meeting. Callers should be prepared to give their birthdate and social security number over the telephone, in order to facilitate clearance into the Old Executive Office Building. Due to unforeseen scheduling difficulties, notice of this meeting was slightly delayed.

John Walters,

Chief of Staff, Office of National Drug Control Policy.

[FR Doc. 90–13553 Filed 6–11–90; 8:45 am]

BILLING CODE 3180–02–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–17520; 812–7386]

Freedom Investment Trust et al.; Notice of Application

June 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Freedom Investment Trust, Freedom Investment Trust II and Freedom Investment Trust III, on behalf of themselves and any other registered open-end management companies, except "money market" or "no-load" funds, that may in the future become members of the Freedom group of investment companies (the "Funds"), Freedom Capital Management Corporation ("Freedom Capital"), Freedom Distributors Corporation ("Freedom Distributors"), and Sutro & Co. Incorporated ("Sutro") and Tucker Anthony Incorporated ("Tucker Anthony"), on behalf of themselves and as sponsors and depositors of Freedom Principal Return Trust, a unit investment trust to be created (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested: (a) Under section 6(c) granting exemptions from sections 12(d)(1), 14(a), 19(b) and 22(d) of the 1940 Act and rule 19b–1 thereunder; and (b) under section 17(d) and rule 17d–1 thereunder approving certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants seek an order: (a) To permit multiple series of Freedom Principal Return Trust (the "Trusts") to invest in portfolios consisting both of shares of one of the Funds (other than money market or no-load Funds) and zero coupon obligations, (b) to exempt the sponsors of the Trusts from having to take for their own account or place with others $100,000 worth of units in the Trusts, (c) to permit the Trusts to distribute capital gains resulting from redemption of Fund shares on a quarterly basis, (d) to permit waiver of any sales load otherwise applicable on Fund shares that, among other things, the Trusts have purchased, and (e) to approve certain affiliated transactions.

FILING DATES: The application was filed on September 7, 1989, and amended on December 13, 1989, April 10, 1990 and May 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 2, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o John A. Dudley, Esq., Sullivan & Worcester, 1025 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Funds are open-end management investment companies organized as Massachusetts business trusts and registered under the 1940 Act. Each is a series company within the meaning of Rule 18f–2 under the 1940 Act and may issue two or more series of shares, each such series representing the beneficial interest in one of its separate portfolios (a "Fund"). Freedom Capital Management Corporation serves as investment adviser to each Fund. Tucker Anthony and Freedom Distributors (the "Distributors") are principal underwriters of the Funds and shares of each Fund are distributed by the Distributors and by authorized securities dealers that have entered into sale agreements with the Distributors. Sutro, Tucker Anthony and Freedom Distributors are registered broker-dealers and indirect wholly-owned subsidiaries of John Hancock Mutual Life Insurance Company.

2. Shares of certain Funds are offered for sale at their net asset value without an initial sales load; however, such shares may be subject to a contingent deferred sales load imposed on redemption. Shares of other Funds may be offered for sale to the public through the Distributors at their net asset value plus an initial sales load, and these shares may be redeemed without charge or penalty at their net asset value. The Funds have adopted distribution plans pursuant to rule 12b–1 under the 1940 Act (the "Plans"). According to the Plans, the Funds pay the Distributors a monthly fee ("12b–1 fees") to compensate them for the services they provide and the expenses they bear in the distribution of shares of the Funds.

3. Freedom Principal Return Trust will be registered under the 1940 Act as a unit investment trust and will consist of a series of similar but separate Trusts, each created under a separate trust agreement (the "Trust Agreement") to be entered into by and among Sutro and Tucker Anthony, as sponsors and depositors (the "Sponsors"), a financial institution that is a bank within the meaning of section 2(a)(5) of the 1940 Act and satisfies the criteria in section 26(a) of the 1940 Act, as trustee (the

"Trustee"), and an independent evaluator having qualifications satisfactory to the Sponsors and the Trustee, as evaluator (the "Evaluator"). The objectives of the Trusts will be: (a) To preserve capital through investment in United States Treasury bonds or notes that have been stripped of their unmatured interest coupons, coupons that have been stripped from such United States Treasury obligations, or certificates of interest in or receipts for such stripped obligations or stripped coupons, or other evidences of an ownership interest thereof ("zero coupon obligations"), and (b) to provide long-term capital appreciation through investment in shares of one of the Funds.

4. Under the Trust Agreement, the Sponsors will deposit with the Trustee shares of the Fund that they have selected and zero coupon obligations that they have purchased for a particular Trust (or contracts for the purchase of such securities, which contracts will be backed by an irrevocable letter of credit). The Trustee will, simultaneously with such deposit, deliver to the Sponsors units representing the entire beneficial ownership interest in the Trust (the "Units"). Following the deposit of portfolio securities for each Trust by the Sponsors with the Trustee, and following the declaration of effectiveness of the registration statement for the Units of that Trust under the Securities Act of 1933 and clearance under the blue sky laws of the various states, the Sponsors will offer the Units of that Trust to the public. During the initial public offering period, the Sponsors will sell Units at a price based on the offering side evaluation of the zero coupon obligations and the net asset value of the Fund shares, plus a sales charge.

5. Each Trust will be structured so that it will contain a sufficient amount of zero coupon obligations to ensure that, at the scheduled maturity of such Trust, the initial purchasers of Units would receive back the approximate total amount of their original investments in the Trust (including the sales load), even if the Fund shares were worthless. The zero coupon obligations deposited in a Trust will have maturities coinciding with the maturity of the Trust, will be non-callable or callable at par, and their value at maturity will approximately equal the original public offering price of the Units on the initial date of deposit. To the extent that dividends are paid or capital gains distributions are made in respect of the Fund shares during the existence of the Trust, and/or to the extent that the Fund shares have value at the maturity of the Trust, the value of a Unitholder's investment will have increased.

6. Each Trust's quarterly, semiannual or other periodic distributions of income and capital gains, if any, will be paid in cash to Unitholders. The Sponsors may make available to Unitholders a vehicle for investment of such distributions that, if offered, will be described in the prospectus for the Trust. Such investment option, if offered, will be limited to investment of Trust distributions in shares of the particular Fund selected for deposit in the Trust's portfolio and such investment shares will be held by each Unitholder individually, not by the Trust. The Sponsors will also make available to Unitholders an investment option in connection with the distribution to Unitholders of the cash proceeds of the zero coupon obligations upon termination of a Trust, which will be described in the prospectus for the Trust.

7. The Sponsors will establish a proportionate relationship for each Trust between the zero coupon obligations and the Fund shares when the initial deposit is made with the Trustee. Under the Trust Agreement, the Sponsors may deposit additional zero coupon obligations and Fund shares that may result in a corresponding increase in the number of Units outstanding. Such additional Units may be continuously offered for sale to the public by means of the prospectus for the Trust. The Sponsors anticipate that any additional zero coupon obligations and Fund shares deposited after the initial date of deposit in connection with the sale of additional Units of a Trust will maintain as far as practicable the original proportionate relationship between the aggregate maturity value of the zero coupon obligations and the Fund shares. The original proportionate relationship on the initial date of deposit in respect of a Trust will be set forth in the prospectus for the Trust and in the related Trust Agreement.

8. Recognizing that the Sponsors will receive a sales load in connection with the sale of Units, the Distributors will rebate to the Trustee the 12b–1 fees they receive under the Plan in respect of the Funds shares held by the Trust. (This rebate will not be made in respect of shares held by Unitholders for their own accounts, since absent the Trust structure there will be no possibility of charging duplicative sales loads.) The Trustee will use the rebated 12b–1 fees to offset expenses incurred in administering the Trust. In addition, any applicable front-end sales load will be waived with respect to all Fund shares sold to or deposited in the Trust. Similarly, for any Fund shares that are deposited in the Trust and would be otherwise subject to a deferred sales load on redemption, such deferred sales load will be waived so long as the shares are redeemed by the Trustee.

9. After the completion of the initial offering period, while not obligated to do so, the Sponsors presently intend to maintain a secondary market for Units. In the absence of the availability of more favorable terms existing in the secondary market, any Units tendered for redemption to the Trustee will be redeemed by the Trustee. Subject to the payment of any applicable tax or other government charges that may be imposed thereon, this redemption will be made by payment of cash equivalent to the redemption price per Unit, determined by the Trustee as of 4 p.m. on the date of tender, multiplied by the number of Units tendered. The redemption price per Unit will be determined by dividing the net asset value of the Trust (based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares) by the number of Units outstanding.

Applicants' Legal Conclusions

1. Applicants assert that section 12(d)(1) of the 1940 Act is intended to prevent the duplication of fees and costs, concentration of control, and other adverse consequences to investors incident to the pyramiding of investment companies. Applicants contend that their proposal is structured to eliminate such pyramiding of expenses and control problems, and that the unit investment trust format is uniquely adaptable to avoiding such concerns. First, with respect to the pyramiding of expenses concern, shares of any Fund otherwise sold subject to an initial or contingent deferred sales load will be sold to each Trust and to Unitholders in connection with reinvestments during the existence of the Trust and upon termination, and may be redeemed, at net asset value. Moreover, the evaluation fee for Fund shares held in a Trust will be waived. Finally, Applicants point out that because a unit investment trust has an unmanaged portfolio, there will be no duplicative advisory fees charged as there would be in the case of an open-end investment company purchasing shares of other open-end investment companies. Applicants believe that the costs and expenses of the administration and operation of the Trusts and the Funds

should be reduced by the proposed arrangement. In support of their request for section 12(d)(1) relief, Applicants have provided an exhibit to the application analyzing the costs and benefits of the proposed arrangement. In addition, Applicants have agreed as a condition that the Distributors will immediately rebate to each Trust the 12b–1 fees that otherwise would be imposed in respect of Fund shares while such shares are held in a Trust. However, the 12b–1 fees will not be rebated with respect to Fund shares held directly by Unitholders. Unitholders who become direct shareholders would be in the same position as any other direct shareholders of the Fund and, therefore, Applicants believe that insulating them from 12b–1 fees would effectively subsidize them in a way that would be unfair to other shareholders.

2. Second, with respect to the concentration of control concern, Applicants maintain that their proposal addresses the potentially abusive problems resulting from concentration of voting power in a fund holding company or from the threat of large redemptions. Applicants have agreed as conditions to the requested order that the voting of shares of the Fund that are held in a Trust will be performed by the Trustee, and that the Trustee must vote all Fund shares held in a Trust in the same proportion as all other shares of that Fund that are not held by the Trust are voted. Applicants believe the threat of large redemptions is alleviated by agreeing to conditions: (a) Permitting the Trustee to sell Fund shares only when necessary to meet redemption obligations or expenses, (b) limiting the amount of any one Fund's shares that may be deposited in a Trust, and (c) requiring Applicants to structure the maturity dates of Trusts at least 30 days apart from one another. In addition, the Trustee has no discretionary ability to demand redemption of Fund shares and may do so only to meet redemption requests (and then only to the extent that the Sponsors do not purchase the Units in order to resell them in the secondary market) and to pay Trust expenses.

3. Applicants believe that because the Sponsors would deposit substantially more than $100,000 of zero coupon obligations and Fund shares in each Trust, Applicants will comply fully with section 14(a) of the 1940 Act. However, Applicants recognize that section 14(a) has been interpreted to require that the initial capital investment in an investment company be made without any intention to dispose of the investment. Under this interpretation, the Trusts would not satisfy section 14(a) because of the Sponsors' intention to sell all the Units thereof. Consequently, Applicants seek an exemption from section 14(a). To satisfy the objectives of section 14(a), Applicants have agreed that the creation and operation of each Trust will comply in all respects with the requirements of rule 14a–3 under the 1940 Act, except that the Trusts will not restrict their portfolio investments to "eligible trust securities" as defined in the rule.

4. Applicants state that the purposes of section 19(b) of the 1940 Act and rule 19b–1 thereunder are to eliminate manipulative capital gains distributions and confusion created by a failure to distinguish between distributions of income and capital gains. While Applicants do not qualify for the exceptions provided in subsections (b) and (c) of rule 19b–1, they argue that the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions do not exist in the case of the Trusts. Any gains from the redemption of Fund shares would be triggered by the need to meet Trust expenses or by requests to redeem Units, events over which the Sponsors and the Trustee have no control. Cash generated from the redemption of Fund shares will be used to pay expenses and redemptions, and not to generate distributions to Unitholders. Although the Sponsors do have control over the Units, they have no incentive to redeem or permit the redemption of Units in order to generate capital gains for distribution to Unitholders. Moreover, because principal distributions are clearly indicated in accompanying reports to Unitholders as a return of principal and are expected to be relatively small in comparison to normal distributions of income, there is little danger of confusion from failure to differentiate among distributions. Finally, any retention of capital gains until year-end would be to the detriment of Unitholders. Based on these reasons, and because Applicants will comply in all other respects with section 19(b) and rule 19b–1, Applicants believe that exemptive relief would be consistent with the purposes and policies of the 1940 Act and in the best interests of the Unitholders.

5. Applicants also request an order of the Commission exempting them from the provisions of section 22(d) of the Act to the extent necessary to permit waivers of any sales load otherwise applicable on sales or redemptions of Fund shares under all circumstances: (a) Where the Sponsors have purchased such shares in connection with the sale of Units, (b) where the proceeds of zero coupon obligations upon termination of a Trust and distributions from a Trust made during the existence of the Trust, have been reinvested by a Unitholder in additional Fund shares, and (c) where a Trust at maturity has transferred a Unitholder's proportionate number of Fund shares from the Trust to a registration in the Unitholder's name in lieu of redeeming such shares. Applicants believe that it would be fair and equitable and in the public interest and in the interest of shareholders for the sales load to the waived. The Sponsors believe that the sales load to be imposed on the Units accurately reflects their costs of sale and will adequately compensate the parties involved, in light of the minimal direct sales effort required with respect to sales of Fund shares to a Trust and to the participants in any reinvestment plan offered by the Sponsors. Furthermore, in view of the sales load to be imposed on the Units, imposition of any sales load upon redemption of Fund shares held by a Trust would be duplicative to investors in the Trusts and, accordingly, would raise questions under section 12(d)(1) with regard to the pyramiding of expenses. Waiver of the sales load is fair to remaining Fund shareholders because, as noted above, it is expected to reduce the impact of the termination of a Trust on the Fund whose shares it holds by providing Unitholders with an incentive to transfer the registration on their proportionate number of Fund shares from the Trust to their own account in lieu of redemption and to invest the cash proceeds of the zero coupon obligations in additional Fund shares. This would tend to reduce the amount of net redemptions of Fund shares upon termination of a Trust, thereby minimizing the Fund's need to sell securities to meet redemptions when investment considerations might indicate that they continue to be held. All Funds whose shares are subject to a sales load upon redemption will fully disclose the waiver provision in their prospectuses.

6. Applicants lastly state that their proposal addresses potential section 17(d) and rule 17d–1 concerns to the extent that the proposed transaction constitutes an affiliated person, acting as principal, engaging in a joint enterprise or arrangement with a registered investment company. There will be no duplication of sales charges with respect to the Fund shares and Units because Fund shares will be sold and redeemed at net asset value. Moreover, there will be no overlapping

of management or evaluation fees. Therefore, Applicants believe that neither the Funds nor the Trusts will be disadvantaged by the arrangement and that they will benefit from the proposed transaction. Accordingly, Applicants conclude that the proposed arrangement is consistent with the provisions, policies and purposes of the 1940 Act and participation by each registered investment company is not on a basis less advantageous than that of other participants.

Applicants' Conditions

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of Units or to pay Trust expenses should distributions received on Fund shares and rebated 12b–1 fees prove insufficient to cover such expenses.

2. Any 12b–1 fees received by the Distributors in connection with the distribution of Fund shares to a Trust will be immediately rebated to the Trustee.

3. Applicants will comply with Rule 12b–1 as currently adopted and as it may be modified.

4. No one Trust will, at the time of any deposit of any Fund shares, hold as a result of that deposit more than 10% of the then outstanding shares of a Fund.

5. All Trusts will be structured so that their maturity dates will be at least thirty days apart from one another.

6. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trusts will not restrict their portfolio investments to "eligible trust securities."

7. Shares of a Fund which are held in a Trust will be voted by the Trustee, and the Trustee will vote all Fund shares held in a Trust in the same proportion as all shares of that Fund not held by the Trust are voted.

8. Applicants agree to comply with rule 22d–1 as adopted and as it may be modified.

9. Any shares of the Funds deposited in any series of the Trusts or any shares acquired by Unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value. Any waiver of a deferred sales load necessary to conform to the foregoing requirement will either be approved by order of the Commission or will comply with the provisions of proposed rule 6c–10 under the 1940 Act if and when such rule is adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–13525 Filed 6–11–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17523; 812–7355]

Technology Funding Partners III, L.P., et al.; Notice of Application

June 6, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Technology Funding Partners III, L.P. ("TFP III"), Technology Funding Venture Partners IV, an Agressive Growth Fund. L.P. ("TFP IV"), Technology Funding Inc. ("TFI"), and Technology Funding Ltd. ("TFL").

RELEVANT 1940 ACT SECTIONS: Order requested under section 17(d) and rule 17d–1 permitting a joint transaction which is otherwise prohibited by section 57(a)(4) and rule 17d–1.

SUMMARY OF APPLICATION: TFP III and TFP IV (the "Partnerships") are affiliated persons, as defined by the 1940 Act. TFI and TFL serve as the managing general partners (the "Managing General Partners") of the Partnerships. Applicants seek an order under section 17(d) of the 1940 Act and rule 17d–1 thereunder permitting a joint investment by the Partnerships in certain securities. Absent relief, the transaction would be prohibited by section 57(a)(4) and rule 17d–1.

FILING DATE: The application was filed on July 7, 1989 and amended on December 18, 1989, March 16, 1990, May 18, 1990, and May 31, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Technology Funding Inc., 2000 Alameda de las Pulgas, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Managment, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each of TFP III and TFP IV is a limited partnership organized under Delaware law pursuant to an Amended and Restated Limited Partnership Agreement (with respect to each, a "Partnership Agreement") that has elected to be regulated as a business development company under the 1940 Act. Each has been designed to provide individuals with the ability to participate primarily in venture capital investments in emerging companies (the "Portfolio Companies"). The investment objective of each Partnership is long-term capital appreciation from such investments and preservation of limited partner capital through risk management and active involvement with the Portfolio Companies.

2. FTI is a California corporation and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). TFL is a California limited partnership and is registered as an investment adviser under the Advisers Act. TFL has seven individual general partners, 24 limited partners, and two special limited partners. The seven individual general partners of TFL own 71% of the outstanding stock of TFI; the remaining stock is owned by TFI employees and outside investors.

3. TFP III and TFP IV each have five general partners, three of which are individuals. TFP III and TFP IV each have received an exemptive order from the SEC determining that each of these individual general partners (with respect to each, the "Independent General Partners") is not an "interested person" of TFP III or TFP IV or of certain other entities specified therein within the meaning of section 2(a)(19) of the 1940 Act solely by reason of being a general partner of a Partnership or a co-partner of the other general partners of a Partnership. Investment Company Act

Release Nos. 15764 (June 2, 1987) (TFP III) and 16626 (November 8, 1988) (TFP IV). Each Partnership's Partnership Agreement provides that, if at any time the number of Independent General Partners is less than a majority of the general partners, the general partners shall, within 90 days, designate and admit one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the general partners. The Partnerships do not and will not have common Independent General Partners.

4. In June 1989, TFP IV committed to purchase $500,000 of limited partner interests in Medical Science Partners, L.P. ("MSP"), an unaffiliated private venture capital partnership managed by Medical Science Ventures, L.P. The commitment was conditioned on MSP's receiving investment commitments aggregating at least $25,000,000. MSP is a seed-stage partnership that will invest in technologies developed from medical research at Harvard Medical School and related area hospitals. TFP IV's total $500,000 commitment represents approximately 2.0% of the approximately $25,000,000 that has been committed to MSP as of the date of the amended application. On January 25, 1990, TFP IV purchased $125,000 of limited partner interests in MSP.

5. At this time (and at the time TFP IV's commitment was made), the Managing General Partners of TFP IV contemplate that if MSP raises at least $30,000,000 and the order requested hereby is granted, TFP III also will be offered the opportunity to purchase $500,000 of limited partner interests in MSP, which purchase would result in the acquisition by TFP III of the same percentage interest in MSP as that committed to by TFP IV. TFP III would thereby become a limited partner of MSP in the same percentage amount and on the same terms and conditions as TFP IV. Because the offering by TFP IV is expected to raise a substantially similar amount of proceeds to that raised by TFP III, the allocation between TFP III and TFP IV of the total investment in MSP securities by the Partnerships will be tantamount to a pro rata allocation in proportion to their respective capitalizations.

6. Applicants propose to allow TFP III and TFP IV to purchase the securities of MSP jointly with one another in a transaction which would otherwise be prohibited by section 57(a)(4) and rule 17d–1 under the 1940 Act (the "co-investment transaction"). The co-investment transaction satisfies the investment objectives of each Partnership.

Applicants' Legal Analysis and Conclusions

1. Section 17(d) of the 1940 Act and rule 17d–1 thereunder provide, among other things, that it shall be unlawful for an affiliated person of an investment company, or an affiliated person of such person, acting as principal, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which any such investment company, or a company controlled by such investment company, is a participant unless an application regarding such joint enterprise or arrangement has been filed with and an exemptive order issued by the SEC. Section 57(a)(4) of the 1940 Act applies similar prohibitions to affiliated persons of a business development company, but section 57(i) permits a business development company to take advantage of rules adopted under section 17(d). In reviewing applications filed pursuant to rule 17d–1, the SEC considers whether the participation of such investment company (or business development company) or controlled company in such joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the 1940 Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants submit that the request for the order permitting the Partnerships to participate in the co-investment transaction is supported by a number of factors. First, the rationale for establishing TFP III and TFP IV has been, and will be, to provide access to venture capital investments not generally available to individual investors who meet the Partnerships' respective suitability standards. Second, applicants believe that the continuing substantive obligations and fiduciary duties imposed on the Managing General Partners and the Independent General Partners of each Partnership provide significant protections for limited partners. The Independent General Partners of TFP III will receive a written recommendation from its Managing General Partners in support of the co-investment transaction and will have the right, in their sole discretion, to determine not to participate in the co-investment transaction. In addition, the Managing General Partners will have no financial interest in the co-investment transaction other than their equity interests in the Partnerships and their management fee and expense reimbursement arrangements with the Partnerships. Further, the terms and conditions of the joint transaction will be identical for each Partnership.

3. Applicants submit that the absence of the potential for overreaching, together with the conditions set forth above, provide an effective control on potential conflicts of interest and make participation by each Partnership in the co-investment transaction consistent with the protection of investors and the provisions, policies, and purposes of the 1940 Act.

Applicants' Conditions

1. Before the co-investment transaction will be effected, the Managing General Partners will make a written investment presentation respecting the proposed co-investment transaction to the General Partners of TFP III. The written presentation will focus on the nature of MSP's operations and objectives and on the terms and conditions of the co-investments transaction. The presentation will be based on such considerations and circumstances as the Managing General Partners deem appropriate, including without limitation the consistency of the proposed co-investment transaction with the investment objectives of TFP II. In this context, "investment objectivess" of TFP III include its policies recited in filings made with the SEC under the Securities Act of 1933, the Securities Exchange Act of 1934 (the "1934 Act"), its registration statement under the 1934 Act, and its periodic reports to its Limited Partners. TFP III will make its own decision and will have the right to decide not to participate in the co-investment transaction.

2. There will be no consideration paid to the Managing General Partners or affiliated persons of such affiliated persons, directly or indirectly, including without limitation any type of brokerage commission, in connection with the co-investment transaction. However, the Managing General Partners will continue to receive amounts under their normal compensation and reimbursement arrangements with the Partnerships (as described in the application) and will participate indirectly in the co-investment transaction through their existing equity interests in the Partnerships.

3. A majority of the Independent General Partners, all of whom are (and will be) natural persons, as well as a majority of all of the general partners as a group, of TFP III must each conclude, as to TFP III, that as presented to them by the Managing General Partners, the terms of the proposed co-investment transaction are reasonable and fair and do not involve overreaching of TFP III or

its limited partners on the part of any person concerned. The Independent General Partners will, for purposes of reviewing each such recommendation of the Managing General Partners, request such additional information from the Managing General Partners as they deem necessary to the exercise of their reasonable business judgment, and they will also employ such experts, including lawyers and accountants, as they deem appropriate to the reasonable exercise of this oversight function.

4. If TFP III decides to participate, the co-investment transaction will thereafter be effected for each Partnership at the same price and on the same terms and conditions, and the MSP securities purchased by TFP III and TFP IV will consist of the same class of securities, including the same registration rights (if any) and other rights related thereto, and will be purchased at the same unit consideration. If one Partnership elects to sell, exchange, or otherwise dispose of an interest in the MSP securities, notice of the proposed disposition will be given to the other Partnership at the earliest practical time. The other Partnership will participate in such disposition at the same time for the same unit consideration and in amounts proportional to its respective holdings of such securities, unless a majority of the other Partnership's general partners and a majority of the Independent General Partners determine, after considering any recommendations by the Managing General Partners, to not participate in the sale. The other Partnership may elect to sell an amount that is not in proportion to its respective holdings of such securities upon approval by the majority of its general partners and a majority of its Independent General Partners.

5. If a Partnership elects to make a "follow-on" investment (i.e., an additional investment in MSP securities) or exercise warrants or other rights of the MPS securities, notice of such transaction will be provided to the other Partnership at the earliest practicable time. All "follow-on" investments will be treated in the same manner as the initial co-investment.

6. A decision by TFP III not to participate in the co-investment transaction or a decision by either Partnership not to sell, exchange, or otherwise dispose of its investment in MSP in the same manner and at the same time as the other Partnership shall include a finding that such decision is fair and reasonable to TFP III or the non-participating Partnership, as the case may be, and not the result of overreaching of TFP III or the non-participating Partnership, as the case may be, or its limited partners by the Managing General Partners.

7. Each Partnership will maintain records of any meetings at which matters related to the SEC order are discussed in the manner prescribed in section 57(f)(3) of the 1940 Act and will otherwise comply with section 57(h) of the 1940 Act. All records referred to or required under these conditions will be available for inspection by the SEC.

8. Neither the Managing General Partners (nor affiliated persons of such affiliated persons) will participate directly or indirectly in the co-investment transaction effected by a Partnership pursuant to the SEC order absent an amendment or unless a separate exemption is otherwise available or obtained thereunder. For this purpose, the term "participate" shall not include either the Managing General Partners' existing equity interests in the Partnerships, their management fees, or their reimbursement arrangements with the Partnerships regarding Organizational and Offering Expenses and Operating Costs (as defined in the Partnership Agreements).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-13523 Filed 6-11-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17526; 811-932]

Wisconsin Securities Company of Delaware; Notice of Application

June 6, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Wisconsin Securities Company of Delaware.

RELEVANT 1940 ACT SECTIONS: Section 8(f) and Rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on December 3, 1986 and amended on December 12, 1988. In addition, Applicant submitted supplemental letters dated November 10, 1989, December 19, 1989 and May 9, 1990, clarifying certain actions taken to dissolve Applicant and distribute its remaining assets.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on July 2, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Richard L. Teigen, Esq., Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3567 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland, (301) 258-4300).

Applicant's Representations

1. On July 19, 1960, Applicant filed a registration statement pursuant to section 8(b) of the 1940 Act to register as a closed end, non-diversified, management investment company. Applicant has never filed a registration statement pursuant to the Securities Act of 1933.

2. On December 17, 1985, Applicant's Board of Directors unanimously approved its Plan of Liquidation and Dissolution (the "Plan") and recommended its submission to Applicant's stockholders. At the annual meeting held on May 8, 1986, a majority of Applicant's stockholders approved the Plan. Applicant filed a Certificate of Dissolution with the Secretary of State of the State of Delaware on May 28, 1986.

3. Distributions in partial liquidation were made to Applicant's stockholders on June 4, June 15, August 1, October 15 and December 29, 1986. On October 15, 1986, Applicant also distributed to its shareholders certificates representing an

interest in a voting trust into which Applicant transferred all of its one-half interest in the common stock of Sandusky Foundry & Machine Company ("Company"). The voting trust was created pursuant to Applicant's Plan to permit its shareholders to continue control of their one-half interest in the Company rather than disbursing and diminishing such control, thus insuring the continuity and stability of the Company's management. The voting trust's trustees are directors of both Applicant and the Company. In addition, any remaining assets not distributed on December 29, 1986, were transferred on December 31, 1986, to a liquidating trust, the beneficiaries of which are Applicant's stockholders and the trustees of which are Applicant's officers. Such transfer represents a final liquidating distribution. The assets in the liquidating trust not used to pay expenses were sold and the net proceeds distributed pro rata, along with any remaining cash, to the beneficiaries. The final payment under the liquidating trust was made on December 15, 1989.

4. Fees and expenses associated with implementing the Plan aggregated approximately $69,755.52, including legal, mailing and postage and appraisal fees and expenses. All expenses were borne by Applicant.

5. Applicant has no stockholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-13524 Filed 6-11-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-90-26]

Petitions for Exemption; Receipt and Disposition

AGENCY: Federal Aviation Administration.

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.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 2, 1990.

ADDRESSES: 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 June 4, 1990.

Jean Neely,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 24237.
Petitioner: Headquarters, United States Air Force.
Sections of the FAR Affected: 14 CFR 91.119 and 91.121.
Description of Relief Sought: To extend Exemption No. 4371A that allows the Military Airlift Command to conduct low-level delivery training missions. Exemption No. 4371A will expire on July 31, 1990.

Docket No.: 26157.
Petitioner: Professional Modification Services, Inc.
Sections of the FAR Affected: 14 CFR 145.35(a)(4) and 147.37(b).
Description of Relief Sought: To allow petitioner to repair and maintain Boeing 707 aircraft using covered work docks until construction of a new hangar extension is completed.

Docket No: 26194.
Petitioner: Private Jet Services.
Sections of the FAR Affected: 14 CFR 91.191(a)(4); 135.165(a)(5) and (6); and 135.165(b)(5), (6), and (7).
Description of Relief Sought: To allow petitioner to operate certain extended overwater flights with only one long-range navigation system and one high-frequency communications system.

Docket No: 26210.
Petitioner: Trans World Airlines, Inc..
Sections of the FAR Affected: 14 CFR 121.411 and 121.413.
Description of Relief Sought: To allow petitioner to utilize Aeroformation's simulator/flight instructors for the purpose of training petitioner's initial cadre of pilots in the Airbus Industrie A-320 aircraft in Toulouse, France.

Docket No: 26231.
Petitioner: Gulkana Air Service.
Sections of the FAR Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought: To allow petitioner's pilots to remove and/or replace passenger seats of its aircraft used in Part 135 operations.

Docket No: 26236.
Petitioner: Machen, Inc.
Sections of the FAR Affected: 14 CFR 21.19(b)(2).
Description of Relief Sought: To allow petitioner to receive Supplemental Type Certificate approval for installation of turbofan engines in place of existing reciprocating engines and propellers on Piper Aerostar aircraft.

Docket No: 085CE.
Petitioner: Burkhart Grob.
Sections of the FAR Affected: 14 CFR 23.841(a) and (b)(6).
Description of Relief Sought: To allow the Grob Model Egrett G 520 airplane, for operation over 31,000 feet, to have a cabin pressure altitude of more than 15,000 feet in the event of any probable failure or malfunction in the pressurization system. For operation over 29,000 feet, to allow the warning indication to be for a cabin pressure altitude of 20,000 feet instead of 10,000 feet. When the airplane is operating above 29,000 feet, the pilot will be wearing a full pressure suit.

Dispositions of Petitions

Docket No: 19651.
Petitioner: Learjet Inc.
Sections of the FAR Affected: 14 CFR 21.197.
Description of Relief Sought/ Disposition: To amend Exemption No. 4593B that makes petitioner's aircraft eligible for the issuance of special flight permits for ferrying aircraft between Wichita, Kansas, and

Tucson, Arizona, for the purpose of completion, subject to certain conditions and limitations. The amendment to Exemption No. 4593B would submit petitioner's new name (Learjet Inc.) in place of the name currently reflected (Learjet Corporation). *Grant, June 1, 1990, Exemption No. 4593C.*

Docket No: 21780.
Petitioner: Civil Air Patrol.
Sections of the FAR Affected: 14 CFR 61.118.
Description of Relief Sought/ Disposition: 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. *Grant, May 16, 1990, Exemption No. 4042C.*

Docket No: 25286.
Petitioner: United States Parachute Association.
Sections of the FAR Affected: 14 CFR 91.15(a)(2), 91.47 and 105.43(a)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 4946 that allows foreign nationals to participate in the U.S. National Skydiving Championship events at Muskogee Municipal Airport, Oklahoma, as well as other locations to be determined, without having to comply with parachute equipment and packing requirements. In addition, the exemption allows the carriage of 40 parachutists in DC–3/C–47 aircraft during parachute competitions. *Grant, May 25, 1990, Exemption No. 4946A.*

Docket No: 25552.
Petitioner: Alaska Department of Transportation and Public Facilities.
Sections of the FAR Affected: 14 CFR 45.29(h).
Description of Relief Sough/Disposition: To extend Exemption No. 4910 that allows persons to operate aircraft across the inner portion of the Alaskan ADIZ without displaying temporary or permanent registration marks at least 12 inches high, unless otherwise required by any other provision of the FAR. *Grant, May 30, 1990, Exemption No. 4910B.*

Docket No: 25990.
Petitioner: Wrangler Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought/ Disposition: To allow petitioner to contract with certain foreign companies for the maintenance, repair, overhaul, and modification of engines, propellers, and other systems and components of the Canadair CL–44 aircraft operated by the petitioner and to purchase certain parts from certain foreign suppliers. *Grant, May 24, 1990, Exemption No. 5180.*

[FR Doc. 90–13504 Filed 6–12–90; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Hardin and Grundy Counties, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice of intent to advise the public that an environmental impact statement will be prepared for a proposed highway project in Hardin and Grundy Counties, Iowa.

FOR FURTHER INFORMATION CONTACT: H.A. Willard, FHWA Division Administrator, Federal Highway Administration, Ames, Iowa 50010. Telephone: (515) 233–1664.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to relocate U.S. Route 20 (U.S. 20) in Hardin and Grundy Counties, Iowa. The proposed improvement would involve relocation and new highway construction between existing U.S. Route 65 south of the community of Iowa Falls in Hardin County easterly for existing relocated U.S. Route 20 at the Grundy-Black Hawk County line for a distance of about 37 miles.

Relocation of U.S. 20 within the study corridor is necessary to provide for existing and projected traffic demands and improved access to northern Iowa. Additionally, the proposed action will provide upgraded traffic service levels within the project area and will reduce the lengths of present U.S. 20 from approximately 55 to 37 miles. Implementation of this proposal may require highway construction through the Iowa River greenbelt and will require bridge construction across the Iowa River in Hardin County.

Alternatives under consideration include (1) taking no action; (2) construction of a new four-lane controlled access highway. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Public meetings will be held to review the project upon completion and publication of the EIS. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be made available for public and agency review prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

H.A. Willard,
Division Administrator, Ames, Iowa.

[FR Doc. 90–13557 Filed 6–11–90; 8:45 am]
BILLING CODE 4910–22–M

Environmental Impact Statement; Polk County, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice of intent to advise the public that an environmental impact statement will be prepared for a proposed highway project in Polk County, Iowa.

FOR FURTHER INFORMATION CONTACT: H.A. Willard, FHWA Division Administrator, Federal Highway Administration, Ames, Iowa 50010. Telephone: (515) 233–1664.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate Route 235 (I–235) in Polk County, Iowa. The proposed improvement may involve improving I–235 through reconstruction in part, and may include construction of additional travel lanes and interchange reconstruction. Upgrading within the study corridor is necessary to provide for existing and projected traffic demands and to provide upgraded

traffic service levels within the Des Moines metropolitan area.

Alternatives under consideration include (1) taking no action; (2) improving or expanding the existing local street system; (3) improving or rebuilding I–235; (4) development of low-capital investment options (such as transit service improvements, promotion of non-auto or high-occupancy auto use, reduced peak-period travel) to eliminate the need for future capital intensive improvements on I–235.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held to review the project prior to and during EIS development. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be made available for public and agency review prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

H.A. Willard,

Division Administrator, Ames, Iowa.

[FR Doc. 90–13558 Filed 6–11–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Appointment of Conservator; First Federal Savings Bank of Annapolis

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Bank of Annapolis, Annapolis, Maryland ("Savings Bank") on June 1, 1990.

Dated: June 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–13533 Filed 6–11–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Conservator; Investors Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Investors Federal Savings Bank, Deerfield Beach, Florida ("Savings Bank") on June 1, 1990.

Dated: June 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–13541 Filed 6–11–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; Financial Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Financial Federal Savings and Loan Association, Fresno. California ("Association"), on June 1, 1990.

Dated: June 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–13531 Filed 6–11–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; First Annapolis Savings Bank, F.S.B.

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Annapolis Savings Bank, F.S.B., Annapolis, Maryland ("Savings Bank"), on June 1, 1990.

Dated: June 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–13532 Filed 6–11–90; 8:45 am]

BILLING CODE 6720–01–M

Fountainebleau Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Fountainebleau Federal Savings Bank, Slidell, Lousiana ("Savings Bank"), on June 1, 1990.

By the Office of Thrift Supervision.

Dated: June 7, 1990.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–13534 Filed 6–11–90; 8:45 am]

BILLING CODE 6720–01–M

Investors of Florida Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Onwers' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Investors of Florida Savings Banks, Deerfield Beach, Florida ("Savings Bank") on June 1, 1990.

By the Office of Thrift Supervision.

Dated: June 7, 1990.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–13535 Filed 6–11–90; 8:45 am]

BILLING CODE 6720–01–M

Lafayette Savings and Loan Association, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Onwers' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,

the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Lafayette Savings and Loan Association, F.A., Gretna, Louisiana ("Association") on June 1, 1990.

By the Office of Thrift Supervision.

Dated: June 7, 1990.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-13536 Filed 6-11-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; New Braunfels Savings and Loan Association, F.A.

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by Section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for New Braunfels Savings and Loan Association, F.A., New Braunfels, Texas ("Association"), on June 1, 1990.

Dated: June 7, 1990

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc 90-13537 Filed 6-11-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; New Mexico Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by Section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for New Mexico Federal Savings Association, Albuquerque, New Mexico ("Association"), on June 1, 1990.

Dated: June 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc 90-13538 Filed 6-11-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Spindletop Savings Association, F.A.

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by Section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Spindletop Savings Association, F.A., Beaumont, Texas ("Association"), on June 1, 1990.

Dated: June 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-13539 Filed 6-11-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Western Savings and Loan Association, F.A.

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by Section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Western Savings and Loan Association, F.A., Phoenix, Arizona ("Association"), on May 31, 1990.

Dated: June 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-13540 Filed 6-11-90; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if appicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: June 4, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Revision

1. Veterans Benefits Administration.
2. Invitation, Bid, and/or Acceptance or Authorization.
3. VA Form 26-6724.
4. This form is used to solicit competitive bids or serves as a work order for the repair of properties acquired by VA. It also serves as a record of contractor's bid, VA acceptance of bid, inspection of completed work, and a contractor's invoice and payment.
5. On occasion.
6. Businesses or other for-profit.
7. 200,000 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90-13514 Filed 6-11-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the

Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: June 4, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.

2. Request for Determination of Reasonable Value (Used Manufactured Home).

3. VA Form 26–8728.

4. This form is used to obtain appraisal of used manufactured home units proposed for guaranteed financing. It is also used to request liquidation appraisal of such units.

5. On occasion.

6. Individuals or households—Businesses or other for-profit—Small businesses or organizations.

7. 45,000 responses.

8. ⅙ hour.

9. Not applicable.

[FR Doc. 90–13513 Filed 6–11–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 113
Tuesday, June 12, 1990

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

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 F.R. 23175.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, June 20, 1990.

CHANGE IN THE MEETING: The open Commission meeting scheduled at 10:00 a.m. has been changed to 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-13687 Filed 6-8-90; 1:38 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 F.R. 23175.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:00 a.m., Wednesday, June 20, 1990.

CHANGE IN THE MEETING: The closed Commission meeting scheduled at 11:00 a.m. has been changed to 3:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-13688 Filed 6-8-90; 1:38 pm]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

June 7, 1990

FCC To Hold Open Commission Meeting Thursday, June 14, 1990

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 14, 1990, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW.

Item No., Bureau, and Subject

1—General Counsel—Title: Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988. Summary: The Commission will consider proposed rules to collect information necessary to implement section 5301 of the Anti-Drug Abuse Act of 1988 with respect to professional and commercial licenses issued by the Commission.

2—General—Title: In the Matter of Regulations Concerning Indecent Communications by Telephone. (GEN Docket No. 90-64). Summary: The Commission will consider whether to adopt final rules under Section 223(b) of the Communications Act governing indecent material made available by telephone.

3—Common Carrier—Title: Policies and Rules Concerning Operator Service Providers. (RM-6767). Summary: The Commission will consider whether to adopt a Notice proposing certain rules regarding operator service providers.

4—Chief Engineer—Title: Amendment of the Commission's Rules to Establish New Personal Communications Services. (Rms 7140 and 7155). Summary: The Commission will consider whether to adopt a Notice of Inquiry to develop a public record on how best to implement new personal communications services in the United States.

5—General—Title: Amendment of Parts 2 and 15 of the Rules with Regard to the Operation of Spread Spectrum Systems. (GEN Docket No. 89-354). Summary: The Commission will consider adoption of a Report and Order that amends the rules concerning the operation of spread spectrum systems in the 902-928 MHz, 2400-2483.5 MHz and 5725-5850 MHz bands.

6—Private Radio—Title: Trunking in the Private Land Radio Services for More Effective Use of the Spectrum. (PR Docket No. 87-213). Summary: The Commission will consider whether to adopt a Report and Order affecting the number of frequencies available for trunked technology in the 800 MHz frequency band.

7—Private Radio—Title: Amendment of Part 87 of the Commission's Rules to Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations. Summary: The Commission will consider whether to propose technical standards for avionics to be used in conjunction with the Mobile-Satellite Service.

8—Private Radio Chief Engineer—Title: Amendment of Parts 2 and 87 of the Commission's Rules to Permit the Aviation Services to Use Frequencies in the 136-137 MHz band. (GEN Docket No. 89-295). Summary: The FCC will consider whether to adopt a Report and Order to amend the Frequency Allocation Table and the Aviation Services Rules, contained in Parts 2 and 87 of the Commission's Rules, respectively.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Issued: June 7, 1990.

[FR Doc. 90-13622 Filed 6-8-90; 10:13 am]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 7, 1990

TIME AND DATE: 2:00 p.m., Wednesday, June 13, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *David Thomas and George Isaacs v. Ampak Mining, Inc.*, Docket No. KENT 89-13-D, etc. (Issues include consideration of a motion to remand.)

2. *Secretary of Labor on behalf of Price and Vacha; and UMWA v. Jim Walter Resources, Inc.*, Docket No. SE 87-128-D. (Continued consideration of the case.)

It was determined by a unanimous vote of Commissioners that this meeting be closed and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90-13640 Filed 6-8-90; 10:49 am]

BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 7, 1990

TIME AND DATE: 10:00 a.m., Thursday, June 14, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Pennsylvania Electric Company*, Docket No. PENN 88–227. (Issues include whether Pennsylvania Electric Company is subject to Mine Act jurisdiction.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Pennsylvania Electric Company*, Docket No. PENN 88–227. (see oral argument listing)

It was determined by a unanimous vote of Commissioners that this item be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90–13641 Filed 6–8–90; 10:49 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 18, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th an 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 8, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–13732 Filed 6–8–90; 3:16 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

USITC SE–90–13

TIME AND DATE: Thursday, June 21, 1990 at 9:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. Nos. 731–TA–439–444 (F) (Industrial Nitrocellulose from Brazil, Japan, The People's Republic of China, The Republic of Korea, The United Kingdom, and West Germany)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: June 6, 1990.

Kenneth R. Mason,

Secretary,

[FR Doc. 90–13677 Filed 6–8–90; 11:59 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

USITC SE–90–11A

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 22990—dated June 5, 1990.

ADDITIONAL MEETING SCHEDULED FOR: 10:50 a.m., Wednesday, June 6, 1990.

Notice is given that an emergency Commission meeting was scheduled at 10:50 A.M., on June 6, 1990 in conformity with 19 C.F.R. § 201.35(c)(1). Commissioners Cass, Eckes, Lodwick, Rohr, and Newquist determined by recorded vote to convene the meeting. It was affirmed that no earlier announcement of the additional meeting was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: June 7, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–13678 Filed 6–8–90; 11:59 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 19, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31494, *Intermountain Western Railroad Company—Purchase—Union Pacific Railroad Company, Boise Group Branch Lines*

AB No. 55 (Sub-No. 342X), *CSX Transportation, Inc.—Abandonment Exemption—Between Athens and Little Hocking, In Athens and Washington Counties, OH*

AB No. 31 (Sub-No. 29), *The Grand Trunk Western Railroad Co.—Abandonment—In Clark, Madison and Fayette Counties, OH*

Ex Parte No. MC–194, *American Bus Association and United Bus Owners of America—Petition for Rulemaking—Prohibitation Against Smoking on Interstate Motor Passenger Carrier Vehicles*

Action on Smoking and Health—Petition for Rulemaking—Prohibitation Against Smoking on Interstate Motor Passenger Carrier Vehicles

No. MC–1515 (Sub–No. 406), *Greyhound Lines, Inc., Exit Petition—Tennessee*

Section 5a No. 55, *Motor Carrier Traffic Association, Inc.—Agreement*

Ex Parte No. 483, *Railroad Revenue Adequacy—1988 Determination*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary,

[FR Doc. 90–13686 Filed 6–8–90; 1:37 pm]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 11, 18, 25, and July 2, 1990.

PLACE: Commissioner's Conference Room 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed

MATTERS TO BE CONSIDERED:

Week of June 11

Thursday, June 14

2:00 p.m.
Briefing on Accident Sequence Precursor Program (Public Meeting)

Friday, June 15

10:00 a.m.
Briefing on Staff Recommendations for Implementation of Severe Accident Policy for Externally Initiated Events (Public Meeting)

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting)

a Final Rule Entitled, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites" and Conforming Amendments to 10 CFR Parts 50 and 170 (Tentative)

Week of June 18—Tentative

Wednesday, June 20

2:00 p.m

Briefing on NUREG–1150 Peer Review Group Status (Public Meeting)

Week of June 25—Tentative

Wednesday, June 27

9:00 a.m.

Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:00 a.m.

Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of July 2—Tentative

There are no Commission meetings scheduled for the Week of July 2.

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: June 7, 1990.

William M. Hill, Jr.

Office of the Secretary.

[FR Doc. 90–13723 Filed 6–8–90; 2:38 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on June 4, 1990, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for July 9, 1990, in Hartford, Connecticut. The members will discuss possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under Chapter 12 of Title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of Title 39, United States Code.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) of title 5, United States Code; section 410(c)(3) of title 39 United States Code; and section 7.3(c) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris

Secretary.

[FR Doc. 90–13722 Filed 6–8–90; 2:37 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [55 FR 23506 June 8, 1990].

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, June 5, 1990.

CHANGE IN THE MEETING: Addition meeting/item/deletion.

The following items will be considered at a closed meeting on Monday, June 11, 1990, at 3:30 p.m.

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

The following additional item will be considered at an open meeting on Wednesday, June 13, 1990, at 9:30 a.m.

Consideration of whether to issue a release soliciting public comment on reform of the regulation of investment companies under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934. The release would request comment on a number of specific issues and on any other issues that commenters believe relevant. For further information, please contact Matthew A. Chambers or Nancy M. Morris at (202) 272–2048.

The following item will not be considered at an open meeting on Wednesday, June 13, 1990, at 9:30 a.m.

Consideration of whether to propose for public comment Rule 17f-6 under the Investment Company Act of 1940. The Rule would allow futures commission merchants to maintain custody of margin posted by registered management investment companies in connection with transactions in commodity futures contracts and related options. For further information, please contact Diane C. Blizzard at (202) 272–2048.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Steve Young at (202) 272–2300.

Jonathan G. Katz,

Secretary.

June 7, 1990

[FR Doc. 90–13706 Filed 6–8–90; 1:39 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 55, No. 113
Tuesday, June 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-89-200]

Pineapples; Grade Standards

Correction

In rule document 90-12879 beginning on page 22765 in the issue of Monday, June 4, 1990, make the following correction:

§ 51.1489 [Corrected]

In § 51.1489, on page 22770, in Table II, the last entry in the last column should read "250".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-401]

Calcium Hypochlorite From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part

Correction

In notice document 90-12740 beginning on page 22367 in the issue of Friday, June 1, 1990, make the following correction:

On page 22368, in the first column, in the table, in the last entry of the first column "Nakai" should read "Nankai".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records Notices

Correction

In notice document 90-12095 beginning on page 21428 in the issue of Thursday, May 24, 1990, make the following correction:

In the third column insert "DPAD 12.0" above "**SYSTEM NAME**".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150-AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

Correction

In rule document 90-11955 beginning on page 21173 in the issue of Wednesday, May 23, 1990, make the following corrections:

1. On page 21174, in the second column, in the first complete paragraph, in the fourth from last line, remove "the".

§ 170.12 [Corrected]

2. On page 21179, in the second column, in § 170.12(a), in the sixth line, between "be" and "charged" insert "processed and may be returned to the applicant. All application fees will be".

§ 170.21 [Corrected]

3. On page 21180, in the third column, in § 170.21, in the table, the heading "Family categories and types of fees" should read "Facility categories and types of fees".

4. On the same page, in the same column, in § 170.21, in the footnotes to the table, a line of five stars should appear between footnotes 2 and 4.

§ 170.31 [Corrected]

5. On page 21182, in the first column, in § 170.31, in the table, in the first line of entry N., "Licensee" should read "Licenses".

6. On page 21183, in the first column, in § 170.31, in the table, in the first line of entry 9B., "devices" was misspelled.

7. On the same page, in the third column, in § 170.31, in footnote (d) to the table, in the 14th line, immediately before "are due" insert "amendment fees".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWP-3]

Proposed Revision of the Honolulu, HI, Control Zone and Establishment of the NAS Barbers Point, HI, Control Zone

Correction

In proposed rule document 90-11932 beginning on page 21203 in the issue of Wednesday, May 23, 1990, make the following correction:

§ 71.171 [Corrected]

On page 21204, in the second column, under **NAS Barbers Point, HI [NEW]**, in the sixth line, after "lat. 21°16'" insert "41"N., long. 158°13'".

BILLING CODE 1505-01-D

federal register

Tuesday
June 12, 1990

Part II

Environmental Protection Agency

40 CFR Part 22

Rules of Practice Governing the Administrative Assessment of Class II Civil Penalties Under the Clean Water Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL-3645-7]

Rules of Practice Governing the Administrative Assessment of Class II Civil Penalties Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today promulgating a final rule establishing procedures for its administrative assessment of Class II civil penalties under the Clean Water Act (CWA). There have been no substantive changes to this rule since it was issued as an interim final rule. See 52 FR 30671 (August 17, 1987). This rule provides that EPA's administrative assessment of Class II penalties will be governed by EPA's Consolidated Rules of Practice for assessing administrative penalties. EPA is taking this action in response to amendments to the CWA, made by the Water Quality Act of 1987, which authorize the Administrator to assess administrative penalties for specified violations of the CWA. The authority granted to the Administrator to assess administrative penalties was made immediately effective on February 4, 1987, the date the Water Quality Act was enacted.

DATES: The final rule is effective July 12, 1990. EPA will use the interim final rule for conducting these proceedings before the date the final rule becomes effective.

FOR FURTHER INFORMATION CONTACT: Susan Cary Watkins, Office of Enforcement and Compliance Monitoring (LE–134W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202–382–2856.

SUPPLEMENTARY INFORMATION: On February 4, 1987, section 309 of the CWA, 33 U.S.C. 1319, was amended by section 314 of the Water Quality Act, Pub. L. 100–4, to authorize the Administrator of EPA to assess administrative penalties for violations of the CWA. The amendments to section 309 created a new subsection 309(g) establishing two classs of administrative penalties, which differ with respect to procedure and maximum penalty amounts.

Class I administrative penalty proceedings are not subject to the Administrative Procedure Act, 5 U.S.C. 554, 556, and authorize a maximum penalty of $25,000. Notice of the availability of procedural guidance for Class I proceedings was published in the **Federal Register**. See 52 FR 30730 (August 17, 1987).

The final procedures promulgated today apply only to Class II. Class II proceedings authorize a maximum penalty of $125,000 and are subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 554, 556. Class II proceedings are similar to administrative penalty proceedings subject to the Administrative Procedure Act under other environmental statutes.

EPA promulgated Consolidated Rules of Practice, 40 CFR part 22, governing the administrative assessment of penalties under other statutes administered by EPA. The Consolidated Rules provide a common set of procedural rules for certain of EPA's administrative penalty programs to reduce paperwork, inconsistency, and the burden on persons regulated. See 45 FR 24360 (April 9, 1980).

Because of the similarity of Class II proceedings to other administrative penalty proceedings subject to the Administrative Procedure Act, EPA concludes that the Consolidated Rules of Practice should be used as the procedural framework for Class II administrative penalty enforcement under the CWA. Accordingly, EPA is today promulgating a final rule providing that the Consolidated Rules shall govern adjudicatory proceedings for the assessment of Class II administrative penalties under section 309(g) of the CWA.

EPA published this rule in interim final form in the **Federal Register** with a 30-day comment period. See 52 FR 30671 (August 17, 1987). The Agency received six comment letters. Comments fell into seven areas of concern:

1. Economic impact on small business. One commenter wanted the Agency to perform an economic impact analysis. This regulation is not considered a major rule by the Agency because it will not have an annual effect on the economy of $100 million or more and, therefore, no regulatory impact analysis is required. The economic effect on most small businesses is slight, therefore, no regulatory flexibility analysis is required. Moreover, this regulation will have no effect at all on small businesses that comply with the Clean Water Act.

2. Public notice of complaints. One commenter asked that the standard public comment period be 30 days, that non-party commenters be allowed to submit late comments only when the commenter shows good cause, and that the Agency provide for late submission by parties to the enforcement action. Another commenter wanted the Agency to give notice of a violation and a reasonable time for correction before issuing an administrative penalty order. The 30-day comment period after public notice is set forth in 40 CFR 22.38(d). Also § 22.38(d) provides that non-party commenters can submit late comments after showing good cause. A party to the action is not covered by the § 22.38(d) provision for submitting comments; party submissions are governed by 40 CFR 22.07(b) and 22.15. The Clean Water Act imposes strict liability and does not require the Agency to give notice of violations before enforcing the Act. These administrative penalties are for past violations. Corrective action will not affect liability. Because administrative penalty orders usually will be based on self-reported permit violations, the discharger should know of the violation before the Agency publishes a notice of the complaint.

3. Timing of state consultation. One commenter wanted the timing of state consultation clarified to ensure that state and federal actions are not initiated simultaneously. The state consultation occurs before the Agency assesses a Class II civil penalty in a final order.

4. Evidentiary issues arising at a hearing. One commenter wanted these supplemental regulations clarified as to admissability and relevance of evidence. The Presiding Officer follows the existing requirements of 40 CFR 22.22 to determine the admissibility of evidence.

5. Participation at a hearing by a commenter who is not an intervenor. One commenter wanted to ensure that a person who is not a party but presents evidence at a hearing is subject to cross-examination. That commenter also wanted the regulations to state that a person who is not a party cannot cross examine witnesses. Under 40 CFR 22.38(d), a commenter who is not a party has no right to cross examine witnesses. Other participation by a commenter is governed by 40 CFR 22.22 and 22.38(d). Parties may cross examine. See 40 CFR 22.22(b).

6. Right to trial by jury. One commenter wanted the regulations to provide for a trial by jury on the issue of liability for administrative penalties. There is no right to a jury trial on the issue of liability in an administrative proceeding. *Atlas Roofing Co., Inc.* v. *Occupational Safety and Health Review Commission*, 430 U.S. 442 (1977). *Accord Tull* v. *U.S.*, 412 U.S. 481, 418 n.4 (1987). The purpose of the administrative penalty authority is to expedite enforcement in straightforward cases in which violations are clearly documented and are unlikely to be contested by a

violator. The Consolidated Rules of Practice and this supplemental rule provide adequate due process protections for respondents.

7. Criteria for assessing a penalty. Three commenters wanted specific criteria for determining a proposed penalty amount. The criteria are stated in section 309(g)(3) of the Clean Water Act, 33 U.S.C. 1319(g)(3). EPA has not issued specific guidelines under the Clean Water Act for calculating administrative penalties for adjudicatory hearings. The Agency issued guidance for calculating a settlement penalty amount on August 28, 1987. The Uniform Civil Penalty Policy, issued February 16, 1984, provides a general framework for determining administrative penalties. See 40 CFR 22.14(c).

Statutory Requirements

Under section 309(g) of the CWA, the Administrator assesses a Class II penalty by a final order after opportunity for a hearing on the record. Under section 309(g), the Administrator also must consult with the State in which the violation occurs before assessing the penalty.

Under section 309(g), the Administrator must provide public notice and reasonable opportunity to comment upon the complaint. The section provides that, if a hearing on the complaint is conducted, the Administrator shall give any citizen who commented on the complaint notice of the hearing, and a reasonable opportunity to be heard and to present evidence at the hearing. The section further provides that the Administrator shall give any person who comments on a complaint notice of the order assessing a penalty.

Under section 309(g), if no hearing is held, any person who commented on the complaint may petition the Administrator to set aside the order and to provide a hearing on the complaint. In addition, section 309(g) provides that the Administrator must set aside the order and provide a hearing if the Administrator determines that the evidence presented by the petitioner is material and was not considered in the issuance of the order. Under section 309(g), if the Administrator denies a hearing, the Administrator shall provide to the petitioner, and publish in the **Federal Register**, notice of and the reasons for the denial.

Section 309(g) did not change the procedures for issuing and enforcing administrative compliance orders under other subsections of section 309. See section 309(g)(11). Accordingly, the rule promulgated today does not apply to or change the procedures for issuing or enforcing compliance orders issued by EPA under, for example, section 309(a) of the CWA.

Consolidated Rules of Practice

EPA concludes that the Administrator may use the Consolidated Rules of Practice, 40 CFR part 22, to assess Class II penalties under section 309(g) of the CWA. The Consolidated Rules were developed for administrative penalty actions like these that are subject to the Administrative Procedure Act.

Under the Consolidated Rules, as supplemented by this final rule, EPA will assess Class II penalties by a final order after opportunity for a hearing on the record. Before issuing an order, EPA will give written notice to the person to be assessed the civil penalty by filing and service of a proposed order and complaint under the Consolidated Rules. Under 40 CFR 22.15, the complaint will include a notice of the respondent's right to request, within 20 days, a hearing on the complaint.

EPA will provide public notice and reasonable opportunity to comment on the complaint under the Consolidated Rules. If EPA conducts a hearing on the complaint, EPA shall provide to any person who commented on the complaint a copy of the notice of hearing required by 40 CFR 22.21(b), and a copy of any final order assessing a penalty. Commenters who wish to participate at a hearing may be heard and present evidence without right of cross examination or may move formally to intervene under 40 CFR 22.11. If no hearing is held, persons who commented on the complaint may petition to have the order set aside and to have a hearing on the complaint.

This final rule is effective 30 days after publication in the **Federal Register**. The Consolidated Rules of Practice and the interim final rule will govern proceedings for the assessment of Class II administrative penalties under the CWA for which a complaint is filed before the effective date of this final rule.

The final rule affirms that actions of the Administrator for which judicial review could have been obtained under section 509(b)(1) of the CWA (for example, issuance of a waste water discharge permit) will not be subject to review in a Class II penalty assessment proceeding. The final rule makes clear that a person who is not a party to a penalty assessment proceeding may nevertheless comment on a complaint and petition for a hearing. The rule requires that these persons file written comments with the regional hearing clerk and serve a copy of the comments upon each party. The rule confirms that a person wishing to intervene as a full party in a Class II penalty proceeding may move for leave to intervene under the Consolidated Rules.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis that describes the impact of the rule on small entities, i.e., small business, small organizations, and small governmental jurisdictions. The Administrator may certify that the rule will not have a significant economic impact on a substantial number of small entities.

This regulation will impose no significant costs on any small entities. The overall economic impact on small entities is slight. Accordingly, I hereby certify that this proposed regulation will not have a significant impact on a substantial number of small entities. This regulation does not require a regulatory flexibility analysis.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a Regulatory Impact Analysis. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. The Agency has determined that this proposed rule does not meet the criteria of a major rule set forth in section 1(b) of the Executive Order. The Agency submitted this regulation to the Office of Management and Budget for review as required by Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, EPA must submit all information collections to the Office of Management and Budget for approval. As the present rule contains no information collection requirements, this stipulation does not apply.

Dated: May 30, 1990.

William K. Reilly,

Administrator.

Accordingly, the interim final rule amending 40 CFR part 22, published at 52 FR 30671 (August 17, 1987) is adopted as a final rule with the following changes:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

1. The authority citation for part 22 is revised to read as follows:

Authority: 15 U.S.C. sec. 2615; 42 U.S.C. secs. 7545 and 7601; 7 U.S.C. secs 136(l) and 136(m); 33 U.S.C. secs. 1361, 1319(g), 1415, and 1418; 42 U.S.C. secs. 6912, 6928, and 6991(e) and 6992(d).

2. Section 22.38 is revised to read as follows:

§ 22.33 Supplemental rules of practice governing the administrative assessment of Class II penalties under the Clean Water Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), administrative proceedings for the assessment of any Class II civil penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g)).

(b) *Consultation with states.* The Administrator will consult with the state in which the alleged violation occurs before issuing a final order assessing a Class II civil penalty.

(c) *Public notice.* Before issuing a final order assessing a Class II civil penalty, the Administrator will provide public notice of the complaint.

(d) *Comment by a person who is not a party.* A person not a party to the Class II proceeding who wishes to comment upon a complaint must file written comments with the Regional Hearing Clerk within 30 days after public notice of the complaint and serve a copy of the comments upon each party. For good cause shown the Administrator, the Regional Administrator, or the Presiding Officer, as appropriate, may accept late comments. The Administrator will give any person who comments on a complaint notice of any hearing and notice of the final order assessing a penalty. Although commenters may be heard and present evidence at any hearing held under section 309(g) of the Act, commenters shall not be accorded party status with right of cross examination unless they formally move to intervene and are granted party status under § 22.11.

(e) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the Act shall not be subject to review in an administrative proceeding for the assessment of Class II civil penalty under section 309(g).

(f) *Petitions to set aside an order and to provide a hearing.* If no hearing on the complaint is held before issuance of an order assessing a Class II civil penalty, any person who commented on the complaint may petition the Administrator, within 30 days after issuance of the order, to set aside the order and to provide a hearing on the complaint. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator will immediately set aside the order and provide a hearing in accordance with the Consolidated Rules of Practice and these supplemental rules of practice. If the Administrator denies a hearing under section 309(g)(4)(C) of the Act, the Administrator will provide to the petitioner, and publish in the **Federal Register**, notice of and the reasons for the denial.

[FR Doc. 90-13347 Filed 6-11-90; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
June 12, 1990

Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 435

Energy Conservation Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings; Final Rule, Response to Comments and Announcement of Appropriate Standby Loss Criteria

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-C]

Energy Conservation Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings

AGENCY: U.S. Department of Energy.

ACTION: Final rule and response to comments and announcement of appropriate standby loss criteria.

SUMMARY: Pursuant to the October 6, 1989, Memorandum and Order of the United States District Court for the District of Columbia in Civil Action No. 89-1315, *Gas Appliance Manufacturers Association, Inc., et al.*, v. *Secretary of Energy*, the Department of Energy (DOE) hereby complies with the Memorandum and Order by publishing a Response to Comments and Announcement of Appropriate Standby Loss Criteria (Response and Announcement). The Court remanded 10 CFR 435.109, section 9.3.2 and portions of Table 9.3-1 dealing with "Minimum Performance (Loss)" for electric, gas and oil storage water heaters pending reconsideration of those provisions on remand in a manner consistent with the Court's opinion. See Court's Memorandum and Order, dated October 6, 1989. In that regard, the Court directed as follows: (1) That DOE provide a statement of reasons for adoption of standby loss criteria, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis, and impact on affected groups; (2) that DOE place in the public rulemaking record all the materials on which it now relies in determining the storage water heater criteria it adopts on remand; (3) that DOE publish its statement of reasons for adoption of standby loss criteria in the Federal Register; (4) that DOE make the materials upon which it relies available; (5) that DOE invite all interested participants to comment on the materials; (6) that plaintiffs and other interested persons file their response or responses with DOE; and (7) that DOE publish in the Federal Register a statement responding to plaintiffs' critique and any others, again with reference to the statutory requirements and announcing appropriate standby loss criteria.

Pursuant to the Court's October 6, 1989, Memorandum and Order, DOE has been enjoined from taking any action to enforce the requirements of section 9.3.2 and the relevant portion of Table 9.3-1 pending completion of the remand procedures described above. With today's publication of this Response and Announcement, that remand process is completed. In the following sections of this Response and Announcement, DOE reviews the circumstances surrounding the remand process, discusses the comments it received from interested persons during the process and the results of additional tests that it caused to be conducted, and announces the standby loss criteria for electric, gas, and oil storage water heaters that it is hereby adopting. DOE has modified the criterion for electric storage water heaters and redefined instantaneous water heaters. The criteria for gas and oil water heaters have not been changed. DOE adopts these conclusions in a revised Table 9.3-1 in section V.

EFFECTIVE DATE: The effective date for standby loss criteria for storage water heaters as presented in § 435.109, Table 9.3-1, in section V of this Response and Announcement is June 12, 1990.

ADDRESSES: Copies of DOE's analysis and test data may be viewed and/or obtained from the DOE Freedom of Information Reading Room, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, 9 a.m.-4 p.m., Monday-Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Jean J. Boulin, Office of Codes and Standards, CE-43, U.S. Department of Energy, room 5E-080, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9444.

Lawrence V. Robertson, Jr., Esq., Office of General Counsel, GC-12, U.S. Department of Energy, room 6A-141, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Historical Background

A. Events Prior to October 6, 1989

This portion of the historical background of the standards is presented at 54 FR 49724-49726, November 30, 1989.

B. Events From October 6, 1989-November 30, 1989

These events are described at 54 FR 49726, *B. Events Subsequent to October 6, 1989.*

C. Events Since November 30, 1989

In compliance with the October 6, 1989, Memorandum and Order of the Court, DOE has completed the following actions to date:

1. Published, on November 30, 1989, a Preliminary Statement of Reasons for Adoption of Standby Loss Criteria (Preliminary Statement), with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis, and impact on affected groups. (See 54 FR 49724).

2. Placed in the public rulemaking record, on November 30, 1989, all of the materials on which it relied in determining the storage water heater criteria it proposed to adopt on remand.

The Preliminary Statement contained editorial errors. These errors were corrected at 54 FR 50341, December 6, 1989.

Subsequently, on February 2, 1990, DOE published a notice of Changes in Dates for Comment. (See 54 FR 3714). Notice was given that, on motion by plaintiffs, the October 6, 1989, Court Order was amended to extend the time allowed to comment on DOE's Preliminary Statement and, correspondingly, for DOE to respond to comments so received and announce appropriate standby loss criteria. The time for comment by the plaintiff and other interested persons was extended from January 15, to February 28, 1990; and the time allowed for the DOE's response from February 15, to May 15, 1990.

A Notice of Supplement to Public Record was published by DOE to advise of the availability of a "research grade" compiled computer code on diskette together with instructions explaining its use by the Department in determining the gas, electric and oil water heater examples set forth in the Preliminary Statement. (See 54 FR 3714, February 2, 1990). The source code compiled on diskette is that which is listed in *Technical Support Document for Preliminary Statement of Reasons for Adoption of Standby Loss Criteria*, November 1989, U.S. Department of Energy, Washington, D.C., Table A-1. This was necessary because DOE, in response to a December 21, 1989, data request from GAMA, provided a copy of this information. In addition, DOE sent a copy of this information to all those who had requested or been sent copies of the November, 1989 Technical Support Document.

II. Applicable Statutory and Judicial Criteria

Congress mandated, in section 501(b)(1) of the Department of Energy Organization Act, 42 U.S.C. 7191(b)(1), that the Secretary of Energy, in

promulgating energy standards, must include "a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation or order." In addition, section 501(d), 42 U.S.C. 7191(d) provides that after the notice and comment period, the Secretary may promulgate a rule if the rule is accompanied by "an explanation responding to the major comments, criticisms, and alterntives offered during the comment period." Section 310 of the Energy Conservation Standards for New Buildings Act, 42 U.S.C. 6839, specifically provides that such standards must be "adequately analyzed in terms of energy efficiency. . . economic cost and benefit, and impact on affected groups. In addition, section 302 of the Energy Conservation Standards for New Buildings Act, 42 U.S.C. 6831(b)(2), requires DOE "to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy." In that regard, the October 6, 1989, Memorandum of the Court concludes that the word 'practicable' in section 302(b)(2) "reinforces the requirement of section 310 that DOE take into account cost-benefit and constituency concerns and not simply sacrifice all other concerns to any reductions in energy use." Further, standards-setting activities "shall be designed to assure that such standards are adequately analyzed in terms of energy efficiency, stimulation of use of non-depletable sources of energy institutional resources, habitability, economic cost and benefit, and impact upon affected groups."

Finally the Court's Memorandum further states that "increased energy efficiency must be weighed against potential increases in overall dollar costs arising from new standards under some articulated formula."

III. Description of Storage Water Heater Standby Loss Criteria in Question

The Storage Water Heater Standby Loss Criteria in question are part of Section 435.109 of the interim standards, entitled "Service Water Heating Systems," published at 54 Federal Register 4689 (January 30, 1989). This section identifies the scope, design principles, minimum requirements, and a prescriptive compliance method for service water heating systems and equipment.

All water heaters and hot water storage tanks are addressed in Table 9.3–1. This includes electric, gas, and oil storage water heaters, unfired storage tanks, gas and distillate oil instantaneous water heaters, and swimming pool water heaters. There is one exception to the standby loss criteria; storage water heaters and hot water storage tanks having more than 500 gallons of storage capacity need not meet the standby loss requirements of Table 9.3–1 if (1) the tank surface area is thermally insulated to R–12.5 and (2) a standing pilot light is not used.

The standby loss criteria for electric, gas, and oil storage water heaters are highlighted in the right hand column of Table 9.3–1. Although the word "standby" could intuitively infer only that period of time when the storage water heater is not used, e.g., overnight, the criteria address the constant loss of heat energy experienced by a storage water heater while holding heated water not immediately being drawn for use in a building. A "storage water heater" is a water heater that has an input rating equal to or less than 4000 Btu/hr per gallon and a storage capacity of more than 10 gallons.

The covered water heaters include the following: electric storage water heaters with a storage capacity of more than 120 gallons or an input rating of more than 12 kW; gas storage water heaters with a capacity of more than 100 gallons or an input rating of more than 75,000 Btu/h; and oil storage water heaters of more than 50 gallons or an input rating of more than 105,000 Btu/h. The covered electric storage water heaters are required to have a standby heat loss of less than 1.9 W/ft ^{2}. The covered gas and oil storage water heaters are required to have a standby heat loss of less than 1.3 + 38/V percent per hour. Standby loss is based on nominal temperature difference of 80°F, or the change in water temperature in percent per hour based on a nominal temperature of 90°F. Table 9.3–1 is shown below.

The test procedures that are to be used for certifying compliance with the standby loss criteria are described and explained in the Preliminary Statement at 54 FR 49730.

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Table 9.3-1 (January 30, 1989)
Standard Rating Conditions & Minimum Performance of Water Heating Equipment

Type	Fuel	Storage Capacity (Gal)	Input Rating	Applicable Test Procedure	Minimum Performance		
					DOE Rating	Eff.	Loss
Storage Water Heaters	Electric	≤120	≤12 kW	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF ≥0.95-0.00132V	- -	- -
		>120 (or)	>12kW	ANSI C72.1 - 1972	- -	- -	SL <1.9 W/ft^2
	Gas	≤100	≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF ≥0.62-0.0019V	- -	- -
		>100 (or)	>75,000 Btu/h	ANSI Z21.10.3-1984 Gas Water Heaters w/Addenda Z21.10.3a-1985	- -	E_t 77%	SL <1.3+ 38/V
	Oil	≤50	≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF ≥0.59-0.0019V	- -	- -
			≤105,000 Btu/h		>0.59-0.0019V	-	-
		>50 (or)	>105,000 Btu/h		- -	E_c 83%	SL <1.3+ 38/V

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Table 9.3-1 (January 30, 1989)
Standard Rating Conditions & Minimum Performance of Water Heating Equipment (Cont.)

		Type		Applicable Test Procedure	Minimum Performance	
Class	Fuel	Capacity	Input Rating			
Unfired Storage	1	All Volume	All Inputs		-	HL
					-	<6.5 Btu/h·ft^2
Instantaneous	Gas	-	All Inputs	ANSI Z21.10.3-1984	E_t	-
					80%	-
	Distill Oil	-	All Inputs		E_c	-
					83%	-
Pool Heaters	Gas/ Oil	-	All Inputs	ANSI Z21.56-1986	E_t	-
					78%[C]	-

Notes for Table 9.3-1:
Terms Defined:
1. EF = Energy factor, overall heater efficiency by DOE Test Procedure
   E_t = Thermal efficiency with 70°F, ΔT
   E_c = Combustion efficiency, 100 percent - flue loss when smoke = 0 (trace is permitted)
   SL = Standby loss in W/ft^2 based on 80°F, ΔT, or in percent per hour based on nominal 90°F, ΔT
   HL = Heat loss of tank surface area
   V = Storage volume in gallons

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IV. Summary of Public Comment Received by February 28, 1990, on the November 30, 1989, Preliminary Statement of Reasons and DOE Responses

A. Summary

At the close of the comment period on February 28, 1990, DOE had received responses from nine individuals, firms, and organizations. A number of those comments were duplicative in nature. The comments dealt primarily with specific sections of the Preliminary Statement, including those dealing with DOE's assumptions in modeling standby loss in gas and electric water heaters, the methods used to compute practicability and cost-benefit, and the impact on affected groups. There were also several general comments. It should be noted that reference is made in many of the comments to "DOE's proposed standards." The Energy Conservation Standards for New Commercial and Multi-Family High Rise Buildings that DOE promulgated on January 30, 1989 (54 FR 4538), are not proposed standards. The standards became mandatory for all Federal construction agencies on July 31, 1989. After that date, all new Federal buildings fitting the category must be designed to meet or exceed the standards. This, of course, does not include portions of the standby loss criteria as specified in the October 6, 1989, Court Order.

The nine parties commenting included one trade association (GAMA), two from one professional society (American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. [ASHRAE]), three water heater manufacturers (Rheem Corporation, State Industries, Inc., and Bradford-White Corporation), a State energy office (California Energy Commission), a public interest group (National Resources Defense Council), and one individual (Lawrence G. Spielvogel of Lawrence G. Spielvogel, Inc.). The comments addressed numerous issues; therefore, DOE has divided them into 86 individual comments. Each comment is addressed in this Response and Announcement, and a response is provided for each. The comments are grouped by issue. Duplicate and similar comments are grouped and responded to as a single comment.

The covered water heaters addressed by this Response and Announcement are defined in the DOE standards by fuel type, storage capacity, and input rating rather than by occupancy served (residential or commercial). For example, some small storage capacity, low input storage water heaters are quite appropriate for use in some commercial buildings. However, to facilitate discussion of comments and DOE's responses, the term commercial, when used in regard to storage water heaters, hereafter refers to the storage water heaters covered by the standby loss criteria in question defined in Section III.

The majority of the comments disputed the standby loss criteria, although a few supported the DOE criteria. One comment suggested a more stringent level for commercial electric storage water heaters.

In developing the Preliminary Statement, as well as in responding to previous requests for information from the water heater industry, DOE has provided detailed documentation in support of its analysis. In responding to comments, DOE again is providing full documentation. This includes further computer analyses and tests on selected commercial electric and gas water heaters. DOE had anticipated a similar level of supporting documentation would be provided in the comments submitted by the interested trade association and water heater manufacturers. However, this was not the case. Rather, in a number of instances these persons advanced arguments and asserted conclusions that were not substantiated by accompanying data or documentation.

A Congressional mandate requires DOE to establish standards that achieve the maximum practicable levels of energy conservation, and DOE intends to establish standards based on the data that is available, and has been made available to it. In the case of water heaters, DOE has based its decisions on information derived from its own research, the standards development process of the Standing Standards Committee—90R, of ASHRAE, and information provided by the industry. Some industry information indicates that the progression of the water heater standby loss criteria, from established standards and practice, through the criteria establish by DOE, can be met by the industry through normal product improvement. DOE's analysis indicates likewise.

B. General Comments

1. DOE received several general comments concerning the practicability of the standby loss criteria for natural gas and electric water heaters. No specific comments were received regarding oil water heaters, although one comment on gas water heaters also alluded to oil water heaters. Three who commented strongly endorsed the DOE standby loss criteria. Five others contended that the DOE water heater standby loss criteria for gas and electric water heaters are too stringent, and that DOE's method of analyzing potential energy savings and cost-benefit are flawed.

Thomas P. Wutka, CIGNA Corporation and Chairman of the ASHRAE Standing Standards Project Committee—90R, stated that the evidence DOE provides in its Preliminary Statement, "clearly demonstrates the cost-effective feasibility of the standby loss requirements for storage water heaters." The ASHRAE 90R Committee also requested that DOE not loosen the requirements simply because other groups assert that the requirements are unreasonable. Mr. Wutka asserted further that those groups seeking an injunction on the water heater standby loss criteria have not offered any convincing evidence that the criteria should be amended. Mr. Wutka and Dr. David Goldstein of the Natural Resources Defense Council (NRDC), and a member of the ASHRAE 90R Committee provided a letter from American Appliances, a water heater manufacturer, in support of the standby loss requirements, which stated "we feel that they are technically achievable by that time [1992] without unreasonable cost". While there was a follow-up letter qualifying these comments, DOE found it unpersuasive. Dr. Goldstein indicated in his comments that the standby loss levels were less stringent than they should be to meet the Congressional mandate of achieving the maximum practicable improvements in energy efficiency.

Dr. Goldstein also said that the new analysis provided by DOE in the Preliminary Statement clearly demonstrated that a more stringent criterion for electric water heaters—1.52 W/ft^2—can be justified. Dr. Goldstein provided procedural, technical, and other background information to substantiate these claims.

Finally, Ms. Elena Schmid of the California Energy Commission (CEC) stated that the CEC found that a more stringent standby loss level could be used for gas water heaters. However, Ms. Schmid said, at the current time, a more stringent level has not been reviewed thoroughly enough to warrant that DOE assess more stringent criteria.

Contending that the DOE water heater standby loss criteria for gas and electric water heaters are too stringent, Mr. Denver Collins of State Industries, Inc., a water heater manufacturer, stated that DOE needs an education in commercial water heaters and recommends that DOE work in good faith with the water

heater industry to arrive at reasonable, obtainable efficiency goals based on actual test data rather than on invalidated, erroneous computer models.

DOE Response: DOE agrees with the three who endorsed the DOE standby loss criterion for the gas water heaters. DOE believes that the water heater standby loss criterion for the gas water heaters are practicable. While DOE believes that there is some data to suggest that more stringent [gas] water heater standby loss criteria would be reasonable, it agrees with the comment made by the CEC that a more stringent level has not been reviewed thoroughly enough to warrant that DOE set more stringent criteria at this time. DOE also believes that Federal construction agencies that specify storage water heaters in the design of their buildings will find water heaters on the market to meet these criteria at life-cycle cost-effective prices.

In response to several of the other commenters on the electric water heater criterion, DOE has performed tests and done additional analysis that cause DOE to believe that slightly less stringent criterion for electric water heaters are warranted. A more detailed discussion is provided below.

DOE appreciates the receipt of diverse comments. It is through public comment that DOE hopes to improve its standard-making process. However, it is important that those who do comment on DOE standards substantiate their views and document or reference published material to support their statements. Statements of opinion and substantive comments must be supported by essential documentation.

Finally, DOE has attempted to work with the industries affected by its standards. Every effort has been made for public review and comment, and through ASHRAE, DOE has worked with the most widely recognized of all energy conservation standards development bodies. In that regard, DOE forcefully rejects the suggestion that it has not been responsive to the concerns expressed by industry representatives.

2. Mr. Paul G. Daugirda of Rheem Corporation and Mr. Eugene L. West of Bradford-White Corporation, both water heater manufacturers, stated that none of their current electric or gas model commercial storage water heaters would meet the standby loss provisions of the proposed DOE standards. Mr. Daugirda said that DOE's inexperience in the design and construction of water heating equipment led to optimistic assumptions and unrealistic conclusions.

DOE Response: While it is expected that some commercial storage water heaters will not meet the criteria set by DOE, DOE continues to believe that the criteria are fair and not onerous to water heater manufacturers. It is not uncommon in any area of technology that some current models will not meet the new criteria when more stringent standards are set. If the standards are developed fairly and are not unduly burdensome, it is then up to the purveyor of that technology to make the decision whether to continue to market specific equipment. If the decision is made to market that equipment, then the necessary modifications will have to be undertaken.

DOE believes that its water heater standby loss criteria, with some modification to the electric storage water heater criterion, are fair and not unduly burdensome. It further believes that many current water heaters can be easily and cost-effectively modified to meet the standards. DOE has produced substantial information to document its rationale, including information that is discussed later in this Response and Announcement.

3. Rheem Corporation estimated its lost revenue, on an annual basis from Federal sales, to be approximately $800,000 if the standby loss criteria are not modified. Mr. Daugirda stated that if various States, especially large market States like California and New York, adopt the Federal standards, the lost sales revenue could easily amount to several million dollars.

Mr. Daugirda also indicated that to stay in business in the Federal sector, the Rheem Corporation would have to re-tool its production facility to produce entirely new models. The company now has eight basic designs of gas-fired water heaters in the 75,500 to 100,000 Btu/h input range, a category of product that comprises 23 percent of the company's commercial water heater business. Only one of these designs has a flue damper. To modify these designs as needed to comply with the DOE criteria would require the addition of a flue damper to all but one design, and increased insulation and enlargement of the casing for all eight designs. Mr. Daugirda claimed these to be radical changes that would increase manufacturing costs by approximately 50 percent over models without flue dampers. He stated further that the total standby loss energy savings would not come close to defraying the additional costs of the units.

DOE Response: The company provided no basis for choosing not to build units that meet the standby loss criteria. Rather, it acknowledges that it currently produces a product line that uses flue dampers, but provided no additional information as to how and why the production line would have to be changed to accommodate the addition of the flue dampers and insulation to Rheem's other currently available water heaters. It further stated that the addition of a flue damper will increase manufacturing costs by 50 percent over models without flue dampers, but again, provided no explanation or supporting information.

Mr. Daugirda implies that the company would lose money by building units to the DOE standby loss criteria. However, this is not logical assuming that the standby loss criteria become mandatory in wide segments of the water heater market. The setting of standards automatically creates a market and market forces would set the unit price. If this were to happen, the question for manufacturers becomes whether they choose to reenter the market with a modified product which can compete in that market. ASHRAE/IES Standard 90.1–1989 has been published with standby loss criteria similar to those in the DOE Interim Standards. A number of States and local governments have expressed interest in adopting the DOE or ASHRAE/IES standards. It is DOE's belief that if the ASHRAE/IES Standard 90.1–1989 becomes the operable standard across the country, then a very large market will be created.

In the meantime, DOE has an obligation to set standards that must "achieve the maximum practicable improvements in energy efficiency." [Public Law 94–385] Given that water heater units that meet the standards are currently available and that these units come within the life-cycle cost guidelines (subpart A of 10 CFR part 436) under which the Federal government operates, it is DOE's responsibility to set standards that most benefit the Federal government.

4. Dr. Goldstein of NRDC requested that DOE conduct further analysis of the standards on affected groups. Dr. Goldstein identified taxpayers as the primary group affected by the DOE standards since they are responsible for the energy bills of buildings covered by mandatory standards.

In addition, Dr. Goldstein stated that the general public is an interested party because the Federal standards, coupled with the similar ASHRAE standards, will influence or even determine the design of most commercial buildings in future years.

According to Dr. Goldstein, failure to promulgate energy savings requirements that are cost-effective—that is, ones whose cost to society is less than the cost of new energy supply—raises utility

bills for everyone. This results in excess and unnecessary consumption of fossil fuels with adverse effects on the nation's energy security, air quality, and the global climate. He said the standards proposed by ASHRAE are exceptionally cost-effective—the DOE Technical Support Document suggests payback periods of less than three years. For this reason, he said, these other parties would be adversely affected if DOE fails to adopt a standard at least as strong as that adopted by ASHRAE.

DOE Response: It is fully DOE's intention to adopt standards that are practicable for both the groups that must abide by the standards and those groups that would be affected, in the long term, should reasonable standards not be adopted. In order to reassess its position on the standby loss criteria, DOE has performed further technical and cost-benefit analyses based on the comments received. Based upon its review and analyses, DOE believes that the standards it has promulgated, and those it will modify through this document, are practicable for groups administering and complying with the standards and also fair to the general public.

C. Comments on DOE's Basic Assumptions in Modeling Commercial Storage Water Heaters

DOE received several general and specific comments regarding the assumptions used in modeling different capacity and fuel types (gas, oil, and electric) of water heaters. The computer modeling was done for several purposes. First, to establish a baseline for current capacity and fuel types of water heaters. Second, to determine the modifications that would be needed, when necessary, so these units could meet the DOE standards. Third, to evaluate the energy savings potential of lowered standby loss levels. Lastly, to determine the cost-benefit of the water heaters at the lowered standby loss levels.

It should be noted that not every water heater currently available was modeled. Rather, the analysis was performed on a range of generic water heaters of different sizes, shapes, and power inputs. This approach was taken to evaluate the effects of specific standby loss criteria and not as a way of evaluating current models. To respond to public comments, DOE did, following the public comment period, test two units—one gas-fired and another electric. These tests were performed to help verify assumptions made in modeling and to assess tests reported by the industry.

A thermal modeling approach was used to determine the standby water heater losses through the tank jacket. The thermal model used in the analysis is a steady-state model based on first principles of thermodynamics. It uses universally accepted equations for calculating the heat flow from the heated water and acceptable values of thermal resistance for various materials in generic models. Due to the wide variety of water heaters on the market, a generic model was used that made no attempt to calculate subtle design differences between models and manufacturers. Rather the model took account of broadly recognized characteristics of storage water heaters that significantly affect standby losses.

Where the inputs to the model were known to vary significantly, a range with high, medium, and low inputs was tested in the model to establish the "sensitivity" to the variations. For example, when there were questions about the values assigned the emissivity of the jacket, several runs of the model were made varying the emissivity for each run and showing the sensitivity of the results for each variation.

Figures 1 and 2 illustrate the heat losses accounted for by the model. The model accounts for 100 percent of the standby losses from the jacket. It did not originally account for the other losses due to fittings, controls, and flue in the case of gas units. DOE did, however, add losses to the model to account for these fitting losses. This information was based on available data, which is summarized later in this document. The water heater tank was modeled as a right cylinder (having its axis perpendicular to the base) containing water at a uniform temperature, surrounded by air, which is also at a uniform temperature. Water and air temperature were selected to correspond to those indicated in the appropriate test procedure for the specific water heater type.

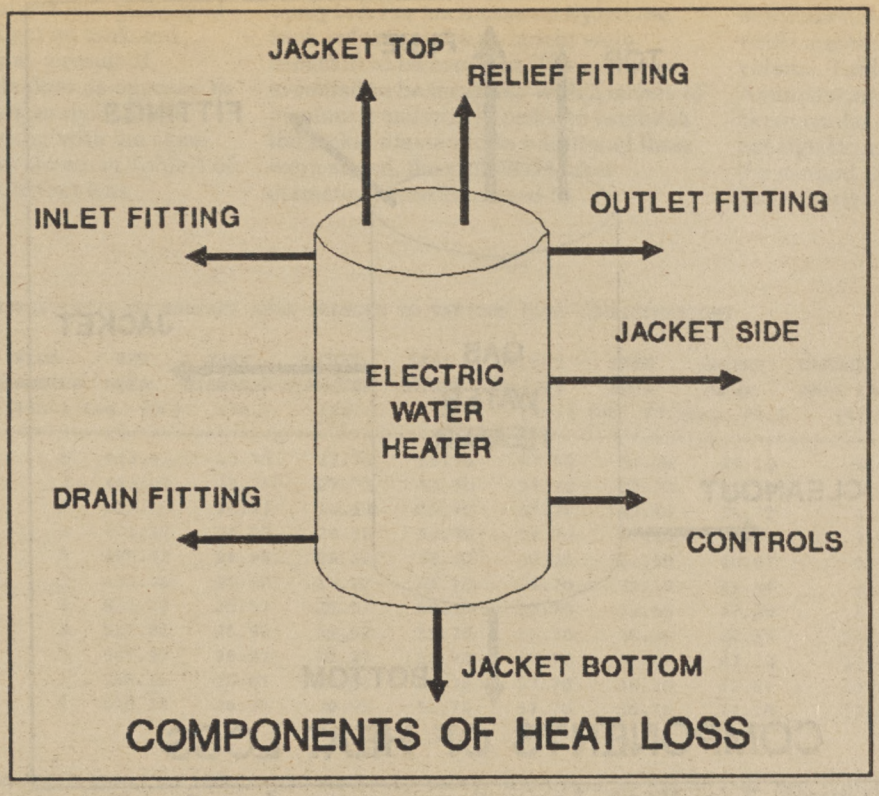


Figure 1 - Heat Loss Components for Electric Water Heaters

Use of the steady-state thermal model allows calculation of heat flow rates from the water in the tank to the ambient air with varying levels of tank insulation. This approach permitted DOE to perform a sensitivity analysis to determine the level of insulation required to meet the standby loss criteria. The required insulation levels for different water heater types and sizes are listed in the Preliminary Statement and the accompanying Technical Support Document.

As described above, the thermal modeling approach used by DOE is based on a steady-state analysis. The actual standby loss tests of water heaters conducted in accordance with the test procedures are dynamic tests covering a 48 hour period. Actual standby loss tests are required to be conducted over an extended period of time due to the complexity of making accurate measurements of heat loss on a steady-state basis. The test procedure measures the energy input required to maintain the water at the setpoint temperature, the input energy required to maintain the setpoint temperature is exactly equal to the steady-state heat loss of the water heater.

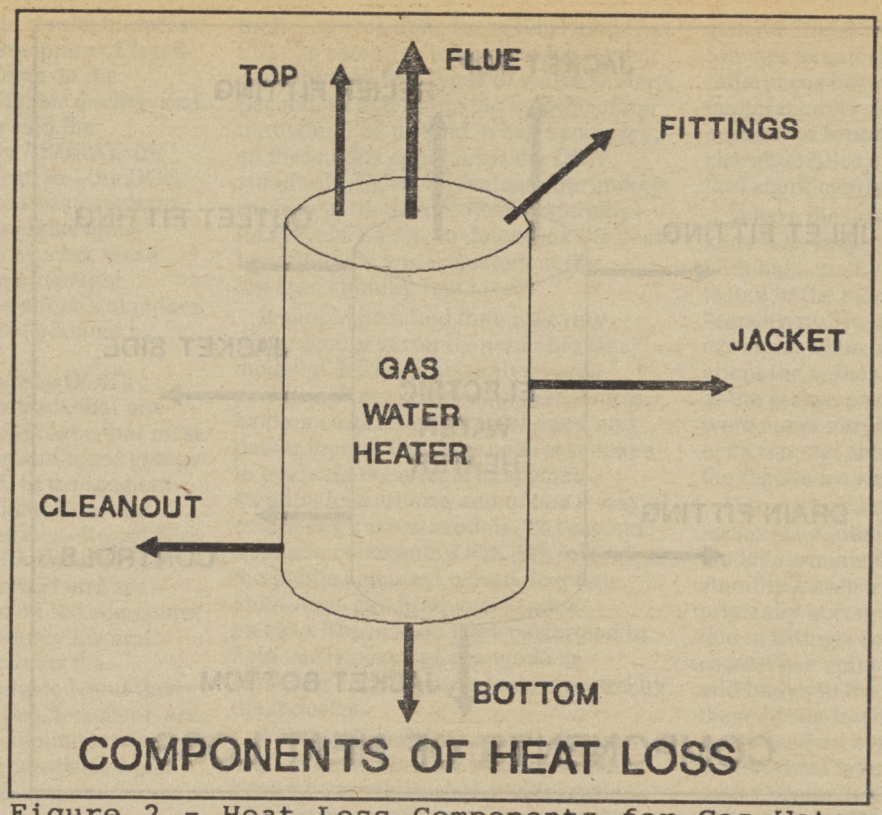


Figure 2 - Heat Loss Components for Gas Water Heater

The steady-state modeling approach used by DOE did not attempt to model the standby loss test, but was instead designed to give results equivalent to the standby loss test. The reference to the test procedure used as the basis for the standby loss calculation shown in the Preliminary Statement and the accompanying Technical Support Document is a reference to the specific standby loss equation used in the calculation.

1. Faulty Modeling

DOE received several general comments from Rheem Corporation, State Industries, Inc., Bradford-White Corporation, and GAMA asserting a lack of knowledge by DOE regarding water heaters, and, therefore, questioning its expertise in compiling a rational computer model. Specifically, the comments addressed the precision with which DOE modeled specific types of water heaters. For example, comments from Rheem, Bradford-White, and GAMA related to size of water heaters modeled, suggesting that DOE reviewed too large a range of water heater sizes, and that the market was primarily within one size—100 gallons and less.

DOE Response: DOE believes that the issues are whether the computer model is reasonable for the entire range of water heaters covered by the standards, and whether the assumptions used are conservative enough to be inclusive of most water heaters and to establish the practicability of the criteria. Most of the comments were directed at a relatively small portion of the storage water heater market.

However, to provide some finality to resolving the question of model assumptions, DOE directed the National Institute of Standards and Technology (NIST) to purchase two "off-the-shelf" storage water heaters, one electric and one gas, and test the units. The results of the tests were then compared with the results generated by DOE's computer model. After adjusting input assumptions for fitting and control losses for the electrical unit, close correlation was found between the results. Thus, the computer model showed itself to be consistent with the NIST test data.

The geometry and size of water heater flues were also areas in which DOE received negative comment. It was asserted that DOE only modeled units with a single flue through the water heater tank. The three who commented on this subject stated that most water heater designs include a multiple flue arrangement through the tank. The hot gases that pass through the flues are then collected at the top of the tank and released through a single flue hole. The comment was made that the geometry and surface area for these water heater types would have a significant effect on standby loss and that DOE had not accounted for this type of water heater in its modeling. As stated previously, it was not DOE's intention to construct a model that handled specific water heaters, rather it was constructed to provide conservative data for an entire range of water heaters. In this instance, DOE allowed for a range of percent heat losses through the flue and picked what it thought was the most appropriate value. However, it also found that the appropriate value may vary depending on input firing rate.

A sensitivity analysis was performed to determine the effect on tank and jacket surface area as a result of considering multiple flues as opposed to a single flue. For this analysis a 100-gallon gas water heater with the same dimensions as those shown in Table 1 of the Preliminary Statement was analyzed. For each case analyzed the tank volume and tank height were assumed to be constant. The unit was assumed to be insulated with 2 inches of insulating material in order to establish the jacket diameter. As additional flues were added, the tank and jacket diameters were increased to accommodate the additional flue area while maintaining a constant water volume. Table 1 in this Response and Announcement indicates the differences between the different configurations is not significant for the purpose of altering the method of establishing the standby loss criteria.

Table 1

SENSITIVITY OF SURFACE AREA CHANGES TO VARIOUS FLUE CONFIGURATIONS

NUMBER OF FLUES	FLUE DIAMETER (in.)	NET AREA (sq. in.)	TANK DIAMETER (in.)	JACKET DIAMETER (in.)	TANK HEIGHT (in.)	JACKET HEIGHT (in.)	TANK AREA (sq. ft.)	JACKET AREA (sq. ft.)	CHANGE IN TANK AREA (%)	CHANGE IN JACKET AREA (%)
1	6	443.01	23.75	27.75	55.70	57.70	31.94	39.13	0.00	0.00
4	3	443.01	23.75	27.75	55.70	57.70	31.94	39.13	0.00	0.00
6	3	457.15	24.13	28.13	55.70	57.70	32.49	39.72	1.74	1.50
8	3	471.29	24.50	28.50	55.70	57.70	33.04	40.30	3.45	2.99
10	3	485.43	24.86	28.86	55.70	57.70	33.58	40.87	5.15	4.45
12	3	499.56	25.22	29.22	55.70	57.70	34.12	41.44	6.82	5.90
14	3	513.70	25.57	29.57	55.70	57.70	34.65	42.00	8.48	7.33
16	3	527.84	25.92	29.92	55.70	57.70	35.17	42.55	10.12	8.74
18	3	541.97	26.27	30.27	55.70	57.70	35.69	43.10	11.74	10.14
20	3	556.11	26.61	30.61	55.70	57.70	36.20	43.64	13.34	11.52
22	3	570.25	26.95	30.95	55.70	57.70	36.70	44.18	14.93	12.89

NOTE: Analysis based on 100-gallon gas water heater described in Table 1 of the Preliminary Statement

2. Specific Comments

a. *Jacket Heat Loss.* Lawrence G. Spielvogel of Lawrence G. Spielvogel, Inc., stated that DOE's assumptions were flawed because the model assumed that all standby heat loss from the jacket of a water heater represents wasted energy. Mr. Spielvogel stated that virtually all water heaters are in heated space in buildings. Therefore, jacket heat loss provides useful heat to the space, reducing the amount of heat that is otherwise required. The space in which water heaters are located is virtually never air conditioned. Since there is no energy penalty for air conditioning, jacket losses are losses only during the months when there is no heating. Throughout the continental United States this period of time typically ranges from several months to about six months per year. In addition, the ambient temperature is usually higher than 70° to 72° F during those months. This further reduces jacket heat loss. Therefore, according to Mr. Spielvogel, the benefit associated with reducing jacket loss is only a fraction of that set forth in the DOE analysis. Mr. Spielvogel did not provide data to support this argument.

DOE Response: No supporting data was provided for the comment. DOE believes that most water heaters are located in mechanical rooms. Such spaces are generally vented to the outside and the heat is lost when vented. Water heater standby loss is not calculated in the sizing of heating of such spaces and reduction of this heat loss is not likely to have any benefits for down sizing of equipment.

Water heaters located in conditioned space, likely will be in core areas of the building. Such core areas of a building are very often cooled year-round. In such conditions, the standby loss requires additional energy to cool the excess heat.

In those cases of water heaters located in heated spaces, DOE believes that many of these spaces are both heated or cooled, or adjacent to and influenced by spaces that are both heated and cooled. In such cases, DOE believes the benefit from heat loss in the heating season is lost to the cost of cooling and ventilation in the swing and cooling seasons.

DOE believes that its assumptions are correct nationally. It should also be noted that Sections 11 and 12 of the standards make provision for taking advantage of otherwise unaccounted for benefits in the standards through a whole building energy analysis. Furthermore, the DOE standards do not assure water heater placement regardless of current practice. DOE does not believe it to be practical to make this a requirement. Therefore, units should be designed for use in non-conditioned areas.

GAMA also commented on jacket heat loss, contending that DOE changed its criteria by allowing for insulation to be placed, either internal or external of the water heater jacket. Furthermore, GAMA contended the test procedures used to evaluate the water heaters do not make any accommodation for adding insulation on the outside of the water heater jacket prior to conducting the test. GAMA indicated that the ANSI/ASHRAE/IES Standard 90A–1980 standby loss requirements have always been applied to the water heater without external insulation. In using the test procedure and adhering to Standard 90,

the only insulation considered is that which is placed between the tank and the water heater jacket at the time of production. GAMA argued that no enforcement agency or any other standard-setting organization recognizes the option of insulating the outside as a means of establishing compliance. It contended that if DOE truly intended that its standby loss criteria could be satisfied by insulating the outside of the water heater, the dispute with DOE could be resolved very simply. DOE's standards could be revised to specify the standby loss requirements currently found in ANSI/ASHRAE/IES Standard 90A–1980 and separately require that all commercial storage water heaters be wrapped with an external insulation blanket at the time of installation. The R-value of the external insulation could be specified to provide the desired level of standby loss.

DOE Response: There is nothing in the test procedures that would prevent the testing of a storage water heater with additional insulation external to the metal jacket. From the standpoint of testing water heaters, it does not matter whether the insulation is internal to the water heater jacket or external, as DOE has found in the tests conducted at NIST. Therefore DOE conducted its analysis to include all possibilities.

DOE believes that external insulation is not a preferred solution if the insulation is of the type that can be easily damaged in operation. For example, low quality insulation wraps can become detached easily and can disintegrate with time; external insulation can be torn or otherwise disabled unless covered by a stiff shell; and routine maintenance to external insulation is subject to the rigors of maintenance, moisture, and animal destruction. DOE does not intend to engineer a specific solution for external insulation, but is aware of foam insulations that might be used externally.

b. *Set Water Temperatures.* Mr. Spielvogel and GAMA commented on the assumption used for water temperature. Mr. Spielvogel stated that DOE is incorrect in its assumption that hot water is stored at 140° F to 160° F. He stated that heater temperatures typically are set in the range of 110° F to 120° F. Both comments indicated that even in the DOE standards—Section 9.3.4—DOE suggests water heater temperatures no higher than 120° F, with the addition of booster heaters for any higher temperature requirements.

DOE Response: Although DOE received no supporting data with which to scrutinize the assertion, it appears that the commenters have misinterpreted the standards. Section 9.3.4.1.1 of the DOE Interim Standards suggests that water temperatures need not be higher than 120 °F except for certain uses. This is a suggestion only, as nowhere in the standards are water temperature levels set. At outlets for a particular use over 120 °F, DOE requires separate remote heaters or booster heaters. For example, a restaurant in what otherwise is an office building would require higher water temperatures for dishwashing and sterilization.

In its analysis DOE uses the 140 °F to 169 °F to reflect the tank temperatures from the only data available to DOE at the time, a End-Use Load and Consumer Assessment Program (ELCAP) study sponsored by the Bonneville Power Administration. In this study commercial building tank temperatures were not studied. Data from residential water heater tank temperature (409 temperatures taken) shows the average temperature to be 137 °F, with a range of 104 °F to 195 °F. Multiples of tank temperatures clustered at standard 120 °F, 130 °F, and 140 °F values. The DOE assumption of 140 °F was based on what was likely to occur.

c. *24-Hour Per Day Use.* Mr. Spielvogel and GAMA indicated that it was presumed that the covered water heaters were used 24-hours per day. Mr. Spielvogel indicated that increasingly it is usual practice to turn off all types of water heaters when non-residential buildings are unoccupied. This is accomplished by seven-day time clocks or with energy management systems. Therefore, according to him, in a typical commercial building, the water heater is likely to be off more than half the hours in a year. GAMA states that a good average usage is 14 hours per day.

DOE Response. The intent of the standby loss criteria is to reduce heat losses. In general these losses can be reduced through the addition of insulation. Additional insulation benefits the efficiency of the water heater whether it is in the standby mode or in an operational mode.

Both the ANSI and DOE test procedures dictate that the units be tested in the standby mode. The test procedures are designed to isolate the losses arising from the standby loss of the unit. In actual operation, the unit will be in standby for part of the time, and will be firing and circulating water for the other part. In either case, the additional insulation required to meet the standby loss criteria will serve to reduce undesirable losses of energy.

With respect to the use of time clocks and energy management systems, DOE did not receive any data or supporting information to substantiate from the comment. DOE does not have any information that indicates that either time clocks or energy management systems predominate in turning off commercial water heaters during times of non-use. The data it does have from the ELCAP study sponsored by the Bonneville Power Administration indicates that a very small percentage of commercial water heaters are controlled.

d. *Sizes of Units Modeled.* Several comments stated that DOE's choice of volumetric capacities is not representative of the marketplace. The comments indicated that the majority of commercial gas storage water heater models have storage volumes in the range of 50 to 100 gallons, with the two most common sizes being 75 to 100 gallons. Further, the comments indicated that the formulas and criterion employed to model commercial gas-fired water heaters were developed only to cover a narrow range of residential size water heaters with specific physical characteristics.

Rheem Corporation commented that 99 percent of water heaters sold have volumetric capacities of 100 gallons or less. Mr. Daugirda also stated that modeling units of greater capacities, when the formula used to set the standby levels is tilted in favor of larger units, gives misleading results.

Bradford-White Corporation indicated that 80 percent of its gas-fired water heaters sold were in the 75 to 100 gallon size (100 percent of the electric water heaters were the 50 to 120 gallon range). Mr. West also indicated that the larger than 100 gallon for gas, and 120 gallon for electric, water heaters have sales prices of six to ten times the price of typical, smaller-size models.

Mr. West pointed out that the electric water heaters DOE examined—50, 120, and 170 gallons—do not accurately represent common models. The predominant volume sizes of commercial electric storage water heaters range from 50 gallons to 120 gallons. Annual shipments of models within this volume range account for over 90 percent of the total commercial electric storage water heater shipments. The typical line consists of a 50- or 52-gallon size, an 80-, 82- or 85-gallon size, and a 120-gallon size. The DOE analysis should have included a model with a volume of 80, 82 or 85 gallons.

GAMA indicated that the sizes modeled by DOE corresponded to the typical sizes for only one company (A.O. Smith), and that the company offered the greatest variety of larger volume models. These models, however, are

equipped with power gas burners and are not representative of typical commercial gas storage water heaters.

DOE Response: The predominant size capacity of commercial gas and electric storage water heaters sold in the United States may well be in the 50 to 120 gallon range. DOE does not have data confirming that information despite several requests to the industry that such information be furnished. It is also not known if the manufacturers' assertion includes both commercial and residential water heaters.

However, DOE has used an analysis that is not dependent on mix of market sales. DOE has analyzed a wide-range of sizes that are covered by the criteria. It does not matter that certain sizes predominate the market. DOE has the obligation of setting levels for all storage water heaters that are within the scope of the standards. Its study is valid if it adequately covers the range of water heaters covered by the criteria. Thus, the study need not be a weighted average study of the units sold. The study addressed the issue by looking at a range of sizes and performing sensitivity analyses to identify parameters that might be sensitive to change. The study clearly shows that the range of units addressed was quite adequate to address the range of units about which Mr. West expresses concern.

With respect to the comment concerning types of gas-fired water heaters modeled, while it is true that the units were modeled after the large power gas burner heater line of one manufacturer, the models in the analysis did not attempt to utilize a power burner design. The models were chosen simply to provide representative tank dimensions of large gas-fired storage water heaters. Because the analysis was looking specifically at jacket losses, the concern about the powered burners and therefore, the cost of these units, is not warranted.

D. Comments on Electric Storage Water Heaters

1. Specific Comments

The majority of the comments pertained to gas storage water heaters. However, GAMA and each of the manufacturers that commented produce both gas and electric water heaters and have provided comments on each type.

a. Water Heater Characteristics—Electric. DOE received comments from GAMA and Rheem Corporation. They indicated that DOE was incorrect in assuming that commercial electric storage heaters are constructed the same as residential electric models. They stated that there are two major differences—the larger surface area of the part of the jacket that covers the water heater's controls and the area where the heating elements, thermostatic controls, and electric circuits are located. The effects of these two differences are: (1) the exterior surface area estimates of the DOE's analysis are too small; and (2) the tank surface area around the heating elements, controls, and circuits cannot be insulated with foam. Thus, the tank surface area has higher standby losses than other parts of the tank because it is not as well insulated as the rest of the storage tank and it also provides several thermal leaks where there are penetrations of the insulation.

Mr. Daugirda of Rheem Corporation stated that the DOE analysis is flawed by the use of a 0.5 emissivity and a 76.6°F temperature difference (150°F water temperature and 71.4°F room temperature) while the basis of the standby loss is an 80°F difference. Mr. Daugirda indicated that these flaws cause a three percent discrepancy due to emissivity and a 4.3 percent discrepancy due to temperature differences. This accounts for a cumulative 7.3 percent difference from the expected. These latter assumptions are made based on the outlet and relief valve fittings typically being at the top of the tank (highest temperature) and inlet and drain fittings typically being at the bottom of the tank (lowest temperature).

DOE Response: The commenters are incorrect in their statement that DOE assumed that commercial electric storage water heaters are constructed in the same manner as residential electric models. Data from commercial water heater manufacturers and vendors were used to establish modeling parameters for the analysis. DOE is quite aware of the extensions of surface area that occur on commercial units, such as extensions covering the heating elements, controls, and electric circuits. According to manufacturers literature, these extensions vary depending on the unit selected. Therefore, it would be difficult, time-consuming, and non-productive to model every model and type of unit.

DOE used a modeling approach that considered the water heater as a right cylinder. The jacket surface area used in the calculations was based on the area of a cylinder without regard to any extensions of that area required to accommodate the electrical components. DOE believes that this method represents the most consistent method of dealing with jacket surface area. Consideration of the additional area covering the electrical components would lead to a lowering of the calculated standby loss for an individual unit. However, in its model, DOE has accounted for the standby losses attributed to fitting, controls, and other externalities.

Various published studies on water heaters were reviewed to approximate the losses attributable to fittings and controls. [Harris, 1984; Hoskins, 1977; Mutch, 1974; Palla, 1979] The information available from these reports was based on analysis and testing of residential water heaters. No data on commercial fittings and controls was uncovered and none of the commenters provided such data. Appropriate adjustments were made to adapt the information for commercial storage water heaters. DOE concluded from this analysis that the heat loss from:

Pressure Relief Valve Fitting=14 Btu/h @ 72°F ▲T

Drain Valve Fitting=7 Btu/h@72°F ▲T

To develop figures for the inlet and outlet water line fittings, the assumption was made that the losses were proportional to the diameter of the fittings, and that the outlet (hot) fitting would be equivalent to the pressure relief valve fitting and the inlet (cold) fitting would be equivalent to the drain valve fitting. Under these assumptions, and considering the relative diameters of typical fittings the following loss figures were estimated:

Inlet Fitting=14 Btu/h@72°F ▲T (at assumed twice drain valve fitting diameter)

Outlet Fitting=28 Btu/h@72°F ▲T (at assumed twice pressure relief valve fitting diameter)

None of the published reports provided data on the losses from the controls for the electric water heaters. The controls are considered to include the thermostat and electric heating elements along with the associated wiring. The NIST test data was used to develop a loss figure for the controls.

The NIST tests on the electric water heater modified to eliminate thermal shorts yielded an average heat loss rate of 294.2 Btu/h. When the NIST unit was further modified by wrapping the unit in an R–11 insulation blanket and inserting an R–11 batt over the electrical components the average heat loss rate was 237.9 Btuh. The difference between the two loss rates was presumably due to the jacket loss reduction and the reduction in loss from the electrical controls. Use of the model would allow the determination of the jacket loss reduction, leaving the remaining loss as attributable to the controls.

Using the NIST test data for the modified unit and the modified unit plus an insulation jacket:

NISTMOD1 (modified unit) average heat loss = 294.2 Btu/h
NISTMOD2 (modified unit plus R-11 Batt) = 237.9 Btu/h
Difference = 56.3 Btu/h

Using the model to predict the difference in jacket heat losses:

MOD1 (model with the same insulation NIST unit) = 193.4 Btu/h
MOD2 (model with R-11 insulation blanket added) = 162.3 Btu/h
Difference = 31.1 Btu/h

The difference between the two NIST tests does not reflect any difference in the losses from the fittings since no changes were made in this area. Thus, the difference in the NIST tests results from the difference in the jacket losses plus the difference in the controls losses. Since the jacket loss difference is presumably accounted for by the model, the remaining difference should be the losses associated with the controls.

Difference in NIST tests (294.2 − 237.9) = 56.3 Btu/h
Difference in model (193.4 − 162.3) = 31.1 Btu/h
Amount attributable to controls losses = 25.2 Btu/h.

Summarizing the estimated losses for the non-jacket areas (fittings and controls) after correction to the test conditions of 79.95°F ▲:

Inlet Fitting (14 Btu/h @ 72 °F ▲T) = 15.5 Btu/h
Outlet Fitting (28 Btu/h @ 72 °F ▲T) = 31.1 Btu/h
Pressure Relief Valve (14 Btu/h @ 72 °F ▲T) = 15.5 Btu/h
Drain Fitting (7 Btu/h @ 72 °F ▲T) = 7.8 Btu/h
Controls = 25.2 Btu/h
Total Loss = 95.1 Btu/h

To correlate the results of the model with the results of the tests, these fittings and control losses are substituted into an equation that describes the heat loss:

Heat Loss = Jacket Loss + Fittings Loss + Controls Loss

From the model for the modification #1 condition, the heat loss is 193.4 Btu/h. The corresponding heat loss from the NIST test data is 294.2 Btu/h. The difference between the two figures is 100.8 Btu/h. Comparing this number to the total loss from fittings and controls indicates that the model and the test results show heat loss within 5.7 Btu/h of each other, when reasonable assumptions for the fittings and controls are made.

The test procedure DOE used for electric water heaters (ANSI Standard C72.1–1972) calls for a test room temperature of 73.4 °F ± 5 °F. ±3.6 °F and a top-of-tank water temperature of 150 °F±5 °F. This information is provided in the Preliminary Statement of Reasons. The equation used in the DOE Interim Standards to calculate standby losses includes a term to correct the actual test condition to an 80 °F temperature rise condition. In calculating the standby loss rate for a given electric water heater model, as subjected to the ANSI Standard C72.1–1972 test conditions, the computer model used the specified room air temperature of 73.4 °F, not 71.4 °F as stated in the comment, and tank water temperature of 150 °F. Then, the standby loss equation was used to project the losses that would occur with and 80 °F temperature rise. Therefore, the standby losses calculated were based on an 80 °F temperature difference, not the 76.6 °F difference stated in the comment.

With respect to emissivity levels, DOE modeled a range of water heaters at 0.1, 0.5, and 0.9 emissivity. The data reported in Figure 3 indicated there is no appreciable difference between emissivity levels.

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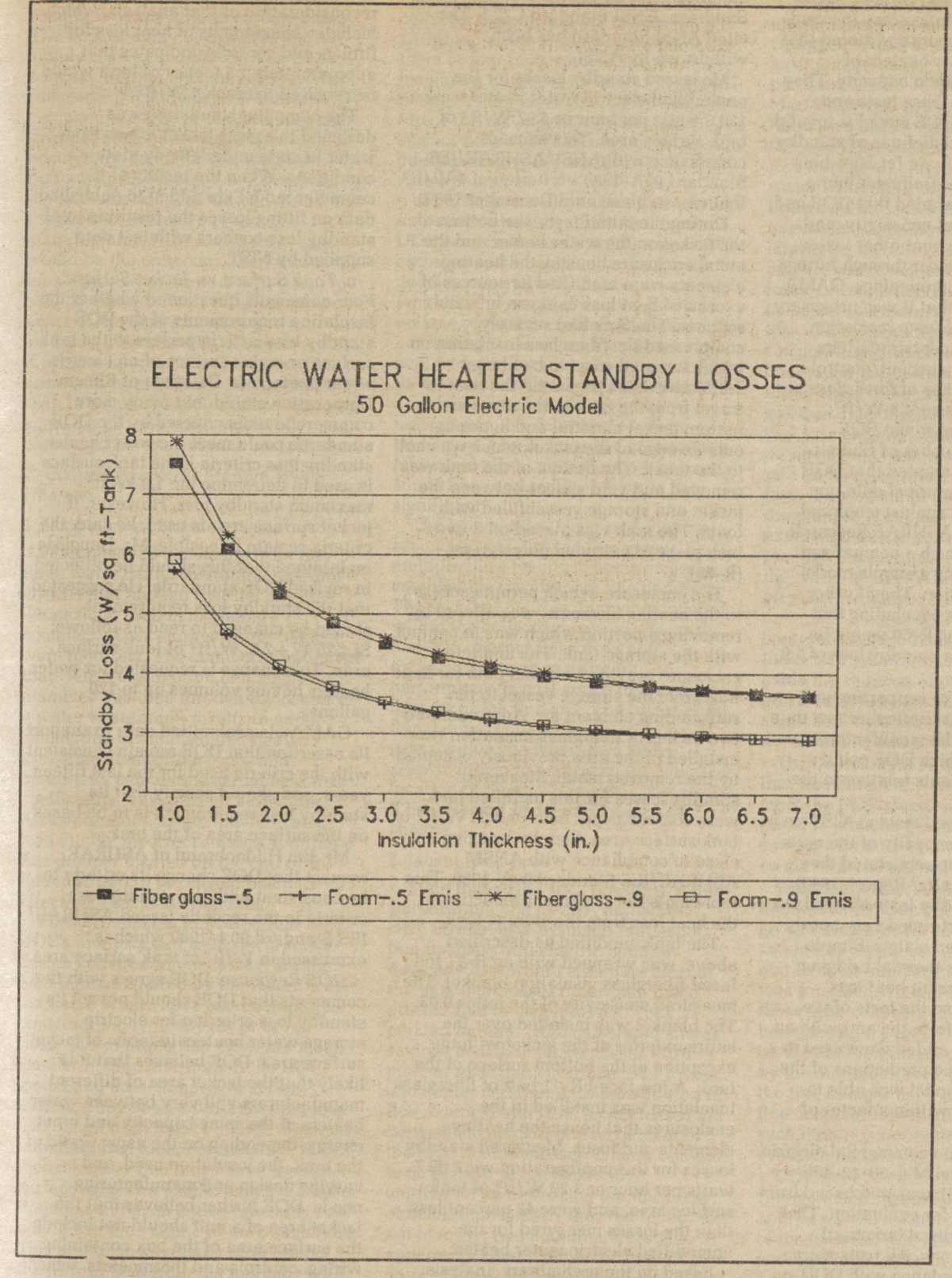


Figure 3 - Sensitivity to Emissivity Levels

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b. *Manufacturer Test Data vs. DOE Calculations.* State Industries, Inc. and Bradford-White Corporation stated that they had tested water heaters of approximately 50-gallon capacity. They and GAMA refer to these tests and concluded that the DOE model is invalid because the DOE predictions of standby loss for that size unit are far less than their test results. Mr. Collins of State Industries, Inc., concluded that DOE had used too low a jacket emissivity, and did not take into account other losses such as those that occur through fittings, values, and clean-out openings. GAMA and SI commented that it was necessary to use two inches of foam insulation around the tank (except around the thermostat/heating element/control area where two inches of fiber glass are used) to meet the current 4 W/ft² criterion, as opposed to the DOE calculation of two inches of fiberglass. GAMA further commented that DOE had neither used empirical data nor validated its model against empirical data. GAMA cited ASHRAE Research Project 502 where such a comparison had been made using a simple model and blanket insulation. They further cited this project as concluding that insulation exceeding R–50 would be needed to achieve a standby loss of 1.9 W/ft².

DOE Response: No supporting unit description, test description, or test data were provided by the manufacturers or by GAMA upon which DOE could evaluate the comments relative to the tested units.

DOE commissioned tests at NIST on a unit similar to the capacity of the units which the manufacturers stated they had tested [NIST Letter Report, 1990]. The results of standby tests showed the unit as shipped performed very poorly relative to published claims. Simple correction of major thermal bridging resulted in a 28 percent heat loss reduction. Data from the tests of the modified unit and from the unit with an insulation blanket added were used in a comparison with the predictions of the DOE model. The model was able to predict the results within a factor of ±15 percent.

A Bradford-White commercial electric water heater, model M–I–50–12–35F–115(S/N GC013836), was purchased from a local distributor for evaluation. The tank had an advertised (nominal) capacity of 50 gallons. All tests were conducted in accordance with DOD's Energy Conservation Progam for Consumer Products, 10 CFR Part 430 (January 1, 1985) in lieu of the test procedure specified within the Energy Performance Standards for Commercial and Multi-Family High Rise Residential Buildings, ANSI Standard C72.1. The cited ANSI Standard has been withdrawn by ANSI.

Measured standby losses for the unmodified electric water heater were 120.3 watts per hour or 5.67 W/ft² of tank surface area. This exceeds compliance with ANSI/ASHRAE/IES Standard 90A–1980's criterion of 4 W/ft² that was in place until December 1989.

During the initial tests, the bottom of the jacket on the water heater and the metal enclosure housing the heating elements were identified as sources of excessive heat loss using an infrared scanner. The tank had severely compressed the fiberglass insulation on which it rested so as to be almost ineffective. This permitted the heat to travel from the tank to the sheet metal bottom jacket material and hence to outside edge of the jacket which was hot to the touch. The bottom of the tank was removed and void spaces between the jacket and storage vessel filled with foam. The tank was placed on a two inch piece of extruded polystyrene (R–10).

The enclosure, which permits access to the heating elements, was altered by removing a portion which was in contact with the storage tank. The unaltered enclosure provided a direct path for heat flow from the storage vessel to the surrounding ambient air. Approximately two inches of fiberglass insulation was installed in the area previously occupied by the removed metal. Measured standby losses for this modified tank were 86.2 watts per hour or 4.06 W/ft² of tank surface area, thereby bringing it close to compliance with ANSI/ASHRAE/IES Standard 90A–1980. This represents the 28 percent reduction in the heat loss from the storage tank.

The tank, modified as described above, was wrapped with an R–11 foil-faced fiberglass insulation blanket. The measured emissivity of the foil is 0.03. The blanket was installed over the entire exterior of the jacket with the exception of the bottom surface of the tank. A foil-faced R–11 batt of fiberglass insulation was installed in the enclosures that house the heating elements and fuses. Measured standby losses for this configuration were 69.7 watts per hour or 3.29 W/ft² of tank surface area, and were 42 percent less than the losses measured for the unmodified electric water heater.

Based on the preliminary analysis conducted for the Preliminary Statement, 50-gallon electric water heaters were shown to comply with the ASHRAE Standard 90A–1980 4 W/ft² criterion with approximately 1.5 inches of fiberglass insulation. A reconsideration of that analysis, which includes components of heat loss for fittings and controls, indicates that approximately 1.5 inches of form would be required to reach 4 W/ft².

The computer simulation was designed to assess jacket losses from water heaters under steady-state conditions. When the results of the computer model are added to published data on fitting losses the resulting total standby loss concurs with test data supplied by NIST.

c. *Tank Surface vs. Jacket Surface.* Four comments questioned whether the insulation requirements of the DOE standby loss criteria pertain to the tank surface or jacket surface of an electric water heater. Mr. Daugirda of Rheem Corporation stated that many more commercial units covered by the DOE standards could meet the water heater standby loss criteria if the tank surface is used to determine the 1.9 W/ft² maximum standby loss. However, if jacket surface area is used, he said, the criteria remain infeasible. Mr. Daugirda maintained that this should be reflected in revised DOE standards. He suggested that the standby loss requirement should be changed to read as follows: SL<25 W+2.6. W/ft² of tank surface area. This change is requested for water heaters having volumes up to 120 gallons.

GAMA also submitted data to support its assertion that DOE remain consistent with the criteria used for the last fifteen years, and should specify that its standby loss requirement is to be based on the surface area of the tank.

Mr. Jim Hildenbrand of ASHRAE request that DOE change its criteria to be consistent with the standby loss criteria in the recently issued ASHRAE/IES Standard 90.1–1989 which is expressed in W/ft² of tank surface area.

DOE Response: DOE agrees with the comments that DOE should not set its standby loss criterion for electric storage water heaters in terms of jacket surface area. DOE believes that it is likely that the jacket area of different manufacturers will vary between water heaters of the same capacity and input energy, depending on the aspect ratio of the tank, the insulation used, and varying design and manufacturing needs. DOE further believes that the jacket area of a unit should not include the surface area of the box containing wiring, controls and thermostats, which project from the side of many water heaters; and that it would be unnecessarily complex to express this concept in a definition to cover those and similar conditions.

DOE also evaluated expressing the criteria in terms of tank surface area. The tank of many of the units are not simple right cylinders. They have a concave bottom and convex top. This raises the question as to whether to calculate the area of the tank as a right cylinder or to refine that calculation to account for the deformed top and bottom. Furthermore, the dimensions of the tank are not generally provided in the product literature of the manufacturer. Fabrication drawings would be the only consistent source of tank dimensions. In addition, it is slightly more difficult to calculate the areas of the convex and concave surfaces. Therefore, DOE concludes that it is more appropriate to express the criteria in terms of tank surface area than in terms of jacket surface area. As such, the criteria announced today are expressed in terms of tank surface area.

E. Comments on Gas Storage Water Heaters

1. Construction Characteristics

DOE received comments from the three water heater manufacturers and GAMA that implied that the physical dimensions used in modeling commercial gas storage water heaters were incorrect. The comments indicated that DOE's assumption of a single large diameter flue tube through the center of a water heater tank results in under-calculating the uninsulated heat exchange area for that loss, and incorrectly calculating actual heat loss coefficients. They further stated the assumption of a single flue tube also leads to the incorrect supposition that a flue damper located on the end of the flue tube and in the closed position effectively seals the flue tube.

These comments indicated that if DOE's analysis had used the practical design construction necessary for the heat inputs required by the water heater market, it would have used a multiflue construction, typically six or seven flues. The multiple flue tubes are much smaller in diameter than in the DOE model and are equipped with flue baffles. They have a different heat loss coefficient from that of a large diameter unbaffled flue tube. For instance, two, 3-inch diameter flue tubes have the same surface area as a single, 6-inch diameter flue tube, but each 3-inch tube only has one-fourth the volume of the 6-inch tube. This diameter-to-volume ratio affects the flow of heat from the flue tube wall to the air and the resultant standby heat loss. Multiple flues require the use of a flue collector box located above the tank and before the flue outlet of the water heater. The flue damper is installed on this flue outlet. The flue collector box essentially covers the entire top of the storage tank and is there to four inches high. The top insulation of the water heater is located between the flue collector box and the top of the water heater jacket. The surface area of this box becomes an additional area of standby loss on the water heater.

DOE Response: It is clear that there is a misunderstanding of the assumptions DOE used in its modeling approach. The assumption of a single flue was made to develop an estimate of the increase in tank dimensions to accommodate the volume of water required. The model did not attempt to account for the detailed heat transfer from internal flue passages to the water. Instead the model assumed a uniform water temperature as indicated in the Technical Support Document. For the purpose of modeling jacket heat loss, the difference between single flues and multiple flues is not significant.

The commenters suggested that the assumption of a single flue versus multiple flues results in some errors in establishing the effect of flue dampers. The fact that the flue damper is located within the collector box and covers the multiple internal flues does not necessarily result in different performance from a single flue with a damper at the flue exit. The intent of the flue damper is to retain the hot flue gases within the flue rather than allowing them to escape up the flue. The location of the flue damper is immaterial if the effect of its location does not change.

2. Jacket Heat Loss

State Industries, Inc., Bradford-White Corporation, and GAMA argued that DOE erroneously assumed that using flue dampers and electric ignition devices (IIDs) would eliminate most of the tank heat losses other than those attributable to jacket losses. They pointed out that DOE calculated energy savings based on jacket losses of 70 percent to 90 percent of the total losses, and contended that with the addition of flue dampers and IIDs, jacket losses are between 40 percent and 50 percent of the total standby losses. Nearly one-half to 60 percent of the losses are unaffected by increasing the thickness of insulation. GAMA referred to, but did not identify, two manufacturers who apparently conducted tests on their own units to prove this point, and partial test information was included in their comments.

Another criticism of the assumptions was that DOE made no attempt to measure the percentage loss attributable to jacket loss. It stated that DOE's analysis assumes that models currently equipped with flue dampers and IIDs have jacket losses that account for 70 percent or more of the total standby loss. However, GAMA and State Industries indicated that in no case did the analysis measure the percentage of loss attributable to jacket loss on such water heaters. GAMA and State Industries indicated that manufacturers' experience and knowledge gained in improving the efficiency of commercial storage water heaters show that the losses through the flue still account for 50 percent or more of the total standby loss. GAMA, Bradford-White Corporation, and State Industries contended that although effective in diminishing a major portion of the flue gas loss, flue dampers do not eliminate that loss entirely. Rather, the steel damper that obstructs the hot flue gas will be warmed and conduct heat away from the system. In the open position, the damper is subject to thermal expansion due to continual exposure to the high temperature flue gases exiting the water heater. When the burner shuts off and the damper closes, it will cool down. As it cools down, the damper will contract slightly. Thus, GAMA and State Industries maintained, even putting aside the realities of production and fabrication tolerances, a damper that might seal tight when first closed, might not maintain that seal.

Dr. Goldstein of NRDC commented that flue dampers were necessary to meet the DOE standards, and promoted the idea of using flue dampers in conjunction with additional insulation on commercial gas water heaters.

DOE Response: Although experience and knowledge, and some testing, were given as reasons for the negative comments on the use of flue dampers and IIDs, no substantive information was provided. To more fully respond to those who commented, it would have been necessary for DOE to receive data on the characteristics of the units tested by the manufacturers, particularly on the flue damper used and the jacket and flue collector box insulation. Without such data it is not really possible to evaluate this statement fully.

DOE believes that those who commented misunderstood the DOE analysis. DOE assumed, for the purpose of its analysis, that after a flue damper and electronic ignition device were added to a commercial gas storage water heater, 70 percent of the remaining heat loss would be through the jacket. This presumes that 30 percent of the loss remains through flue and pilot losses and that the standby

loss criteria cannot be attained simply by adding insulation.

DOE does not consider acceptable the contention of those who commented that 50 percent or more of the loss comes through the flue despite the presence of a flue damper. First, while it is understandable that flue dampers are not 100 percent efficient, it is also conceivable that better design and production and the more predominant use of electronic flue dampers can rectify much of the residual heat loss. Second, the DOE test on a commercial gas water heater at NIST indicates that total heat loss without a flue damper during the cool down mode of the test procedure is approximtely 50 percent during the first 24 hours. With the flue damper, the percentage heat loss during a similar 24-hour period was only about 30 percent. See Figures 4 and 5. These figures were based on the total standby losses minus those through the jacket, fittings, gas valve, and piping losses. While not confirming the percentage thermal resistance provided by a flue damper, the test was illustrative of the effect flue dampers can have.

In regard to Dr. Goldstein's comment, DOE agrees that flue dampers are an integral part of water heater energy conservation and that they, along with IIDs, should be added to units that cannot now meet the DOE criteria with insulation only.

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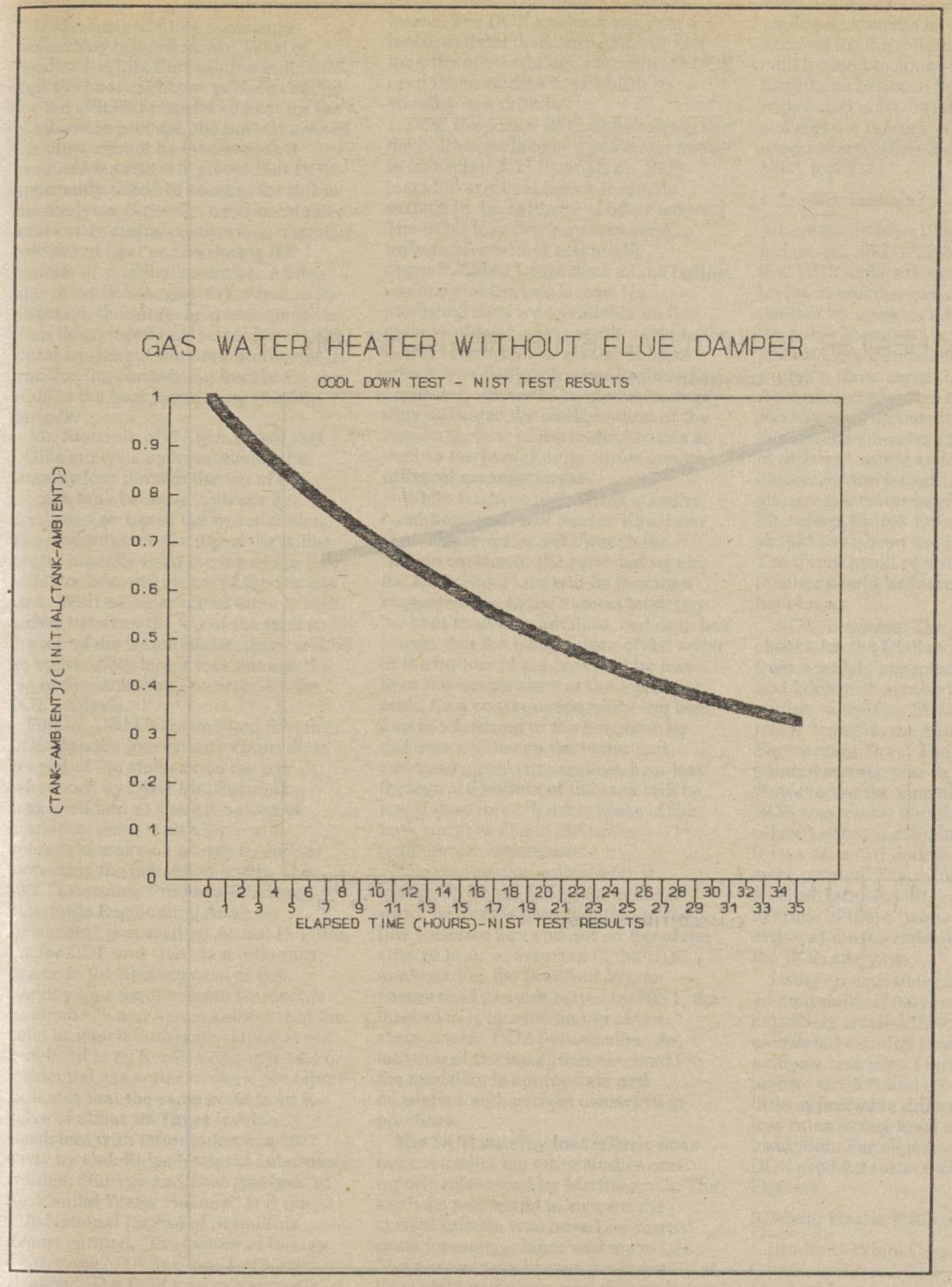


Figure 4--NIST Gas Water Heater Cool-Down Test w/out Flue

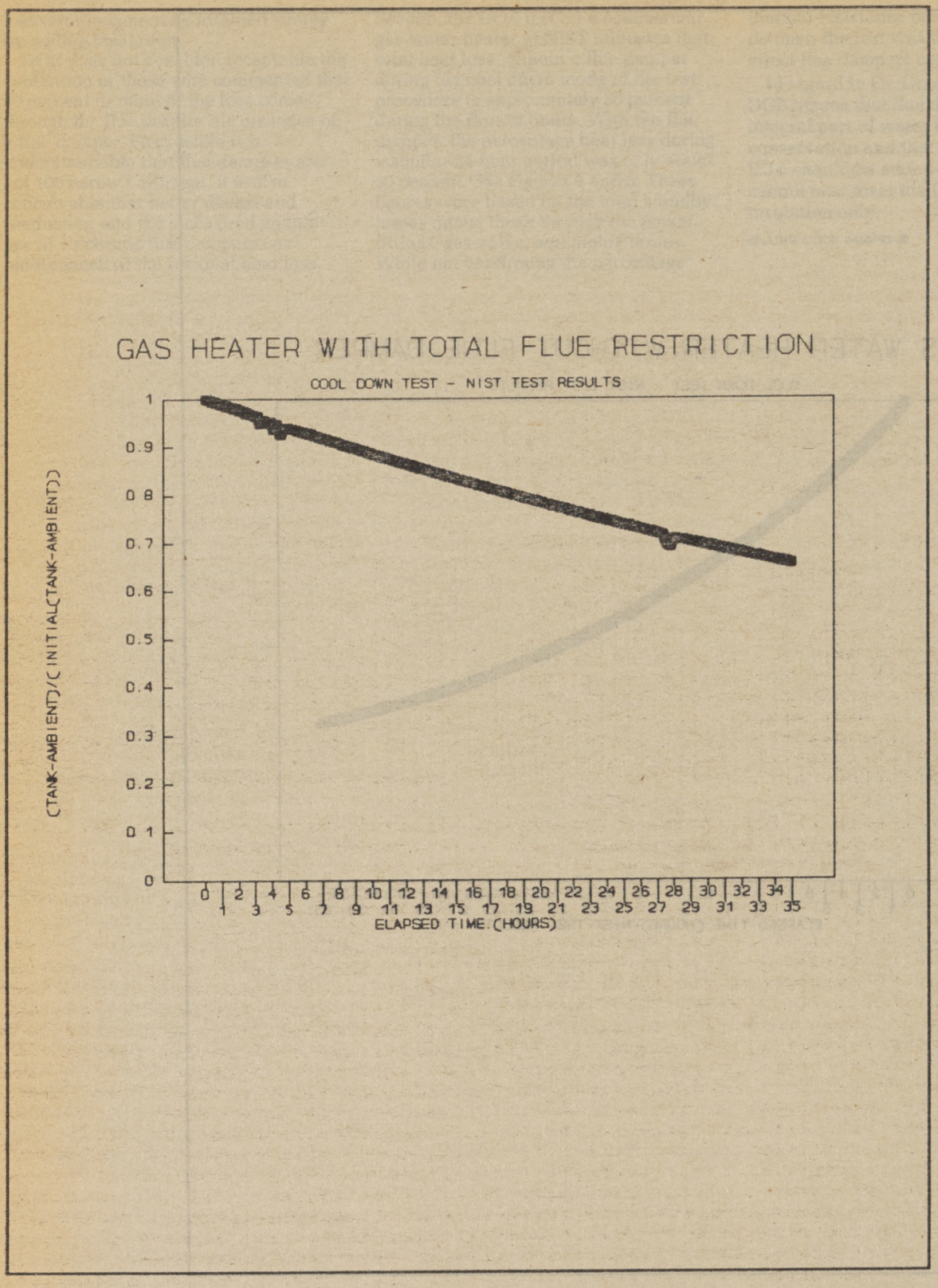


Figure 5 - NIST Gas Water Heater Cool-Down Test w/ Flue Damper

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3. Insulation.

DOE received three comments concerning insulation. Mr. West of Bradford-White Corporation indicated that the heat exchange surface needed for the efficient transfer of heat for the combustion process, the bottom area of the tank, cannot be insulated in a practical manner. He stated that DOE apparently failed to account for this in the analysis. Since the need to transfer heat exists during combustion, a similar transfer of heat occurs during the periods of standby operation. At this time, heat flow begins to reverse in its direction, therefore, heat loss emanates from this needed uninsulated area. The water heater bottom area is efficient in transferring combustion heat but it also adds to the heat loss during standby periods.

Mr. Stanonik of GAMA stated that DOE's analysis underestimates the standby loss through the top of the storage tank because it places the insulation on top of the water heater. The insulation on the top of the water heater actually is on the top of the flue collector box, not on top of the storage tank. With an air space of three to four inches between the top of the tank and the top of the water heater, there will be an appreciably larger loss through the top of the tank than predicted by the DOE analysis.

Finally, GAMA commented that the DOE standby loss criteria contradicts several of the studies and reports referenced by DOE. Mr. Stanonik suggested that at some R-values of insulation there is no significant potential for saving energy by further increasing the insulation levels. The 1982 "Consumer Products Efficiency Standards Engineering Analysis Document" prepared by Arthur D. Little, Co. for DOE and cited as a reference source in the development of the standby loss requirements for electric residential water heaters states that the point at which further insulation is not beneficial is an R-value of about 14. For residential gas water heaters, the report indicates that the same point is an R-value of about 16. These levels are consistent with information in a 1977 study by Oak Ridge National Laboratory entitled, "Energy and Cost Analysis of Residential Water Heaters" and the 1979 National Bureau of Standards Report entitled, "Evaluation of Energy Conserving Modifications for Water Heaters." The DOE analysis suggests that this critical point is an R-value of 21 for commercial electric water heaters and an R-value of 18 to 21 for commercial gas water heaters, depending on what percentage of standby loss is attributed to jacket losses. The DOE analysis suggests a larger optimal thickness of insulation than the other studies, even though DOE used these studies to establish its standby loss criteria.

DOE Response: DOE understands that the bottom surface of a gas water heater is uninsulated. In its analysis, DOE included any heat losses from this surface in the category of other losses. The other loss category was used to include all areas of essentially uncontrollable losses such as the bottom surface and the flue losses. No published data was available on the amount of heat losses attributable to the bottom surface of gas water heaters which would allow for treating this loss separately. In addition, manufacturers' data indicates the configuration of the bottom surface of the water heaters as well as the burner units varies among different manufacturers.

While it is true that during standby conditions heat will tend to flow from the warmer water out through the bottom surface to the surrounding air, the actual heat loss will be less than suggested due to the natural tendency for heat to rise. In addition, test data has shown that the temperature of the water in the bottom of the tank will be less than the temperature at the top of the tank. As a consequence, since the heat loss is a function of the temperature difference between the water and surrounding air temperature, heat loss through the bottom of the tank will be lower than through other areas of the tank surfaces due to the lower temperature differences.

The commentor indicated that insulation on the top of commercial water heaters is placed on top of the flue collector box and not on top of the storage tank as assumed in the DOE analysis. For the Bradford-White commerical gas unit tested by NIST, the insulation is located on top of the storage tank. DOE believes that the location of the insulation assumed for the modeling is appropriate and consistent with current construction practices.

The DOE standby loss criteria does not contradict the other studies and reports referenced by Mr. Stanonik. The analysis performed to support the current criteria was based on current costs for energy, labor and materials. The previous studies were conducted at least eight years ago, one of them being 13 years ago. Costs have changed since the publication of those reports, and the change in costs is reflected in the current analysis. Additionally, the referenced studies dealt with residential versus commercial water heaters. DOE made adjustments in its analysis to account for the differences in size, construction techniques and operating conditions between commercial and residential units. In fact, results from some of the referenced reports were used in correlating the DOE model to the NIST test data.

4. Surface Emissivity

Comments from Rheem, State Industries, and GAMA each indicated that DOE underestimated standby losses in commerical storage water heaters by using an emissivity factor of 0.5 rather than 0.9. Mr. Daugirda of Rheem Corporation stated that this causes a three percent discrepancy. According to the *Gas Engineers Handbook* (The Industrial Press, 1965), the surface emissivity of various paints of different colors and types is 0.9 or higher. All the jackets of commercial storage gas water heaters are painted. Therefore, the 0.9 emissivity value should have been used in the analysis. The direct result of utilizing a higher number would be increased standby heat loss.

DOE Response: The emissivity values chosen for the DOE model were taken from a widely accepted heat transfer text book with similar data to the 1965 edition of the *Gas Engineers Handbook [Heat Transfer, an Alan Chapman Engineering Text].* The value for a painted surface was in the 0.9 range. However, at the time of the modeling, DOE was aware that some units are offered with stainless steel jackets and it was assumed that not all the surfaces were painted. The value for a stainless steel surface was 0.1, so an approximate average of these two was calculated to arrive at the 0.5 emissivity factor used in the DOE analysis.

Using an emissivity of 0.5 rather than an emissivity of 0.9 results in an extremely small difference in the calculated standby loss. The computer analysis was run at three separate levels—0.5, 0.7, and 0.9—and DOE found little appreciable difference in standby loss rates at any level of added insulation. For all subsequent analysis, DOE used 0.9 surface emissivity. See Figure 3.

5. Water Heater Fittings

Bradford-White Corporation and GAMA indicated that water heater fitting(s) losses are distinctly different from the jacket and flue losses and need to be considered in any analysis. The comments maintained that DOE's analysis underestimates standby losses because it does not consider the standby

losses that occur through such fittings. The losses from thermal leaks created by fittings that connect through the insulation to the tank contribute to standby loss but are not affected by the addition of insulation. The comments cited an Arthur D. Little, Co. report entitled, "Study of Energy Saving Options for Refrigerators and Water Heaters," published in 1976, that determined that the fitting losses are about 85 Btu/h in a residential gas water heater and about 110 Btu/h on a residential electric water heater. Considering that the fittings on commercial storage tanks will be larger and that such tanks also add a clean-out valve, the fitting losses on commercial storage water heaters will at least be comparable to residential units. These fitting losses represent over four percent of the "90 percent allowable losses" of 1932.26 Btu in DOE's analysis for the 100-gallon gas model and almost 20 percent of the "90 percent allowable losses" of 539 Btu for the 120-gallon electric model.

DOE Response: In the initial modeling, DOE used an aggregate number for fitting losses. Subsequently, further information was identified and used in the latest modeling runs. For electric water heaters, the total standby loss for fittings was 100.85 Btu/h. The number for gas water heaters is approximately 75 percent of the electric fittings losses because controls are not included. Figures 1 and 2 illustrate the avenues of standby loss for electric and gas water heaters. Subsection D of this Section contains additional information relevant to this topic.

6. Heat Traps

DOE received one comment from GAMA concerning heat traps. Mr. Stanonik stated that there is a conflict between the DOE analysis and an earlier DOE document—"1982 DOE Engineering Analysis Document". In the papers submitted in response to the lawsuit filed by GAMA, DOE stated that the use of heat traps were not factored into the establishment of the standby loss requirement. Mr. Stanonik contended that the use of the 1982 DOE document as a primary reference contradicts this statement. Furthermore, according to Mr. Stanonik, at a February 11, 1990, meeting of the ASHRAE SSPC 90R Service Water Heating Subcommittee, ASHRAE factored in the benefits of heat traps even though neither the referenced test procedures nor the text of the ASHRAE specifications allow for a credit for heat traps in the determination of a water heater's standby loss.

DOE Response: In setting the standby loss criteria, DOE has not assumed that any or all water heaters will come with integral heat traps. Heat traps that are integral to the unit, which are more efficient than the heat traps required of the test procedure, would receive credit from the gas water heater test procedure. GAMA thus misconstrues or misrepresents DOE's reference of the 1982 DOE document. DOE has included heat traps in its standby loss calculations per the requirements of the test procedures and the January 30, 1989, DOE Interim Standards. In the ANSI gas water heater test procedure, heat traps on both the inlet and outlet ports are to be installed if not already present before testing. In addition all inlet and outlet piping including heat traps for a length of four feet from the tank is insulated to a minimum R–4. A temperature and pressure relief valve is also to be installed if not already and insulated to R–4.

The ANSI electric water heater test method does not require heat traps and insulation on temperature and pressure relief valves. Association insulation, including pipe, are not required to be installed or added prior to testing.

The DOE Interim Standards require heat traps to be installed on storage water heaters when not supplied as part of the unit. Circulating systems do not require heat traps. The standards also require piping on storage water heaters to be insulated to R–4 for the first eight feet from the tank, this would include traps, for inlet and outlet connection sizes up to two inches. This will include most units up to the 300-gallon range. Insulation with a thermal resistance of R–6 is required for connections above two inches. The standards do not specifically require insulation on relief valves.

The primary difference between the test procedures and the DOE standards is the additional four feet of insulated inlet and outlet piping. In the case of an operating tank, with hot water being drawn from the tank, the entire pipe will be full of hot water and an additional four feet of insulated pipe out of tens and hundreds of feet of total pipe will likely have very minimal effect. In standby situations, the required heat trap is the primary heat transfer inhibiter. Similar to the diminishing return of added insulation, insulation of the additional four feet beyond the tank during standby periods will also have little effect. The test method also credits insulation on relief valves, which is not required by the standard.

DOE has included these requirements in developing the model that estimates water heater requirements to meet the DOE standards. Manufacturers should already be aware of these requirements for use in their own testing.

DOE rejects the assertion that neither the test procedures nor the ASHRAE/IES Standard 90.1–1989 requires heat traps; in fact, they both incorporated heat traps. The insulation on the trap and pipe in the test method is equivalent to that required by the standards, hence, a more effective internal heat trap may well reduce additional standby heat loss not addressed by the R–4 pipe insulation required in the test procedure.

It should be noted that while DOE has found it beneficial to listen to and participate in the deliberations of ASHRAE SSPC 90R, DOE has independently considered the information received and reached its own conclusions.

7. Water Heater Recovery Efficiency

DOE received one comment, from Rheem Corporation, indicating that the use of 75 percent recovery efficiency is misleading when applied to the recovery of standby losses. Mr. Daugirda of Rheem stated that the thermal efficiency of commercial gas storage water heaters is determined under steady-state conditions and that during the course of the standby loss determination, the recovery efficiency for the short recovery cycles are in the 60 percent range. Therefore, according to Mr. Daugirda, the recovery efficiency is variable, depending on the mass of the water heater in addition to the stored water that is to be heated.

DOE Response: In the DOE model, recovery efficiency has been assumed to be equivalent to the thermal efficiency of the water heater. Rheem states without supporting information that the recovery efficiency is much lower than that. For the gas water heater tested by NIST, the recovery efficiency was 72 percent, or very close to the 75 percent efficiency rating of the unit tested.

8. Measured Data

Bradford-White Corporation maintained that the DOE analyses were faulty as shown by manufacturer tests conducted in response to DOE's Preliminary Statement.

In an effort to verify the DOE conclusions, Bradford-White Corporation constructed and tested a 100-gallon gas water heater prototype (250,000 Btu/h input), with flue damper and IID, and two additional inches of external insulation. With the additional insulation, a total R-value of 16.3 was achieved. The test results for this unit indicate a 2.02 percent standby loss per

hour. Mr. West of Bradford-White contended, therefore, that the achievement of a 1.68 percent per hour standby loss rate is not possible under the conditions specified in the DOE analysis. In addition, the 2.02 percent value can only be achieved under laboratory test conditions because in real use situations several water heater externalities, such as the controls and drain value fittings cannot be covered by the insulation wrap.

DOE Response: The commenter provided no data to substantiate his argument that test data indicated that available gas units could not be brought into compliance. Test data provided by the California Energy Commission indicates that several gas water heaters that are commercially available do comply with the current standby loss criteria. The test data provided by NIST indicates that when properly insulated the test unit actually exceeds the standby loss criteria.

9. Cost Benefit Analysis

a. *Modeling and Assumptions.* Comments were received from State Industries, Rheem, and GAMA that criticized DOE's cost-benefit analysis model and the assumptions used in developing the model. These comments argued that the energy calculations, the cost data, and payback periods were wrong. They indicated that the cost of adding insulation, including labor, retooling costs, and profit, was based on residential storage water heaters and not commercial water heaters. Finally, they asserted that DOE did not prepare a complete cost-benefit analysis. They pointed out that DOE did recognize current models of gas storage water heaters, all low input models, that comply with existing standards and will comply with the DOE standards if flue dampers and IIDs are added. They maintained, however, that DOE's analysis does not reflect the true costs of adding a flue damper or an IID.

It was suggested that DOE could have conducted a more detailed analysis if it had surveyed suppliers of commercial water heaters to obtain cost differences in comparable models, with and without flue dampers and IIDs. GAMA pointed out that DOE would have discovered that the addition of the flue damper and IID raises the price of the water heater by $500.00 or more. Comparing this cost to the benefit calculated by DOE, the flue damper and IID option would have a simple payback of almost 14 years under the most realistic conditions of usage. Therefore, GAMA concluded that DOE's decision to establish a standby loss criteria to require flue dampers and IIDs on non-equipped models is not economically justified.

DOE Response: In attempting to establish the costs for adding insulation, flue dampers, and IIDs, DOE sought information from the industry to establish representative costs. Various manufacturers were contacted to secure cost information. Unfortunately the commenters did not supply information to substantiate their claims that the DOE information developed as part of this process was incorrect. Costs for retooling and profit were not separately included in the DOE analysis, and thus cannot be presumed to be incorrect. All of the data collected by DOE was solicited based on current retail costs for commercial rather than residential units.

b. *Cost/Benefit of Flue Dampers and IIDs.* DOE received three comments from Rheem Corporation, Bradford-White Corporation, and GAMA concerning the required addition of flue dampers and IIDs to many models currently on the market if these models are to meet the DOE standby loss criteria. The DOE analysis assumes that the benefit of the flue damper and IID occurs 24-hours per day. The comments argued that it should be obvious to DOE that when a water heater burner is operating, the flue damper is not closed. They maintained that a generous estimate for the standby period is 20 hours. Based on 24-hour per day standby, DOE estimated annual savings of $30.41. Using the 20-hour per day figure, the comments estimated annual savings of $21.29. They also argued that the true cost of the benefit was not analyzed. Mr. West of Bradford-White indicated that the addition of a flue damper and IID increases the water heater cost by $594.000 to the consumer. At $21.29 per year in energy savings, the payback period would be 28 years instead of the DOE estimate of three years.

DOE Response: Assuming that the units are not firing for 20 hours daily, a reduction of hours from 24 to 20 results in an approximate 17 percent change in time for potential savings. Adjusting for a normal work week, the reduction is about 8 percent. The commentors contend the change in savings would be on the order of 30 percent which is inconsistent with the change in operating hours. DOE believes, given these assumptions, that its cost-benefit analysis remains valid.

With the exception of several of the smaller units, DOE assumes that flue dampers and IIDs will be required on all gas water heaters to meet current as well as future national standards. Thus the added cost of these devices is virtually nil since they would have been required anyway in the absence of the DOE standard.

When setting new, more stringent standards criteria, it is logical to assume that a few model offerings that previously only marginally met the former criteria may not be cost effectively modified to meet the new criteria. DOE has not analyzed the variety of engineering strategies heretofore used by manufacturers to obtain minimal compliance with the prior standards, but which would not be necessary should more effective measures be incorporated to meet the new criteria. For example, if baffle dampers should be replaced by electronic dampers for that purpose. Hence, DOE believes its cost benefit analysis is quite reasonable.

Where it is marginally effective to modify such units they may be offered as options or discontinued in favor of other options. If discontinued, designers will select other alternatives for the market, either rounding up or down factors used in their sizing assumptions. For example, a "residential" sized and fired unit may be selected.

c. *Payback Period.* GAMA commented that DOE should not use any payback period longer than five years. In the Preliminary Statement, DOE identified a three- to five-year payback as acceptable in the non-federal sector and seven to ten years as acceptable payback for federal agencies. GAMA commented that if any payback in excess of five-years is used, the more expensive unit may never pay back because the unit may fail in the interim. A typical commercial storage water heater is warranted for three years. Two major factors affect water heater lifetime—the amount of water required and the quality of that water. These factors vary greatly in commercial applications, and likewise so does the range of service life of commercial storage water heaters—less than three years to more than ten years. A representative, typical service life is five years.

DOE Response: The typical payback periods cited in the DOE Preliminary Statement stem from the factors normally used by DOE to assess energy conservation measures in buildings. The Federal government, being the owner/operator of its buildings, generally specifies materials and equipment built to last a great deal longer than in some parts of the non-federal sector. Therefore, it is willing to invest in energy conservation measures that have a longer payback if the measures are to

be life-cycle cost-effective. All purchases for federal government buildings, especially for energy conservation, must be justified as life-cycle cost-effective using a methodology developed byt NIST (subpart A of 10 CFR part 436).

The three to five-year payback for the non-federal sector is responsible. It should be noted that the DOE cost-benefit analysis indicates that much shorter paybacks are possible when factoring costs related to lower standby loss levels.

d. *Value of Energy Savings.* GAMA commented that DOE's analysis overestimated the value of energy savings for gas water heaters. DOE estimated an annual energy savings of $32.53 for a 100-gallon gas water heater, with 70 percent loss through the jacket. Mr. Stanonik of GAMA believed the annual energy savings estimate should be between $9.33 and $13.34, depending on the variables used in the analysis.

DOE Response: DOE has reviewed the calculation of savings in Table 5 of the Preliminary Statement and concluded that they were made using a base assumption of 0.5 inches of insulation and the addition of 2 inches of insulation to meet the criterion, for a total of 2.5 inches of insulation. DOE believes that Table 5 of the Preliminary Statement should have been calculated on a base assumption of 1 inch of insulation and the addition of 2 inches of insulation to meet the criterion, for a total of three inches of insulation. This would result in a savings of $15.80 and a simple payback of 4.64 years. A revised Table 5 follows:

TABLE 5 (REVISED).—ENERGY COST SAVINGS AND FIBERGLASS COSTS DUE TO DOE INTERIM STANDARDS (WITH 70 PERCENT LOSSES THROUGH JACKET AT ANSI/ASHRAE/IES STANDARD 90A–1980 COMPLIANCE LEVELS).

Tank capacity (gallons)	Energy savings (dollars)	Fiberglass (dollars)	Total * (dollars)	Payback years
100	15.80	29.34	73.35	4.64
129	14.89	22.01	55.01	3.69
221	15.99	19.04	47.59	2.98
411	16.16	13.77	34.43	2.13
594	22.14	18.77	46.91	2.12

*The total cost is based on studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (See Blue 1979.)

Note.—That the above table does not adjust for fitting losses. (See the comment and response of Water Heater Fittings above.)

Table D–5 of the DOE Technical Support Document provides performance values for a water heater operating under the ANSI standby loss test conditions for gas water heaters. These values were used simply to determine the additional insulation that would be required to attain compliance with the DOE standards. In GAMA's example, the 100-gallon gas water heater required an additional two inches of insulation for compliance, bringing the total level to three inches. To estimate annual savings that would be realized with the additional two inches of insulation, performance calculations were made for the 100-gallon water heater model, except that operating conditions were set to typical operation values, not the standy loss test values, i.e., room temperature was set to 72.5°F and water temperature was set to 140°F. Table E–1 of the DOE Technical Support Document indicates the expected savings that would result from the insulation increase. It is unnecessary to try to calculate savings from values in Table D–5, which were obtained under standby loss test conditions and not typical operating conditions. For an insulation change from one to three inches, Table E–1 shows that annual savings will be $15.80. The simple payback is 4.64 years. This payback period remains well under the acceptable limit for Federal sector projects and within the GAMA estimated five year life of units.

F. Proposed Alternative Standby Loss Criteria

1. General

GAMA recommended that DOE revise its standards to exclude from the standby loss criteria storage water heaters with more than 120-gallon storage capacity. The DOE standards exempt storage water heaters and hot water storage tanks having more than 500 gallons of storage capacity from the standby loss requirements if the tank surface area is thermally insulated to R–12.5 and if a standing pilot light is not used. GAMA pointed out that its suggestion of the 120-gallon limit was due to commercial storage water heaters greater than 120-gallons being custom built, as stated in the Preliminary Statement.

DOE Response: A point of clarification is necessary. In its Preliminary Statement, DOE acknowledges that many storage water heaters over 120 gallons are custom made. This is not to imply that DOE has data showing that all are custom made. DOE has no such data and neither GAMA nor the manufacturers have provided such data.

The Preliminary Statement indicates that many, but not all, commercial storage water heaters over 120 gallons are custom made. Therefore, to categorically exempt units over 120 gallons from the standby loss criteria could lead to potentially high levels of energy loss as a result of their use. DOE feels that it is appropriate to continue to apply the standby loss criteria, and the resulting test procedures to units over 120 gallons in size.

2. Instantaneous Water Waters

GAMA contended that DOE has redefined instantaneous water heaters in its standards by adding a maximum 10-gallon parameter. The DOE standards define instantaneous water heaters as devices with an input rate greater than 4,000 Btu/h per gallon of water stored and less than 10 gallons of storage capacity. They contend the definition immediately recategorizes a number of models that are presently considered instantaneous water heaters as storage water heaters and thus subjects those models to a standby loss criteria for the first time. Mr. Stanonik of GAMA argued that DOE did not analyze the effect of the standby loss requirements on these models. Without such analysis, the revised definition is not justified and the standards should be revised to the current industry definition of instantaneous water heater, which is "a water heater having an input of more than 4,000 Btu/h per gallon of stored water."

Tom Wutka of CIGNA contended that DOE should use the ASHRAE/IES Standard 90.1–1989 water heating criteria. This standard uses a definition that defines a storage water heater as a water heater that has an input rating of less than 4,000 Btu/h per gallon of stored water or a storage capacity of 10 gallons

or more. It defines a non-storage water heater as a water heater that has an input rating of at least 4,000 Btu/h per gallon of stored water and a storage capacity of less than 10 gallons.

DOE Response: DOE has evaluated the conflicting comments and concludes that the definitions in ASHRAE/IES Standard 90.1–1989 meet DOE's intent to separate the two categories of water heaters. It has been DOE's intent to separate instantaneous water heaters from storage water heaters so that instantaneous water heaters are limited to "in-line" water heating. The 10-gallon cut off was consciously established to eliminate any confusion over the definition of storage water heater and instantaneous water heaters, respectively. If DOE were to use the definition of water heaters having an input of more than 4,000 Btu/h per gallon of stored water proposed by GAMA and State Industries, the new definition would shift many storage water heaters into the instantaneous category and exempt them from the corresponding standby loss criteria. This has never been DOE's intent and DOE has received no convincing justification for doing so.

In the Preliminary Statement, the wording on page 49727 of 54 FR 49724 defined storage water heaters as having an input rating of less than 4,000 Btu/h per gallon and a storage capacity of more than 10 gallons. This raises the potential for confusion as shown in Table 2.

TABLE 2. DOE STATEMENT OF REASONS (11/30/89)

Storage Capacity	Input rating	
	<4000 Btu/h/gal	>4000 Btu/h/gal
>10 Gallons	Storage: Water Heater.	Instantaneous: ???
<10 Gallons	Storage: ???	Instantaneous: ???

In its newly published Standard 90.1–1989, ASHRAE has defined the water heater categories as shown in Table 3.

TABLE 3. ASHRAE 90.1–1989

Storage Capacity	Input rating	
	<4000 Btu/h/gal	>4000 Btu/h/gal
>10 Gallons	Storage: Water Heater.	Storage: Water Heater.
<10 Gallons	Storage: Water Heater.	Non-Storage: Water Heater.

Thus, ASHRAE has avoided the term instantaneous water heaters and used the term non-storage water heaters. Also, it uses the word "or" in defining the storage water heaters to be more than 10 gallons or to have an input rate of less than 4000 Btu/h per gallon. DOE used the word "and" in the Preliminary Statement, thus causing the differences seen in Tables 2 and 3.

DOE concludes that the ASHRAE proposal meets DOE's long term intention and avoids conflict with the water heater industry definition of "instantaneous water heater".

3. Electric Water Heaters.

Four comments suggested revisions to the 1.9 w/ft² standby loss requirements for commercial electric storage water heaters. Rheem Corporation and GAMA maintained that if DOE agrees to reference the tanks surface area, instead of the jacket surface area, for placement of insulation, DOE's goal of lowering standby loss becomes more feasible. They stated that the DOE standby loss requirement of 1.9 W/ft² is too low and should be modified upward. Also, they suggested that the requirement be structured to separate out losses that cannot be reduced by adding insulation, such as those that occur in smaller units because of higher volume-to-surface area relationships.

Their suggestion is as follows:

$SL \leq 25\ W + 2.6\ W/ft^2$ of tank surface area for water heaters up to 120 gallons.

Equation 1.

Their comment stated that the 25 W constant is the same as in the original standby loss requirement proposed by DOE in 1984 [USDOE, 1984]. In light of the fact that DOE's 1.9 W/ft² of jacket surface area translates to about 3.2 W/ft² of tank surface area, they pointed out that the suggested requirement is very close to DOE's requirements for two of the most popular sizes of commercial electric storage water heaters.

DOE also received two comments and detailed background material from Dr. Goldstein of NRDC maintaining that the 1.9 W/ft² requirement was too high. Dr. Goldstein argued that DOE had provided sufficient technical analysis to support a 1.52 W/ft² standby loss level.

Dr. Goldstein also contended that the DOE Technical Support Document demonstrates that increasing insulation beyond the levels required to meet the DOE standby loss criteria are cost-effective, and should not be reduced.

Dr. Goldstein maintained the following: that Table C–1 of the Technical Support Document shows that increasing insulation to a thickness of four inches results in a cumulative payback period of about three years, with the worst product category having a payback of less than 3.5 years. On an incremental basis, the table allows calculation of the payback period of the last increment of insulation from 3½ inches to 4 inches. This ranges from 7.1 years for the 120-gallon units to 8.8 years for the 50-gallon units. Assuming a 12-year life for the water heater, the payback period of less than 8.9 years is cost-effective at real discount rates of five percent or less. Since energy supply costs are typically evaluated at discount rates of two percent to four percent, a five percent rate is conservatively high, proving cost-effectiveness. The results are so striking that for two of the three sizes analyzed by DOE, the payback periods would apply cost-effectiveness even at a seven percent real discount rate. Thus, taken from an incremental cost-effectiveness point-of-view, four inches of insulation, corresponding to a standby loss of about 1.52 W/ft², is the economic optimum point for the building owner. Dr. Goldstein concluded that a requirement for the maximum improvement in efficiency that is economically practicable can ask no less than the level of efficiency represented by the minimum life cycle cost point.

Dr. Goldstein stressed that DOE must revise its standards to agree with the new calculations.

DOE Response: Based on the public comment and other information received, DOE has decided to amend its criteria for commercial electric storage water heaters.

At a February 11, 1990, meeting of the Service Water Heating Subcommittee of SSPC 90R, GAMA presented a handout that proposed a revised requirement for standby losses for electric water heaters. The equation presented was:

$SL \leq 25W + 1.6W/ft^2$ of external jacket area

Equation 2.

Note that this equation is for external, or jacket surface area, while the recommendation to DOE pertains to tank surface area and uses 2.6W/ft².

To calculate the standby loss criteria in Watts using this equation, one would have to multiply the area of the water heater jacket by 1.6 and then add 25 Watts. To calculate the criteria in Watts/ft² of external surface area, one would divide 25 by the tank's external surface area and add 1.6 W/ft².

To compare both of the above standby loss requirement equations with the current 4 W/ft² of tank area and the proposed 1.9 W/ft² of jacket area one can use the typical electric water heater tank and surface area figures provided by GAMA in Attachment 3 of its comments to DOE. Values in the following tables were derived from these figures and the above equations.

Table 4 - Comparison of Proposed GAMA Standby Loss Criteria for Electric Water Heaters

Volume (G)	At (ft^2)	Aj (ft^2)	Eq. 1 SL (W) (based on jacket)	Eq. 2 SL (W) (based on tank)
50-52	20-23	35-39	81.0-87.4	77.0-84.8
80-85	28-32	44-45	95.4-97.0	97.8-108.2
120	38-41	54	111.4	123.8-131.6

To further compare Equations 1 and 2, DOE looked at the criteria values that would apply to sample tanks of 50-, 80- and 120-gallon storage capacities. The insulation thickness on these tanks were varied to determine when, in terms of standby loss in total Watts, the equations would be equivalent. Table 5 shows the insulation levels near which the two equations become equivalent for the sample water heaters.

Table 5 - Comparison of Criteria for Sample Electric Water Heaters

TYPE	HEIGHT (ft)	DIAMETER (ft)	GALLONS	INS (in)	TANK AREA (ft^2)	J. AREA (ft^2)	GAMA 1 (W @ 1.6)	GAMA 2 (W @ 2.6)
ELEC	3.06	1.67	50.00	3.00	20.43	31.67	75.67	78.13
ELEC	3.06	1.67	50.00	3.50	20.43	33.77	79.03	78.13
ELEC	4.05	1.83	80.00	3.50	28.54	44.28	95.84	99.22
ELEC	4.05	1.83	80.00	4.00	28.54	46.79	99.86	99.22
ELEC	4.35	2.17	120.00	4.50	37.05	60.18	121.28	121.33
ELEC	4.35	2.17	120.00	5.00	37.05	63.07	125.92	121.33

DOE agrees with the comment that a revision in the standby loss criteria to reference tank surface area versus jacket surface area is appropriate. DOE's current analysis considers losses that cannot be controlled by the addition of insulation to the tank. Including these losses in the total loss figure still allows for the calculation of a meaningful W/ft^2 figure of merit for the particular water heater. However, the comment is incorrect in stating that the 1.9 W/ft^2 of jacket area translates to 3.2 W/ft^2 of tank area is incorrect. Actually the conversion between the jacket and tank is shown in Table 5.

DOE has conducted additional analysis to analyze the opposing requests and several other comments received, such as the effect of using a water heater jacket emissivity of 0.5 versus 0.9.

DOE finds that 3 W/ft^2 is a practicable standby loss criteria for its electric storage water heaters of the size and input ranges discussed in this Response and Announcement and has adopted it as its new commercial electric storage water heater standby loss level.

Table 6 was created to compare the new criteria for electric water heaters with existing DOE criteria, jacket surface area versus tank surface area, the ANSI/ASHRAE/IES Standard 90A–1080, the GAMA proposal, the NRDC proposal, and the test data collected by NIST. The table is confined to those sizes of commercial electric water heaters that predominate the industry, as stated by GAMA and the commenting manufacturers—50, 80, 120 gallons.

The DOE Interim Standards require a standby loss level of no more than 1.9 W/ft^2. In comparison, the currently produced 50-gallon unit tested by NIST had 3.06 W/ft^2 standby loss of jacket surface area. When modified by additional insulation, the NIST test unit performed with a 2.47 W/ft^2 standby loss. Neither the currently produced unit nor the modified unit would meet the DOE standards.

Both GAMA and ASHRAE suggested to DOE that referencing tank surface area would produce a more practical criteria. DOE has agreed. The tank surface area equivalent to the current DOE criteria translates into 2.95 W/ft^2 for a 50-gallon model, 2.78 W/ft^2 for an 80-gallon model, and 2.66 W/ft^2 for a 120-gallon model. The NIST 50-gallon test unit showed a tank surface area equivalent of 4.06 W/ft^2 unmodified and a 3.29 W/ft^2 modified with additional insulation. Again neither would meet a tank surface area equivalent of the current DOE standby loss criteria. However, these units would meet the current ASHRAE criteria set in 1980 of 4 W/ft^2 of tank surface area.

The GAMA proposal discussed above, translates into a standby loss criteria level of 3.82 W/ft^2 of tank surface area for 50-gallon units, 3.47 W/ft^2 for 80-gallon units, and 3.27 W/ft^2 for 120-gallon units. These all would be lower than the current ASHRAE levels set in 1980 but only 10 to 18 percent lower. The DOE analysis indicates that at least a 25 percent reduction is practical and cost-effective.

The NRDC proposal suggests that a 1.52 W/ft² of jacket surface area is practical according to DOE's analysis in the Preliminary Statement. Dr. Goldstein is correct in his assessment, however, DOE believes its estimates were optimistic for a standby loss criteria referencing jacket surface area. Therefore, DOE is not inclined to reduce the standby loss criteria any further.

As such DOE has set its standby loss criteria level for electric storage water heaters at 3.0 W/ft² of tank surface area for all size units. This represents a 25 percent reduction in current standards. It means that units built with 2.75 to 3 inches of foam insulation surrounding the tank and R–8 fiberglass on the controls, or 6.5 inches of fiberglass surrounding tank and controls, will meet the criteria. It will also mean that the larger units will have an easier time meeting the criteria because of their larger tank volume to surface ratio, as indicated by item two in table 6.

Table 6 - Comparison of Standby Loss Criteria

Alternative criteria	Nominal Tank Capacity 50 Gal	80 Gal	120 Gal
DOE Statement of Reasons [W/ft² of jacket area]	1.9	1.9	1.9
NIST tests [modified/with blanket]	[3.06/2.47]		
DOE estimated tank equivalent of the jacket area [W/ft² of tank area]	2.95	2.78	2.66
NIST tests [modified/with blanket]	[4.06/3.29]		
DOE estimated percent loss equivalent [percent of stored energy per hour]	0.630	0.520	0.430
NIST tests [modified/with blanket]	[0.99/0.77]		
ANSI/ASHRAE/IES Standard 90A-1980 and 90-1975 [W/ft² of tank area]	4.0	4.0	4.0
GAMA proposal [converted to W/ft² of tank surface area]	3.82	3.47	3.27
NRDC proposal [W/ft² of tank area]	1.52	1.52	1.52

DOE acknowledges the support for its existing criteria and the recommendation to extend it further. However, DOE observes that the original analysis did not include the losses from fittings and controls, thus overstating the benefits of adding insulation. It is also noted that no manufacturer currently produces a model which has been tested and found to meet the current standby loss criteria.

The argument of a 12-year life for commercial water heaters may not be valid in light of contentions about the life of water heaters made by the manufacturers. Until more definitive data become available, DOE believes it is appropriate to use its more conservative analysis.

4. Gas Water Heaters

Rheem Corporation and GAMA suggested revisions to the categorization of gas storage water heaters. They suggested that DOE separate gas storage water heaters into two categories—≤155,000 Btu/h and >155,000 Btu—so that manufacturers of water heater models not currently equipped with flue dampers and IIDs, generally those 155,000 Btu/h and lower, do not have to add them to meet the DOE standards. The lower requirement for the higher input models recognizes that these models already are equipped with flue dampers and IIDs. The suggested requirements are as follows:

Input≤155,000 Btu/h is SL≤1.3+120/V; and

Equation 3.

Input>155,000 Btu/h is SL≤1.3+100/V.

Equation 4.

GAMA further proposed an exception to the basic formula for maximum allowable standby loss. Mr. Stanonik contended that flue dampers and IIDs are not cost effective on commercial gas storage water heaters with inputs up to approximately 200,000 Btu/h and that 12 percent or less of water heaters sold have storage vessels greater than 120 gallons. Mr. Stanonik proposed the following exceptions: for gas water heaters having an input rating not over 200,000 Btu/h and not requiring an external power source, the standby loss in percent per hour shall not exceed 1.3 + 368/V; for all types of storage water heaters—gas, electric, and oil—with capacities greater than 120 gallons, they shall be insulated to limit heat loss to 605 Btu/h/ft² of tank surface area.

DOE Response: DOE appreciates the suggestions for alternate criteria. DOE notes, however, that the commenter did not include documentation to support the proposed criteria. Test data supplied by the CEC shows several units that currently meet DOE's standby loss criteria. One of the manufacturers of those units supports the standby loss criteria at its current level. While there was a following letter qualifying these comments, DOE found it unpersuasive. Additional units tested by CEC indicate compliance with the ASHRAE 90A–1980 standard without flue dampers and IIDs. Estimates of the benefits of flue dampers

and IIDs applied to these units indicate that all would comply with the current DOE criteria. DOE feels that it has promulgated criteria which is reasonable, cost-effective, and can be met with current technology and manufacturing practices.

V. Conclusions and Appropriate Standby Loss Criteria

The following is a discussion of the conclusions reached by DOE in connection with this announcement of final storage water heater standby loss criteria and the reasons for its decisions. DOE's decisions are based on its consideration of the comments received, additional computer modeling, and the tests conducted by NIST on an electric water heater and a gas water heater.

As stated in Section III, the water heaters included in this Response and Announcement are limited to the following: (i) Electric storage water heaters of greater than 120-gallon capacity or of greater than 12 kW input rating; (ii) gas storage water heaters of greater than 100-gallon capacity or greater than 75,000 Btu per hour input rate; and (iii) oil-fired storage water heaters of greater than 50-gallon capacity and greater than 105,000 Btu per hour input rate. Storage water heaters having more than 500 gallons of storage capacity are excluded if the tank surface area is thermally insulated to R–12.5 and a standing pilot light is not used. At issue are the standby loss criteria set by DOE for these water heaters, which some have contended are too high or too low. A second issue is the difference between storage and instantaneous water heaters. The specific question is whether to include high power water heaters in the category of instantaneous water heaters and, therefore, eliminate standby loss requirements for these units. The purpose of this Section is to discuss the appropriate standby loss criteria and the bases for DOE's determination.

In addition, the DOE Interim Standards reference recognized test procedures to determine water heater standby loss. The referenced test procedures were developed by ANSI and DOE. The reliability of the test procedures is not in question at this time, although recommendations have been made to DOE to consider recognizing updated test procedures for commercial electric storage water heaters.

With due consideration of the comments that have been received and the results of further tests and analyses that DOE has caused to be conducted, and in accordance with the remand procedure provided for in the Court's October 6, 1989, Memorandum and Order, DOE is announcing and adopting the water heater standby loss criteria set forth in Table 9.3–1 below (part 435 of chapter II of title 10 of the *Code of Federal Regulations* subpart A, § 435.109, Table 9.3–1, Standard Rating Conditions and Minimum Performance of Water Heating Equipment).

PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

1. The authority for part 435 continues to read as follows:

Authority: Energy Conservation Standards for New Buildings Act of 1976, as amended, (42 U.S.C. 6831–6870), enacted as Title III of the Energy Conservation and Production Act; (42 U.S.C. 8201, *et seq.*): (42 U.S.C. 8255); section 545, National Energy Conservation Policy Act; Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*)

§ 435.109 [Amended]

2. In § 435.109, Table 9.3–1 is revised to read as follows:

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Table 9.3-1 (Revised June 12, 1990)
Standard Rating Conditions & Minimum Performance of Water Heating Equipment

Type	Fuel	Storage Capacity (Gal)	Input Rating	Applicable Test Procedure	Minimum Performance		
					DOE Rating	Eff.	Loss
Storage Water Heaters	Electric	≤120	≤12 kW	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF ≥0.95-0.00132V	- -	- -
		>120 (or)	>12kW	DOE Test Procedures, 1990 Code of Federal Regulations Title 10, Part 430	- -	- -	SL <3.0 W/ft^2
	Gas	≤100	≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF ≥0.62-0.0019V	- -	- -
		>100 (or)	>75,000 Btu/h	ANSI Z21.10.3-1984 Gas Water Heaters w/Addenda Z21.10.3a-1985	- -	E_t 77%	SL <1.3+ 38/V
	Oil		≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF ≥0.59-0.0019V	- -	- -
		≤50	≤105,000 Btu/h		>0.59-0.0019V	-	-
		>50 (or)	>105,000 Btu/h		- -	E_c 83%	SL <1.3+ 38/V

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Table 9.3-1 (Revised June 12, 1990)
Standard Rating Conditions & Minimum Performance of Water Heating Equipment (Cont.)

		Type		Applicable Test Procedure	Minimum Performance	
Class	Fuel	Capacity	Input Rating			
Unfired Storage	1	All Volume	All Inputs		- -	HL <6.5 Btu/h·ft^2
Non-Storage[2] Water Heaters	Gas	-	All Inputs	ANSI Z21.10.3-1984	E_t 80%	- -
	Distill Oil	-	All Inputs		E_c 83%	- -
Pool Heaters	Gas/ Oil	-	All Inputs	ANSI Z21.56-1986	E_t 78%[c]	- -

Notes for Table 9.3-1:
Terms Defined:
1. EF = Energy factor, overall heater efficiency by DOE Test Procedure
E_t = Thermal efficiency with 70°F, ΔT
E_c = Combustion efficiency, 100 percent - flue loss when smoke = 0 (trace is permitted)
SL = Standby loss in W/ft^2 based on 80°F, ΔT, or in percent per hour based on nominal 90°F, ΔT
HL = Heat loss of tank surface area
V = Storage volume in gallons
2. A non-storage water heater is a device with an input rate greater than 4000 Btu/h/gallon of water stored or less than 10 gallons of storage capacity. A storage water heater is a water heater that has an input rating of less than 4000 Btu/h per gallon of storred water or a storage capacity of less than 10 gallons .

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A. Instantaneous Water Heaters

DOE has determined that the definition of instantaneous water heaters used in the January 30, 1989, DOE Interim Standards and the definition used in the November 30, 1989, Preliminary Statement, should be modified to match the definition utilized by ASHRAE/IES Standard 90.1–1989.

GAMA contended that DOE had changed an accepted definition of instantaneous water heaters by adding a maximum ten-gallon parameter to devices with an input rate greater than 4000 Btu/h per gallon of water stored and subjecting the remaining models (>10-gallons and >4,000 Btu/h per gallon) to a standby loss criteria for the first time. As previously indicated, if DOE were to use the industry definition of water heaters having an input of more than 4,000 Btu/h per gallon of stored water, the new definition would add many storage water heaters into the instantaneous category and exempt them from the corresponding standby loss criteria. It has been DOE's intent to separate instantaneous water heaters from storage water heaters so that instantaneous water heaters are limited to "in-line" water heating. The 10-gallon cut-off was established to eliminate any confusion over the definition DOE has chosen to use. The DOE standards now cover instantaneous water heaters with separate storage tanks. In the future, DOE will use the same definition found in ASHRAE/IES Standard 90.1–1989. This definition is included in Table 9.3–1 (revised June 12, 1990).

B. Electric Water Heaters

1. Test Procedures

In its January 30, 1989 Interim Standards, DOE listed ANSI Standard C72.1–1972, American National Standard for Household Automatic Electric Storage-Type Water Heaters, as test procedures for establishing standby loss performance. DOE has subsequently learned that the ANSI test procedure is no longer supported by ANSI. Accordingly, in the future, DOE will require that all tests be conducted in accordance with DOE's test procedure for electric water heaters. (10 CFR part 430, January 1, 1990.) This test procedure requires a test setup similar to what will be required of the piping around the unit in actual conditions, including insulated heat trap and inlet and outlet piping. The DOE test procedure is well understood by manufacturers and testing laboratories and is widely recognized in the building industry.

2. Tank Surface Area vs. Jacket Surface Area

In addition to the suggestions to revise the 1.9 W/ft ^{2} standby loss requirement for commercial electric storage water heaters, several comments suggested that DOE express its criteria in terms of tank surface area, instead of the jacket surface area. ASHRAE indicated that it had clarified its criteria as pertaining to tank surface area. DOE initially used the jacket surface area because that is what was required by the now unsupported ANSI test procedure. Industry commenters suggested that DOE's requirement of 1.9 W/ft^2 of jacket surface area translates to about 3.2 W/ft ^{2} of tank surface area or what was termed very close to DOE's requirements for two of the most popular sizes of commercial electric storage water heaters.

DOE agrees with the comments and in its announced criteria expressed its requirements in terms of tank surface area instead of jacket surface area. DOE believes that criteria expressed in terms of tank surface area is more often used and that it will help to avoid confusion of specification writers between the DOE criteria and that adopted by ASHRAE. Table 6 shows specific examples of the numerical differences between tank and jacket surface area for water heaters that would meet the DOE standby loss criteria.

3. Watts/ft ^{2} vs. Percent of Stored Energy

The industry uses criterion for gas storage water heater standby loss expressed in percent stored energy loss per hour. The appropriateness of using a standby loss expressed in terms of stored energy loss is attributable to the fact that the precise temperature of the test room is no longer critical to the results. In addition, as the calculation is done in terms of tank volume, it is easy to measure that volume. One fills the tank, measuring the amount supplied, or, if capable of being fully emptied, empties it, and measures the volume of the contents emptied. This would also have the advantage of expressing the standby loss for all "commercial size" water heaters in the same terms. Finally, both manufacturers and testing laboratories are familiar with standby loss being expressed in these terms and those who test units are already set up to do these measurements.

It has been recommended that DOE express the standby loss for electric water heaters in terms of percent of stored energy loss per hour. DOE has determined not to do so at this time, as additional information is needed on the implications of such a decision. During the remainder of the demonstration period for the DOE Interim Standards, DOE will continue to evaluate the desirability and effects of changing the electric storage water heater criterion from criterion expressed in tank surface area to criterion expressed in percent per hour. However, for purposes of this publication, DOE's electric storage water heater criterion is expressed in terms of tank surface area and any subsequent change of this standard would need to be justified on the basis of the statutory guidelines, including energy efficiency, economic cost and benefit, and impact on affected groups. In the event DOE is considering a change of this nature in connection with the forthcoming issuance of final standards, it will so indicate in the Notice of Proposed Rulemaking at that time and request comment on the feasibility or appropriateness of such a change.

4. Establishment of DOE Criteria

DOE received comment from GAMA and three water heater manufacturers indicating that the DOE standby loss requirement of 1.9 W/ft ^{2} is too low and should be modified upward. They suggested that the requirement be restructured to separate out losses that cannot be reduced by adding insulation, such as those that occur in smaller units because of higher volume-to-surface area relationships.

Their suggestion is contained in Equation 1, repeated below:

SL = <25 W + 2.6 W/ft ^{2} of the tank surface area for water heaters up to 120 gallons

Equation 1.

Dr. Goldstein of NRDC maintained that the 1.9 W/ft ^{2} requirement is too high. He argued that DOE had provided sufficient technical analysis to support a 1.52 W/ft ^{2} standby loss level.

DOE has conducted additional analysis of opposing views and several other comments received, such as the effect of using a water heater jacket emissivity of 0.5 versus 0.9. DOE finds that 3 W/ft ^{2} is a practicable and cost-effective standby loss criterion for electric storage water heaters of the size and input ranges discussed in this Response and Announcement and adopts it as DOE's new commercial electric storage water heater standby loss criterion.

DOE bases this decision on tests of a storage water heater, additional information developed on other losses, such as fittings and controls, excellent correlation of test and model results, and a new cost benefit analysis. Figure 6

presents the analysis of a 50, 80, 120 and 170 gallon capacity electric storage water heaters, respectively, for a range of insulation thicknesses up to 7 inches. Tables 8, 9, 10, and 11 provide the data on which Figure 6 was based.

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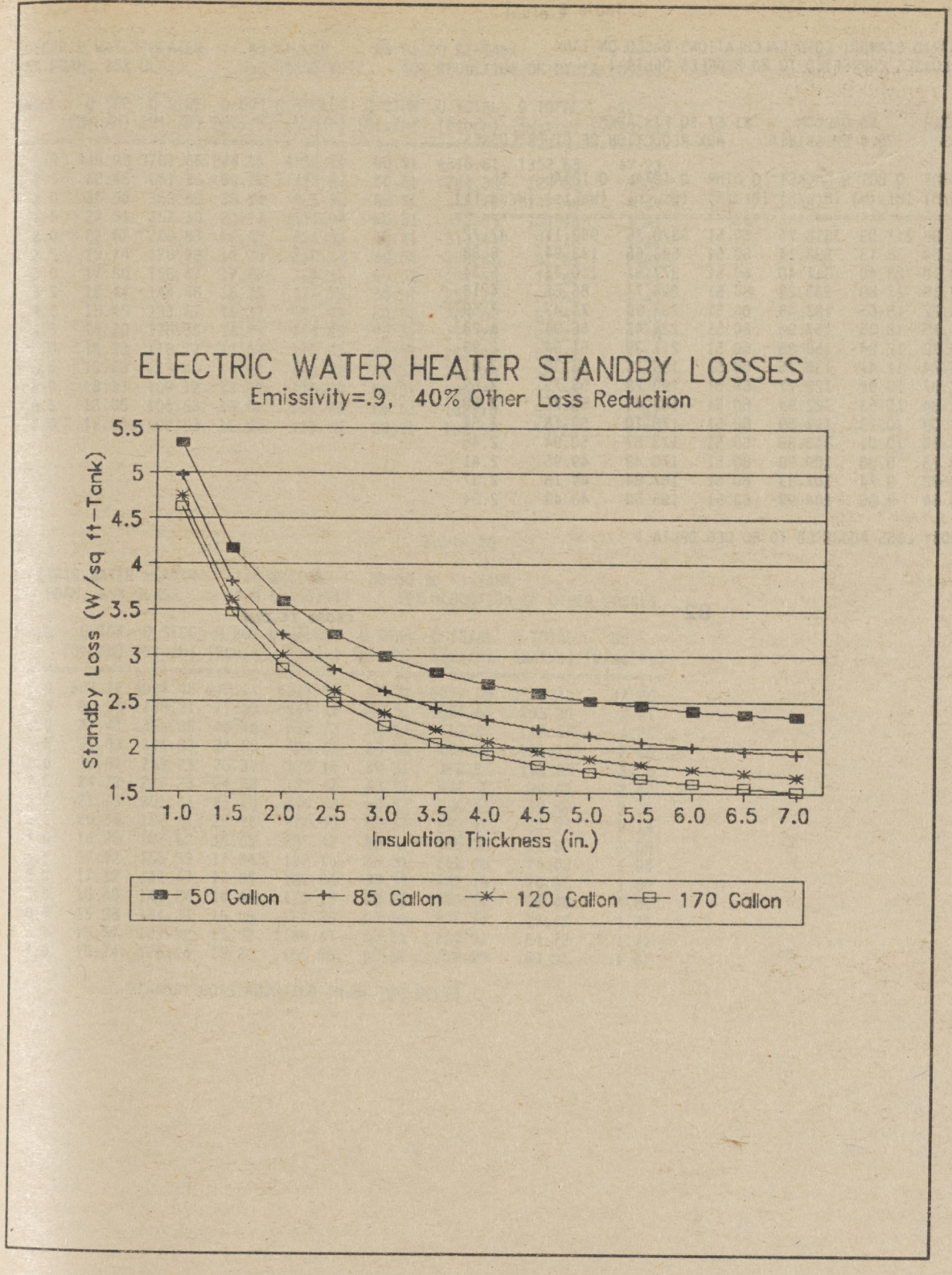


Figure 6 - Analysis of Electric Water Heaters - 50, 80, 120 & 170 gallon capacity

Table 8

ELECTRIC STANDBY LOSS CALCULATIONS BASED ON TANK
LOSSES CORRECTED TO 80 DEGREES DELTA T

ELECTRIC WATER HEATER 50 GALLON 21.67 SQ FT-TANK
75% FOAM, 25% GLASS 0.9 EMISSIVIT 40% REDUCTION OF OTHER LOSSES

INSUL	Q TOP (Btu/h)	Q SIDE (Btu/h)	Q BOT (Btu/h)	Q JACKET (Btu/h)	Q OTHR (Btu/h)	Q TOTAL (Btu/h)	Q TOTAL (Watts)	SL (W/sq ft)
0.0	286.33	2815.33	217.09	3318.75	60.51	3379.26	990.11	47.72
0.5	39.67	455.34	38.13	533.14	60.51	593.65	173.94	8.38
1.0	23.90	270.10	23.40	317.40	60.51	377.91	110.73	5.34
1.5	18.15	199.19	17.89	235.23	60.51	295.74	86.65	4.18
2.0	15.21	163.22	15.05	193.48	60.51	253.99	74.42	3.59
2.5	13.46	141.15	13.35	167.96	60.51	228.47	66.94	3.23
3.0	12.32	126.32	12.24	150.88	60.51	211.39	61.94	2.99
3.5	11.54	115.74	11.47	138.75	60.51	199.26	58.38	2.81
4.0	10.98	107.87	10.92	129.77	60.51	190.28	55.75	2.69
4.5	10.57	101.84	10.53	122.94	60.51	183.45	53.75	2.59
5.0	10.27	97.09	10.23	117.59	60.51	178.10	52.18	2.51
5.5	10.05	93.30	10.01	113.36	60.51	173.87	50.94	2.46
6.0	9.89	90.23	9.86	109.98	60.51	170.49	49.95	2.41
6.5	9.77	87.82	9.74	107.33	60.51	167.84	49.18	2.37
7.0	9.69	85.64	9.66	104.99	60.51	165.50	48.49	2.34

STANDBY LOSS ADJUSTED TO 80 DEG DELTA T

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Table 9

ELECTRIC WATER HEATER 85 GALLON 29.91 SQ FT-TANK
75% FOAM, 25% GLASS 0.9 EMISSIVIT 40% REDUCTION OF OTHER LOSSES

INSUL	Q TOP (Btu/h)	Q SIDE (Btu/h)	Q BOT (Btu/h)	Q JACKET (Btu/h)	Q OTHR (Btu/h)	Q TOTAL (Btu/h)	Q TOTAL (Watts)	SL (W/sq ft)
0.0	449.93	3761.66	344.51	4556.10	60.51	4616.61	1352.65	47.23
0.5	62.45	601.35	60.07	723.87	60.51	784.38	229.82	8.02
1.0	36.90	352.66	36.14	425.70	60.51	486.21	142.46	4.97
1.5	27.51	257.30	27.13	311.94	60.51	372.45	109.13	3.81
2.0	22.67	208.83	22.43	253.93	60.51	314.44	92.13	3.22
2.5	19.74	178.99	19.58	218.31	60.51	278.82	81.69	2.85
3.0	17.80	158.87	17.68	194.35	60.51	254.86	74.67	2.61
3.5	16.44	144.46	16.35	177.25	60.51	237.76	69.66	2.43
4.0	15.45	133.67	15.37	164.49	60.51	225.00	65.92	2.30
4.5	14.70	125.35	14.64	154.69	60.51	215.20	63.05	2.20
5.0	14.13	118.77	14.07	146.97	60.51	207.48	60.79	2.12
5.5	13.68	113.46	13.63	140.77	60.51	201.28	58.97	2.06
6.0	13.33	109.12	13.29	135.74	60.51	196.25	57.50	2.01
6.5	13.05	105.53	13.01	131.59	60.51	192.10	56.28	1.97
7.0	12.83	102.53	12.80	128.16	60.51	188.67	55.28	1.93

Table 10

ELECTRIC WATER HEATER 120 GALLON 39.50 SQ FT-TANK
75% FOAM, 25% GLASS 0.9 EMISSIVIT 40% REDUCTION OF OTHER LOSSES

INSUL	Q TOP (Btu/h)	Q SIDE (Btu/h)	Q BOT (Btu/h)	Q JACKET (Btu/h)	Q OTHR (Btu/h)	Q TOTAL (Btu/h)	Q TOTAL (Watts)	SL (W/sq ft)
0.0	607.16	4957.48	447.94	6012.58	60.51	6073.09	1779.40	47.05
0.5	80.98	788.21	77.93	947.12	60.51	1007.63	295.23	7.81
1.0	47.41	458.86	46.45	552.72	60.51	613.23	179.67	4.75
1.5	35.03	334.53	34.55	404.11	60.51	464.62	136.13	3.60
2.0	28.61	269.23	28.32	326.16	60.51	386.67	113.29	3.00
2.5	24.72	228.23	24.52	277.47	60.51	337.98	99.03	2.62
3.0	22.13	201.41	21.98	245.52	60.51	306.03	89.67	2.37
3.5	20.30	182.11	20.18	222.59	60.51	283.10	82.95	2.19
4.0	18.95	167.62	18.85	205.42	60.51	265.93	77.92	2.06
4.5	17.92	156.39	17.84	192.15	60.51	252.66	74.03	1.96
5.0	17.12	147.47	17.05	181.64	60.51	242.15	70.95	1.88
5.5	16.48	140.24	16.43	173.15	60.51	233.66	68.46	1.81
6.0	15.98	134.29	15.93	166.20	60.51	226.71	66.43	1.76
6.5	15.57	129.32	15.52	160.41	60.51	220.92	64.73	1.71
7.0	15.24	125.14	15.20	155.58	60.51	216.09	63.31	1.67

STANDBY LOSS ADJUSTED TO 80 DEG DELTA T

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Table 11

ELECTRIC WATER HEATER 170 GALLON 51.84 SQ FT-TANK
75% FOAM, 25% GLASS 0.9 EMISSIVIT 40% REDUCTION OF OTHER LOSSES

INSUL	Q TOP (Btu/h)	Q SIDE (Btu/h)	Q BOT (Btu/h)	Q JACKET (Btu/h)	Q OTHR (Btu/h)	Q TOTAL (Btu/h)	Q TOTAL (Watts)	SL (W/sq ft)
0.0	537.83	6914.44	398.60	7850.87	60.51	7911.38	2318.01	46.70
0.5	72.13	1102.86	69.41	1244.40	60.51	1304.91	382.34	7.70
1.0	42.40	640.35	41.53	724.28	60.51	784.79	229.94	4.63
1.5	31.45	465.43	31.01	527.89	60.51	588.40	172.40	3.47
2.0	25.78	373.42	25.52	424.72	60.51	485.23	142.17	2.86
2.5	22.36	316.74	22.17	361.27	60.51	421.78	123.58	2.49
3.0	20.08	278.40	19.94	318.42	60.51	378.93	111.03	2.24
3.5	18.47	250.81	18.36	287.64	60.51	348.15	102.01	2.06
4.0	17.29	230.05	17.20	264.54	60.51	325.05	95.24	1.92
4.5	16.39	213.91	16.32	246.62	60.51	307.13	89.99	1.81
5.0	15.70	201.03	15.64	232.37	60.51	292.88	85.81	1.73
5.5	15.16	190.55	15.10	220.81	60.51	281.32	82.43	1.66
6.0	14.73	181.89	14.68	211.30	60.51	271.81	79.64	1.60
6.5	14.38	174.62	14.34	203.34	60.51	263.85	77.31	1.56
7.0	14.10	168.46	14.07	196.63	60.51	257.14	75.34	1.52

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C. Gas Water Heaters

As noted above, DOE received two comments suggesting revisions to the categorization of gas storage water heaters. It was suggested that the categories be changed to ≤155,000 Btu/h and >155,000 Btu/h so that manufacturers of water heater models not currently equipped with flue dampers and IIDs, generally those >155,000 Btu/h, would not have to add them to meet the DOE standards. The January 30, 1989, DOE standards require that gas storage water heaters with an input rating of less than 75,000 Btu/h must meet the standby loss criterion of <1.3+38/V. The two comments suggested that units with an input rating of 155,000 Btu/h or greater are already equipped with flue dampers and IIDs.

DOE has not received sufficient information to warrant adopting the suggestion. Rather it believes that units of over 75,000 Btu/h are high input models that should be equipped with flue dampers and IIDs to limit energy waste. DOE further believes that the use of these high input-low storage units is contrary to good building design in many cases and most certainly is counterproductive to good energy conservation practice. Units with high demand and low storage are only properly used when health codes or other practical reasons require on-demand hot water. Even then a booster heater should be used. Too often the units are used so as not to cause complaints about not enough hot water. In many cases, this type of cautionary procedure causes over-design and wastes energy.

DOE also does not find any persuasive argument that the addition of flue dampers and IIDs will add significant production costs. The industry acknowledges that it is already building units that have such features.

The two comments also suggested the following requirements:

Input ≤155,000 Btu/h requires a SL<1.3+120/V

Input >155,000 Btu/h requires a SL<1.3+100/V

The January 30, 1989, DOE Interim Standards require that units of less than or equal to 100 gallons of nominal storage capacity and/or possess an input rating of less than or equal to 75,000 Btu/h must meet an overall energy factor. Units of greater than 100 gallons of nominal storage capacity and/or greater than 75,000 Btu/h input rating must meet a standby loss criterion of <1.3+38/V.

D. Gas Water Heater Analysis

As stated above, DOE is not changing its criterion for gas storage water heaters. DOE bases its conclusions on the analysis performed for the Preliminary Statement and additional analysis that was performed subsequent to the receipt of public comment. This includes the testing of a gas water heater by NIST, as described below, and the addition of analysis on a 78-gallon model unit. Several industry comments suggested that DOE was not studying the more prevalent models when it used analysis on 100-, 221-, 411-, and 594-gallon units on which to base its conclusions.

Tables 12 and 13 are comparisons made of the gas storage water heater that NIST tested with the addition of fiberglass and foam insulation. The analysis used the NIST test unit that has been labeled MOD1. The MOD1 unit was a basic off-the-shelf unit that had been modified to eliminate some unnecessary thermal bridges. For further information, see the NIST letter report, which is included in the public record. Surface emissivity was determined to be 0.87. The unit had a flue damper. The test unit came with a standing pilot light. Input for the pilot light was calculated at 881 Btu/h. For the purposes of the analysis the pilot light was removed. In doing so, 269 Btu/h were calculated as having delivered energy to the stored water and thus cannot be counted in the energy lost. This was determined by the following calculation:

(0.22)(881 Btu/h)/0.72=269 Btu/h

where 0.72 is the recovery efficiency of the unit and 0.22 is the reported efficiency with which the pilot delivers energy to the stored water. [Hoskins, 1977]

In Table 12, two inches of fiberglass insulation (R-12, or k=0.25 Btu·in/h•ft²• °F were used, in like amounts, on the tank top and sides. In Table 13, the figerglass was replaced by k = 0.1667 Btu•in/h•ft ²• °Ffoam at R-12 for 2 inches. No insulation was factored for the bottom. This is consistent with the previous analysis performed for the Statement of Reasons. The "Q ADD" factor was adjusted until the standby loss matched that reported by NIST on the test unit—3.14 percent per hour. "Q ADD" is the amount of losses that must be added to the jacket losses calculated by the DOE model to match total losses with NIST measured losses. As before, the DOE criteria is compared with the ANSI/ASHRAE/IES Standard 90A-1980. "Q ADD" was considered to be independent of insulation thickness, therefore, the DOE determined the percent of total losses that "Q ADD" would be at compliance with ANSI/ASHRAE/IES Standard 90A-1980 with the standing pilot light factored out, as follows:

90A allowed loss rate
=(2.3+67/V percent per hour)/100×energy content of stored water (based on 90 °F ▲T)
=0.03159×8.25 Btu/gallon• °F×90 °F×78 gallons
=1830 Btu/h

Q ADD w/o pilot
=854/efficiency−pilot energy+makeup for lost energy from pilot to water
=1186−881+269
=574 Btu/h

Q ADD % of allowed loss
=574/1830×100
=31.4 percent

The January 30, 1989, DOE Interim Standards allow a standby loss of less than 1.3+38/V or 1.79 percent for this 78-gallon unit.

Standby loss is calculated as:

"Q TOTAL"/Efficiency/(8.25×78×(156.764−72.566))×100 where: 156.764 is the average tank water temperature (°F) during the NIST test; and 72.566 is the average ambient temperature (°F) during the NIST test. Standby loss without the pilot light was calculated as: ("Q TOTAL"/Efficiency−Pilot Loss+Makeup Energy)/(8.25×78×(156.764−72.566))×100.

With a flue damper and an IID, the unit complies with the addition of one inch of fiberglass to the base two inches or with the use of approximately two inches of foam insulation.

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Table 12

GAS WATER HEATER
(FIBERGLASS INSULATION)

HEIGHT (ft)	DIAMETER (ft)	EMIS	GALLONS	INS TOP (in)	INS SIDE (in)	INS BOT (in)	TANK AREA (sqft)	J. AREA (sqft)	W. TEMP (F)	A. TEMP (F)	Q LOSS (Btu/h)	Q ADD (Btu/h)	Q TOTAL (Btu/h)	SL (%/HR)	SL W/O PI (%/HR)
4.50	2.00	0.87	78.00	0.00	0.00	0.00	34.56	34.56	160.000	75.000	5463.71	854.00	6317.71	16.042	14.923
4.50	2.00	0.87	78.00	0.50	0.50	0.00	34.56	36.54	160.000	75.000	767.10	854.00	1621.10	4.116	2.997
4.50	2.00	0.87	78.00	1.00	1.00	0.00	34.56	38.57	160.000	75.000	441.40	854.00	1295.40	3.289	2.170
4.50	2.00	0.87	78.00	1.50	1.50	0.00	34.56	40.64	160.000	75.000	319.88	854.00	1173.88	2.981	1.862
4.50	2.00	0.87	78.00	2.00	2.00	0.00	34.56	42.76	160.000	75.000	255.36	854.00	1109.36	2.817	1.698
4.50	2.00	0.87	78.00	2.50	2.50	0.00	34.56	44.92	160.000	75.000	216.70	854.00	1070.70	2.719	1.600
4.50	2.00	0.87	78.00	3.00	3.00	0.00	34.56	47.12	160.000	75.000	190.56	854.00	1044.56	2.652	1.533
4.50	2.00	0.87	78.00	3.50	3.50	0.00	34.56	49.37	160.000	75.000	171.77	854.00	1025.77	2.605	1.486
4.50	2.00	0.87	78.00	4.00	4.00	0.00	34.56	51.66	160.000	75.000	157.65	854.00	1011.65	2.569	1.450
4.50	2.00	0.87	78.00	4.50	4.50	0.00	34.56	54.00	160.000	75.000	146.68	854.00	1000.68	2.541	1.422
4.50	2.00	0.87	78.00	5.00	5.00	0.00	34.56	56.37	160.000	75.000	137.94	854.00	991.94	2.519	1.400
4.50	2.00	0.87	78.00	5.50	5.50	0.00	34.56	58.80	160.000	75.000	130.84	854.00	984.84	2.501	1.382
4.50	2.00	0.87	78.00	6.00	6.00	0.00	34.56	61.26	160.000	75.000	124.97	854.00	978.97	2.486	1.367
4.50	2.00	0.87	78.00	6.50	6.50	0.00	34.56	63.77	160.000	75.000	120.05	854.00	974.05	2.473	1.354
4.50	2.00	0.87	78.00	7.00	7.00	0.00	34.56	66.32	160.000	75.000	115.90	854.00	969.90	2.463	1.344

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Table 13

GAS WATER HEATER
(FOAM INSULATION)

HEIGHT (ft)	DIAMETER (ft)	EMIS	GALLONS	INS TOP (in)	INS SIDE (in)	INS BOT (in)	TANK AREA (sqft)	J. AREA (sqft)	W. TEMP (F)	A. TEMP (F)	Q LOSS (Btu/h)	Q ADD (Btu/h)	Q TOTAL (Btu/h)	SL (%/HR)	SL W/O PI (%/HR)
4.50	2.00	0.87	78.00	0.00	0.00	0.00	34.56	34.56	156.764	72.566	5367.64	854.00	6221.64	15.949	14.819
4.50	2.00	0.87	78.00	0.50	0.50	0.00	34.56	36.54	156.764	72.566	1052.67	854.00	1906.67	4.888	3.758
4.50	2.00	0.87	78.00	1.00	1.00	0.00	34.56	38.57	156.764	72.566	625.31	854.00	1479.31	3.792	2.663
4.50	2.00	0.87	78.00	1.50	1.50	0.00	34.56	40.64	156.764	72.566	459.08	854.00	1313.08	3.366	2.236
4.50	2.00	0.87	78.00	2.00	2.00	0.00	34.56	42.76	156.764	72.566	370.54	854.00	1224.54	3.139	2.009
4.50	2.00	0.87	78.00	2.50	2.50	0.00	34.56	44.92	156.764	72.566	315.66	854.00	1169.66	2.998	1.869
4.50	2.00	0.87	78.00	3.00	3.00	0.00	34.56	47.12	156.764	72.566	277.23	854.00	1131.23	2.900	1.770
4.50	2.00	0.87	78.00	3.50	3.50	0.00	34.56	49.37	156.764	72.566	250.56	854.00	1104.56	2.831	1.702
4.50	2.00	0.87	78.00	4.00	4.00	0.00	34.56	51.66	156.764	72.566	230.43	854.00	1084.43	2.780	1.650
4.50	2.00	0.87	78.00	4.50	4.50	0.00	34.56	54.00	156.764	72.566	214.74	854.00	1068.74	2.740	1.610
4.50	2.00	0.87	78.00	5.00	5.00	0.00	34.56	56.37	156.764	72.566	202.22	854.00	1056.22	2.708	1.578
4.50	2.00	0.87	78.00	5.50	5.50	0.00	34.56	58.80	156.764	72.566	192.00	854.00	1046.00	2.681	1.552
4.50	2.00	0.87	78.00	6.00	6.00	0.00	34.56	61.26	156.764	72.566	183.56	854.00	1037.56	2.660	1.530
4.50	2.00	0.87	78.00	6.50	6.50	0.00	34.56	63.77	156.764	72.566	176.48	854.00	1030.48	2.642	1.512
4.50	2.00	0.87	78.00	7.00	7.00	0.00	34.56	66.32	156.764	72.566	170.48	854.00	1024.48	2.626	1.497

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VII. DOE Reference Materials

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VIII. Summary

The preceding sections of this Response and Announcement represent DOE's efforts to provide a thorough and substantive response pursuant to the final step in the remand procedure set forth in the October 6, 1989, Memorandum and Order of the Court in *Gas Appliance Manufacturers Association et al.* v. *Secretary of Energy*. Specifically, DOE has provided a detailed and substantiated discussion of the reasons for and circumstances surrounding its adoption of the water heater standby loss criteria announced today, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis and impact on affected groups. In that regard, DOE has addressed the comments and suggestions submitted by interested persons during the remand procedure, as well as the results of tests and analyses performed in connection with its consideration of those comments and suggestions.

In conjunction with the publication of this Response and Announcement, and in further response to the Court's Memorandum and Order, DOE has also placed in the public rulemaking record all of the technical support documents and referenced materials upon which it relied in reaching the decisions discussed in the preceding sections.

List of Subjects in 10 CFR Part 435

Architects, Building code officials, Buildings, Energy conservation, Energy conservation building performance standards, Engineers, Federal buildings and facilities, Housing, Water heaters, Insulation, and Voluntary performance standards.

With due consideration of the comments that have been received and the results of further tests and analyses that DOE has caused to be conducted, and in accordance with the remand procedure provided for in the Court's October 6, 1989, Memorandum and Order, DOE is announcing and adopting the water heater standby loss criteria set forth in Table 9.3–1 above (part 435 of chapter II of title 10 of the *Code of Federal Regulations* subpart A, § 435.109, Table 9.3–1, Standard Rating Conditions and Minimum Performance of Water Heating Equipment).

Issued in Washington, DC, on June 7, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 90–13661 Filed 6–8–90; 4:31 pm]

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federal register

Tuesday
June 12, 1990

Part IV

Office of Personnel Management

45 CFR Part 801

Voting Rights Program; Final Rule With Request for Comments

OFFICE OF PERSONNEL MANAGEMENT

45 CFR part 801

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective June 12, 1990. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before July 12, 1990.

ADDRESS: Send or deliver comments to Nichole Jenkins, Attorney, Office of Personnel Management, Room 7541, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Nichole Jenkins, (202) 606–1701.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Chester, South Carolina, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on June 8, 1990, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to seciton 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote and Federal Observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 9 of the United States Code, the Director finds that good cause exists to make this amendment effective in les than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject county, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965 as amended.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of subject in 45 CFR Part 801

Administrative practice and procedure, Voting Rights.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 45 CFR part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for part 801 is revised to read as follows:

Authority: 5 U.S.C. 1103; secs 7, 9, 9 Stat. 440, 411 (42 U.S.C. 19732, 1973g).

2. Appendix A to part 801, is amended by adding alphabetically the South Carolina County of Chester to read as follows:

Appendix A

* * * * *

South Carolina

County, Place for filing: Beginning date.

Chester—Chester Motor Lodge, Room 161, West End St. at By-pass, Chester, SC 29706, (803) 385–5511

* * * * *

June 12, 1990.

[FR Doc. 90–13806 Filed 6–11–90; 12:07 pm]

BILLING CODE 6325–01–M

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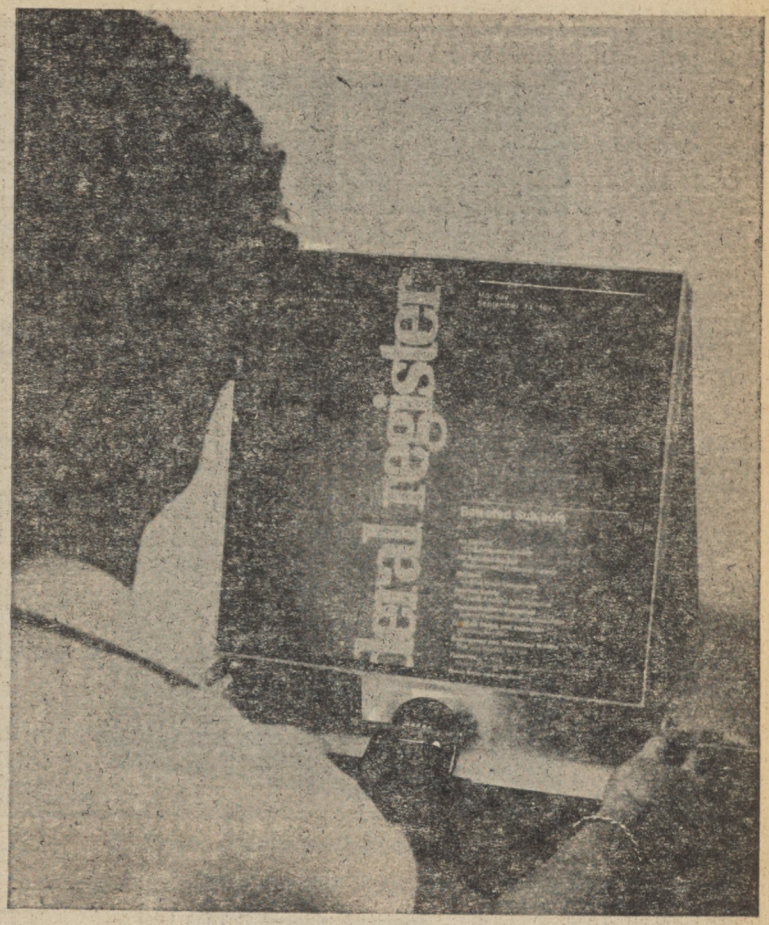
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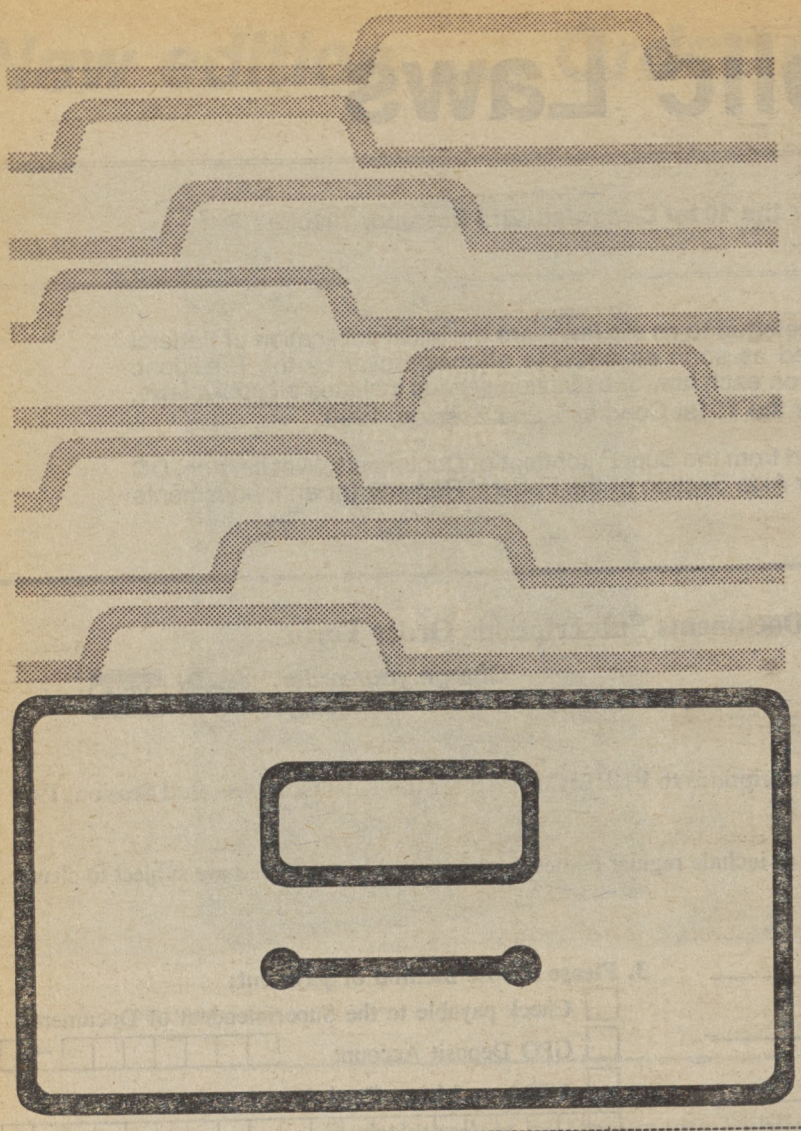
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