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Presidential Documents

Title 3—

The President

Proclamation 5929 of January 6, 1989

National Skiing Day, 1989

By the President of the United States of America

A Proclamation

We can trace evidence for skiing back more than 5,000 years. This efficient method of traveling over snow in difficult or inaccessible terrain has benefited mankind in countless ways over the centuries and continues to do so in our land. The practicality and pleasure of skiing are worth celebrating by all of us, and that is the reason for this National Skiing Day.

Skiing is advantageous to many of us for the jobs and income it generates. It also proves useful for residents of isolated areas; rescue teams; and Armed Forces units. Additionally, national and international sports groups, including Special Olympics International, recognize the athletic and therapeutic benefits of skiing for handicapped people and include it in their regular programs.

Skiing is now one of our most popular winter sports. It is loved by fans of national, international, and Olympic competition and enjoyed by millions of Americans as healthful, exciting recreation. More and more of us are becoming skiers. The increase of ski trails and slopes on private and public lands is making skiing much more widely available, as is the advent of artifical snow surfaces in areas with mild winter weather.

In recognition of skiing and its benefits, the Congress, by Public Law 100-634, has designated January 20, 1989, as "National Skiing Day" and authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim January 20, 1989, as National Skiing Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 89-596
Filed 1-6-89; 4:31 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5930 of January 6, 1989

National Tourism Week, 1989

By the President of the United States of America

A Proclamation

The travel and tourism industry is the source of countless benefits for both Americans and our guests from other lands. Friendship, knowledge, and appreciation of intercultural differences, enhancement of international understanding, cooperation, and goodwill are just a few.

Our abundant natural and manmade attractions, the warm hospitality of our people, and the outstanding facilities and services provided by our travel and tourism industry establish the United States as the preeminent destination for both foreign and domestic travelers.

Every year, millions of Americans and foreign visitors travel throughout our country discovering the glory of America—the beauty of our natural wonders, cities, wilderness, and countryside; the hospitality of our people; and our outstanding recreational, educational, and cultural activities. They learn America's history and see, firsthand, that ours is the land of freedom, justice, democracy, and opportunity.

The travel and tourism industry, which is composed mainly of small businesses, is now America's second largest private employer and its third largest retail industry. The industry directly employs over 5-½ million Americans and indirectly employs another 2,200,000. Total travel expenditures in the United States amount to nearly $280 billion—over 6 percent of our gross national product. The more than $19.4 billion spent here on travel and tourism by foreign visitors improves our balance of trade and makes travel and tourism our largest service export.

National Tourism Week fittingly honors all those Americans who earn their livelihood in the travel and tourism industry. National Tourism Week reminds us of this industry's economic, educational, cultural, and social benefits—that come from a productive partnership of industry, labor, and government.

The Congress, by Public Law 100–672, has designated the week beginning the second Sunday in May 1989 as "National Tourism Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 14–May 20, 1989, as National Tourism Week, and I call upon the people of the United States to observe the week with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 89–597
Filed 1–6–89; 4:32 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12663 of January 6, 1989

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 620 of Public Law 100–440, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay and salaries of the following statutory pay systems are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to the provisions of section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of pay or salaries for the following offices and positions are set forth on the Schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5316) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and Congressional Salaries (2 U.S.C. 31) at Schedule 6; and

(c) Salaries for justices and judges (28 U.S.C. 5, 44(d), 135, 252) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601 of Public Law 100–456, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Effective Dates.* The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for herein are effective on January 1, 1989. All other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1989.

Sec. 6. Executive Order No. 12622 of December 31, 1987, is superseded.

Ronald Reagan

THE WHITE HOUSE,
January 6, 1989.

Billing code 3195–01–M

SCHEDULE 1--GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$10,213	$10,555	$10,894	$11,233	$11,573	$11,773	$12,108	$12,445	$12,461	$12,780
2	11,484	11,757	12,137	12,461	12,601	12,972	13,343	13,714	14,085	14,456
3	12,531	12,949	13,367	13,785	14,203	14,621	15,039	15,457	15,875	16,293
4	14,067	14,536	15,005	15,474	15,943	16,412	16,881	17,350	17,819	18,288
5	15,738	16,263	16,788	17,313	17,838	18,363	18,888	19,413	19,938	20,463
6	17,542	18,127	18,712	19,297	19,882	20,467	21,052	21,637	22,222	22,807
7	19,493	20,143	20,793	21,443	22,093	22,743	23,393	24,043	24,693	25,343
8	21,590	22,310	23,030	23,750	24,470	25,190	25,910	26,630	27,350	28,070
9	23,846	24,641	25,436	26,231	27,026	27,821	28,616	29,411	30,206	31,001
10	26,261	27,136	28,011	28,886	29,761	30,636	31,511	32,386	33,261	34,136
11	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510
12	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
13	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
14	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
15	57,158	59,063	60,968	62,873	64,778	66,683	68,588	70,493	72,398	74,303
16	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*	82,500*	
17	76,990*	79,556*	82,122*	82,500*	83,818*					
18	86,682*									

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $75,500.

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$57,158	$46,315	$37,529	$30,410	$24,641	$22,028	$19,693	$17,605	$15,738
2	58,873	47,704	38,655	31,322	25,380	22,689	20,284	18,133	16,210
3	60,639	49,136	39,815	32,262	26,142	23,370	20,892	18,677	16,696
4	62,458	50,610	41,009	33,230	26,926	24,071	21,519	19,237	17,197
5	64,332	52,128	42,239	34,227	27,734	24,793	22,165	19,815	17,713
6	66,262	53,692	43,506	35,254	28,566	25,536	22,830	20,409	18,245
7	68,250	55,303	44,812	36,311	29,423	26,303	23,514	21,021	18,792
8	70,297	56,962	46,156	37,400	30,305	27,092	24,220	21,652	19,356
9	72,406	58,670	47,541	38,522	31,214	27,904	24,947	22,301	19,936
10	74,303	60,431	48,967	39,678	32,151	28,742	25,695	22,971	20,535
11	74,303	62,243	50,436	40,868	33,115	29,604	26,466	23,660	21,151
12	74,303	64,111	51,949	42,095	34,109	30,492	27,260	24,369	21,785
13	74,303	66,034	53,507	43,357	35,132	31,407	28,078	25,101	22,439
14	74,303	68,015	55,113	44,658	36,186	32,349	28,920	25,854	23,112

SCHEDULE 3--DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES
VETERANS ADMINISTRATION

Section 4103 Schedule

	1	2	3	4	5	6	7	8
Chief Medical Director	$97,206***							
Deputy Chief Medical Director	93,248**							
Associate Deputy Chief Medical Director	89,314*							
Assistant Chief Medical Director	86,682*							
Medical Director	76,990*	$78,128*	$79,266*	$80,404*	$81,542*	$82,500*	$83,818*	
Director of Nursing Service	76,990*	78,128*	79,266*	80,404*	81,542*	82,500*	83,818*	
Director of Podiatric Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	$81,060*
Director of Chaplain Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*
Director of Pharmacy Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*
Director of Dietetic Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*
Director of Optometric Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*

*** The rate of basic pay is limited to the rate for level III of the Executive Schedule, which is $82,500.

** The rate of basic pay is limited to the rate for level IV of the Executive Schedule, which is $80,700.

* The rate of basic pay is limited to the rate for level V of the Executive Schedule, which is $75,500.

SCHEDULE 3 (Continued)

Physician and Dentist Schedule

	1	2	3	4	5	6	7	8	9	10
Director Grade	$67,038	$69,273	$71,508	$73,743	$75,473	$76,678*	$78,869*	$81,060*	$82,500*	
Executive Grade	61,900	63,963	66,026	68,089	70,152	72,215	74,278	76,341*	76,868*	$78,891*
Chief Grade	57,158	59,063	60,968	62,873	64,778	66,683	68,588	70,493	72,398	74,303
Senior Grade	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
Intermediate Grade	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
Full Grade	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
Associate Grade	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510

Clinical Podiatrist and Optometrist Schedule

	1	2	3	4	5	6	7	8	9	10
Chief Grade	$57,158	$59,063	$60,968	$62,873	$64,778	$66,683	$68,588	$70,493	$72,398	$74,303
Senior Grade	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
Intermediate Grade	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
Full Grade	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
Associate Grade	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510

Nurse Schedule

	1	2	3	4	5	6	7	8	9	10
Director Grade	$57,158	$59,063	$60,968	$62,873	$64,778	$66,683	$68,588	$70,493	$72,398	$74,303
Assistant Director Grade	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
Chief Grade	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
Senior Grade	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
Intermediate Grade	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510
Full Grade	23,846	24,641	25,436	26,231	27,026	27,821	28,616	29,411	30,206	31,001
Associate Grade	20,521	21,205	21,889	22,573	23,257	23,941	24,625	25,309	25,993	26,677
Junior Grade	17,542	18,127	18,712	19,297	19,882	20,467	21,052	21,637	22,222	22,807

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule which is $75,500.

SCHEDULE 4 -- SENIOR EXECUTIVE SERVICE

ES-1 . . . . . the sum of $68,700 and an amount equaling 28.8 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-2 . . . . . the sum of $71,800 and an amount equaling 31.0 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-3 . . . . . the sum of $74,900 and an amount equaling 38.4 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-4 . . . . . the sum of $76,400 and an amount equaling 55.0 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-5 . . . . . the sum of $78,600 and an amount equaling 74.8 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-6 . . . . . the rate in effect from time to time for level IV of the Executive Schedule.

SCHEDULE 5 -- EXECUTIVE SCHEDULE

level I	$99,500
level II	89,500
level III	82,500
level IV	80,700
level V	75,500

SCHEDULE 6 -- VICE PRESIDENT AND MEMBERS OF CONGRESS

Vice President	$115,000
Senators	89,500
Members of the House of Representatives	89,500
Delegates to the House of Representatives	89,500
Resident Commissioner from Puerto Rico	89,500
President pro tempore of the Senate	99,500
Majority leader and minority leader of the Senate	99,500
Majority leader and minority leader of the House of Representatives	99,500
Speaker of the House of Representatives	115,000

SCHEDULE 7 -- JUDICIAL SALARIES

Chief Justice of the United States	$115,000
Associate Justices of the Supreme Court	110,000
Circuit Judges	95,000
District Judges	89,500
Judges of the Court of International Trade	89,500
Judges of the United States Claims Court	89,500

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

PART I--MONTHLY BASIC PAY TABLE

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
COMMISSIONED OFFICERS														
O-10**	$5710.80	$5911.80	$5911.80	$5911.80	$5911.80	$6138.30	$6138.30	$6478.80*	$6478.80*	$6875.10*	$6875.10*	$7115.10*	$7115.10*	$7558.50*
O-9	5061.30	5193.90	5304.30	5304.30	5304.30	5439.30	5439.30	5665.80	5665.80	6138.30	6138.30	6478.80*	6478.80*	6875.10*
O-8	4584.30	4721.40	4833.60	4833.60	4833.60	5193.90	5193.90	5439.30	5439.30	5665.80	5911.80	6138.30	6289.50	6289.50
O-7	3809.10	4068.00	4068.00	4068.00	4250.40	4250.40	4496.70	4496.70	4721.40	5193.90	5551.20	5551.20	5551.20	5551.20
O-6	2823.30	3102.00	3305.10	3305.10	3305.10	3305.10	3305.10	3305.10	3417.30	3957.60	4159.80	4250.40	4496.70	4877.10
O-5	2257.80	2651.40	2834.70	2834.70	2834.70	2834.70	2920.50	3077.40	3283.80	3529.50	3732.00	3845.10	3979.20	3979.20
O-4	1903.50	2317.80	2472.30	2472.30	2518.20	2629.20	2808.60	2966.40	3102.00	3237.90	3327.60	3327.60	3327.60	3327.60
O-3***	1768.80	1977.60	2114.10	2339.10	2451.00	2538.90	2676.30	2808.60	2877.90	2877.90	2877.90	2877.90	2877.90	2877.90
O-2***	1542.30	1684.50	2023.50	2091.60	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40
O-1***	1338.90	1394.10	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER														
O-3	----	----	----	$2339.10	$2451.00	$2538.90	$2676.30	$2808.60	$2920.50	$2920.50	$2920.50	$2920.50	$2920.50	$2920.50
O-2	----	----	----	2091.60	2135.40	2202.90	2317.80	2406.30	2472.30	2472.30	2472.30	2472.30	2472.30	2472.30
O-1	----	----	----	1684.50	1799.40	1865.70	1933.20	2000.70	2091.60	2091.60	2091.60	2091.60	2091.60	2091.60

* Basic pay is limited to the rate of basic pay for level V of Executive Schedule, which is $6,291.60 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,340.00*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member or warrant officer.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
WARRANT OFFICERS														
W-4	$1802.10	$1933.20	$1933.20	$1977.60	$2067.30	$2158.50	$2249.10	$2406.30	$2518.20	$2606.40	$2676.30	$2762.70	$2855.10	$3077.40
W-3	1637.70	1776.60	1776.60	1799.40	1820.40	1953.60	2067.30	2135.40	2202.90	2268.60	2339.10	2430.00	2518.20	2606.40
W-2	1434.30	1551.90	1551.90	1597.20	1684.50	1776.60	1844.10	1911.60	1977.60	2046.90	2114.10	2180.70	2268.60	2268.60
W-1	1195.20	1370.40	1370.40	1484.70	1551.90	1618.80	1684.50	1754.10	1820.40	1888.20	1953.60	2023.50	2023.50	2023.50
ENLISTED MEMBERS														
E-9*	----	----	----	----	----	----	$2096.10	$2143.50	$2192.10	$2242.20	$2292.30	$2337.00	$2459.70	$2698.80
E-8	----	----	----	----	----	$1758.00	1808.10	1855.80	1904.10	1954.20	1999.20	2048.40	2168.70	2410.20
E-7	$1227.30	$1324.80	$1374.00	$1422.00	$1470.60	1517.40	1566.00	1614.60	1687.80	1735.80	1784.10	1807.20	1928.70	2168.70
E-6	1056.00	1150.80	1198.80	1249.80	1296.30	1343.40	1392.90	1464.60	1510.50	1559.40	1583.10	1583.10	1583.10	1583.10
E-5	926.70	1008.60	1057.50	1103.70	1176.00	1224.00	1272.60	1319.40	1343.40	1343.40	1343.40	1343.40	1343.40	1343.40
E-4	864.30	912.60	966.30	1041.30	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40
E-3	814.20	858.90	893.40	928.80	928.80	928.80	928.80	928.80	928.80	928.80	928.80	928.80	928.80	928.80
E-2	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60
E-1**	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00
E-1***	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,280.50 regardless of cumulative years of service computed under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

PART II—BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents Full rate*	Partial rate**	With dependents
COMMISSIONED OFFICERS			
O-10	$613.20	$50.70	$754.50
O-9	613.20	50.70	754.50
O-8	613.20	50.70	754.50
O-7	613.20	50.70	754.50
O-6	562.50	39.60	679.80
O-5	541.80	33.00	654.90
O-4	502.20	26.70	577.80
O-3	402.60	22.20	478.20
O-2	319.50	17.70	408.00
O-1	268.80	13.20	364.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3	$434.40	$22.20	$513.30
O-2	369.60	17.70	463.20
O-1	317.70	13.20	428.10
WARRANT OFFICERS			
W-4	$453.30	$25.20	$511.20
W-3	380.70	20.70	468.60
W-2	337.80	15.90	430.80
W-1	283.20	13.80	372.60
ENLISTED MEMBERS			
E-9	$372.00	$18.60	$490.50
E-8	342.00	15.30	452.10
E-7	291.90	12.00	420.30
E-6	264.00	9.90	387.90
E-5	243.60	8.70	348.90
E-4	212.10	8.10	303.60
E-3	208.20	7.80	282.30
E-2	169.20	7.20	268.80
E-1	150.30	6.90	268.80

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed service without dependents is authorized by title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and Part IV of Executive Order 11157, as amended.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

Part III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month) $119.61

Enlisted Members (per day):

	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$5.27	$5.70
When rations-in-kind are not available	5.95	6.44
When assigned to duty under emergency conditions where no messing facilities of the United States are available	7.89	8.53

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $525.00.

[FR Doc. 89-598
Filed 1-6-89; 4:33 pm]
Billing code 3195-01-C

Rules and Regulations

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 88-194]

Pink Bollworm Regulated Areas; Removal of Mississippi from List of Quarantined States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the pink bollworm quarantine and regulations by removing previously regulated areas in Mississippi and by removing Mississippi from the list of states quarantined because of pink bollworm.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective September 20, 1988 (53 FR 36431-36432, Docket Number 88-112), we amended the pink bollworm quarantine and regulations by removing Bolivar and Washington Counties in Mississippi from the list of regulated areas in 7 CFR 301.52-2a and deleted Mississippi from the list of states quarantined because of pink bollworm. Comments on the interim rule were required to be postmarked or received on or before November 21, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

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

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

This action affects the interstate movement of regulated articles from specified areas in the state of Mississippi. There are hundreds of small entities that move these articles interstate from nonregulated areas in the United States. However, based on information compiled by the Department, it has been determined that eight small entities move these articles interstate from the previously quarantined areas in MIssissippi. Further, we estimate that this action will save approximately $7,000 per year.

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

Paperwork Reduction Act.

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR Part 301 that was published at 53 FR 36431-36432 on September 20, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162 and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, DC, this 5th day of January 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-492 Filed 1-9-89; 8:45 am]
BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 704

Conservation Reserve Program

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends 7 CFR Part 704 to expand the land eligibility provisions of the Conservation Reserve Program to include certain fields which are subject to scour erosion or which contain wetlands.

DATES: Effective January 10, 1989. Written comments must be received not later than March 13, 1989, in order to be assured of consideration.

ADDRESS: Written comments on this interim rule must be submitted to the Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service (ASCS), P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: James R. McMullen at the above address, phone: (202) 447-6221.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512-1 and has been classified "nonmajor." It has been determined that the provisions of this rule will not result in an annual effect on the national economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 USC 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will not have a significant adverse impact on the quality of the human environment. Therefore, an environmental impact statement is not needed. Copies of the environmental assessment are available upon written request.

The title and number of the Federal assistance program to which this rule applies are: Conservation Reserve Program—10.069, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Under the Conservation Reserve Program (CRP), which is provided for in Title XII of the Food Security Act of 1985 (Pub. L. No. 99-198) ("the Act"), the Secretary of Agriculture is required, during the 1986-90 crop years, to enter into long-term contracts with eligible owners and operators of eligible cropland to assist them in conserving and improving the soil and water resources of their farms and ranches by converting the eligible land to a permanent vegetative cover in accordance with an approved conservation plan.

Title XII of the Act generally limits eligible cropland to "highly erodible cropland," except that Section 1231(c)(2) of the Act provides that the Secretary may include in the program lands that are not highly erodible lands but that pose an off-farm environmental threat or which, if permitted to remain in production, pose a threat of continued degradation of productivity due to soil salinity. Section 1232(c) of the Act provides that, to the extent practicable, not less than one eighth of the number of acres of land that is placed in the CRP in each of the 1986 through 1990 crop years shall be devoted to trees.

This rule, pursuant to the authority contained in Section 1231(c)(2) of the Act, expands the land eligibility provisions of 7 CFR 704.7. Under this rule certain fields with soils that do not qualify as highly erodible soils under the CRP regulations in 7 CFR Part 704 may, nonetheless, qualify for enrollment in the CRP if the field: (1) Contains land which has evidence of substantial scour erosion or (2) contains wetlands. This authority will be in addition to the authority already present in § 704.7 which permits "filter strips" to be enrolled in the progam even though the soil within the strip is not "highly erodible".

Land enrolled into the CRP under the authority provided for in this rule must be planted to trees unless the Soil Conservation Service (SCS) of the Department of Agriculture determines that tree-planting is not appropriate. If SCS determines that tree planting is not appropriate, the land must be devoted to other permanent vegetative cover approved by SCS.

Scour erosion is erosion caused by over-flowing water from streams and rivers. Normally, the overflowing water will return to the stream or river and may carry with it environmentally harmful pollutants and sedimentation picked up from the flooded land.

Wetland areas are areas that have a predominance of hydric soils and will, in their normal state, support hydrophytic vegetation. Title XII of the Act provides, in general, that a person may lose eligibility for specified USDA benefits by producing an agricultural commodity on converted wetlands. However, persons producing agricultural commodities on certain wetlands are exempt from this provision. This rule will permit some fields with such wetland areas to be placed in the CRP. Returning cropped wetlands to non-cropped vegetation and trees will reduce the off-farm environmental threat posed by the continued cropping of these areas. The continued cropping of wetland areas reduces the availability of natural habitats for wildlife including migratory birds. In addition, wetland areas, because they often serve as collection areas for runoff from other lands on which crops are produced tend to be areas where pollutions can collect. Cropping of these areas allows the continued movement of pollutants into downstream streams, lakes, and rivers.

To be eligible to be enrolled in the CRP under the amendment to § 704.7 adopted in this rule, a field, must have evidence of scour erosion or have wetland areas within its boundaries, as determined by the Commodity Credit Corporation (CCC) in consultaton with the Soil Conservation Service (SCS) of the Department. Fields with qualifying scour erosion or wetland areas must, in addition: (1) Have been committed to the production of an annual corp, as determined under § 704.7 of the regulations, for 2 out of the 5 years in the period from 1981-85, and (2) as determined pursuant to § 704.7(a)(2), be capable, at the time of enrollment in the CRP, of being planted to an annual crop. For purposes of this rule, the term "wetland" has the same meaning as that which is assigned in the provisions of the "Swampbuster" regulations in 7 CFR Part 12. Where enrollment is sought on the basis of scour erosion, it must be determined, in addition to the other requirements for eligibility, that the cropland in the field will likely flood, on the average, once every 10 years and that the cropland has suffered damage as a result of the scour erosion.

The full amount of the cropland in the field will be eligible for CRP enrollment if: (1) The field is 9 acres or less in size, or (2) at least one-third of the field has qualifying scour erosion or wetland areas.

If the full field is not eligible then: (1) In the case of a field with scour erosion, the eligible portion shall consist only of that portion of the cropland in the field which lies between the waterbody and the inland limit of the damage and (2) in the case of a cropland field with wetland areas, the eligible area shall include the amount of land deemed by the CCC to be necessary to create reasonable boundaries between the area to be enrolled in the program and those not enrolled.

This amendment will provide greater CRP environmental benefits, increase the quantity of land eligible for the program, and will foster the planting of trees. The rule is adopted as an interim rule in order that the changes made by the rule with respect to eligibility of land for enrollment in the CRP may be in effect at the time of the next sign-up period for the program.

List of Subjects in 7 CFR Part 704

Administrative practices and procedures, Conservation plan, Contracts, Technical assistance, Natural resources, Wildlife.

Interim Rule

Accordingly, 7 CFR Part 704, Conservation Reserve Program is amended as follows:

PART 704—[AMENDED]

1. The authority citation for Part 704 continues to read as follows:

Authority: Secs. 1201, 1231–1244, Pub. L. 99–198, 99 Stat. 1354, as amended (16 USC 3801, 3831–3844).

2. Section 704.7 is amended by adding a new paragraph (e), to read as follows:

§ 704.7 Eligible cropland.

* * * * *

(e)(1) A field which has evidence of scour erosion caused by out-of bank flows of water, as determined by SCS, or wetland areas, and which meets the other requirements of this paragraph may, as approved by CCC, be eligible to be placed in the CRP, although the field does not meet the erodibility criteria of paragraph (a)(3) of this section.

(2) In order for land to be eligible for enrollment in the CRP under this paragraph, the land must be cropland and must meet the criteria of paragraphs (a)(1) and (a)(2) of this section.

(3) In order for land to be eligible for enrollment in the CRP on the basis of scour erosion, the land at the time of enrollment in the program must be cropland which:

(i) Can be expected to flood a minimum of once every 10 years; and

(ii) Has evidence of damage as a result of such scour erosion.

(4) For purposes of this paragraph, the term "wetland" shall, to the extent practicable, be given the same meaning as is designated in the regulations in 7 CFR Part 12.

(5) To the extent practicable, only cropland areas of a field may be enrolled in the CRP under this paragraph. The entire cropland area of an eligible field may be enrolled in the CRP if:

(i) The size of the field is 9 acres or less, or,

(ii) More than one third of the cropland in the field is either wetland or is land which, in the case of scour erosion, lies between the water source and the inland limit of the scour erosion.

If the full field is not eligible for enrollment, the quanitity of cropland within the field which is eligible for enrollment shall be determined in accordance with subparagraphs (6) and (7).

(6) If the full field is not eligible for enrollment under this paragraph:

(i) That portion of the field eligible for enrollment on the basis of scour erosion shall be that portion of the cropland between the water body and the inland limit of the scour erosion plus whatever additional areas would otherwise be unmanageable and would be isolated by the eligible areas; and,

(ii) That portion of the field which is eligible for enrollment on the basis of the presence of wetlands, shall be only the wetland, except as determined under paragraph (7).

(7) The area of a field deemed eligible for enrollment under this paragraph may be adjusted as necessary to establish manageable boundaries between the eligible and ineligible areas of the field.

(8) If cropland is approved for enrollment in the CRP under this paragraph, the eligible cropland shall be planted to an appropriate tree species approved by SCS unless tree planting is determined to be inappropriate by SCS in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover approved by SCS and the CCC.

Signed at Washington, DC on January 3, 1989.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation and Administrator, Stabilization and Conservation Service.

[FR Doc. 89–414 Filed 1–9–89; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 682]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 682 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 6 through January 12, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 682 (§ 907.982) is effective for the period January 6, 1989, through January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 4, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a six to two vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that demand for navel oranges has reduced sharply.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable,

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

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.982 is added to read as follows:

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

§ 907.982 Navel Orange Regulation 682.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 6, 1989, through January 12, 1989, are established as follows:

(a) District 1: 1,176,000 cartons;
(b) District 2: 112,000 cartons;
(c) District 3: 42,000 cartons;
(d) District 4: 70,000 cartons.

Dated: January 5, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–433 Filed 1–6–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 647]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 647 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 302,312 cartons during the period January 8 through January 14, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 647 (§ 910.947) is effective for the period January 8 through January 14, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

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

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

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

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

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

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on January 4, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.947 is added to read as follows:

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

§ 910.947 Lemon Regulation 647.

The quantity of lemons grown in California and Arizona which may be

handled during the period January 8, 1989 through January 14, 1989, is established at 302,312 cartons.

Dated: January 5, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-432 Filed 1-6-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 948

[FV-88-134]

Irish Potatoes Grown in Colorado Area 2; Reduction in Minimum Size Requirement for Round Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the minimum diameter for round potato varieties from 2⅛ inches to 2 inches in diameter. The size change also applies to imported red-skinned round type potatoes. This action is expected to foster increased consumption and have a positive impact on the industry.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 120 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. Also, there are about 20 potato importers subject to the requirements of the potato import regulation. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes and importers of potatoes may be classified as small entities.

The San Luis Valley Potato Administrative Committee Area 2 estimated that shipments during the 1987-88 season totaled 29,252 loads at about 480 hundredweight (cwt.) per load. Of the total, 97 percent or 13,686,191 cwt., entered the fresh market and two percent (315,857 cwt.) was shipped to processors. Culls approximated 1.4 million cwt., which were utilized for starch.

The breakdown of fresh shipments by variety was 69.2 percent Centennial Russets (9,469,033 cwt.), 23.9 percent Russet Burbanks (3,268,607 cwt.), 6.7 percent reds (927,231 cwt.), and 0.2 percent other varieties (21,318 cwt.).

One percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 63 percent U.S. No. 1, 21 percent U.S. Commercial, 13 percent U.S. No. 2, and two percent U.S. No. 1/Size B.

The handling requirements for fresh market shipments of Colorado Area 2 potatoes are specified in § 948.386 (53 FR 8146, March 14, 1988) and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements require that fresh potatoes be shipped under the following conditions. Round variety potatoes must grade at least U.S. No. 2 and be at least 2⅛ inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must be U.S. No. 2 or better grade and 2 inches minimum diameter or 4 ounces minimum weight. All varieties of potatoes may be Size B if they otherwise grade U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2¼ inches. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period August 25 through October 31 specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This rule reduces the minimum size requirement for round potato varieties from 2⅛ to 2 inches in diameter. This change was recommended by a vote of 10 to two by the San Luis Valley Potato Administrative Committee Area 2 at its August 18, 1988, meeting.

A proposal inviting comments on this action was published in the **Federal Register** on November 4, 1988 (53 FR 44591). Interested persons were invited to submit comments until November 21, 1988. One comment was received in favor of the proposed change. The comment was filed by Wayne D. Thompson, manager of the San Luis Valley Potato Administrative Committee Area 2, on behalf of the committee. Also included in the comment was a recommendation for an additional change in the handling regulation to reduce the minimum size requirement for certain long variety potatoes. This recommendation, however, is being addressed in a separate rulemaking proceeding.

The minimum size requirement for round potato varieties was 2 inches in diameter for many years. During the 1987-88 marketing season, the minimum size requirement was increased to 2⅛ inches in diameter. This change was intended to upgrade the pack and thereby foster increased consumption and have a positive impact on the industry. However, this size increase did not satisfy consumer preferences and proved unsatisfactory in the marketplace.

Consumer demand has increased for small round potato varieties. Virtually all round potatoes grown in Colorado's San Luis Valley are red-skinned. Such potatoes typically account for about 6.5 percent of San Luis Valley's total crop. Centennial Russets and Russet Burbanks (long white varieties) are the other dominant varieties. There are minimal shipments of round white potatoes from this area.

The committee concluded that the change in the minimum size requirement for round potato varieties would provide handlers the opportunity to ship smaller round potatoes (primarily red skinned) without adversely affecting the market for larger potatoes.

Quality assurance is very important to the Colorado (Area 2) potato industry

both within and outside of the State. Providing the public with quality potatoes which are appealing and responsive to consumer trends is necessary in order to maintain market share. This action is expected to foster increased consumption and benefit Colorado Area 2 potato growers and handlers.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of potatoes, the current import regulation (§ 980.1), specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (7 CFR Part 945) during each month of the marketing year. The import requirements for round white types are based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31 (7 CFR Part 953), and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year (7 CFR Part 948).

The quality standards imposed upon imports of red skinned, round type potatoes are based on that type grown in Washington during the months of July and August (7 CFR Part 946). During the remainder of the year, the import requirements are based upon those in effect for potatoes grown in Colorado Area 2 (7 CFR Part 948).

Because this rule reduces the minimum size requirement for round potato varieties, and virtually all round potatoes grown in Area No. 2 are red skinned, this change is applicable to imports of red-skinned round type potatoes from September 1 to June 30 each season.

No change is required in the language of § 980.1 or § 948.386(h).

Applicability to Imports

Based on the above, the Administrator of AMS has determined that this action will not have a significant eocnomic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 533) in that the shipping season for Colorado Area 2 potatoes has already begun, and it is important that the change resulting from this rulemaking be in effect as soon as possible to be of maximum benefit to producers and handlers. Furthermore, producers and handlers of potatoes in the production area are already aware of the changes, which relax current handling requirements.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

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

2. Section 948.386 is amended by revising paragraph (a)(1) to read as follows:

Note.—This regulation will appear in the Code of Federal Regulations:

§ 948.386 Handling regulation.

* * * * *

(a) *Minimum grade and size requirements*—(1) Round varieties, U.S. No. 2, or better grade, 2 inches minimum diameter.

* * * * *

Dated: January 5, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–491 Filed 1–9–89; 8:45 am]

BILLING CODE 3410–02–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to designated members of the Singapore International Monetary Exchange Limited ("SIMEX") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10, which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Lauchlan Wash, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America

Before the

Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Designated Members of the Singapore International Monetary Exchange Limited from the Application of Certain of the Foreign Futures and Option Rules Thirty Days after Filing of Consents and Representations by Such Members and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to customers located in the United States

by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, the Commission considered the potential extraterritorial impact of such a program and the desirability of avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons *located outside the United States* and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under Section 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10. 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, in adopting Commission Rule 30.10, the Commission stated that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to activity subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to make their books and records available in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated January 29, 1988, SIMEX, which is regulated by the Monetary Authority of Singapore ("MAS"), petitioned the Commission for an exemption from the application of certain of the Commission's foreign futures and option rules. In support of its petition, SIMEX represented that granting such an exemption with respect to its members would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because SIMEX and its members were subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by SIMEX and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable Singapore law, regulations and SIMEX rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

—Registration with the Commission;
—The separate account requirement contained in Commission Rule 30.7 17 CFR 30.7; and
—Those sections of Part I of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30;

based upon substituted compliance by such persons with the applicable statutes, regulations and relevant exchange rules of the SIMEX in effect in Singapore.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in Singapore who would be exempted hereunder provides:

(1) A system of licensing of firms and persons who deal in transactions subject to regulation under Part 30 that includes, for example, procedures for granting, conditioning, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for firms carrying customer accounts including, without limitation, a required minimum level of adjusted net capital of S$250,000 (US$129,075) [2] or 10% of the amount of customer funds required to be segregated, whichever is higher, and an early warning system requiring firms to immediately inform MAS or SIMEX, as appropriate, if such firms' adjusted net capital falls below a specified level;

(3) A system for the protection of customer funds that applies to all customers which provides for the maintenance of customer trust accounts at designated locations and in designated investments, which precludes the use of customer funds to satisfy house obligations and which mandates certified audits of accounts, augmented by a compensation fund administered by SIMEX;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, records of all customer transactions, monthly customer account statements, customer segregation records and discretionary account documentation;

(5) Sales practice standards for licensees which include, for example, required risk disclosures to prospective customers and prohibitions on: (a) Fraudulent and misleading practices; (b) commingling of customer funds with house funds; and (c) insider dealing and other improper trading practices;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program which monitors and enforces compliance with rules adopted with respect to fraud, bucketing, manipulation, the withholding of orders, trading ahead of or opposite customer orders, and prearranged trades, among others; and

(7) Mechanisms for sharing information with the Commission and NFA of an "as needed" basis including, without limitation, confirmation data,

[1] 52 FR 28980, 28981 and 29002.

[2] Currency is valued at .5163 United States dollar equivalent as of December 12, 1988. *The Wall Street Journal*, December 13, 1988, at C13, col. 4.

data necessary to trace funds related to trading futures and option products subject to regulation in Singapore, position data and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the anti-fraud provision in Commission Rule 30.9, 17 CFR 30.9, or the disclosure provisions of Commission Rules 30.6 and 33.7, 17 CFR 30.6 and 33.7. Moreover, the relief granted is directed to brokerage activities by the firm licensed in Singapore on SIMEX and does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading on United States markets for its own account would be subject to the large trader reporting requirement. *See, e.g.*, 17 CFR Part 18. Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to, among other things, the reporting requirements applicable to foreign brokers. *See e.g.*, 17 CFR Parts 17 and 21. The relief herein is inapplicable where the firm solicits United States customers for transactions on United States markets. In that case, the firm must comply with all applicable United States laws and regulations, including the requirements to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Singapore; such firm is engaged in business with customers located in Singapore as well as in the United States; and such firm would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) All transactions on SIMEX with respect to customers resident in the United States will be made on or subject to the rules of SIMEX and the Commission will receive prompt notice of all material changes in the Singapore Futures Trading Act of 1986, Regulations thereunder and SIMEX rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than Singapore customers under all relevant provisions of Singapore law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an " as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of a Singapore-domiciled firm doing business in the United States under the exemption granted by this order.[3]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act and files a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5;

(b) Agrees to provide the books and records related to transactions under Part 30 required to be maintained under the applicable statutes, regulations and SIMEX rules in effect in Singapore upon the request of any representative of the Commission or United States Department of Justice at the place in the United States designated by such representative, within 72 hours, or such lesser period of time as specified by that representative, after notice of the request;

(c) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under Section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32;

(d) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, bank or broker/dealer affiliate) and provides brief description of such subsidiary's or affiliate's principal business in the United States;

(e) Consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representatives or activities with respect to foreign futures and option transactions under Part 30 and consents to notify all customers resident in the United States of the availability of such a program; and

(f) Undertakes to comply with the applicable provisions of Singapore law and SIMEX rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This order will become effective as to any firm designated under the Commission's interim order or hereinafter designated the later of thirty days after publication of the Order in the Federal Register or after filing of the consents hereinabove required. Upon filing of the notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and SIMEX and/or any applicable regulatory or self-regulatory organization.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firm required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, generally have been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the

[3] In this connection, the Commission notes that SIMEX's petition dated January 29, 1988 and related documents already address the representations required in paragraphs (1), (c), (d) and (e) of the conditions specified above.

systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide relevant books and records. If necessary, provisions will be made for servicing existing client positions.

In the future, the Commission may determine that other considerations and conditions are also relevant to the determination to exempt, or to continue to exempt, specified firms from the application of the Part 30 rules generally. To this end, the Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules.

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix C is added to Part 30 to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

Firms designated by the Sydney Futures Exchange Limited.

FR date and citation, November 7, 1988; 53 FR 44856.

Firms designated by the Singapore International Monetary Exchange Limited.

FR date and citation: January 10, 1989; 54 FR _____.

Issued in Washington, DC, on December 30, 1988.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-229 Filed 1-9-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Availability of Record Formats and Notice of Second Implementation Conference

Issued January 4, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of availability of record formats for rate, tariff and certificate filings; notice of Second Implementation Conference on Order Nos. 493, 493-A, and 493-B.

SUMMARY: On January 4, 1989, the Commission staff issued revised record formats for submitting rate filings, tariffs and certificate applications on an electronic medium. These formats are revised to respond to certain recommendations and comments submitted during and after the Order No. 493 (53 FR 15023 (Apr. 27, 1988)) implementation conference held on September 12 and 13, 1988. Additionally, the Commission staff is issuing hard copy print formats for rate filings and tariff sheets. The Commission staff also identifies minor revisions to the FERC Form Nos. 2 and 2-A record formats which were issued on October 26, 1988. Finally, Commission staff is scheduling a second implementation conference to be held on February 1 and 2, 1989. The revised formats issued with this notice will be discussed at this conference.

DATES: The revised formats are available as of January 4, 1989. The implementation conference will be held on Wednesday and Thursday, February 1 and 2, 1989, at 10:00 a.m.

ADDRESSES: The implementation conference will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Requests to attend the conference, comments and questions regarding participation may be directed in writing or via telephone to: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 7010, Washington, DC 20426, (202) 357-8995 or (202) 357-8844.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 7010, Washington, DC 20426, (202) 357-8995 or (202) 357-8844.

SUPPLEMENTARY INFORMATION: Order No. 493-B, issued November 30 1988, extended the implementation date for submitting rate filings, tariffs and certificate applications on an electronic medium from March 31, 1989 to October 31, 1989. At the implementation conference on Order Nos. 493 and 493-A, held on September 12 and 13, 1988, and in supplemental comments filed after the conference, commenters recommended numerous technical revisions to the record formats for rate, tariff and certificate filings. Staff has reviewed these comments and incorporated most of the recommended revisions in the record formats released with this notice. The technical revisions to the formats for rate, tariff and certificate filings are described in Appendices A, B, and C, respectively. In addition, certain revisions to Form Nos. 2 and 2-A omitted from the October 26, 1988 Notice of Availability of Revised Record Formats are listed in Appendix D.

Additionally, staff is releasing hard copy print formats for rate filings and tariff sheets.

Finally, staff is announcing a second implementation conference as requested by commenters. The conference will be held on February 1 and 2, 1989, and will provide representatives of natural gas companies and the public with an opportunity to discuss the revised record formats for rate, tariff and certificate filings in a public forum. Staff intends to resolve all remaining technical problems with these record formats at this conference and then issue final formats after the conference. Therefore, persons representing companies required to make rate, tariff and/or certificate filings with the Commission should be prepared to indicate whether or not the format for each record is adequate to satisfy the applicable statement or schedule content requirements for their company. If a particular format is not adequate, then participants should be prepared to propose all necessary technical additions or revisions.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice and the associated record formats, during normal business hours in Room 1000 at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

This notice and the record formats for tariff and certificate filings are also available through the Commission Issuance Posting System (CIPS), an

electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, eight data bits and one stop bit. The full text of the notice and the tariff and certificate record formats will be available on CIPS for 10 days from the date of issuance.

Due to the size of the record format and hard copy print format files for rate filings, these formats will not be available through CIPS. However, the revised formats for rate filings on diskette in ASCII text file format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The record formats for tariff and certificate filings, and the hard copy print formats for tariff sheets are also included on the diskette.

All record formats, and hard copy print formats are available on a single 5.25" (1.2MB) double-sided, high density diskette. To order a copy of the diskette, please request: RM-87-17-000, Record Formats for Rates, Tariffs and Certificates (January 4, 1989)—1 Diskette.

The diskette contains a copy of this notice and an INFO file which describes the files on the diskette and specifies the margin, font and orientation required to print each file after importing the file into a word processing program.

Lois D. Cashell,

Secretary.

Appendix A—Revisions to the Rate Filing Record Formats

The current rate filing record formats represent a major revision of the formats presented at the Implementation Conference of September 12 and 13, 1988. Most of the records are revised or corrected (new items or character positions, deletions, expanded codes, etc.). This appendix identifies the major technical changes to the working draft formats presented at the September implementation conference.

General Changes

(1) Schedule R1 is now labeled Schedule RA.

(2) Statement M is now included under Schedule RB.

(3) An expanded table of Function Codes is now contained in Exhibit G.

(4) A Footnote ID is included in all non-text records.

(5) Records containing text information are now preceded by a header record.

Schedule RA

(01) *Rate Case Filing Requirements—Part 1* (old R1/01)

No change.

(02) *Rate Case Filing Requirements—Part 2* (old R1/02)

This record is revised to incorporate a header record followed by text.

Note 1 includes a code for the letter of transmittal.

(03) *Statement A, Overall Cost of Service* (old R1/03)

This record is expanded to allow for Operating Expense Classification codes.

The number of "other" functional classification fields is expanded from one to four with corresponding description fields included in the record.

(04) *Statement B, Rate Base and Return* (old R1/04)

Codes are added for Gas Plant Classification and Accumulated Depreciation Classification. Fields are included in the record to describe the "other" codes within these classifications.

Three "other" functional classification fields are added with corresponding description fields included in the record.

(05) *Statement C, Cost of Plant* (old R1/05)

An additional account description code is added for "Other utility plant".

Account 118 is added to FERC Account Number.

The number of adjustment entries is expanded from one to three with adjustment description fields included in the record.

(06) *Schedule C-1, Detailed Plant Accounts* (old R1/06)

Account 118 is added to FERC Account Number; new function codes are defined in new Exhibit G.

Project Name is a new item.

The number of adjustment entries is expanded from one to three with adjustment description fields included in the record.

(07) *Schedule C-2, Major Plant Additions and Retirement Projects—Part 1* (old R1/07)

New function codes are defined in new Exhibit G.

FERC Docket Number is a new item.

The Date of Addition or Retirement is divided into separate date fields.

The description of any "other" function code is now included in the record instead of a footnote.

(08) *Schedule C-2 Major Plant Additions and Retirement Projects—Part 2* (new record)

This is a new text record to describe the plant additions or retirement projects included in Schedule C-2, Part 1.

(09) *Statement C-3, Uncompleted Work Orders* (old R1/08, with revised title)

Type of Undistributed Construction Overhead is deleted.

(10) *Schedule C-4, Storage Projects* (old R1/09)

Codes for base period and test period are redefined. The following items are new: Unit Reported Code, Ending Volume, Ending Cost, and Name and Description of Storage Project. Note 1 is deleted.

(11) *Statement C, Work Papers* (old R1/10)

This record is revised to include a header record followed by text.

(12) *Statement D, Accumulated Provisions for Depreciation, Depletion, Amortization, and Abandonment* (old R1/11)

Account No. 117 is added to Gas Plant Account Number. Additional function codes were added and included in Exhibit G.

Adjustments and Reimbursements is deleted.

The number of Adjustments to Accumulated Provision at End of Period is expanded from one to three with descriptions of the adjustments included in the record.

The description of any "other" function code is now included in the record instead of a footnote.

(13) *Statement D, Work Papers* (old R1/12)

This record is revised to include a header record followed by text.

Text ID 1 in Note 8 is revised to include negative salvage.

(14) *Statement E, Working Capital* (old R1/13)

Working capital codes are added for prepaid gas purchase agreements, prepaid gas purchase take or pay amounts, and fuel stock.

The number of "other" entries is expanded from one to four with description fields included in the record.

A new item is added for statement or schedule reference.

(15) *Schedule E-1, Working Capital—Monthly Balances—Part 1* (old R1/14)

Parts 1 and 2 of Schedule E-1 are revised so that Working Capital monthly balances and totals are reported in the same record formats.

Month/year is revised to Year/Month/Total to allow for total, 13-month average balance, test period adjustment, and adjusted balance entries. The separate item for Total Working Capital is deleted.

The following items are new: Prepaid Gas Purchase Agreements (138a),

Prepaid Gas Purchase Take or Pay Agreements (138b), Fuel Stock (138c), and Storage Expense (140).

(16) *Schedule E-1, Working Capital—Monthly Balances—Part 2* (old R1/15)

This record is now a continuation of new Record 15. The description of Other Working Capital is now included in the record format.

(17) *Schedule E-2, Storage Record* (old R1/16-17)

The two records previously used for Schedule E-2 are reformatted into one record. This single record is now used to report a monthly balance, total, 13-month average balance, test period adjustment, or adjusted balance.

Two items are added to the record: a code for the units used to report volumes and cost; and Storage Field Name.

(18) *Schedule E-3, Account 191 Reconciliation—Part 1* (old R1/18)

Storage Field Name is a new item.

(19) *Schedule E-3, Account 191 Reconciliation—Part 2* (old R1/19)

A Storage Activity Code and a code for units reported are added to the record.

The Month/Year field is revised to Year/Month/Total.

(20) *Schedule E-4, Research and Development Expense—Account 188* (new title) (old R1/20)

This record is totally revised to allow reporting of research and development expenses by individual project and for the total of all projects. The balances reported include monthly balances, totals, 13-month average balances, test period adjustments and adjusted balance.

(21) *Statement E, Working Capital Narrative Reports* (old R1/21)

This record is revised to include a header record followed by text.

(22) *Statement F(1), Rate of Return Claimed* (old R1/22)

This record is revised to include a header record followed by text.

(23) *Statement F(2), Rate of Return and Cost of Capital* (old R1/23)

This record is expanded to include both base period and test period data.

Item Nos. 191, 196, 201, 205-209, and 212 are new.

(24) *Statement F(3) Debt Capital-Individual Instruments* (old R1/24)

This record is expanded to include both base period and test period data.

Item Nos. 229 and 233 are new.

Items pertaining to the weighted average cost of debt capital (old Item Nos. 185 and the entry in old character positions 195-200) are deleted.

Old Item Nos. 202-204 are deleted.

(25) *F(3), Debt Capital-Total Debt* (old R1/25)

This record is expanded to include both base period and test period data.

Item Nos. 242, 243, and 249 are new.

Old Item Nos. 210, 212, 214-216, and 220-221 are deleted.

(26) *Statement F(3)(g), Amortization of Gain/Loss on Reacquired Debt* (old R1/26)

This record is substantially revised.

(27) *Statement F(4), Preferred Stock Capital* (old R1/27)

This record is expanded to include both base period and test period data.

Item Nos. 285-291 and 293-294 are new.

(28) *Statement F(5), Common Stock Capital—Part 1* (old R1/28)

Item Nos. 297 and 307 are new.

(29) *Statement F(5), Common Stock Capital—Part 2* (new record)

This is a new record for reporting the text of new issues.

(30) *Schedule F(5)-1, Stock Dividends, Splits, etc.* (old R1/29)

Item No. 323, Text for Changes in Common Stock Capital, is added to this record.

The Time Period Codes in Note 14 are revised so that codes 01-12 correspond to month 1-12 and codes 21-24 correspond to years 1-4.

Company Name (old Item No. 284) is deleted.

(31) *Schedule F(5)-2/3, Stock Information* (old R1/30-32)

Item Nos. 324-326 and 337 are new.

The Time Period Codes in Note 15 are revised as in Note 14 with additional codes 25 and 31 for "year 5" and "total", respectively.

(32) *Schedule F(5)-4/5, Earnings Per Share/Interest Coverage* (old R1/33)

Balance Sheet Date (old Item No. 322) is revised to Income Statement Date (new Item No. 338). This record is expanded with Item Nos. 341-347 for deductions and identification of the deductions.

(33) *Schedule F(6), Changes in Financial Position—Part 1* (old R1/34)

Schedule F(6) is expanded from four records to six records.

Record RA/33 is expanded with Item Nos. 355 and 356 for indicating base period or test period data, and Item Nos. 368 and 369 for reporting and describing other non-cash charges.

Old Item Nos. 326 and 327 are deleted. Old Item Nos. 340-343 are moved to Record RA/34, Item Nos. 372-375.

(34) *Schedule F(6), Changes in Financial Position—Part 2* (old R1/35)

This record is expanded with Item Nos. 371 to indicate base period or test period data, and Item Nos. 377 and 386 to describe other sources of funds.

(35) *Schedule F(6), Changes in Financial Position—Part 3* ((R1/36)

Item Nos. 388 is added to indicate base period or test period data.

Old Item No. 355 is deleted.

(36) *Schedule F(6), Changes in Financial Position—Part 4* (old R1/37)

Item No. 404 is added to indicate base period or test period data. Item No. 416, Inventory and supplies, is new.

Old Item Nos. 386-391 are moved to Record RA/37.

(37) *Schedule F(6), Changes in Financial Position—Part 5* (new record)

This record is a continuation of Schedule F(6), Part 4.

(38) *Schedule F(6), Changes in Financial Position—Part 6* (new record)

This record is added to report "Other Non-Cash Charges" in addition to Item No. 368 in Part 1 and to report "Other Sources of Funds" in addition to Item No. 385 in Part 2.

(39) *Statement G, Gas Operating Revenues and Sales Volume* (old R1/38)

Character positions are revised.

(40) *Statement G, Gas Operating Revenues and Sales Volumes—Field Sales, Non Jurisdictional Sales, and Other Sales* (old R1/39)

The record now contains a single indicator for the United Reported Code.

(41) *Statement G, Gas Operating Revenues and Sales Volumes—Total Jurisdictional, Field and Other Sales* (old R1/40)

Old Item No. 445 is deleted.

(42) *Statement G, Gas Operating Revenues and Sales Volumes—Volumes—Transportation of Gas for Others* (old R1/41)

Character positions are revised.

(43) *Statement G, Gas Operating Revenues and Sales Volumes—Process Plant* (old R1/42)

Old Item No. 474, Field Code of Product, is revised to new Item No. 518, Field or Plant Code.

(44) *Statement G, Gas Operating Revenues and Sales Volumes—Products Extracted* (old R1/43)

Item No. 528 is added to indicate the units reported.

Item No. 531 may be reported in $/MMBtu or $/gallon.

(45) *Statement G, Gas Operating Revenues and Sales Volumes—Incidental Sales* (old R1/44)

Item Nos. 495 and 497, the names of the gasoline and oil purchasers, are deleted.

(46) *Statement G, Gas Operating Revenues and Sales Volumes—Other Gas Revenues* (old R1/45)

Character positions are revised.

(47) *Statement G, Gas Operating Revenues and Sales Volumes—Rents* (old R1/46)

Character positions are revised.

(48) *Statement G, Gas Operating Revenues and Sales Volumes—Liquids and Liquefiables—Details* (old R1/47)

Character positions are revised.

(49) *Statement G, Gas Operating Revenues and Sales Volumes—Liquids and Liquefiables—Totals* (old R1/48)

Character positions are revised.

(50) *Statement H(1), Operations and Maintenance Expenses—Part 1*

Schedule H(1)-1(a), Labor Costs

Schedule H(1)-1(b), Materials and Other Charges (Excluding Purchased Gas Costs)

Schedule H(1)-1(c), Expenses and Associated Volumes Applicable to Accounts 810, 811 and 812—Part 1 (old R1/49, 51–53)

There are major revisions to the former records. The new formats now provide for the type of balance, 12 monthly balances, an adjustment identifier, and a project name. The base period total, adjustment, and test period total are retained from old Record R1/49.

Old Record R1/53 is divided into separate records for reporting expenses (included in new Record RA/50) and volumes (new Record RA/52) applicable to Accounts 810, 811 and 812.

(51) *Statement H(1), Operations and Maintenance Expenses—Part 2* (old R1/50)

This record is revised to include a header record in presenting text data for the adjustments to the gas operation and maintenance expenses for each account.

(52) *Schedule H1-1(c), Expenses and Associated Volumes Applicable to Accounts 810, 811, and 812—Part 2* (new record)

This is a new record used to report volumes associated with expenses applicable to Accounts 810, 811 and 812.

(53) *Schedule H(1)-2, Purchased Gas Costs—Part 1*

(54) *Schedule H(1)-2, Purchased Gas Costs—Part 2*

(55) *Schedule H(1)-2, Purchased Gas Costs—Part 3*

(56) *Schedule H(1)-2, Purchased Gas Costs—Part 4* (old R1/55–56)

The Purchase Gas Costs Records are expanded and reformatted to provide more specific data formats as well as new items and codes.

(57) *Schedule H(1)-3, Workpapers* (old R1/54)

This record is revised to include a header record in presenting text data for workpapers.

(58) *Schedule H(2), Depreciation, Depletion, Amortization, and Negative Salvage Expenses—Part 1* (old R1/58)

Functionalization codes are expanded in Note 22.

(59) *Schedule H(2), Depreciation, Depletion, Amortization, and Negative Salvage Expenses—Part 2* (new Record)

Record RA/59 is a text record used to provide an explanation of the depreciation, depletion and amortization rates reported in Record RA/58.

(60) *Schedule H(2)-1, Reconciliation of Depreciable Plant Included in Statement H(2) and Gas Plant Included in Statement C* (old R1/57)

Character positions are revised.

(61) *Statement H(3), Income Taxes—Part 1*

(62) *Statement H(3), Income Taxes—Part 2*

(63) *Statement H(3), Income Taxes—Part 3* (old R1/59–60)

The Income Tax Records are expanded to capture additional data on federal, state and local income tax rates. New Item No. 716 is used to describe the "other function" code in Item No. 699. Individual Tax adjustments are now included in Record RA/62. The text data is now presented in Record RA/63.

(64) *Schedule H(3)-6, Accumulated Deferred Income Taxes* (old R1/61)

A code is added for test period adjustment and individual items are added for the Deferred Tax Balances in Accounts 190, 282, and 283, and the Total Accumulated Deferred Income Taxes.

(65) *Statement H(4), Other Taxes* (old R1/63)

This record is expanded to show the taxes by function (Item Nos. 732–743a). Item No. 726 is now used to indicate whether totals or individual tax items are being reported.

(66) *Schedule H(4)-1, Workpapers* (old R1/64)

This record is revised to include a header record in presenting text data for workpapers.

(67) *Statement I, Allocation of Overall Cost of Service—Part 1* (old R1/65)

This record is revised to include a header record in presenting test data.

(68) *Statement I, Allocation of Overall Cost of Service—Part 2* (old R1/66)

New "mainline" and "production area" codes are added to Item Nos. 744. The description of "other" in Item No. 744 is now described in Item No. 746.

(69) *Statement I-4, Transmission and Compression of Gas by Others* (old R1/67)

Item No. 750, Unit Reported Code, replaces old Item No. 673.

(70) *Schedule I-5, Meters* (old R1/68 No changes.)

(71) *Schedule I-6, Deliveries* (old R1/69)

A "special off-system" code is added to delivery Type (Item No. 780). A "direct sales" code is added to Nature of Service (Item No. 783). Item No. 784, Unit Reported Code, replaces old Item No. 701. An optional data item, Customer Name (item No. 802) is added. Item No. 802a is used to describe the "other" delivery type code.

(72) *Schedule I-7, Gas Account—Part 1*

(73) *Schedule I-7, Gas Account—Part 2*

(74) *Schedule I-7, Gas Account—Part 3* (old R1/70)

The original record is expanded into 3 new records. Specific instructions for completion of these records are included as Note 29 in Record RA/72.

Note: Records RA/75–80 are text records that now include a header record.

(75) *Statement J, Allocation of Cost of Service by Zones* (old R1/71)

(76) *Statement J-1, Allocation of System Cost by Zones* (old R1/72)

(77) *Statement J-2, Development of the Zone Rate Differential Proposed* (old R1/73)

(78) *Statement K, Comparison of Estimated Revenues with Cost of Service* (old R1/74)

(79) *Statement K-1, Rate Design* (old R1/75)

(80) *Statement K-2, Proposed Changes in Cost Classification, Allocation, Crediting and/or Rate Design Procedures* (old R1/76)

Note: Records RA/81–88 are not revised except for the Schedule/Record ID and addition of the Footnote ID.

(81) *Comparative Balance Sheet—Part 1 (Major)* (old R1/77)

(82) *Comparative Balance Sheet—Part 2 (Major)* (old R1/78)

(83) *Comparative Balance Sheet—Part 3 (Major)* (old R1/79)

(84) *Comparative Balance Sheet—Part 4 (Major)* (old R1/80)

(85) *Comparative Balance Sheet—Part 5 (Major)* (old R1/81)

(86) *Comparative Balance Sheet—Part 6 (Major)* (old R1/82)

(87) *Comparative Balance Sheet—Part 7 (Major)* (old R1/83)

(88) *Comparative Balance Sheet—Part 81 (Major)* (old R1/84)

Note: An information reported code to indicate consolidated or non-consolidated reporting is added to Records RA/89–93. There are no other revisions except for the Schedule/Record ID and the addition of a Footnote ID.

(89) *Comparative Balance Sheet—Part 1 (Major)* (old R1/85)

(90) *Comparative Balance Sheet—Part 2 (Major)* (old R1/86)

(91) *Comparative Balance Sheet—Part 3 (Major)* (old R1/87)

(92) *Comparative Balance Sheet—Part 4 (Major)* (old R1/88)

(93) *Comparative Balance Sheet—Part 5 (Non-Major)* (old R1/89)

Schedule RB

(01) *Statement M, Statement of Income for the Year—Part 1 (Major)* (old R1/90)

Old Item No. 928 (Utility Plant Reported) is deleted.

Balance Year is a new item to indicate current or previous year data.

Old Item No. 946 (Net Utility Operating Income) is moved from Record R1/90 to new Item No. 1059 in Record RB/02.

Note 40 is added and contains specific instructions for Records RB/01–04. Balance year has also been added to Records RB/02–04.

(02) *Statement M, Statement of Income for the Year—Part 2 (Major)* (old R1/91)

(03) *Statement M, Statement of Income for the Year—Part 3 (Major)* (old R1/92)

(04) *Statement M, Statement of Income for the Year—Part 4 (Major)* (old R1/93)

(05) *Statement M, Statement of Income for the Year—Part 1 (Non-Major)* (old R1/94)

Old Item No. 991 (Plant Reported) is deleted and new Item No. 1105 (Year Reported) is added.

Note 41 contains specific instructions for Records RB/05–07. Year Reported and the Information Reported Code, to indicate consolidated or non-consolidated reporting, are added to Records RB/05–07.

(06) *Statement M, Statement of Income for the Year—Part 2 (Non-Major)* (old R1/95)

(07) *Statement M, Statement of Income for the Year—Part 3 (Non-Major)* (old R1/96)

(08) *Schedule N–1, Cost of Plant By Functional Classification Part 1* (old RB/01)

Old Item No. 1042 (Plant Name Code) is changed to new Item No. 1158 (Account Description Code) and the codes are expanded to include "other" and "total cost of plant". The description of "other" is reported in Item No. 1173.

Old Item No. 1043 (FERC Account Number) is changed to new Item No. 1159 and the comments are expanded to include account 118 and "0" when reporting total cost of plant.

Old Item 1049 (Adjustments) is expanded to new Item Nos. 1165 through 1170 to provide for as many as three adjustments and descriptions. Item No. 1171, Eliminations, is new.

(09) *Schedule N–1, Cost of Plant By Functional Classifications Part 2* (old RB/02)

Old Item No. 1051 (FERC Account Number) is changed to new Item No. 1174 and expanded to include account 118.

Old Item No. 1052 (Function Code) is changed to new Item No. 1175 and expanded. Codes are defined in Exhibit G.

Old Item No. 1053 (Detailed Plant) is deleted.

A new Item No. 1176 (Subaccount No.) is added; account codes are defined in Exhibit E.

Item Nos. 1177 (Information Reported Code) and 1178 (Project Name) are new.

Old Item No. 1055 (Adjustments) is expanded to new Item Nos. 1180 through 1185 to allow entry of as many as three adjustments and descriptions.

Old Item Nos. 1057, (Functional Subtotal Code) and 1058 (Functional Subtotal Amount) are deleted. New Item No. 1187 (Description of Other Function) is added.

(10) *Schedule N–2, Accumulative Provisions for Depreciation, Depletion, Amortization, and Abandonment* (old RB/03)

Old Item No. 1059 (Account Number) is changed to new Item No. 1188 (Gas Plant Account Number) and expanded to include account 117.

Old Item No. 1060 (Function Code) is changed to New Item No. 1189 and expanded. Codes are defined in Exhibit G.

Balances at the beginning and ending of the TEST period are revised to balances per books at beginning and end of BASE period.

Old Item No. 1068 (Adjustments) is expanded to new Item Nos. 1197 to 1202 to allow for entry of as many as three adjustments and descriptions.

New Item No. 1204 (Description of Other Function) is added.

(11) *Schedule N–3, Working Capital—Monthly Balances—Part 1* (old RB/04)

The same record format is now used to report both monthly balances and totals.

Old Item No. 1070, (month/year) is changed to new Item No. 1205 and expanded to include a "Total" indicator.

New Item Nos. 1214 to 1216 are added.

Old Item No. 1087 is changed to Item No. 1228, Total Working Capital, and moved to Part 2.

(12) *Schedule N–3, Working Capital—Monthly Balances—Part 2* (old RB/05)

Old Item Nos. 1089 to 1107 are combined with new Record RB/11. New Item Nos. 1225 to 1227 and 1229 are added.

(13) *Schedule N–4, Rate of Return—Part 1* (old RB/06)

Note 1 is changed to note 43 and the requirement to file the company's latest prospectus on an electronic medium is deleted from the instructions.

The text data is now presented with a header record.

(14) *Schedule N–4, Rate of Return and Cost of Capital—Part 2* (old RB/07)

A new Item No. 1231 is added to indicate base period or test period data.

New Item Nos. 1238, 1243 are added to file adjustments for preferred stock and common equity. Item Nos. 1247 through 1251 are added for filing "other" amounts and adjustments.

Item No. 1254 is added to indicate schedules from which information was taken.

(15) *Schedule N–5, Operations and Maintenance—Part 1* (old RB/08)

Item No. 1255 is added to indicate the beginning month or total.

Classification Code is changed to Type of Balance (Item No. 1257 and expanded to include "Total", and "Expenses applicable to accounts 810, 811 and 812."

Monthly balances can now be entered in twelve individual fields in a single record. Previously, a single record could contain only one monthly balance.

New Item Nos. 1272 (Adjustment Identifier) and 1274 (Project Name) are added.

(16) *Schedule N–5, Operations and Maintenance—Part 2* (old RB/09)

The text data is now presented with a header record.

(17) *Schedule N–6, Depreciation, Depletion, Amortization, and Negative Salvage Expenses—Part 1* (old RB/10)

New Item No. 1275 (Account Number) is expanded to include accounts 404.2 and 404.3.

Functionalization Code (new Item No. 1276) is expanded; codes are defined in Note 46.

Old Item No. 1133 (Function Code) is expanded to provide an individual entry in the record for each function. The description of "Other Functionalization" is entered in new Item No. 1288.

Old Item No. 1140 (% Functionalized) is deleted.

(18) *Schedule N–6, Depreciation, Depletion, Amortization, and Negative Salvage Expenses—Part 2* (new record)

This is a new text record.

(19) *Schedule N–7, Income Taxes—Part 1* (old RB/11)

There are now three records for Schedule N–7 instead of two.

New Item No. 1289 (Function Code) includes "total" and "other function", to be specified in new item 1306.

New Item Nos. 1297 (Federal Tax Rate) and 1300 (State Income Tax Rate) are added. Old Item No. 1152 (Deferred State Tax) is deleted.

Old Item No. 1154 is changed to new Item No. 1304 and expanded to include local income tax. Old Item No. 1156 is changed to new Item No. 1305 and expanded to include local income tax.

(20) *Schedule N-7, Income Taxes—Part 2* (new record)

This record is a continuation of Record RB/19. New Item Nos. 1310 and 1311 are added.

(21) *Schedule N-7, Income Taxes—Part 3* (old RB/12)

The text data is now presented with a header record.

(22) *Schedule N-8, Other Taxes* (old RB/13)

An Information Reported Code is added for reporting total or individual tax items.

Old Item No. 1158 (Function Code) is expanded into individual items (new Item Nos. 1318 to 1329).

A new Item No. 1330 is added to describe "other taxes except income taxes" for Tax Type Code = 9.

(23) *Schedule N-9, Allocation of Overall Cost of Service—Part 1* (old RB/14)

Schedule N-9 is expanded into two parts. The text data in Part 1 is now presented with a header record.

Note 49 and 50 are added.

(24) *Schedule N-9, Allocation of Overall Cost of Service—Part 2* (new record)

New Item Nos. 1331 to 1333 are added to indicate the Type of Sale or Transportation and the Total Cost. Item No. 1333 is used to describe "other" in Item No. 1331.

(25) *Schedule N-10, Gas Operation Revenues and Sale Volumes* (old RB/15)

This record is substantially revised.

(26) *Schedule N-10, Gas Operation Revenues and Sale Volumes, Field Sales, Non-Jurisdictional Sales, and Other Sales* (old RB/16)

This record is substantially revised.

(27) *Schedule N-10, Gas Operation Revenues and Sale Volumes Total Jurisdictional, Non-Jurisdictional, Field, and Other Sales* (old RB/17)

This record is substantially revised.

(28) *Schedule N-10, Gas Operation Revenues and Sales Volumes Transportation of Gas of Others* (new record)

(29) *Schedule N-11, Research and Development Expenses Account 188* (old RB/18)

Old Item Nos. 1195, 1196, and 1197 are replaced by new Item Nos. 1397 to 1401.

(30) *Schedule O, Description of Company Operations* (old RB/19)

The text data is now presented with a header record.

(31) *Schedule P, Explanatory Text and Prepared Testimony* (old RB/20)

The text data is now presented with a header record.

(32) *Footnotes* (old RB/21)

Reference Number is changed to Footnote ID.

(33) *Nonstandard Statements and Schedules* (new record)

(34) *Notes to Financial Statements* (new record)

Exhibits

Item No. 5 is expanded in Exhibit B.

Footnotes are deleted from items 7 & 8 of Exhibit D.

Exhibit E is expanded to include additional accounts.

Exhibits F & G are new.

Appendix B—Revisions to Tariff Record Formats

ANR/CIG point out that the Tariff Volume Header Record has only one place to designate the printer pitch of the entire document. To create the documents that are currently submitted to FERC, it will be necessary to change the pitch of the printing within the document. Williston Basin points out that for portrait documents, the length of the header and trailer records exceeds the boundaries for tariff sheet text and will require margin changes at the top and bottom of each page. Northwest suggests that the trailer records are redundant and unnecessary since the header record can serve as the delimiter for each page. ANR/CIG note a discrepancy between the maximum line lengths in the October 7, 1988 Commission Staff Response and the instructions for Schedule TF.

In response to these comments, staff is eliminating all trailer records and reformatting the margin and page format information into four header records. The revised header records have a maximum usable length of 65 characters (limited by the number of characters allowable at 10 cpi pitch in Portrait orientation) and may be used with either Portrait or Landscape orientation without changing the margins on each page. The printer pitch specification is moved to Tariff Sheet Header Record No. 1, so that pitch can be changed for individual sheets within a volume. In addition, a Line Density Indicator is added so that tariff sheets can be printed at either six- or eight-lines per inch with appropriate fonts.

The revised formats issued with this notice contain maximum characters/line and lines/page values for 10 cpi, 12 cpi and 17 cpi pitch. However, staff will consider additional pitch options for printing tariff sheets. Table 1 lists the characters/line limits, up to a maximum pitch of 20 cpi, and lines/page limits for various print pitches at six and eight lines per inch. These limits are determined by margin and border requirements specified in the Commission's regulations, by the space needed to print information in the margin, and by legibility considerations. Staff invites comments at the conference on the need for and the feasibility of the additional print options, and the impact of these options on tariff sheets that would otherwise have to be reformatted.

TABLE 1.—CHARACTER, LINE AND BLANK MARGINS FOR AVAILABLE PRINT DENSITIES

[Maximum Values]

Pitch (cpi)	Inside border limits			Margins (excl. text)
	Char/Line	Lines		
		(6/in.)	(8/in.)	
Portrait:				
10	65	50	70	Top: ½ in.
12	79	50	70	Bottom: ½ in.
15	99	50	70	Left: 1¼ in.
16.6	110	50	70	Right: ½ in.
17	112	50	70	
20	134	50	70	
Landscape:				
10	98	31	45	Top: 1¼ in.
12	118	31	45	Bottom: ½ in.
15	148	31	45	Left: ½ in.
16.6	163	31	45	Right: ½ in.
17	168	31	45	
20	198	31	45	

Note.—8.5 point print font will be used for: (1) 8 lines/inch print, and (2) 15, 16.6, 17 and 20 pitch print at 6 or 8 lines per inch.

Sheet Number and Tariff Volume Number in the header records are revised from numeric to character fields in response to comments from Northwest and Enron. For tariff sheets that must be revised, this will allow additional pages to be included with an alphabetic suffix.

In response to comments submitted by Enron, staff clarifies that margin data included in the header records does not need to be repeated in the text record. The Commission-provided software will print the border required on the hard copy and will print information from the header records in the margin. However, there are several revisions to the current display format which are required to print tariff sheets filed on an electronic medium. First, for sheets printed in Landscape orientation, margin information will be printed in the same orientation instead of the Portrait format

used in current hard copy filings. Top, bottom and side margins will be revised to accommodate the margin information for Landscape orientation.

Second, for Portrait orientation at 10 cpi and 12 cpi pitch, the Superseded Sheet Number will be printed on the line below the Tariff Volume ID and will be right justified with the border. This change is due to the size of the items to be printed and the 65 and 79 character limits for 10 cpi and 12 cpi pitch, respectively. This revision will eliminate the need to change print fonts within an individual tariff sheet. The same format for printing information in the margin will be used for all other pitch, font and orientation combinations.

ANR/CIG question if footnotes must be included within the borders of the tariff sheet or be printed outside as is the current practice for some companies. In addition, marginal footnotes concerning information imposed by Commission order are printed at the bottom of the page on the current hard copy. Will there be a separate marginal footnote record or will this type of marginal note be acceptable in the footnote sequence at the end of the document?

Staff responds that footnotes applicable to the text on a tariff sheet will be printed within the borders for all companies. Footnote text, and all appropriate footnote reference numbers, should be included as part of the regular text for each tariff sheet, i.e., there is no special record format for entering footnotes. If a tariff sheet is filed to comply with a Commission order, and Order Date and Docket Number are entered on Tariff Sheet Header Record 4, then the following message will be printed in the bottom margin as specified by Commission regulation:

"Issued to comply with order of the Federal Energy Regulatory Commission, Docket No. dated "

Enron questions how the Navy Document Interchange Format (DIF) is to be used by the Commission and whether header records apply to this format or only to ASCII files. Enron also notes that older versions of word processing software do not provide a conversion utility to Navy DIF.

Staff notes that the Commission cannot require that specific word processing software be used to submit tariff filings. For this reason, staff could consider only generic file formats such as ASCII and Navy DIF. Furthermore, a single format for submittal of tariff sheets will simplify the development and use of microcomputer-based systems for tariff sheet control and inquiry/search functions. Therefore, output from specific word processing software, without conversion, will not be acceptable.

Staff considered Navy DIF because of its concern that special print features, such as underlining and bold-face print, are not preserved in an ASCII file. Commission regulations do not require that these features be included in tariff sheets. If it is acceptable to natural gas companies and the public to submit tariff sheets without these features, then an ASCII file is acceptable to staff. If certain special features are necessary or desirable, then Navy DIF may be an acceptable alternative to an ASCII file. Staff recognizes, however, that Navy DIF is not a universal solution and that, after testing, limits might have to be placed on the use of that format.

Staff clarifies that header records will be required regardless of the format adopted by the Commission.

Enron notes that the 144 byte limit for all records submitted on tape is inconsistent with the maximum length of 170 characters stated in the Staff Response and asks if this limit also applies to diskettes. ANR/CIG question whether tariff filings can be submitted on tape or diskette, since the Staff Response stated that it will be less burdensome on industry and staff if pipelines submit tariffs on diskette only.

Staff clarifies that the byte limit should have corresponded to the maximum length stated in the Staff Response. That maximum length is revised to 168 characters but may be increased after the conference discussion on print options. Staff intends to develop a microcomputer-based system for control of tariff sheets. For this reason, staff prefers that tariff sheets be filed on diskette. However, pipelines may file tariffs on magnetic tape or cartridge, as well as diskettes.

ANR/CIG state that certain tariff sheets will need new formats due to the proposed Maximum Line Length and questions if the filing fee and notice procedure apply if the new formats do not require changes to the existing tariff. ANR/CIG also ask whether the new tariff sheets must be provided to all holders of the tariff when the sheets are filed, and whether the Commission will issue an order accepting the tariff sheets with the new formats despite the fact that there have been no changes in the tariff provisions.

Staff clarifies that all current regulations with respect to filing fees, notice procedure, service, and the requirement for a Commission order accepting the tariff sheets will apply to all tariff sheets filed on an electronic medium.

ANR/CIG ask if only tariff sheets should be included on the electronic medium and not other materials such as the Statement of Reasons and the transmittal letter. ANR/CIG state that these ancillary materials should not be required to be included on tape or diskette since there is not a record in Schedule TF for submitting such data.

Staff agrees that the transmittal letter and Statement of Reasons are not required to be included on the electronic medium.

Appendix C—Revisions to Certificate Application Record Formats

The certificate application record formats are revised to include an expanded General Information Record and summary records for various types of certificate applications. The actual text of a certificate application will be entered without prefix of any kind. However, a header record indicating the type of text immediately following the header must be inserted prior to the text. The text header record contains a code corresponding to specified sections of the Commission's regulations and also indicates printed orientation and pitch.

Appendix D.—Clarification of Revisions to FERC Form Nos. 2 and 2-A

The following corrections are added to those listed in Appendix A of the October 26, 1988 Notice of Availability of Revised Record Formats for FERC Form Nos. 2 and 2-A:

FERC Form No. 2

Specific Instruction 6(a) is revised to agree with the codes in Schedule F4, Records 19–21. Delete "or 4" in line 4 and change "= 5" to "= 4" in the last line of the instruction.

In Schedule F5, Record 33, change Item No. 559a to Item No. 559b.

In Schedule F5, Record 41, the character positions for Item Nos. 602–607 and the Footnote ID are revised as follows:

Item	New character position
602	11-142
603	143-148
604	149-160
605	161-172
606	173-184
607	185-196
Footnote ID	197-200
Filler	201-255

In Schedule F6, Record 09, the Information Reported Codes are expanded.

In Schedule F6, Record 31, two new items are added: Item Nos. 1016a (Special Construction Personnel) and 1016b (Equivalent Employees).

In Schedule F7, Record 17, the character positions for Gas for Compressor Fuel are revised to 198–209, and the character positions for Item Nos. 1254–1256 and the Footnote ID are 210–214, 215–220, 221–226, and 227–230, respectively.

FERC Form No. 2-A

In Schedule F8, Record 02, the character positions for Item No. 17 and the Footnote ID are revised to 244–249 and 250–253, respectively.

In Schedule F8, Record 08, the Plant Reported Codes are revised (one of the two "other utility" codes was deleted) and the remaining "other utility" code is identified in new Item No. 99a, character positions 193–217.

In Schedule F8, Record 23, the character positions for Item Nos. 235–238 are revised.

In Schedule F8, Record 37, a Utility Plant Reported Code is added in character position 12.

In Schedule F8, Record 80, the character positions for Item No. 948, Salary and/or Fee, are revised to 56–67.

[FR Doc. 89–434 Filed 1–9–89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1311-89]

Delegation of Power of the Attorney General's Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order delegates to the Assistant Attorney General in charge of the Civil Rights Division authority to implement section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100–383, 50 U.S.C. App. 1989b. The effect of this delegation is to delegate to the Assistant Attorney General for Civil Rights the responsibilities and duties assigned to the Attorney General by the Civil Liberties Act of 1988. This is done to carry out the Department's responsibility for the restitution provisions of this Act.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert K. Bratt, Redress Administrator, Office of Redress Administration, Civil Rights Division, Department of Justice, Washington, DC 20530 (202/633–4224).

SUPPLEMENTARY INFORMATION: This order deals with Agency management. It is not required to be and has not been published in proposed form for comment under 5 U.S.C. 553(b).

This regulation is not a major rule within the meaning of Executive Order 12291 because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and, therefore, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 28 CFR Part 0

Indemnity payments.

For the reasons stated in the preamble Title 28, Part 0, Subpart J of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. In § 0.50, General functions, a new paragraph (j) is added to read as follows:

§ 0.50 General functions.

* * * * *

(j) Administration of section 105 of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b).

Date: January 3, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89–474 Filed 1–9–89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of Kansas Abandoned Mine Land Reclamation Plan Amendment

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Kansas Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kansas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns a proposal to assume responsibility for administering an emergency reclamation program. After opportunity for public comment and review of the amendment, the Deputy Director has determined that the Kansas amendment meets the requirements of the Surface Mining Control and Reclamation Act and the Secretary's regulations at 30 CFR Part 884.

EFFECTIVE DATE: January 10, 1989.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374–6405

Kansas Department of Health and Environment, Surface Mining Section, Bureau of Waste Management, 1501 South Joplin, P.O. Box 1418, Pittsburg, Kansas 66762, Telephone: (314) 231–8615

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Kansas AMLR program on February 1, 1982. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the February 1, 1982, **Federal Register** (47 FR 4513). Deficiencies that resulted in the conditional approval were corrected by the State, and on June 3, 1983, all conditions of approval were removed by OSMRE. The Secretary's findings can be found in the June 3, 1983 **Federal Register** (48 FR 24874).

Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under **"ADDRESSES"**.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to OSMRE proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the

State in the conduct of its reclamation program, the Deputy Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated September 30, 1988, Kansas submitted a reclamation plan amendment to OSMRE (Administrative Record No. AML-KS 93). The amendment consists of procedures to be used in the implementation and administration of emergency reclamation projects.

On September 19, 1983, OSMRE informed the States and Tribes of the opportunity to amend their reclamation plans to include responsibility for administering emergency response reclamation activities (47 FR 42729). For a State to undertake such activities as part of its reclamation program, it must demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors. The State of Kansas has submitted material demonstrating compliance with these requirements.

OSMRE announced receipt of the proposed amendment in the October 27, 1988, **Federal Register** (53 FR 43449-43450), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. One public comment was received by November 28, 1988, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

Following a thorough review of the Kansas amendment, OSMRE notified the State on November 29, 1988, of the need for several nonsubstantive editorial changes and clarifications. On December 6, 1988, Kansas submitted the necessary clarifications and editorial corrections. The Deputy Director has determined that these corrections are insignificant in nature and accordingly require no further public comment.

Under SMCRA, OSMRE codifies the approved requirements of individual States including decisions on State reclamation plans and amendments under parts 900 to 950 of 30 CFR Subchapter T. Provisions relating to Kansas are found in 30 CFR Part 916.

III. Deputy Director's Findings

In accordance with Section 405 of SMCRA, the Deputy Director of OSMRE finds that Kansas has submitted an amendment to its Abandoned Mine Land reclamation plan and has determined pursuant to 30 CFR 884.15 and the criteria for assumption of emergency response activities specified in 47 FR 42729-42730, that:

1. The State provided adequate notice and opportunity for public comment in the development of the plan amendment and that the record does not reflect major unresolved controversies.
2. Views of other Federal agencies having an interest in the plan or amendment have been solicited and considered.
3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.
4. The proposed plan amendment meets all requirements of the OSMRE AMLR program provisions.
5. The State has an approved Surface Mining Regulatory Program.
6. The proposed plan amendment is in compliance with all applicable State and Federal laws and regulations.
7. State emergency reclamation activities (47 FR 42729-42730).

Kansas submitted a comprehensive package to demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work, and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors.

Based upon OSMRE's substantive review and after considering other agency comments, the Deputy Director finds that the Kansas Department of Health and Environment has complied with the emergency program guidelines and qualifies for assumption of emergency response capability within the constraints imposed by law and Departmental regulations.

IV. Public and Agency Comments

As discussed in the section of this notice entitled "Discussion of Amendment," OSMRE solicited public comment and provided opportunity for a public hearing on the proposed amendment. Since no one requested an opportunity to testify, the public hearing scheduled for November 21, 1988, was cancelled. One comment was received from the public during the comment period, which closed on November 28, 1988. A summary of the comment and its disposition follows:

The Wyoming Department of Environmental Quality suggested that OSMRE provide a description of the benefits that will result to the public from transfer of emergency reclamation authority to the State of Kansas. OSMRE finds that the following benefits will result from such transfer:

(a) Administrative costs will be reduced.

(b) Accessibility of the administering agency to the public and response time to emergency complaints will improve because the State Program office is located in the center of the major area of historical emergency complaints.

(c) The State's overall control of the Abandoned Mine Land Reclamation Program will be enhanced.

The Wyoming Department of Environmental Quality suggested that a cost/benefit analysis be performed to ensure that the proposed transfer of emergency reclamation authority is in the best financial interest of the Abandoned Mine Land Reclamation Fund. OSMRE has performed an analysis of State vs. Federal costs and found that State administration of the program should be less costly.

Pursuant to 30 CFR 884.14(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas plan. No comments were received in response to the solicitation.

V. Deputy Director's Decision

Based upon the findings enumerated above, the Deputy Director is approving the Kansas amendment. A copy of the approved amendment can be obtained by contacting the offices listed under "**ADDRESSES**".

VI. Procedural Matters

1. Executive Order 12291 and the Regulatory Flexibility Act

OSMRE examined this final rulemaking under Executive order 12291 and has determined that on November 23, 1987, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State AMLR plans and amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review of OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

2. Compliance with the National Environmental Policy Act

Furthermore, OSMRE has determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Effective Date

The final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because: (1) Kansas' Department of Health and Environment is staffed and prepared to administer the emergency reclamation program, and (2) OSMRE wishes to expedite grant assistance to the State to initiate emergency reclamation work.

List of Subjects in 30 CFR 916

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

Dated: January 5, 1989

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

PART 916—KANSAS

1. The authority citation for Part 916 is revised to read as follows:

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

2. Section 916.20 is revised to read as follows:

§ 916.20 Approval of Kansas Abandoned Mine Land Reclamation Plan.

The Kansas AMLR Plan, as submitted on October 1, 1981, and amended by Kansas Statute 49–428, April 14, 1982, is hereby fully approved and all conditions prohibiting the funding of State AML construction grants are deleted.

3. A new Section 916.25 is added to read as follows:

§ 916.25 Approval of Kansas Abandoned Mine Land Reclamation Plan Amendments.

The Kansas AMLR plan amendment allowing the State to assume responsibility for administering an emergency reclamation program, as submitted on September 30, 1988, and modified on December 6, 1988, is approved. Copies of the approved plan and amendments are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106

Kansas Department of Health and Environment, Surface Mining Section, Bureau of Waste Management, 1501 South Joplin, P.O. Box 1418, Pittsburg, Kansas 66762

[FR Doc. 89–406 Filed 1–9–89 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42071B; FRL-3503-6]

Testing Consent Order for Octamethylcyclotetrasiloxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule announces that EPA has signed an enforceable testing consent order with six manufacturers of octamethylcyclotetrasiloxane (OMCTS; CAS No. 556–67–2), who have agreed to perform certain chemical fate and environmental effects tests with OMCTS. OMCTS is added to the list of Testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR Part 707 apply.

EFFECTIVE DATE: January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR Part 790, six manufacturers have entered into a testing consent order with EPA in which they have agreed to perform certain chemical fate and environmental effects tests with OMCTS.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. ITC Recommendation

In its 15th Report to EPA, published in the **Federal Register** of November 29, 1984 (49 FR 46931), the ITC recommended that OMCTS be considered for chemical fate and environmental effects testing. Chemical fate testing included water solubility, octanol/water partition coefficient, and biodegradation studies. The recommended environmental effects testing included acute toxicity testing with several species and, if indicated by the results of the acute tests, chronic toxicity tests with appropriate species.

II. Proposed Test Rule

In the **Federal Register** of October 30, 1985 (50 FR 45123), EPA issued a proposed test rule requiring that manufacturers and processors of OMCTS conduct chemical fate and environmental effects testing of OMCTS. Chemical fate testing included biodegradability testing in water and sediment using the eco-core method of Bourquin et al. (Ref. 1), aerobic and anaerobic biodegradability tests in soil, and a biodegradability test in a sludge system. Environmental effects testing included acute toxicity tests with rainbow trout, fathead minnow, bluegill, sheepshead minnow, silversides, daphnids, mysid shrimp, oyster, and freshwater and saltwater algae; chronic effects tests with a fish, daphnid, and mysid shrimp; bioconcentration tests with fathead minnows and oysters; a marine sediment toxicity test; and a reproduction test with mallard ducks. EPA based this testing on a finding of potential for unreasonable risk of injury to the environment under TSCA section 4(a)(1)(A) and a finding of substantial environmental exposure under section 4(a)(1)(B). These finds are more fully described in the proposed rule.

III. Testing Consent Order Negotiations

After issuing the proposed test rule on OMCTS, EPA amended the regulations for rulemaking to expedite the development of data for risk assessment by establishing the TSCA section 4 testing consent order process. A consent order is not based on formal findings and expedites testing while retaining the same TSCA penalty provisions applicable under rulemaking.

On March 18, 1988, the Silicones Health Council (SHC) submitted a proposal to EPA requesting EPA to develop a testing consent order for OMCTS (Ref. 2). The SHC proposal contained most of the testing that EPA had included in the proposed rule. EPA agreed to consider negotiating a consent order with the SHC and issued a notice, published in the **Federal Register** on April 6, 1988 (53 FR 11341), announcing the decision. This notice also announced the time and location of a public meeting to initiate testing negotiations on OMCTS and requested that all "interested parties" who wanted to participate in negotiations identify themselves to EPA by April 28, 1988.

Prior to the public meeting of April 20, 1988 the SHC drafted a consent order on OMCTS and submitted it to EPA for review (Ref. 3). This draft was modified by EPA and was discussed at the public meeting of April 20 and a revised draft was discussed at the meeting of May 11. By December 1, 1988, six OMCTS manufacturers: Dow Corning Corp., Union Carbide Corp., General Electric Co., Rhone-Poulenc Inc., Mobay Corp., and Wacker Silicones Corp., and two interested parties, the Silicones Health Council and the County of Onondaga, New York had signed the Testing Consent Order for OMCTS. The manufacturers agreed to perform certain chemical fate and environmental effects tests by specified dates according to the test standards in the Appendix of the Consent Order.

IV. Use and Exposure

OMCTS is a colorless oily liquid with a water solubility of approximately 50 ppb; a log soil-sorption coefficient of 4.45, a log octanol/water partition coefficient of 3.8, and a vapor pressure of 1 mm Hg at 20°C (Refs. 4 through 10).

Based on data submitted under section 8(a) of TSCA and by Dow Corning, the 1985 importation/production volume of OMCTS was 110 to 135 million pounds and is expected to increase about 10 percent per year (Ref. 10). Approximately 80 percent of the OMCTS produced or imported is used on-site as an intermediate in the production of polydimethylsiloxane polymers (Ref. 9 through 12). These polymers are used in making surfactants, propellants, lubricants, caulks, sealants, and rubber products (Refs. 9, 11, and 12). The remaining 20 percent of OMCTS is used in spray cleaners and polishes, in paper and textile sizing agents, in detergents, as a defoamer in inks and paints, and in cosmetic products such as colognes, hairsprays, and antiperspirants (Refs. 11 and 13).

The proposed rule on OMCTS included the results of several monitoring studies reporting the presence of organosilicones in rivers and estuaries, effluents, sludges, and sediments at several locations in the United States, Europe, and Japan. After publication of the proposed test rule, the SHC submitted the results of a monitoring study it had sponsored (Ref. 14). In this study, 15 sediment samples from 3 estuaries and 8 sediment samples from 4 freshwater sites were analyzed for OMCTS and organosilicon. Effluent and sludge samples from 3 waste water treatment plants were also analyzed. Organosilicon was found in 17 of 28 samples, but OMCTS was identified in only 1 sediment sample from the Rouge River, Detroit, and in 2 sludge cake samples. EPA has reviewed this study, and, although locations below manufacturing plants were not sampled, the study is sufficient to show that OMCTS is not a widespread environmental contaminant at concentrations exceeding 50 ppb.

V. Testing Program

A. Chemical Fate

SHC has reported that OMCTS is not biodegradable in water and sediment, but due to its volatility, will not persist in receiving waters and sediments (Ref. 15).

Under the Consent Order, the manufacturers have agreed to determine the solubility of OMCTS in freshwater and saltwater, its volatility half-life in freshwater and saltwater, and its biodegradability rate in a sediment/water system.

B. Environmental Effects

Several acute toxicity tests were summarized in the proposed rule. EPA judged all the test data inadequate because they were based on nominal test concentrations that exceeded the water solubility of OMCTS. Available bioconcentration data indicate that the bioconcentration factor for OMCTS in fish may be as high as 10,000.

On February 10, 1988, Dow Corning Corporation submitted the results of a recently completed daphnid chronic toxicity test with OMCTS to EPA under section 8 (d) and (e) of TSCA (Ref. 16). These data suggested that OMCTS was toxic to daphnids at a concentration as low as 10 ppb. Since similar adverse effects were seen in the daphnids exposed to the solvent control, EPA and Dow Corning consider these data unreliable and inadequate to assess the toxicity of OMCTS.

In the Consent Order, the manufacturers agreed to a tiered testing program. Tests agreed upon are presented in the following table.

TABLE.—TESTING PLAN FOR OMCTS

	Test methods	Start date [1]	Report date [1]
Tier 1 Tests			
Solubility test in fresh water	40 CFR 796.1860	8	10
Solubility test in salt water	40 CFR 796.1860	8	10
Aquatic half-life	Smith [2]	8	10
Aquatic biodegradation	Bourquin [3]	12	16
Acute toxicity, algae	40 CFR 797.1050	12	16
Acute toxicity, daphnid	40 CFR 797.1300	12	16
Acute toxicity, rainbow trout	40 CFR 797.1400	12	16
Acute toxicity, silverside or sheepshead minnow	40 CFR 797.1400	12	16
Acute toxicity, mysid shrimp	40 CFR 797.1930	12	16
Chronic toxicity, daphnid	40 CFR 797.1330	12	16
Bioconcentration, fathead minnow	40 CFR 797.1520	12	16
Tier II Tests [4]			
Fish early life stage test	40 CFR 797.1600	18	24
Sediment/invertebrate test	Adams [5]	18	24

[1] Months after the effective date.

[2] Smith, J.H., Bomberger, D.C. Jr., and Haynes, D.L. "Prediction of the volatilization rates of high-volatility chemicals from natural water bodies." *Environmental Science and Technology*. 14:1332-1337. (1980).

[3] Bourquin, A.W., Hood, M.A., and Garnas, R.I. "An artificial microbial ecosystem for determining effects and fate of toxicants in a salt-marsh environment." *Developments in Industrial Microbiology*. 18:185-191. (1977).

[4] Performed only if any LC50 from Tier I is <1 mg/l or the MATC from the daphnid chronic test is ≤0.1 mg/l.

[5] Adams, W.J., Kimerle, R.A., and Mosher, R.G. "Aquatic safety assessment of chemicals sorbed to sediments." In: "Aquatic Toxicology and Hazard Assessment." Seventh Symposium, ASTM STP 854. R.D. Caldwell, R. Purdy, and R.C. Bahner, Eds., American Society for Testing and Materials, Philadelphia, PA, pp. 429-453. (1985).

In tier I, the manufacturers will perform all the required chemical fate tests, the acute tests with algae, daphnid, rainbow trout, a marine fish, and mysid shrimp, and a bioconcentration test with fathead minnows, and will repeat the chronic toxicity test with daphnids. Tier II testing includes a fish early life stage toxicity test and a test to determine sediment toxicity to benthic invertebrates. Tier II tests will be performed only if any of the LC50's from the tier I tests are ≤1 mg/l, or the maximum acceptable toxicant concentration (MATC) from the daphnid chronic test is ≤0.1 mg/l. If no such adverse effects are observed in any of the tier I tests, tier II testing is not required.

EPA is not requiring that the manufacturers perform all the acute tests that were identified in the proposed rule. EPA believes that if acute toxicity is observed, data on five species are sufficient to assess the acute toxicity of OMCTS to aquatic organisms. EPA is not including a mysid chronic test in tier II because EPA believes that both the toxicity data from the daphnid life cycle test, and, if triggered, the fish early life stage test and the sediment test with the midge, will be sufficient to assess the chronic toxicity of OMCTS.

EPA is not requiring a reproduction test in mallard ducks because available health effects data demonstrate that OMCTS is not toxic to mammals, and thus is not expected to be toxic to ducks. The rat oral LC50 is >2.0 g/kg and antifoam A (5 percent OMCTS) had no adverse effects on rats in a 2-year feeding study (Ref. 17).

The manufacturers agreed to perform the testing according to cited EPA test standards and a specified test schedule. Tier I testing will be completed in 16 months with interim status reports due 6 and 12 months after the date of publication of this notice. If tier II testing is required, it will be completed in 24 months with an interim status report due after 18 months.

EPA and the manufacturers recognize that OMCTS is a volatile substance that is soluble in water at extremely low concentrations and that a test method does not exist to measure OMCTS at concentrations below 30 ppb. Also, additional efforts are needed to develop test systems that can generate stable concentrations of OMCTS in water. The manufacturers will work on the development of such methods and test systems during the period after signature of the Consent Order and before the first test in tier I is performed.

EPA will use the data generated by these tests to determine the risk of adverse environmental effects associated with the manufacture, use, and disposal of OMCTS.

VI. Export Notification

The issuance of this Testing Consent Order subjects any person who exports or intends to export OMCTS to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. In 52 FR 23548 of June 23, 1987, EPA issued 40 CFR 799.5000 as a listing of testing consent orders issued by EPA. This listing serves as notification to persons who export or who intend to export chemical substances or mixtures which are the subject of testing consent orders that 40 CFR Part 707 applies.

VII. Rulemaking Record

EPA has established a record for this rule (docket number OPTS-42071B). This record contains the information EPA considered in developing this rule and the Consent Order and includes the following information.

A. Supporting Documentation

(1) Testing Consent Order for OMCTS.

(2) **Federal Register** notices pertaining to this rule and Consent Order consisting of:

(a) Notice containing the ITC designation of OMCTS to the Priority List (49 FR 46931; November 29, 1984).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on OMCTS (49 FR 46739 and 46741; November 28, 1984).

(c) Notice of EPA's proposed test rule for octamethylcyclotetrasiloxane (50 FR 45123; October 30, 1985).

(d) Notice soliciting interested parties for developing a Testing Consent Order for OMCTS (53 FR 11341; April 6, 1988).

(3) Communications consisting of:

(a) Written letter.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished materials.

B. References

(1) Bourquin, A.W., Hood, M.A., and Garnas, R.I. "An artificial microbial ecosystem for determining effects and fate of toxicants in a salt-marsh environment." *Development in Industrial Microbiology*. 18:185-191. (1977).

(2) Silicones Health Council. Letter from E.J. Hobbs to Stephen Ells, Environmental Protection Agency. (March 18, 1988).

(3) Silicones Health Council. Draft Testing Consent Order on OMCTS. (April 13, 1988).

(4) Dow Corning Corporation. Letter with attached studies from Cecil L. Frye to Martha G. Price, Environmental Protection Agency. (December 12, 1984).

(5) Vogel, G.E. and Stark, F.O. "Mutual solubilities in water-permethylsiloxane system." *Journal of Chemical Engineering Data*. 9(4):555-601. (October 1984).

(6) Bruggemen, W.A. et al. "Absorption and retention of polydimethylsiloxanes (Silicones) in fish: preliminary experiments." *Toxicology and Environmental Chemistry*. 7(4):287-296. (1984).

(7) Dow Corning Corporation. Unpublished study of T.H. Lane and C.I. Frye. Letter with attached studies from Cecil L. Frye to Martha G. Price, Environmental Protection Agency, (December 12, 1984).

(8) Kenaga, E.E., "Predicted bioconcentration factors and soild sorption coefficients of pesticides and other chemicals." *Ecotoxicology and Environmental Safety*. 4:26-38. (1980).

(9) Interagency Testing Committee (ITC). Fifteenth Report to the Administrator and Request for Comments. (November 29, 1984).

(10) Dow Corning Corporation. Letter with attachment from C.W. Lentz to Martha Price, Environmental Protection Agency. (February 27, 1986).

(11) Dow Corning Corporation. Letter with attached studies from E.J. Hobbs to M. Grief, Interagency Testing Committee. (December 16, 1982).

(12) Browning, G.R. Silicone Products Division, General Electric Co. Personal communication with M.G. Price, U.S. Environmental Protection Agency. (May 23, 1985).

(13) Versar, Inc. Environmental risk assessment for octamethaylcyclotetra-siloxane. Springfield, VA (1986).

(14) Ann Arbor Technical Services, Inc. Organosiloxanes in fresh water and salt water sediments. Ann Arbor, MI. (1985).

(15) Silicones Health Council. Comments of the Silicones Health Council on EPA's proposed test rule for octamethylcyclotetrasiloxane. (February 28, 1986).

(16) Dow Corning Corporation. A chronic reproductive limit test of polyethylene glycol sorbitan monolaurate and

octamethylcyclotetrasiloxane with *Daphnia magna*. (1988).

(17) CRCS, Inc. Information Review No. 348, Octamethylcyclotetrasiloxane. Reston, VA (May 31, 1983).

A public version of this record is available for inspection in the OPTS Reading Rm. NE-G004, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

VIII. Other Regulatory Requirements

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of this Paperwork Reduction Act, 44 U.S.C. *et seq.* and have been assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 799

Testing procedures,
Environmental protection,
Hazardous substances,
Chemicals,
Chemical export,
Recordkeeping and reporting requirements.

Dated: December 28, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substance in Chemical Abstract Service (CAS) Registry Number order to the table to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS No.	Substance or mixture name	Testing	Federal Register citation
*	*	*	*
556-57-2	Octamethylcyclo-tetrasiloxane	Chemical fate	[Insert FR date].
		Environmental effects	[Insert FR date].
*	*	*	*

[FR Doc. 89-298 Filed 1-9-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 80625-8183]

Atlantic Billfishes; Delayed Enforcement of Collection-of-Information Requirement

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

ACTION: Notice of delayed enforcement of collection-of-information requirement.

SUMMARY: NOAA announces a delay in enforcement of the collection-of-information requirement applicable to commercial seafood dealers and processors who possess billfish. This delay is necessary because the collection-of-information requirement has not yet been approved by the Office of Management and Budget (OMB), as required by the Paperwork Reduction Act (PRA). Until approval by OMB, the collection-of-information requirement cannot be enforced.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, Southeast Region, 813-893-3722.

SUPPLEMENTARY INFORMATION: A final rule to implement the Fishery Management Plan for Atlantic Billfishes (FMP) was published September 28, 1988 (53 FR 37765). A detailed discussion of the background, issues, regulations, and classification of the FMP is set forth in the final rule and is not repeated here. The final rule became effective October 28, 1988, with the exception of a phrase in § 644.7(e) and § 644.24(c), which were added and effective from October 28 through December 26, 1988, and §§ 644.7(g) and 644.24(b), which were effective December 27, 1988. Section 644.24(b) specifies that, with a limited exception, a regulated billfish (blue marlin, white marlin, sailfish, and longbill spearfish) possessed by a seafood dealer or processor will be presumed to have been harvested from its management unit unless it is accompanied by specified documentation that it was harvested from outside its management unit. (A billfish from its management unit may not be purchased, bartered, traded, or sold.) Section 644.7(g) prohibits the possession of a billfish by a commercial seafood dealer or processor without the specified documentation. The specified documentation constitutes a collection-of-information requirement subject to the PRA. A request to collect this information was submitted to OMB for approval and the issuance of a control number.

Under the final rule, §§ 644.7(g) and 644.24(b) became effective December 27, 1988. However, pursuant to the PRA, OMB approval is necessary before the collection-of-information requirement is enforceable. When OMB approval is obtained, a notice to that effect will be published in the **Federal Register**, and §§ 644.7(g) and 644.24(b) will be enforced.

It should be noted that the information specified in 50 CFR Part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce are in effect without regard to OMB approval of the specified documentation requirements of § 644.24(b).

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

Dated: January 5, 1989.

Richard B. Stone,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-447 Filed 1-5-89; 4:20 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

Training

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: This document proposes changes in the regulation implementing the Government Employees Training Act so as to eliminate unnecessary reporting on training provided by Federal agencies to State and local government employees, eliminate an obsolete reference to the report on cooperative education, and update references to certain training forms. This document also proposes changes in the regulation on training source determinations which would eliminate unnecessary features dealing with agencies' determinations as to whether to use Government or non-Government sources to meet their training needs.

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

ADDRESS: Send or deliver written comments to: Office of Personnel Management, Office of Training and Development, Policy and Oversight Branch, Room 1215TC, 1121 Vermont Avenue NW., Attn: Mr. Harold Segal, P.O. Box 7230, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Masterson, (202) 632-9769.

SUPPLEMENTARY INFORMATION: The proposals would change the regulations implementing the training law (5 U.S.C. 4101 *et seq*) in various ways when dealing with agencies' *reporting training information* to the Office of Personnel Management (OPM). All references in 5 CFR 410.901 to reports on training provided to State and local government employees would be eliminated. OPM has not found this information useful in recent years and has ceased asking for it in its annual request to agencies for training information. A reference in paragraph (d) of § 410.901 to reporting on cooperative education programs—as specified in the Federal Personnel Manual chapter dealing with those programs—would be eliminated, because the report has been dropped from that chapter. Lastly, references in paragraph (b) of § 410.901 to forms used to transmit special information to OPM would be updated to reflect the forms now in use.

The regulation dealing with *training source determinations*, 5 CFR 410.501, would be revised to eliminate unnecessary provisions. That section is based on the training law which provides, in 5 U.S.C. 4118(b)(2), that OPM authorize in its regulations training by, in, or through non-Government facilities "only after the head of the agency concerned determines that adequate training for employees by, in, or through a Government facility is not reasonably available * * *". The initial advice in the Federal Personnel Manual dealing with this matter stated that agencies ordinarily would consider whether new programs could be established in time to meet a training need. However, the regulation initially adopted by OPM in implementation of this provision of the law merely addressed the *use* of reasonably available training facilities, not the *establishment* of training facilities. There was no hard-and-fast obligation to consider the establishment of new "in-house" training programs if it had none to meet its needs and adequate training were available elsewhere.

The present § 410.501 (issued in 1980) *requires* that an agency which lacks in-house training to meet its need and finds nothing available elsewhere in Government determine whether it can establish new in-house training in time to meet its need. If it can do that, the agency is then to estimate the cost of the new "in-house" training so as to compare it to the cost of using a non-Government facility. While an agency *may* give consideration to the establishment of new in-house training law which suggests that an agency would be required to go to that length before using a non-Government facility. This feature of the regulations unnecessarily mixed determinations made under the training law on *use* of training facilities and determinations made under agency and Executive Branch policies on the *establishment* of training facilities.

This blending of disparate determinations came about after it was decided that Federal employee training was to be viewed as a "commercial activity" under Office of Management and Budget Circular No. A-76 (which deals with the performance of commercial activities). The provision in the training law cited above was then interpreted as covering the same ground as Circular A-76 which deals, among other things, with the creation of new commercial activities by Federal agencies. This interpretation brought about an unnecessary requirement that an agency hypothesize the creation of an in-house training activity, as explained above, before using a non-Government source. The proposed revision of material now in paragraph (a) of § 410.501 would remove this unnecessary feature and make other changes in the interest of simplification.

Another feature of the change adopted in 1980 for § 410.501 was intended as a means of reconciling what was perceived at the time as a conflict between the training law and Circular A-76. It was assumed that the process used under the training law in justifying the use of training from a non-Government source had to be blended with the A-76 process of determining whether an agency's in-house training should be performed instead by a non-Government source. As a result, it was determined that an exception would be needed to assure that agencies, in following Circular A-76, did not run afoul of the training law. It was felt that agencies would come into conflict with the training law if they exercised the option, afforded in A-76, to contract out small activities without going through a cost-comparison process. Hence, the 1980 regulations authorized OPM to prescribe alternative procedures for cost-comparison studies of small training activities in lieu of the A-76 cost-comparison process.

Various decisions could be made by agency management affecting the availability of in-house training to meet particular training needs. Management could decide to consolidate training activities and transfer one of them to a different geographic area, thus rendering in-house training in one of the areas unavailable. Or, agency management could decide to abolish a training activity, thus making the agency's constituent organizations dependent on non-Government sources if adequate training were not available elsewhere in

the Government. Or, management could decide to contract out a training activity. Each of these decisions would affect the "availability" of in-house training yet would be independent of determinations made under the training law on use of training sources to meet instances of needed training.

The training law does not force an agency to make cost comparisons before deciding to terminate or contract out a training activity. If an agency determines, for whatever reason, that it would not be feasible to continue or expand an existing training activity, or establish a new training activity—or would not be justified in doing so under Circular A-76—its subsequent use of a non-Government source without reference to in-house performance would not contravene 5 U.S.C. 4118(b)(2).

Another provision in § 410.501, adopted in 1980, authorized OPM to approve, after consultation with the Office of Management and Budget, alternatives to Circular A-76 procedures, intended for application to training activities exceeding the small activity "threshold" in that Circular. OPM announced in its Federal Personnel Manual that it would entertain proposals from agencies for such alternatives. OPM has received no proposal from an agency under this provision. Here, too, it should be noted that OPM adopted a provision dealing with the maintenance/establishment of training activities, a provision unrelated to the thrust of 5 U.S.C. 4118(b)(2).

In view of the foregoing, all provisions in section 410.501 dealing with determinations concerning the maintenance or establishment of training activities are unnecessary and would be removed. This would mean the removal of all of the present paragraph (b) from § 410.501, except for subparagraph (3). That subparagraph would also be removed, for the reasons stated below.

The authority delegated to agencies by the present 5 CFR 410.506(a) to waive a limitation in the training law on the amount of training allowable each year through non-Government facilities would be preserved but modified by removing the reference to cost-comparison studies. This would bring § 410.506 into harmony with the proposed revision of § 410.501 described above. Revising § 410.506 would have the effect of broadening the authority of agencies to waive the limitation on the amount of training allowable through non-Government facilities. It would, for example, authorize such a waiver if an agency were to determine that training from non-Government facilities was the only training available even though it made that determination without estimating the cost of creating in-housing training to meet a new need.

The reference to this waiver authority appearing in the present 5 CFR 410.501(b)(3) restates what is in the training law and is adequately covered by 5 CFR 410.506(a). It is, therefore, unnecessary and would be removed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 11291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 410

Education, Government employees, Personnel Management Office, Manpower training programs, Authority delegation.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR Part 410 as follows:

PART 410—[AMENDED]

1. The authority citation for Part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275. § 410.503 also issued under 5 U.S.C. 5364. § 410.506 and § 410.602 also issued under 5 U.S.C. 1104. § 410.902 also issued under 42 U.S.C. 4746.

2. Section 410.501 is revised to read as follows:

§ 410.501 Determining the source of training.

If adequate training is reasonably available from a Government facility to meet an agency's need, it shall use that facility. If adequate training is not reasonably available from a Government facility, the agency shall use a non-Government facility. The head of an agency will determine that adequate training is not reasonably available within the Government when either of the following conditions is met:

(a) There is no training within the agency, and reasonable inquiry has failed to disclose training elsewhere in the Government (in another agency or an interagency training facility), which would be available and adequately meet its need; or

(b) Adequate training available within the Government would be more expensive, because of the costs of distance, time, or other factors, than training available from non-Government facilities which would adequately meet the need.

3. Section 410.506(a) is revised to read as follows:

§ 410.506 Waiver of limitations on training of employees through non-Government facilities.

(a) The head of an agency may waive the limitation in section 4106(a)(1) of title 5, United States Code, if it is in the public interest because the training from non-Government facilities is the only available training or is as effective as, and less costly than, training available from Government facilities.

* * * * *

4. Section 410.901 is revised to read as follows:

§ 410.901 Reports.

(a) The reports required by section 4113(b) of title 5, United States Code, and the reports required by this section shall be prepared for each fiscal year. An agency shall submit a consolidated report to OPM by the date specified each year by OPM in its notification to agencies.

(b) The consolidated report shall include:

(1) A narrative summary—

(i) Outlining, in the first report to OPM under this section, the training policies and overall program of the agency and; in each subsequent report, any major changes in policy or shifts in program emphasis;

(ii) Describing the manner in which training has aided in the accomplishment of the mission of the agency by providing skills and knowledges;

(iii) Assessing generally the values of training to the agency;

(iv) Assessing generally the extent to which economies and improved operation have resulted in the agency; and

(v) Providing other information which OPM may request concerning specific areas of agency training activity.

(2) A statistical summary, in the format prescribed by OPM, on employee participation and agency expenditures in training conducted through agency, interagency, and non-Government facilities.

(3) A Long-Term Training Report, OPM Form 1306, containing special information required by section 4113(b)(2) of title 5, United States Code, regarding employees receiving training

by, in, or through non-Government facilities for more than 120 days.

(4) A Contributions and Awards Report, OPM Form 1307, containing special information regarding employees who, under authority of section 4111(a) of title 5, United States Code, receive from non-Government sources contributions or awards incident to training in non-Government facilities.

(5) A report on personnel engaged in agency training activities, OPM Form 1186.

(6) Information on the number of employees failing to fulfill their obligations under section 4108 of title 5, United States Code, and a description of the action taken with respect to the recovery of the additional expenses incurred by the Government in connection with their training.

(7) Such other information as OPM may request.

(c) OPM may grant exceptions to the requirements stated in paragraphs (a) and (b) of this section.

[FR Doc. 89-428 Filed 1-9-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations governing the management and supervision of FmHA Multiple Family Housing loan and grant recipients. This action is taken to comply with Office of Management and Budget Circulars A-73 and A-128 and U.S. Department of Agriculture, Departmental regulations, Subpart I of Part 3015 of Chapter XXX of Title 7. The intended effect of this action is to provide for better borrower auditing standards through the implementation of the above.

DATES: Comments must be submitted on or before March 13, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, FmHA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Booker Reaves, Senior Loan Officer, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5329, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382-1617.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulations 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" because there will not be an annual effect on the economy of $100 million or more; a major increase in cost of 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. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action.

Environmental Impact Statement

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

Regulatory Flexibility Act

The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities becaue it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Intergovernmental Consultation

For reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.405 Farm Labor Housing Loans and Grants

10.415 Rural Rental Housing Loans

10.427 Rural Rental Assistance Payments (Rental Assistance)

Background

This package is an accumulation of regulation changes needed to comply with the requirements the Single Audit Act of 1984, OMB Circular A-128 and "Audit of Federal Operations and Programs." The primary changes proposed include the following:

1. OMB Circular A-73, which requires that audits submitted in accordance with program requirements, must be prepared on the basis of the audit standards issued by the Comptroller General of the United States. These standards are published in "Standards for Audit of Governmental Organizations, Programs, Activities and Functions." It is important to note that the standards include the requirement that the generally accepted Government auditing standards (GAGAS) be used instead of the generally accepted auditing standards (GAAS). Audits must be submitted by certain participants in the Multiple Family Housing Programs. GAGAS has three elements: (1) Financial and compliance; (2) economy and efficiency; and, (3) program results. FmHA will only be requiring auditors to use the GAGAS element that provides for financial and compliance audits. Basic financial statements should be prepared in conformity with generally accepted accounting principles (GAAP). The change from GAAS to GAGAS will have only a minimal effect on the conduct of audits, since GAGAS requires the auditor to report on the entity's material compliance with requirements governing financial assistance it received; and, GAAP-based reporting requires disclosure of material violations of legal and contractual provisions. Therefore, it is FmHA's feeling that to perform a GAGAS audit, the auditor would have to conduct similar tests of the accounting records

and such other auditing procedures as considered in performing a GAAS audit. FmHA believes the proposed changes will clarify the regulations and help FmHA to serve the public more efficiently while protecting the Government's interest.

2. The paragraphs on audits of borrower operations are revised to comply with the Single Audit Act of 1984, Pub. L. 98-502, and OMB Circular A-128, "Audits of State and Local Governments." The Single Audit Act establishes audit requirements for State and local governments that receive Federal assistance and defines Federal responsibilities for implementing and monitoring these requirements. Section 7505 of the Act requires OMB to issue implementing guidelines which were issued as OMB Circular A-128. Further, the Circular directed Federal agencies to publish regulations implementing it.

3. FmHA expects to include additional changes to 7 CFR Part 1930, Subpart C in the final rule. These additional proposed changes are not included for publication in the proposed rule because they are items of internal management not directly impacting the public.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing loans—Rental, Reporting requirements.

Accordingly, FmHA proposes to amend Part 1930, Subpart C, Title 7, Code of Federal Regulations as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

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

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. In § 1930.124, paragraphs (c) (1), (2), (3), (4) and (5) are redesignated as paragraphs (c)(3) (i), (ii), (iii), (iv) and (v); the introductory text of paragraph (c) is revised; and new paragraphs (c) (1) and (2) and the title and introductory paragraph (c)(3) are added to read as follows:

§ 1930.124 Borrower budgets, reports, audits, and analysis.

* * * * *

(c) *Audits Reports.* All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), as set forth in the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" (1988 Revision), established by the Comptroller General of the United States, and any subsequent revisions. (commonly referred to as the "Yellow Book"). In addition, the audits are also to be performed in accordance with Departmental regulations, Subpart I of Part 3015 of Chapter XXX of Title 7, when applicable and in accordance with requirements as specified in separate sections of this subpart.

(1) *State and Local governments and Indian tribes.* These organizations are to be audited in accordance with this Subpart, Title 7 CFR Part 3015, Subpart I, and OMB Circular A-128, with copies of the audits being forwarded by the borrower to the FmHA District Director and the appropriate Federal cognizant agency, if applicable.

(i) *Cognizant agency.*

(A) "Cognizant agency" means the Federal agency assigned by OMB Circular A-128. Within the Department of Agriculture (USDA), the OIG shall fulfill cognizant agency responsibilities.

(B) *Cognizant agency assignments.* Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted for technical assistance related to auditing matters.

(ii) *Audit requirements.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(A) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A-128.

(B) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal assistance shall have an audit made in accordance with OMB Circular A-128 or in accordance with FmHA audit requirements. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with FmHA requirements, the audit shall be in accordance with paragraph (c)(3) of this section.

(C) State and local and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from OMB Circular A-128.

(2) *Nonprofit organizations.* These organizations are to be audited in accordance with OMB Circular A-110 and paragraph (3) of this section. These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audit requirements of paragraph (c)(1) of this section.

(3) *For profit organizations and others referred to this paragraph by paragraphs (c)(1) and/or (c)(2) of this section.* For guidance in performing audits under this paragraph, the USDA Office of Inspector General has published an audit bulletin entitled "Farmers Home Administration—Audits of Recipients of FmHA Loans, Grants and Guarantees" (available in any FmHA office).

* * * * *

3. Exhibit B of Subpart C is amended by removing the first sentence in paragraph XIII C 2 c beginning with the word "All" and substituting in its place the following two sentences:

Exhibit B—Multiple Housing Management Handbook

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C * * *
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c Audit report or verification. All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), as set forth in the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" (1988 revision), established by the Comptroller General of the United States and any subsequent revisions. State and local governments and Indians Tribes must also meet the audit requirements set forth in Title 7 CFR Part 3015, Subpart I, when applicable. For all other borrowers, the USDA Office of Inspector General has published an audit bulletin entitled "Farmers Home Administration—Audits of Recipients of FmHA Loans, Grants and Guarantees" (available in any FmHA office). * * *

* * * * *

§ 1930.124 [Amended]

4. In § 1930.124, newly designated paragraph (c)(3)(iii) is amended in the first sentence by changing the reference "paragraph (c)(3) of this section" to "paragraph (c)(3)(iii) of this section."

Date: October 28, 1988.

Vance L.Clark,

Administrator, Farmers Home Administration.

[FR Doc. 89-490 Filed 1-9-89; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

Required Capital Levels For Insured Institutions; Regulatory Intervention

Date: December 30, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Bank Board" or "Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), has recently proposed to amend its regulations establishing minimum capital requirements for insured institutions whose accounts are insured by the FSLIC ("insured institutions," "thrift institutions," or "institutions"). The Board has determined that it is appropriate, in conjunction with the capital proposal, to raise the related issue of whether the final capital regulation should contain specific provisions defining a particular level of regulatory capital as an "unsafe and unsound condition to transact business" for purposes of triggering the Board's statutory authority to appoint a conservator or receiver for the institution. The Board seeks public comment on questions that arise from consideration of this "regulatory intervention" issue.

DATE: Comments must be received on or before February 9, 1989.

ADDRESS: Send comments to: Director, Information Services Division, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, (202) 331-4592; John Robinson, Director, Policy Analysis, (202) 331-4587; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006; Deborah Dakin, Regulatory Counsel, (202) 377-6445; Theresa Stark, Attorney, (202) 377-7054; Karen Solomon, Associate General Counsel, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

The Board has recently proposed substantial revisions to its regulations defining regulatory capital and establishing minimum capital requirements for insured institutions. Board Res. No. 88-1342, 53 FR 51800 (December 23, 1988). The proposal would establish new capital requirements on the basis of the various risks an insured institution's portfolio may present to the FSLIC and to the institution itself ("risk-based capital proposal"). Under the risk-based capital proposal, institutions would be required to maintain a minimum capital level equal to the higher of two requirements. The first would be based upon the credit risk and interest-rate risk presented by its portfolio and its level of collateralized borrowings and would equal approximately eight percent of risk-weighted assets. The second would equal two percent of an institution's total assets, in recognition that the risk-weighting provisions of the capital proposal do not address all risks to which an institution may be subject.

An institution could satisfy the first capital requirement with a variety of elements, including contributions to capital, retained earnings, maturing subordinated debt instruments, and general loan loss allowances. The proposal would establish a two-tiered requirement, with certain components qualifying for inclusion as "core equity capital" and others restricted to use as "supplementary capital." "Core equity capital" would equal capital as computed in accordance with Generally Accepted Accounting Principles, commonly referred to as "GAAP", with some modification. *See* 53 FR 51812. Half of an institution's capital as determined under the first test would have to be held in the form of core equity capital. The second minimum capital requirement could only be met with core equity capital. Because all institutions would be required to hold an amount of capital equal to the higher of these two requirements, no insured institution could hold core equity capital in an amount below 2% of its total assets and still satisfy its minimum regulatory capital requirements.

Both the Board's current regulation and the risk-based capital proposal provide that the Board may require one or more corrective actions, through enforcement proceedings or otherwise, of thrift institutions that fail to meet their capital requirements. *See* 12 CFR 563.13(d) (1988) (existing), 563.13(g) (proposed). These corrective actions include requiring an insured institution to increase capital, hold meetings with supervisory personnel, conform with lending and investment restrictions, and restrict a variety of account or deposit activities, including growth. The Board's policy is to use these tools to improve the capital levels of insured institutions whenever possible. As part of its overall supervision of an insured institution, it may enter into a supervisory agreement with an institution that is operating with insufficient capital. Such an agreement may authorize a variety of actions, including the replacement of an institution's management or a supervisory merger. The Board's goal is, as it has always been, to achieve the safe and sound operation of all insured institutions, including adequate capital levels for each insured institution, by the least disruptive and most effective means available.

The Board is considering, and by this Advance Notice, soliciting public comment on, whether its authority to take corrective actions when an institution falls below its minimum regulatory capital levels should be clarified. The Board contemplates regulatory provisions establishing failure to maintain a floor or "subminimum" level of capital as an unsafe or unsound condition to transact business for purposes of the Home Owners' Loan Act of 1933 ("HOLA") and the National Housing Act ("NHA"). Such a regulatory provision would clarify the Board's existing ability to appoint a conservator or receiver before an insured institution reaches insolvency if, in the Board's judgment, no other effective regulatory action would be sufficient.

B. Issues Presented

1. Board's Authority to Establish Failure To Maintain a Required Level of Capital as an Unsafe or Unsound Condition

The HOLA sets forth five grounds for the Board's appointment of a conservator or receiver for a federal association. *See* HOLA section 5(d)(6)(A), 12 U.S.C. 1464(d)(6)(A). The statute does not require that all of these grounds, or any combination of them, must exist before such regulatory intervention. Each, standing alone, may support such action. The grounds are: (1) Insolvency; (2) substantial dissipation of assets or earnings due to any violation of law, rules, or regulations or any unsafe or unsound practices(s); (3) an

unsafe or unsound condition to transact business; (4) willful violation of a cease and desist order which has become final; and (5) concealment of or refusal to produce for inspection the books, papers, records or assets of the institution. *Id.* In addition, the NHA grants the Board exclusive power and jurisdiction to appoint the FSLIC as sole receiver for state-chartered insured institutions where it determines that insolvency, a substantial dissipation of assets, or an unsafe or unsound condition exists.[1] Neither statute further defines these conditions in this context. Under such circumstances, the Board has considered whether a regulatory definition of an "unsafe or unsound condition to transact business" would further the statutory objectives. The Board believes that it would.

The Board has the authority to issue regulations to ensure the safety and soundness of insured institutions. Since its enactment in 1934, the NHA has contained a grant of general rulemaking authority, empowering the Board to make rules to carryout the purposes of the Act. 12 U.S.C. 1725(a). Two key purposes of the NHA are the protection of the FSLIC fund from excessive risk [2] and the development and maintenance of a safe and sound economic system of home financing.[3] *See also Lincoln Savings* v. *Federal Home Loan Bank Board,* 856 F.2d 1588 (DC Cir. 1988). The determination in a regulation of what can constitute unsafe or unsound practices and conditions follows logically from this authority.

In this regard, the next question presented is what would be an appropriate indicator of an unsafe or unsound condition. The Board believes that an insured institution's capital level is one of the appropriate indicia of its health and that inadequate capital is an appropriate indicator of an unsafe and unsound condition to transact business. Congress has recognized the critical importance of capital and the use of levels of capital as a regulatory measurement device. In the Competitive Equality Banking Act of 1987 ("CEBA"), it provided that the Board and FSLIC may, in their discretion, treat the inability of a federal association or an insured institution "to maintain capital at or above the minimum level required * * * as an unsafe or unsound practice" [within the meaning of 12 U.S.C. 1464(d) or 12 U.S.C. 1730(e)]. 12 U.S.C. 1464(s)(3); 1730(t)(3). This may trigger a variety of enforcement actions.

Additionally, by establishing a CEBA a specific capital forbearance program whereby a "troubled but well-managed" institution "With net worth of 0.5 percent or more, as determined in accordance with regulatory accounting principles, *may be allowed* to continue to operate and be eligible for capital forbearance" if it met certain conditions and adhered to an approved capital recovery plan, Congress impicitly recognized that institutions in weakened capital conditions but not yet insolvent and not qualifying for capital forbearance *might not be allowed* to continue to operate. *See* 12 U.S.C. 1467(a), 1730i (emphasis added).

These provisions, taken as a whole, demonstrate Congress's recognition of capital levels as an appropriate standard for the Board to use in determining whether to take a variety of regulatory and enforcement actions. It is less clear, however, what relationship Congress intended the capital adequacy provisions of CEBA to bear to the Board's existing authority to appoint conservators and receivers. Thus, the Board requests comment on the interaction of the statutory provisions governing capital standards with those governing the appointment of conservators and receivers in establishing a regulatory definition of unsafe and unsound condition tied to capital and in implementing such a definition.

The Board wishes to emphasize that nothing in this Notice should be construed as in any way indicating that the Board will not, when and where appropriate, use other criteria to determine the existence of an unsafe or unsound condition. For example, in the past, inability to meet liabilities or obligations has been considered evidence of operation in an unsafe or unsound condition. *See Washington Federal Savings and Loan Association* v. *Federal Home Loan Bank Board,* 526 F. Supp. 343 (N.D. Ohio 1981). Neither CEBA nor this Notice calls into question the Board's authority to act in such a case.

2. Appropriate Triggers for Regulatory Intervention

The Board is considering establishing a "floor" capital requirement below which an institution would, by definition, be considered to be operating in an unsafe or unsound condition to transact business. Such a requirement would further the Board's goal of providing institutions with sufficient incentives to conduct business in a prudent manner as well as providing a "bright line" test for possible regulatory intervention.

The Board is considering setting this requirement at a level of 1.5% of total assets, to be held in the form of core equity capital. This level is intentionally lower than the alternate minimum capital requirement of 2% of total assets, also to be held in the form of core equity capital, discussed in Part A above. As discussed above, in Part B.1, operation below the *minimum* capital requirement may be considered an unsafe or unsound *practice.* 12 U.S.C. 1464(s)(3), 1730(t)(3). Today, the Board is addressing establishment of a "subminimum" or floor capital level, operation below which would constitute an unsafe and unsound *condition.* While an unsafe or unsound practice does not imperil an institution in a manner necessitating the appointment of a conservator or receiver unless the practice results in the substantial dissipation of assets, the existence of an unsafe or unsound condition calls for decisive action by the Board to protect account holders and the public.

The contemplated subminimum or floor capital requirement would be tied to core equity, rather than total, capital because the Board believes that core equity capital provides the best protection to the FSLIC and is the best indicator of the institution's ability to absorb losses. The Board solicits comments, with any available supporting empirical data, on whether the required level should be higher or lower. Commenters may wish to discuss whether this requirement should be tied to core equity capital or whether tangible capital would be a more appropriate measure.

The capital floor would be designed primarily to provide additional protection to the FSLIC by clarifying that the Board may take active management control of a deteriorating institution by appointing a conservator

[1] *See* NHA section 406(c)(1)(B)(i)(I), 12 U.S.C. 1729(c)(1)(B)(i)(I). In addition, the Board may appoint a receiver for a state-chartered institution on any of the five grounds enumerated in the HOLA, once it has been closed by a state authority and certain technical requirements have been satisfied, pursuant to section 406(c)(2) of the NHA.

[2] The title of the bill that became the National Housing Act identified it as a bill to, *inter alia,* "promote thrift and protect savings". *See also* specific provisions of the NHA which are directed toward achieving this objective, *e.g.,* 12 U.S.C. 1726(b) (provisions for examination of insured institutions and for reserves); section 1726(c) (provisions for safe management and financial policies); section 1730 (provisions regarding unsafe or unsound practices).

[3] One example illustrating this purpose is found at section 403(c) of the NHA, 12 U.S.C. 1726(c). That section provides that the FSLIC may reject the application of a state-chartered institution if the applicant's "home-financing policy is inconsistent with economical home financing or with the purpose of this subchapter." *See also,* 78 Cong. Rec. 11196, 11198 (Remarks of Representatives Reilly and Williams) (June 12, 1934); 78 Cong. Rec. 12013–15 (Senate statement of objectives of the NHA) (June 16, 1934).

or receiver where the institution has not reached insolvency but is in a substantially weakened, or weakening, capital condition.

Implementation of this objective raises the further question whether the Board may, or should, act solely upon the finding that an insured institution has reached the specified floor capital level. The Board invites comments and suggestions regarding any other, additional factors that should be considered when making the determination that an institution is operating in an unsafe or unsound condition under a scheme of regulatory intervention.

The Board also notes that fiscal constraints, together with other factors such as the impact of Board action on local economies, may make it difficult, impossible, or unwise for it to take action under a regulatory intervention rule with respect to all of the insured institutions that have reached the floor capital level at any given time. At the same time, the Board wishes to avoid unnecessary disparity in its treatment of similarly situated institutions. In this regard, the Board invites suggestions about the factors it should consider in prioritizing its caseload of institutions found to be in an unsafe or unsound condition.

The Board also wishes to consider suggestions as to the mechanics of establishing that an institution is in an unsafe or unsound condition based upon its capital level. For instance, the Board invites comment on whether it should establish that an institution has been operating with capital below 1.5% of total assets for some specified period of time prior to considering it to be in an unsafe or unsound condition. Commenters addressing this issue are invited to discuss what period of time would be meaningful.

3. Procedural Issues

As discussed above, the Board has the authority under the HOLA and the NHA to appoint a conservator or receiver for an insured institution operating in an unsafe or unsound condition. Such an action could result in a loss of any property interests held by shareholders of stock institutions or members of mutual institutions. The Board believes, however, that it can create standards for the proper use of this authority by promulgating regulations pursuant to section 402 of the NHA. *See Lincoln,* supra. In this regard, the Board wishes to solicit comments on a variety of procedural issues detailed below.

Both the current and proposed capital regulations provide for a series of corrective actions that the FSLIC may require when an institution fails to meet its minimum capital requirement. 12 CFR 563.13(d) (1988) (current), 563.13(g) (proposed). These actions are wide-ranging and, while they are aimed at remedying shortfalls in capital, they also serve to place institutions on notice that the FSLIC regards their capital levels as dangerously low. The Board is interested in comments that address whether these measures provide notice sufficient to address any fairness or due process concern prior to a Board determination that a particular institution is in an unsafe or unsound condition, or whether it must, or should, establish procedures to give notice and an opportunity to respond to institutions operating with capital approaching the 1.5% level prior to such determination. *See* 12 CFR 563.14–1 (issuance of capital directives, including an example of notice procedures). In this regard, the Board is concerned that all institutions be accorded adequate procedural protections and seeks suggestions to ensure fair treatment.

Additional fairness or due process issues may arise once the Board makes a determination that an institution is in an unsafe or unsound condition. As further discussed below, the Board has formulated some preliminary views on such issues, but invites commenters to submit other analyses of the questions raised here.

The Board believes that the statutory provisions governing receivership challenges satisfy any procedural rights of the owners of insured institutions found to be in an unsafe or unsound condition. Both the HOLA and the NHA provide that an institution for which the Board appoints a conservator or receiver may, within thirty days, bring an action in federal district court for an order to remove the appointee. *See* HOLA section 5(d)(6)(A), 12 U.S.C. 1464(d)(6)(A); NHA section 406(c)(3)(A), 12 U.S.C. 1729(c)(3)(A). The statutes further provide that such an action will be given precedence over other pending cases and, upon consideration of the merits, the court will either dismiss the action or order the Board to remove the conservator or receiver. *Id.*

In *Fahey v. Mallonee,* 332 U.S. 245, 253–54 (1947), the Supreme Court upheld then-current Board regulations (later embodied in the HOLA and NHA) that provided for a hearing following, rather than preceding, the appointment of a conservator or receiver for a federal association against a due process challenge. *See also Federal Deposit Insurance Corporation v. Mallen,* 486 U.S. ____, 100 L. Ed. 2d 265, 278, 108 Sup. Ct. ____ (1988) (unanimous decision that the Federal Deposit Insurance Act provisions for a hearing following rather than preceding the suspension of an indicted bank officer were justified by the FDIC's need to be able to act promptly and effectively where necessary to protect the interests of depositors and to maintain public confidence in banking institutions). The Board believes that the statutory provisions for immediate judicial review on the merits therefore afford adequate due process for the shareholders of insured institutions affected by regulatory intervention, especially in light of the competing concern that advance notice of the Board's intent to intervene in the case of a particular insured institution may itself cause further reductions in the institution's capital and a dissipation of its assets. *See Fahey,* 332 U.S. at 253.

Moreover, the regulations regarding the priority of claims in a receivership adequately provide for any constitutionally protected property interests that shareholders may have. Section 569c.11(a)(10) of Title 12 of the Code of Federal Regulations provides that holders of nonwithdrawable accounts, including stock, shall have priority, after depositors and general creditors of the institution, in accordance with the written instruments that evidence such claims. 53 FR 25129, 25133 (July 5, 1988).

While members of mutual savings and loan associations are not specifically mentioned in the priority scheme, the courts have not generally given significant weight to a member's interest beyond its deposit in the institution. The courts have viewed a mutual savings and loan member's interest as primarily that of a creditor of the association and only secondarily as that of an equity owner. *See Washington Federal,* 526 F. Supp. at 400, citing *York* v. *Federal Home Loan Bank Board,* 624 F.2d 495, 500 (4th Cir. 1980). This view is supported by the fact that depositors of a mutual institution are not allowed to realize or share in profits of the association but only receive an established rate of interest. In addition, because members's deposits are federally insured to the statutory maximum, they do not share in the institution's risk of loss. *Id.*

The Supreme Court has disposed of arguments made by members of mutual institutions asserting an interest in anything beyond their deposits as follows:

> The asserted interest of the depositors is in the surplus of the bank, which is primarily a reserve against losses and secondarily a repository of undivided earnings. So long as the bank remains solvent, depositors receive

a return on this fund only as an element of the interest paid on their deposits. If a depositor withdraws from the bank, he receives only his deposits and interest. If he continues, his only chance of getting anything more would be in the unlikely event of a solvent liquidation, a possibility that hardly rises to the level of an expectancy. It stretches the imagination very far to attribute any real value to such a remote contingency, and when coupled with the fact that it represents nothing which the depositors can readily transfer, any theoretical value reduces almost to the vanishing point.[4]

The Board solicits comments on whether the regulations regarding creditor priorities would satisfy constitutional requirements for compensation should the Board's action be construed as a taking under the Fifth Amendment and whether specific provisions should be made for a member's equity interest in a mutually held institution to address the possibility of that interest having some value in a liquidation.

In addition, the Board wishes to consider whether, and to what extent, the "Takings Clause" of the Fifth Amendment to the United States Constitution would apply in a regulatory intervention context. That clause provides that private property may not be taken for public use without just compensation. U.S. Constitution amendment V. Owners of insured institutions where a receiver is appointed on grounds that an unsafe or unsound condition exists, rather than on grounds of insolvency, may argue that the Board's appointment constitutes a Fifth Amendment "taking".

A preliminary analysis of the case law suggests that such action by the Board would not constitute interference with property rights so as to violate the Fifth Amendment. Courts have said that the purpose of the Fifth Amendment Takings Clause is to "bar the government from forcing some people alone to bear public burdens which in all fairness and justice, should be borne by the public as a whole." [5] It is well established that Congress is entitled to create statutory rights and liabilities that are rationally related to a legitimate government purpose.[6] Moreover, Congress can create public programs that adjust the benefits and burdens of economic life to promote the common good; the government may affect property rights under such programs without engaging in a compensable taking under the Fifth Amendment.[7]

In the Board's view, the regulation of thrifts by the Federal government constitutes a public program as contemplated by the courts. By enacting legislation to establish the Federal Home Loan Bank System, the Bank Board, and the FSLIC, Congress created a separately regulated housing finance industry after the Great Depression. Since that time, Congress has seen fit to adjust the parameters under which the thrift industry operates as economic conditions have changed. Throughout this period, however, Congress' intention has been to establish a government program designed to promote housing and protect depositors. It gave the Bank Board regulatory authority over thrifts and specifically enumerated the grounds upon which the Board may appoint a conservator or receiver, including grounds other than insolvency. It also carefully crafted measures to provide a remedy to challenge such an appointment by the affected association.

The Supreme Court has not developed a set formula for determining when justice and fairness require that economic injuries caused by public action be compensated by the government.[8] Recently, it has relied on an *ad hoc* factual analysis to determine whether a government action constitutes a Fifth Amendment taking. Three factors that have particular significance in the determination are: (1) The economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action.[9]

With respect to the first factor, the Court has analyzed regulatory schemes to determine whether those burdened bear only their rightful portion of the burden and whether there exist any provisions that serve to moderate the economic impact of the program.[10] In determining the extent to which the regulation interferes with distinct investment-backed expectations, the Court considers whether claimants have advance notice of the regulation affecting their ownership rights and asks what fairness and justice require by way of distribution of the burdens under the regulatory scheme.[11] Finally, when attempting to determine the character of the governmental action, the Court asks, among other things, whether the government has permanently appropriated assets *for its own use* and whether the action is incident to a public program that adjusts the benefits and burdens of economic life for the promotion of the public good.[12]

The Board's analysis of these factors based on the case law leads it to the preliminary conclusion that the actions suggested in this notice would not constitute a taking under the Fifth Amendment. First, Congress, in reaction to an economic crisis, determined that regulation of the nation's financial institutions was necessary and important. It established the FSLIC in an effort to promote public confidence in the nation's thrifts by insuring deposits. As a condition of obtaining the benefits of this overall goal, thrift institutions were subject to regulations reasonably aimed at protecting the safety and soundness of the industry as a whole and the viability of the FSLIC fund. This statutory and regulatory scheme, including explicit factors that could cause regulatory intervention to appoint a conservator or receiver, has been in place since the 1930s. Shareholders of insured institutions assume the risks and responsibilities placed upon them under this regulatory design. They are not provided any assurance that their investment in a thrift institution operating under this statutory and regulatory scheme will continue to retain its value if all regulatory requirements are not satisfied.

Second, as discussed above, both Congress and the Board have recognized that capital levels are an indicator of the health of an institution. Further, the operation of institutions below minimum capital requirements, especially where such capital is steadily decreasing, erodes the public's confidence in the industry as a whole and endangers the continued viability of the insurance fund. For these reasons, the Board believes that the operation of an institution at subminimum levels of capital could be explicitly defined as an unsafe or unsound condition such that regulatory intervention, including but not limited to the appointment of a conservator or receiver, is justified.

Finally, conservators and receivers do not appropriate the assets of institutions

[4] *Society for Savings* v. *Bowers*, 349 U.S. 143, 150, 75 Sup. Ct. 607, 611, 99 L.Ed. 950 (1955).

[5] *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U.S. 211, 227 (1986) citing *Armstrong* v. *United States*, 364 U.S. 40, 49 (1960).

[6] *Motor & Equipment Manufacturers' Association, Inc.*, v. *EPA*, 267 F.2d 1095, 1127 (DC Cir 1979), *cert. denied*, *General Motors Corp.* v. *Costle*, 446 U.S. 952 (1980).

[7] *Connolly*, 475 U.S. at 225. *See Penn Central Transportation Co.* v. *New York City*, 438 U.S. 104, 124 (1978); *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15–16 (1976).

[8] *Penn Central*, 438 U.S. at 124.

[9] *Connolly*, 475 U.S. at 224–225.

[10] *Penn Central*, 438 U.S. at 137.

[11] *See Connolly*, 475 U.S. at 226–227.

[12] *Id.* at 223–26.

for the government's own use. Instead, they preserve such assets for the use of depositors and other creditors of the institution who do not invest in an insured instituton with the same expectations of risk should the institution fail to operate in accordance with regulatory guidelines as would a shareholder.

The Board invites comment on all aspects of this Notice. Comments are particularly solicited as to what additional administrative or regulatory procedures might be appropriate to implement any rulemaking on this subject. After reviewing the comments received, the Board anticipates promulgating a notice of proposed rulemaking, including regulatory language addressing a number of the issues discussed in this Advance Notice. The Board contemplates that any final rulemaking regarding this proposal might be made effective 30 days after its adoption. While the risk-based capital proposal has an extended transition period, the Board believes that it is important that it take action with respect to institutions operating under unsafe and unsound conditions promptly.

Finally, the Board has announced that it will be holding a public hearing on the risk-based capital proposal. The Board anticipates a discussion of the regulatory intervention issues discussed in this Advance Notice at that time. The date of the hearing will be published in the **Federal Register.**

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-404 Filed 1-9-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-175-AD]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, which would require inspection of motor driven fuel valve actuators and replacement with actuators that have been modified to reduce corrosion and improve sealing around mating joints. This proposal is prompted by reports of Boeing Model 767 fuel crossfeed and APU fuel shutoff valve failures that were caused by corrosion of the fuel valve actuator housing that allowed moisture to enter the actuator assembly around mating joint seals, which subsequently froze in flight after cold soaking. These actuators are used for all of the fuel tank valves installed on Boeing Model 757 and 767 airplanes, including the engine shutoff valves, APU isolation and shutoff valves, the fuel crossfeed valve, and the defuel valves. This condition, if not corrected, could lead to the inability to shut off fuel to an engine or the APU in the event of fire, to correct fuel tank imbalance, or to allow use by either engine of all of the usable fuel on board the airplane after an engine inflight shutdown.

DATES: Comments must be received no later than February 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-175-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, ANM-140S; telephone (206) 431-1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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 number and submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. 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 NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-175-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has received reports of Boeing Model 767 fuel crossfeed and APU fuel shutoff valve failures. The failures have been determined to be caused by corrosion of the fuel valve actuator housing that allowed moisture to enter the actuator assembly around mating joint seals, which subsequently froze in flight after cold soaking. These actuators are used for all of the fuel tank valves installed on Boeing Model 757 and 767 airplanes, which include the engine shutoff valves, APU isolation and shutoff valves, the fuel crossfeed valve, and the defuel valves. There are between six and eight actuators installed on each airplane. A failure of a fuel valve actuator in flight could lead to the inability to shut off fuel to an engine or the APU in the event of fire, to correct fuel tank imbalance, or to allow use by either engine of all of the usable fuel on board the airplane after an engine inflight shutdown.

The FAA has reviewed and approved Boeing Alert Service Bulletins 757-28A0018 and 767-28A0020, both dated September 15, 1988, which describe an inspection of the fuel valve actuators for corrosion, and replacement with actuators that have been modified in accordance with Mitsubishi Electric Corporation Service Bulletin AV-31-28-1, in order to reduce corrosion and improve the sealing around mating joints.

Since this condition is likely to exist or develop on other airplanes of these same type designs, and AD is proposed which would require inspection and replacement of the fuel valve actuators, in accordance with the service bulletins previously mentioned.

There are approximately 211 Model 757 and 249 Model 767 series airplanes of the affected design in the worldwide

fleet. It is estimated that 126 Model 757 and 112 Model 767 airplanes of U.S. registry would be affected by this AD. It would take approximately 18 manhours per Model 757 airplane and 8 manhours per Model 767 airplane to accomplish the required actions; the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $126,560.

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

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Exeuctive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 or Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

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

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

2. By adding the following new airworthiness directive:

Boeing: Aplies to Model 757 and 767 series airplanes identified in Boeing Alert Service Bulletins 757-28A0018 and 767-28A0020, both dated September 15, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent freezing of motor driven fuel valve actuators caused by moisture ingress around corroded mating joint seals, accomplish the following:

A. For Model 757 series airplanes: Within the next 60 days after the effective date of this AD, visually inspect the left and right engine fuel shutoff valve actuators, engine fuel crossfeed valve actuator, and Auxiliary Power Unit (APU) fuel shutoff valve actuator for aluminum oxide corrosion residue on actuator screw heads and joining surfaces of the actuator body, in accordance with Boeing Alert Service Bulletin 757-28A0018, dated September 15, 1988. Any corroded actuator found must be replaced, prior to further flight, with a serviceable part; or as an alternative, a corroded actuator may be exchanged with a non-corroded actuator from a defuel valve position.

B. For Model 767 series airplanes: Within the next 60 days after the effective date of this AD, visually inspect the left and right engine fuel shutoff valve actuators, engine fuel crossfeed valve actuator, Auxiliary Power Unit (APU) fuel shutoff valve actuator, and APU fuel isolation valve actuator for aluminum oxide corrosion residue on actuator screw heads and joining surfaces of the actuator body, in accordance with Boeing Alert Service Bulletin 767-28A0020 dated September 15, 1988. Any corroded actuator found must be replaced, prior to further flight, with a serviceable part; or as an alternative, a corroded actuator may be exchanged with a non-corroded actuator from a defuel valve position.

C. Within one year after the effective date of this AD, replace all fuel valve actuators with modified valve actuators, in accordance with Boeing Alert Service Bulletin 757-28A0018 dated September 15, 1988, for Model 757 series airplanes, and Boeing Alert Service Bulletin 767-28A0020 dated September 15, 1988, for Model 767 series airplanes.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

Issued in Seattle, Washington, on December 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-409 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 93

[Docket 25758; NPRM 88-17]

High Density Traffic Airports; Slot Allocation and Transfer Methods; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: FAA is correcting an error in the Amendment Number. In FR Doc. 88-29309, published Monday, December 22, 1988, on page 51628, please delete the Amendment number 93-56 and insert NPRM 88-17.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Bartanowicz, Office of Rulemaking (ARM-1), (202) 267-9679.

Michael D. Triplett,

Legal Technician, Program Management Staff.

[FR Doc. 89-410 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Withdrawal of a Proposed Rulemaking To Amend the Texas Permanent Regulatory Program

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

ACTION: Withdrawal of Proposed Amendments.

SUMMARY: OSMRE is announcing the withdrawal of a proposed rulemaking to extend the deadline for Texas to submit proposed rules governing the training, examination, and certification of blasters. The required amendments were submitted before the final rule extending the deadline was approved.

EFFECTIVE DATE: January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E.

Skelly Drive, Suite 550, Tulsa, Oklahoma 74135: telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION: The Federal rules at 30 CFR 943.16 established a May 15, 1987, deadline for Texas to submit rules governing the training, examination, and certification of blasters. Texas was not able to meet that deadline, and in a letter dated June 4, 1987 [Administrative Record No. Tx-389], Texas requested an extension of the deadline until December 31, 1987. By letter dated July 31, 1987 [Administrative Record No. Tx-393], Texas submitted, along with numerous other proposed amendments, proposed rules governing the training, examination, and certification of blasters. OSMRE was not immediately aware that the July 31, 1987, package contained the blaster rules, and on August 18, 1987, [52 FR 30930] OSMRE published a notice in the **Federal Register** announcing receipt of the request to extend the deadline for Texas to submit rules governing the training, examination, and certification of blasters.

OSMRE had received the proposed amendments before the notice proposing to extend the deadline was published; therefore, the proposed rule published in the August 18, 1987, **Federal Register** extending the deadline for Texas to submit rules governing the training, examination and certification of blasters is withdrawn, and 30 CFR 943.16 is not amended.

List of Subjects in 30 CFR Part 943

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

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date December 30, 1988.

[FR Doc. 89-407 Filed 1-9-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 943

Withdrawal of a Proposed Rulemaking To Amend the Texas Permanent Regulatory Program

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

ACTION: Withdrawal of proposed amendments.

SUMMARY: OSMRE is announcing the withdrawal of proposed amendments to the Texas permanent regulatory program. The proposed amendments consisted of changes to the Texas regulations governing prime farmland, water quality standards and effluent limitations, designation of lands as unsuitable for surface coal mining, and notices of violation.

EFFECTIVE DATE: January 10, 1989.

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

SUPPLEMENTARY INFORMATION: By letter dated October 22, 1986, (Administrative Record No. TX-373), Texas submitted a package of proposed amendments to OSMRE. The proposed amendments consisted of modifications to Texas regulations governing prime farmland, water quality standards and effluent limitations, designation of lands unsuitable for mining, and notices of violation. OSMRE announced receipt of the amendments on December 3, 1986 (51 FR 43618).

Texas followed the State rulemaking process and solicited comments on the proposed amendments. Texas revised the amendments based on comments received and OSMRE announced receipt on February 17, 1988 (53 FR 4645) of the revised amendments.

By letter dated November 29, 1988 (Administrative Record No. TX-422), Texas withdrew the proposed amendments, stating that it intends to resubmit them with other amendments at a future date. Therefore, the revised, proposed amendments published in the February 17, 1988 **Federal Register** are withdrawn.

List of Subjects in 30 CFR Part 943

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

Date: January 4, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-408 Filed 1-9-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13 88-09]

Security zone; Sinclair Inlet, WA; Correction

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; correction.

SUMMARY: In the **Federal Register**, Vol. 53, No. 236, dated December 8, 1988, commencing on page 49562, a notice of proposed rulemaking considering a proposal to establish a security zone in the waters of Sinclair Inlet immediately adjacent to the Puget Sound Naval Shipyard Bremerton, Washington was published. Upon further review of the coordinates of the proposed security zone an error was detected.

FOR FURTHER INFORMATION CONTACT: CDR W.O. Harper, (206) 442-1711.

PART 165—[CORRECTED]

§ 165.1303 [Corrected]

Paragraph (a) of § 165.1303 entitled "Puget Sound Naval Shipyard Bremerton, WA", is correctly added to read as follows:

* * * * *

(a) Location. The following is a security zone: The waters of the Sinclair Inlet encompassed by a line commencing on the north shore of Sinclair Inlet at latitude 47°33'40"N, longitude 122°37'29"W; thence to latitude 47°33'35"N, longitude 122°37'28"W; thence to latitude 47°33'21"N, longitude 122°37'37"W; thence to latitude 47°33'02"N, longitude 122°38'26"W; thence to latitude 47°33'02"N, longitude 122°38'40"W; thence to the shoreline at latitude 47°33'23"N, longitude 122°38'40"W; thence easterly along the shoreline to the point of origin.

* * * * *

Dated: December 28, 1988.

G.A. Penington,

Captain, U.S. Coast Guard Commander, Thirteenth Coast Guard District Acting.

[FR Doc 89-350 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[EN-FRL-3503-8]

EPA Administered Permit Programs; The National Pollutant Discharge Elimination System; General Pretreatment Regulations for Existing and New Sources; Proposals to Implement the Recommendations of the Domestic Sewage Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: The United States Environmental Protection Agency (EPA) is today providing notice that the public comment period for proposed amendments to 40 CFR Parts 122 and 403 to carry out the recommendations of the Domestic Sewage Study is extended. The proposed amendments were

published in the **Federal Register** on November 23, 1988 (53 FR 47632).

DATES: All comments on the November 23, 1988 proposed rule published at 53 FR 47632 must be received on or before February 22, 1989.

ADDRESSES: Interested persons may submit written comments to Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 475-9526.

SUPPLEMENTARY INFORMATION: On November 23, 1988, EPA published proposed amendments to 40 CFR Parts 122 and 403 to implement the recommendations of the Domestic Sewage Study. The November 23 notice set a period of 60 days for the receipt of public comments. Since publication of that notice, EPA has received several requests to lengthen the comment period. In response to these requests, EPA has decided to extend the comment period to February 22, 1989.

Date: January 3, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-422 Filed 1-9-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-8, 201-13, and 201-39

Restructuring and Simplification of Federal Information Resources Management Standards

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this proposed rule is to simplify provisions on the use and implementation of Federal automatic data processing and telecommunications standards. It results in major changes in the regulatory coverage and presentation of FIRMR provisions on standards. The intent of these changes is to remove redundant and non-regulatory provisions from the FIRMR that may be found in other agency issuances, and to reorganize the FIRMR so that users may more readily locate standards provisions relevant to their particular requirements. The changes do not relax an agency's obligation to comply with the standards.

The use of uniform standards permits the integration and sharing of information and processes among vendors, and helps agencies maximize the productivity of their investments in information technology. Ready access to information about standards applicability and to standards specifications is critical to realizing the benefits standards can help provide. To ensure that agencies have up-to-date standards specifications for use in solicitations and contracts, GSA plans to publish and distribute its "ADP and Telecommunications Standards Index" initially on a semi-annual basis. FIRMR changes are published infrequently, and continued inclusion of information about standards and specifications in the codified regulation will not provide such timely access as more frequent distribution of the Index. These changes will also make FIRMR coverage of standards specifications consistent with Federal Acquisition Regulation (FAR) coverage of similar specifications.

Federal Information Processing Standards (FIPS), and the implementing specifications that are included in agency contracts, can have important effects on agencies and on businesses that sell to the Government. Proposed changes to standards and specifications will continue to be published in the **Federal Register** and circulated to agency regulatory and standards contacts for comment, and the comments resolved, before changes are adopted and printed in the Index.

The specific changes in this proposal include the following. Information regarding the applicability of Federal standards is removed, the individual standard "requirements statements" for inclusion in solicitation documents are removed, and overall policies and procedures governing the use of standards are separated from contracting policies and procedures regarding the implementation of standards. In addition, contracting provisions are reorganized for consistency with the FAR.

Because these changes represent such a radical departure from current FIRMR provisions, this notice solicits comments not only on the changes but also on any adverse impact the changes may cause. Comments are specifically requested on whether the proposed approach will make the FIRMR easier to use.

DATE: Comments are due: March 13, 1989.

ADDRESS: Comments should be submitted to the General Services Administration (KMPR), Project 87.26A, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich or Mary Anderson, Regulations Branch, Office of Information Resources Management Policy, telephone (202) 566-0194 or FTS, 566-0194. The full text of the proposed rule for Project 87.26A is available upon request, by telephoning (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) FIRMR Part 201-8, Implementation and Use of Federal Standards, will be removed and reserved and provisions will be relocated as follows: (a) Provisions addressing overall policies and procedures for using Federal standards will be relocated in FIRMR Part 201-13, and (b) contracting provisions that implement standards in the acquisition process will be amended and relocated in FIRMR Part 201-39. All existing Federal standard "requirement statements" for inclusion in solicitation documents will be removed.

(2) The changes proposed for FIRMR Part 201-13 are explained in the following paragraphs.

(a) Reserved Part 201-13 will be activated under the title, Operations and Control. It will contain management policies and procedures pertaining to the use of standards and other aspects of information resources management.

(b) Subpart 201-13.1, Standards, will be established to contain overall policies and procedures for using standards, including Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED-STDS), joint FIPS/FED-STDS, and agency standards.

(c) Other subparts in Part 201-13 will be reserved.

(3) The changes proposed for FIRMR Part 201-39 are explained in the following paragraphs.

(a) Reserved Part 39 will be activated under the title, Acquisition of Information Resources. It will contain the special acquisition rules that apply Governmentwide to information resources.

(b) Subpart 201-39.10, Standards, will be established and organized consistent with Part 10 of the FAR. It will contain policies and procedures from Part 201-8 pertaining to the implementation and use of requirements statements in the acquisition process. Provisions will be amended by replacing the term "requirements statement" with the term "specifications", removing the applicability statements for individual standards, and adding a requirement for agencies to review the GSA "ADP and Telecommunications Standards Index" to determine standards applicability.

(c) Subpart 201-39.52, Solicitation Provisions and Contract Clauses, will be established and organized consistent with Part 52 of the FAR. It will contain provisions and contract clauses for inclusion in solicitation documents for information resources. It will provide a provision for incorporating standards specifications in solicitation documents by reference to the "ADP and Telecommunications Standards Index".

(d) All other subparts in Part 201-39 will be reserved and activated as other FIRMR contracting provisions are relocated in this part.

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

List of Subjects in 41 CFR Parts 201-8, 201-13 and 201-39

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

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

Dated: June 15, 1988.

Fred L. Sims,

Acting Deputy Commissioner for Federal Information Resources Management.

[Editorial note: This document was received at the Office of the Federal Register on January 4, 1989.]

[FR Doc. 89-330 Filed 1-9-89; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 81270-8270]

Pacific Halibut Fisheries

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

ACTION: Notice of proposed Pacific halibut catch sharing plan and request for comments.

SUMMARY: NOAA announces and requests comments on a proposed Catch Sharing Plan developed by the Pacific Fishery Management Council (Council) to allocate the catch of Pacific halibut in 1989 between Treaty Indian and non-Indian commercial and recreational fishermen in International Pacific Halibut Commission (IPHC) statistical Area 2A.

This proposal plan allocates the total allowable catch of Pacific halibut in Area 2A as established by the IPHC between domestic users in accordance with the Northern Pacific Halibut Act of 1982. The purpose of this notice is to solicit public comments on the proposed plan before final action is taken by the Council in recommending approval by the Secretary of Commerce and implementation by the IPHC.

DATES: Comments on the proposed plan must be received by January 17, 1989; Comments submitted on or before January 10, 1989, will be presented to the Council by NMFS.

ADDRESS: Send comments to Rolland A. Schmitten, Director Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140 or Lawrence D. Six at 503-221-6352.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act), Pub. L. 97-176, 16 U.S.C. 773c(c) authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with the regulations of the International Pacific Halibut Commission (IPHC). The geographic area herein involved is all U.S. marine waters lying south of the U.S./Canadian border including Puget Sound, known as IPHC statistical Area 2A.

The Pacific halibut harvest in Area 2A historically has been almost entirely a commercial longline fishery. In recent years however, the Treaty Indian tribes have begun to develop a commercial halibut fishery, and tribal fishing effort and harvests have increased from four Treaty Indian tribes with 17,000 pounds harvested in 1986 to eleven Treaty Indian tribes with over 105,000 pounds of halibut harvested in 1988. In addition non-Indian recreational catch has undergone a dramatic increase from a catch of about 50,000 pounds in 1983 to a peak catch of about 461,000 pounds in 1987. These increases culminated in a combined harvest of over one million pounds of halibut in Area 2A in 1987 by Treaty Indian and non-Indian commercial and sport users which exceeded the maximum sustained yield of 800,000 pounds set by the IPHC. Because the increasing annual catch needed to be controlled and reduced to meet conservation goals established by the IPHC, it became necessary for the Council for the first time in 1988 to allocate the catch among the three user groups.

In 1988, the Council developed a Catch Sharing Plan (Plan) in compliance with a directive by the Under Secretary of Commerce that the Pacific and North Pacific Fishery Management Councils should allocate halibut catches among user groups if allocation is necessary. The 1988 Plan was based on a total allowable catch (TAC) of 750,000 pounds and included a number of specific provisions that were described in the **Federal Register** notice (53 FR 7528, March 9, 1988) that announced its approval by the Secretary of Commerce (Secretary). Following approval by the Secretary, the 1988 Plan was forwarded to the IPHC which adopted implementing regulations. The Plan was for the 1988 fishing season only for treaty Indian/non-Indian sharing, and for two years (1988 and 1989 seasons) for non-Indian commercial and recreational sharing. In general, the 1988 Plan provided the Treaty Indian fishermen a fixed season that was projected to harvest no more than 100,000 pounds. A reserve of 50,000 pounds was established for Treaty Indian fishermen to accommodate a larger harvest if necessary. Non-Indian users were allocated 600,000 pounds which were divided 55 percent for the commercial catch and 45 percent for the recreational catch. In addition the Council recommended recreational seasons and size and bag limits that were designed to achieve overall recreational allocation and to distribute it among four geographic areas within Area 2A. These recommendations were accepted and implemented by the IPHIC in their 1988 regulations. The 1988 Plan and IPHC implementing regulations resulted in a harvest of about 105,000 pounds by Treaty Indians, about 381,000 pounds by non-Indian commercial users, and about 256,000 pounds by recreational users for a total of 742,000 pounds of halibut harvested in Area 2A.

A Catch Sharing Plan for the three user groups in Area 2A is again necessary in 1989 because the combined fishing power of the user groups easily exceeds the anticipated 1989 TAC of 750,000 pounds. In addition, the 1988 sharing provisions between Treaty

Indian and non-Indian fisheries have expired. Although the allocation between non-Indian commercial and recreational users is fixed for 1989, the Council again developed and will recommend recreational seasons and size and bag limits to the IPHC. The 1989 Catch Sharing Plan was developed by a Halibut Managers Group consisting of State, Federal, and tribal fishery managers, user group representatives and the general public. A number of meetings were convened betweeen Treaty Indian tribes and Federal and State fishery managers to negotiate a Treaty Indian/non-Indian allocation of the TAC. Four public workshops were held in Oregon and Washington to obtain input from user groups and the general public. In addition, the Council appointed a Halibut Advisory Panel consisting of non-Indian commercial and recreational representatives to advise the Council on the non-Indian allocation and distribution of the recreational share between four geographic areas within Area 2A.

The Council adopted a proposed 1989 Catch Sharing Plan for public review at its November 16–18, 1988 public meeting after receiving recommendations from the Halibut Managers Group on the negotiated treaty Indian/non-Indian catch sharing agreement and from the Council advisory bodies on the sharing of the non-Indian allocation between commercial and recreational users. The proposed Plan is for 1989 only and distributes the anticipated TAC of 750,000 pounds as subquotas between the three user groups as follows:

Treaty Indian subquota = 150,000 pounds
Reserve = 25,000 pounds
Non-Indian Commercial subquota = 316,000 pounds
Non-Indian Recreational subquota = 259,000 pounds.

The reserve would be set aside initially for Treaty Indian use, although parts or all of the reserve would be released to non-Indian recreational users during the season if it is determined that all or parts of the reserve are surplus to tribal needs. The reserve release would occur no later than July. Further, if it is determined at that time that some portion of the Treaty Indian subquota of 150,000 pounds is surplus to tribal needs, then that portion may be released to the non-Indian fisheries.

This proposed Plan is based on an anticipated 750,000 pound TAC; a final TAC is not yet available. Establishment of the final TAC is the responsibility of the IPHC and the final TAC will not be determined until the annual meeting of the IPHC in January. The proposed Plan provides that the subquotas and the reserve will be adjusted upward or downward proportionately with any change in the TAC from the anticipated 750,000 pounds. Additional details of the proposed plan are as follows:

1. The Treaty Indian subquota will include both commercial and ceremonial and subsistence (C&S) fishing. The Treaty Indian commercial fishing season will extend from March 1 through October 31, and C&S fishing will be permitted all year. The IPHC commercial 32-inch size limit will apply to fish sold by tribal commercial fishermen; however, no size limits will apply to C&S-caught halibut, including C&S fish retained during commercial fishing. Other IPHC regulations on commercial fishing gear and C&S daily bag limits before and after the commercial fishing season will remain the same as in 1988.

2. The non-Indian allocation will be divided 55 percent to commercial users and 45 percent to recreational users, with a minimum of 60,000 pounds to Oregon recreational users in accordance with the provisions of the two-year sharing agreement established in 1988. The recreational catch will be divided into four areas: (1) Inside waters of Washington State eastward of the Bonilla-Tatoosh line; (2) North coastal Washington waters from the U.S./Canada border to the Queets River; (3) Southern Washington and northern Oregon waters from the Queets River to Cape Falcon; and (4) Oregon and California waters south of Cape Falcon.

The Council will consider final adoption of the 1989 Catch Sharing Plan at its January 11–12, 1989, public meeting in Seattle, WA. After receipt and consideration of public comments, the Council will recommend a final 1989 Plan to the Secretary of Commerce to be forwarded to the IPHC for implementation. Public comments made before the Council will also be considered a port of record in this proceeding. Specific regulations to implement the final plan will be developed by the IPHC consistent with its responsibilities under the international convention.

Classification

This proposed 1989 Catch Sharing Plan is published with a request for public comments as a general statement of agency policy which does not require notice and comment rulemaking under the Administrative Procedure Act at 5 U.S.C. 553(b)(A). Consequently, the Regulatory Flexibility Act does not apply. A regulatory impact review was prepared for this proposed action to fulfill the requirements of E.O. 12291 and concludes that actions taken under the proposed plan are not "major" and a Regulatory Impact Analysis is not required.

The present action will not have cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to the consumers, industries, government agencies, or geographical regions. An Environmental Assessment (EA) was prepared for the 1988 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA) and the Assistant Administrator for Fisheries, NOAA determined that there would be no significant adverse environmental impact resulting from the plan and that preparation of an environmental impact statement was not required by section 102(2)(C) of NEPA or its implementing regulations. The alternatives and environmental impacts of the 1989 proposed plan are no different than those evaluated in the EA for the 1988 Catch Sharing Plan. Therefore, this action is categorically excluded from the NEPA requirements to prepare an EA in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives and their impacts have not changed and the determination of no significant environmental impact would also apply to the 1989 proposed plan.

The proposed plan does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Copies of the 1988 environmental assessment and the regulatory impact review are available at the address above. The Council has determined that this action is consistent to the maximum extent practicable with applicable State coastal zone management programs as required.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773K.

Dated: January 4, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89–448 Filed 1–5–89; 3:30 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

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

DEPARTMENT OF COMMERCE

International Trade Administration

[C-301-001]

Leather Wearing Apparel From Colombia; Final Results of Changed Circumstances Administrative Review, Determination Not To Cancel Suspension Agreement, and Termination of Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances administrative review, determination not to cancel suspension agreement and termination of administrative review.

SUMMARY: On November 4, 1987, the Department of Commerce published a notice of intent to review, preliminary results of changed circumstances administrative review, and tentative determination to terminate suspended investigation on leather wearing apparel from Colombia. We have now completed that review and determine that the agreement meets the requirements of sections 704 (b) and (d) of the Tariff Act of 1930. Therefore, we are not canceling the suspension agreement.

EFFECTIVE DATE: January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 42330) its intention to review, preliminary results of changed circumstances administrative review, and tentative determination to terminate the suspended investigation on leather wearing apparel from Colombia (46 FR 19963; April 2, 1981). The Department has now completed that administrative review in accordance with section 751(b) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Colombian men's, boys', women's, girls', and infants' leather coats, jackets and other leather wearing apparels (such as vests, pants and shorts), as well as parts and pieces thereof. Such merchandise is currently classifiable under items 4203.10.40.30, 4203.10.40.60 and 4203.10.40.90 of the Harmonized Tariff Schedule. The review covers the period from December 8, 1986, the effective date of the revised suspension agreement, through September 30, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Colombian government and from the Amalgamated Clothing and Textile Workers Union, AFL-CIO ("ACTWU"), a domestic interested party.

Comment 1: The Colombian government does not believe that the Department should cancel the revised suspension agreement. It asserts that it has maintained an internal monitoring procedure since January 1987, when the revised suspension agreement went into effect, to ensure that all exporters of leather wearing apparel renounced all countervailing benefits. The Colombian government did not present the details of these monitoring procedures to the Department because it believed that this information was implicit in the quarterly monitoring reports submitted during the first three quarters of 1987, all of which stated that "none of the signatories" received benefits. The Colombian government maintains that the "signatories" referred to in the monitoring reports meant all exporters of leather wearing apparel to the United States.

In addition, the Colombian government has established a mechanism to ensure that the agreement covers all exporters by continually updating the list of exporters of leather wearing apparel to the United States and by securing commitment letters from new entrants into the market to renounce all countervailing benefits in the future.

Department's Position: Astrakan was the only signatory to the revised suspension agreement during the period of review (having succeeded Confecciones Amazonas Orinoco, the sole signatory to the original agreement). The other "signatories" to which the Colombian government refers are leather wearing apparel exporters willing to renounce countervailable benefits. They were not, however, signatories to the agreement as we accept the term.

We recognize that there was a fundamental misunderstanding over the interpretation of the term "signatory" with respect to the revised suspension agreement. Although other exporters did renounce benefits, the Colombian government did not inform the Department of the renunciations by these "signatories" until after the publication of the preliminary results of this review.

A procedure whereby new entrants renounce benefits on their exports to the United States and provide letters to that effect to the Department has been a part of the Colombian government's monitoring of the suspension agreement on fresh cut flowers from Colombia since its inception in 1983. Effectively, we have treated these exporters as new signatories. Because we consider such a procedure an acceptable method for monitoring a suspension agreement and because we now know that a comparable procedure exists for the suspension agreement on leather wearing apparel, we hereby consider the exporters that have submitted letters renouncing all benefits to be signatories from this point on. The Government of Colombia must continue to forward comparable letters from any new exporters to the Department for such exporters to be considered signatories. (The signatories to the revised suspension agreement are listed in Appendix I).

In addition, the Government of Colombia has stated that it will continue to require all new entrants into the market to sign a commitment letter renouncing all benefits. Therefore, we

determine that the suspension agreement in its current form is enforceable and monitorable and meets the requirements of section 704(b) of the Tariff Act.

Comment 2: ACTWU endorses our tentative determination to cancel the revised suspension agreement, arguing that it is long overdue given the history of problems with this suspension agreement and the Department's inability to enforce its terms. ACTWU notes that during the two-year period over which the original agreement was renegotiated, new exporters received additional countervailable benefits, and the domestic industry was not afforded adequate relief. ACTWU claims that the intent of Congress in suspension agreements is to ensure that governments maintain their commitments for the complete renunciation of countervailable benefits and that when agreements fail, they should be canceled.

Department's Position: We determine that the Colombian exporters of leather wearing apparel to the United States did not receive any bounties or grants after the revised suspension agreement went into effect and that they complied with the terms of the agreement through September 30, 1987, the period covered by this review. We also determine that, because the U.S. industry is not forced to compete against imports that benefit from bounties or grants, the agreement provides the domestic industry with the relief intended by section 704(b) of the Tariff Act and that it is monitorable and enforceable in its current form (see our response to Comment 1).

Final Results of Review, Determination Not To Cancel Suspension Agreement, and Termination of Administrative Review

After considering all of the comments received, we have determined that the suspension agreement is enforceable and can be adequately monitored and that it meets the requirements of sections 704 (b) and (d) of the Tariff Act. Therefore, we are not canceling the suspension agreement on leather wearing apparel from Colombia.

We also determine that the Colombian exporters of leather wearing apparel have complied with the terms of the suspension agreement through September 30, 1987, thus obviating the need to complete section 751(a) reviews requested in accordance with § 355.10 of the Commerce Regulations covering that period. Therefore, we are terminating those administrative reviews.

This changed circumstances administrative review, determination not to cancel suspension agreement, termination of administrative review and notice are in accordance with sections 704(b) and 751 (a) and (b) of the Tariff Act (19 U.S.C. 1671c(b) and 1675 (a) and (b)) and 19 CFR 355.10, 355.31 and 355.41.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: January 3, 1989.

Appendix I

1. Andina de Curtidos, S.A.
2. Arpiel de Colombia Ltda.
3. Astrakan Ltda. Colombian Bags Ltda.
4. Comercializadora Gloria & Tirado & Cia. Ltda.—G.E. Collection.
5. Curtiembres Progreso Ltda.
6. Emicolor Ltda.
7. Exporimp Ltda.
8. Catalina Falquez de Donado.
9. Glaser & Cia. Ltda.
10. Hacienda Cencerro Ltda.
11. Inversiones Licarmo Ltda.
12. Jaime Vallejo Sra. e Hijos Ltda.
13. JAS & Cia., S. en C.
14. Jose Ortiz Gonzalez, J. Alco S. en C.
15. Julia de Rodriguez e Hijos S. en C.
16. Luis Alberto Rayran Rodriguez.
17. Martha Marina Latorre.
18. Opera Ltda.
19. Ivan Ramirez Martinez.
20. Miguel Angel Rodriguez.
21. Sistemas de Informacion SIDEIN Ltda.
22. Sociedad Administradora Mercantil Ltda., SAMER Ltda.
23. Versatil Cueros Ltda.

[FR Doc. 89-457 Filed 1-9-89; 8:45 am]

BILLING CODE 3510-DS-M

[Application #87-2A004]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Machine Tool Builders' Association ("NMTBA") on May 19, 1987 (52 FR 19371, May 22, 1987).

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

The amendment consists of the following changes:

(1) Each of the following companies has been added as a new "Member" of the Certificate: Compumachine Inc.; Elox Corporation; Fayscott Company; Innovex; J.M. Montgomery Mfg. Inc.; PH Hydraulics & Automation, Inc.; The Pratt & Whitney Company, Incorporated; Productivity Systems, Inc.; Strippit, Inc.; Trumpf Industrial Lasers, Inc.

(2) Each of the following companies has been reinstated as a "Member" of the Certificate and the company name has been changed as indicated (new listing cited in parentheses): Acme-Cleveland Corporation (National Acme Co.); MG Cutting Systems (MG Systems Div.).

(3) Each of the following companies has been deleted as a "Member" of the Certificate: Acro Automation Systems, Inc.; Automation Associates, Inc.; Colt Industries, Inc.; Continental M.D.M., Inc.; Engis Corporation; GM Industries, Inc.; GT Acoustical Technologies; Grinders for Industry; Houdaille Industries, Inc.; Industrial Development Systems, Inc.; The OK Tool Company, Inc.; Reno Machinery and Engineering Co.; Universal Engineering Div. Stanwich Industries, Inc.; Wotan Machine Tool, Inc.; Zero Manufacturing Co.

(4) The company name listing for the "Member" APEC/CPM Guill Technologies Inc. has been changed to A.P.E.C.; Centro-Morgardshammer Inc. to Centro-Metalcut, Inc.; Danley Machine Division to Danley Machine Division/Connell Ltd. Partnership; Equipment Systems to ES/TECH-Equipment Systems Technology Co.; Sciaky Bros. Inc. to Ferranti Sciaky, Inc.; Gehring LP to Gehring Corporation; Bohle Machine Tools Inc. to George Fisher-Bohle Machine Tool Corp.; Geometric Tool-Division Greenfield Industries to Greenfield Industries; USI Clearing to HZ Clearing Inc.; Hansvedt to Hansvedt Industries, Inc.; Kayex-Spitfire Tool & Machine Co. to Kayex-Spitfire; Lodge & Shipley/Manuflex to Manuflex Corporation; Pneumo

Precision Inc. to Rank Pneumo Inc.; Surf/Tran to Surf/Tran Division, Robert Bosch Corporation; Ex-Cell-O Corporation to Textron Inc./North American Machine Tool Division; Eitel Presses Inc. to Transmares Corp.; and White Consolidated Industries to WCI Machine Tool & Systems Co.

(5) The Certificate holder is now identified as "National Machine Tool Builders' Association (aka NMTBA—The Association for Manufacturing Technology)."

Effective date: October 17, 1988.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: January 4, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-456 Filed 1-9-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION OF THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

[CFDA No. 90.001]

Inviting Applications for New Awards for FY 1989 Bicentennial Educational Grant Program

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Notice inviting applications and providing application forms for Bicentennial Educational Grant Program—Second Round.

SUMMARY: The Commission on the Bicentennial of the United States Constitution announces its application deadline for a second round of FY-1989 funding from its Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for the development of instructional materials and programs on the Constitution and Bill of Rights which are designed for use by elementary or secondary school students. This grant program notice informs all interested individuals and organizations about the closing dates for the receipt of applications for funding. The application conditions are based on the law and regulation which contain the key requirements for all applicants to follow in seeking funding from the Commission.

DATES: Applications wil be accepted from April 1, 1989 until May 15, 1989 at 5:30 pm. Applications by mail must be postmarked no later than May 15, 1989.

ADDRESS: For further information contact: Anne A. Fickling, Associate Director of Educational Programs, Commission on the Bicentennial of the U.S. Constitution, 808 17th Street, NW., Suite 800, Washington, DC, 20006, (202) 653-5110.

SUPPLEMENTARY INFORMATION: The objective of this program is to help elementary and secondary school teachers develop a better understanding of the history and development of the U.S. Constitution and Bill of Rights and to provide them with materials and methods so they will become more able to teach the Constitution to young learners. Programs designed to affect students directly are also encouraged. Programs designed for adult learners in an elementary or secondary school environment are also eligible. The Commission continues to encourage proposals from non-traditional educational organizations and those concerned with ethnic and minority interests, people for whom English is a second language, and other special interest organizations such as those concerned with the learning disabled and the physically handicapped.

Available funds anticipated: Approxiamtely $2 million.

Estimated range of awards: $3,000–$125,000.

Estimated number of awards: 25–35.

Project period: No longer than 24 months, beginning no later than September 1, 1990.

Priority areas for funding: The Program Announcement and Final Rule governing the 1989 Bicentennial Educational Grant Program were published in the **Federal Register** on August 14, 1987. Specifically, the Commission encourages proposals which focus on themes paralleling those of the Commission's five-year plan and the development of the three branches of government. In this round of its 1989 Educational Grant Program, the Commission shifts the focus to the commemoration taking place in 1990—a study of the Judiciary and its historical development in the 200 years since the first session of the Supreme Court. In addition, for projects taking place in the 1990–91 school year, the Commission welcomes proposals which focus on the Bill of Rights and subsequent Amendments. The focus of any proposal, therefore should be dictated to some extent by when the project will go into effect.

Limited funding is available for expanding, replicating, or continuing highly successful educational programs which effectively link the Constitution to civic literacy and responsibility today. A significant aspect of any such program would be the inclusion of a co-curricular activity and/or community invovlement component. The Commission encourages applications for funding these exemplary projects from schools, school districts, or organizations. A well-developed dissemination plan should be included in any proposal for funding under this initiative.

Selection criteria: The Commission has developed the following criteria as general guidelines for judging all project proposals:

1. The project is designed to strengthen teachers' capacity to understand and teach the Constitution, its antecedents, provisions, structure, and history, while benefitting students in an academically sound way appropriate for the age group toward which it is directed. (15 points)

2. The project has potential to make effective and appropriate use of existing and proven curricular materials, including those made available through Commission sponsorship and the Bicentennial Educational Grants Program. (5 points)

3. The project is cost-effective in that expenditures are reasonable and appropriate for the scope of the project. (5 points)

4. The project must demonstrate the potential for affecting a much wider audience than the immediate project participants. (10 points)

5. The project represents an improvement upon existing teaching methods. (5 points)

6. Applicants have the capacity to carry out the project as evidenced by:

a. Academic and administrative qualifications of the project personnel;

b. Quality of project design;

c. Soundness of project management plan. (10 points)

The decision to award grant funding is solely within the discretion of the Commission based upon its judgment of how best to fulfill the statutory purposes of the grant program.

Applicable regulations: 45 CFR 2010 as published in the August 14, 1987 **Federal Register** (52 FR 30582). The Commission's program announcement was also published together with the grant regulation.

Interested applicants are invited to call or write to the Commission for a copy of the printed version of the program announcement and application forms.

Authority: Title V of Pub. L. 99-194; 45 CFR Part 2010.

Herbert M. Atherton,

Director, Educational Programs.

[FR Doc. 89-469 Filed 1-9-89; 8:45 am]

BILLING CODE 6340-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

January 6, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 24 Jan 89 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington DC.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89-566 Filed 1-9-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: January 30 and 31, 1989.

Time: 0900-1630 hours each day.

Place: Louisiana Army Ammunition Plant, Shreveport, LA.

Agenda: The Army Science Board Ad Hoc Subgroup on Toxic and Hazardous Waste Management will conduct its second meeting at the Louisiana Army Ammunition Plant in Shreveport, LA. Briefings will be conducted by various members of the DOD and EPA respect to the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-452 Filed 1-9-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: February 1-2, 1989.

Time: 0900-1630, February 1

0800-1700, February 2.

Place: Fort Ord, California.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Families will be hosted by the Commanding General of Ford Ord, California. The subgroup will receive briefings on those programs being utilized at Fort Ord that address soldier and family issues impacting on quality of life in the Fort Ord community. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-453 Filed 1-9-89; 8:45 am]

BILLING CODE 3710-08-M

Partially Closed Meeting; Chief of Staff's Special Commission on the Honor Code and Honor System at the U.S. Military Academy

Subject: Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy.

Name of Panel: Legal panel of the Chief of Staff's Special Commission to Review the Honor Code and Honor System at the U.S. Military Academy.

Date: 23 January 1989.

Place: U.S. Court of Military Appeals, 5th and E Streets NW., Washington, DC.

Summary of Agenda:

Date/time	Open/closed to public	Discussion items
23 Jan/0900 to 1200.	Open	Review and discussion of legal, and procedural aspects of USMA Honor System and Honor Code.
23 Jan/1300 to 1600.	Closed	Study of illustrative cadet/midshipmen case histories.

Note: 1. The public may attend the meeting marked "OPEN". 2. The meeting being "CLOSED" to the public is due to privacy act restrictions. Specific honor cases will be presented to the panel. The basis for the closed portion of the meeting is paragraph (6) of section 552b(c), title 5, U.S. Code.

Point of Contact: Executive Secretary, LTC James O. Younts III, 695-1983.

[FR Doc. 89-400 Filed 1-9-89; 8:45 am]

BILLING CODE 3710-08-M

Meeting; Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy

Subject: Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy.

Name of Subcommittee to Meet: Panel on Military Environment—Values, Functions, and Regulations.

Date of Meeting: 23 January 1989.

Place: U.S. Court of Military Appeals, 5th and E Streets NW., Washington, DC.

Proposed Agenda: 1. Review of plenary commission meetings. 2. Discussion of the relationship of the honor system to the values, functions, and regulations of the military environment.

Point of Contact: Executive Secretary to the Commission, LTC James O. Younts III, 695-1983.

[FR Doc. 89-401 Filed 1-9-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Chicago Operations Office, Restricted Eligibility for Grant, Award: American Nuclear Society

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Department of Energy (DOE) Chicago Operations Office announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.7(b)(2), it is restricting eligibility for award of a grant to the American Nuclear Society (ANS) in order to partially support a conference commemorating fifty years of research on the nuclear fission process. The conference will provide a forum for the exchange of knowledge among peers through the presentation of papers which will feature a recapitulation of progress by outstanding contributors and presentations of nuclear fission and applications.

FOR FURTHER INFORMATION CONTACT: Richard Oehl, NE. U.S. Department of Energy, Associate Deputy Assistant Secretary for Reactor Deployment, 11901 Germantown Road, Germantown, Maryland 20874, (301) 353-2948.

SUPPLEMENTARY INFORMATION: DOE believes that the American Nuclear Society and the other sponsoring organizations of the conference (American Chemical Society, American Physical Society and the National Institute of Standards and Technology) are the only entities in the United States planning to conduct a conference commemorative of the discovery of nuclear fission. The American Nuclear Society is considered to be unique in its qualification to sponsor such a conference because of the nature of its charter as a technical society devoted to the nuclear field.

The conference will be held in April 1989. DOE plans to provide ANS with $20,000.00 in funding.

Issued in Chicago, Illinois, on December 23, 1988.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 89-495 Filed 1-9-89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-61-NG]

Metro Gaz Marketing, Inc.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Metro Gaz Marketing, Inc. (Metro Gaz Marketing), blanket authorization to export natural gas to Canada. The order issued in ERA Docket No. 88-61-NG authorizes Metro Gas Marketing to export up to 150 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 23, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-497 Filed 1-9-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-57-NG]

Natgas U.S. Inc.; Order Extending Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Natgas U.S. Inc. an extension of its blanket authorization to import up to 730 Bcf of Canadian natural gas over a two-year term beginning July 1, 1988, through June 30, 1991.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-498 Filed 1-9-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket Nos. 87-34-LNG]

Pan National Gas Sales, Inc.; Order Granting Authorization To Import Liquefied Natural Gas From Algeria and Imposing Conditions

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of order granting authorization to import liquefied natural gas from Algeria and imposing conditions.

SUMMARY: The Economic Regulatory Administration (ERA) gives notice that it has issued an order granting Pan National Gas Sales, Inc. (Pan National) a 20-year authorization to import up to 3.3 Tcf of liquefied natural gas (LNG) from Algeria, to be delivered to Lake Charles, Louisiana, beginning on the date of first delivery. The ERA conditioned the order so that, for any LNG imported pursuant to the authorization which involves a purchase agreement of over two years in length, Pan National or some other designated applicant shall file with the ERA a separate application for import authority for the LNG within 90 days of the date of such purchase agreement.

A copy of this Order is available in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on December 27, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-500 Filed 1-9-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Small Business Innovation Research Commercialization Assistance Project

AGENCY: Department of Energy, Office of Energy Research.

ACTION: Notice of program solicitation.

SUMMARY: The Department of Energy (DOE), Office of Energy Research, through the Oak Ridge Operations Office, invites organizations with appropriate capability to submit applications for financial assistance for planning and implementing a commercialization project for Phase II

awardees under the Small Business Innovation Research (SBIR) Program.

The objective of this project is to help SBIR awardees to commercialize their products and processes, and may include:

1. Assistance to awardees in determining approaches to be taken in marketing the results of their research and development.

2. Providing opportunities for awardees to contact or meet with potential investors or licensors for the purpose of developing arrangements for pursuing commercial use of their results.

DATE: To be eligible, applications must be submitted to Ms. Susan G. Hiser, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Oak Ridge, Tennessee 37830, by 4:30 p.m. February 17, 1989.

FOR FURTHER INFORMATION CONTACT: All technical questions concerning this Program Solicitation should be directed to Dr. Samuel J. Barish, SBIR Program Manager, ER-16, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20545, telephone: (301) 353-3054. All other inquiries should be directed to Ms. Susan G. Hiser, Contracting Officer, Procurement and Contracts Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831-8758, telephone: (615) 576-6367.

Authority: 10 CFR Part 600.

SUPPLEMENTARY INFORMATION:

Eligibility

This solicitation is open to private and public entities (except Federal Agencies) within the United States and its territories, including industry, associations, schools, colleges, universities, and state, local and regional government organizations, small business concerns and individuals.

Award Size and Duration

The FY 1989 budget for this project is $20,000. It is anticipated that one award will be made for a 12-month period.

No fee will be paid in accordance with 10 CFR Part 600.103(h).

Evaluation Process and Selection Criteria

Applications will be judged competitively to select for award the application offering the best value to the Government on the following criteria:

1. The approach shown in the application, and the likelihood that it will be successful in helping SBIR awardees to commercialize their products and processes.

2. The qualifications and experience of the Project Manager and other key staff, and their ability to carry out the project.

3. The company experience in or related to:

a. Marketing high technology innovation,

b. Providing training for marketing and commercialization. More specific evaluation criteria will be available in the "Guide for the Preparation of Applications for the SBIR Commercialization Project—1989."

Application Preparation Guidelines

Applications submitted in response to this solicitation shall contain the information required in the "Guide for the Preparation of Applications for an SBIR Commercialization Assistance Project—1989," Program Solicitation Number DE-PS05-89ER80688. Copies of the guide are expected to be ready for mailing by January 3, 1989. Qualified applicants may obtain a copy of the guide by writing to the U.S. Department of Energy, Oak Ridge Operations, Procurement and Contracts Division, ATTN: Susan G. Hiser, P.O. Box 2001, Oak Ridge, Tennessee 37831-8758, telephone number: (615) 576-6367.

DOE assumes no responsibility for any costs associated with application preparation under this announcement.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-496 Filed 1-9-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2216-001 New York]

Power Authority of the State of New York; Availability of Environmental Assessment

January 5, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Niagara County, near Lewiston and Niagara Falls, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-489 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-583-002]

O'Brien California Cogen II Limited; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

December 16, 1988.

On December 2, 1988, O'Brien California Cogen II Limited (Applicant), of 225 South Eighth Street, Philadelphia, Pennsylvania 19106 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Salinas, California. The facility as originally proposed was to consist of a combustion turbine generator, a three drum (tri-pressure) heat recovery steam generator and an extraction condensing turbine generator. Thermal energy recovered from the facility will be used either via absorption chiller for freezing of food products or directly used for food processing. The primary energy source will be natural gas.

The original application was filed on June 27, 1985 and granted on September 18, 1985 (32 FERC ¶ 62,606).

The recertification is requested due to the following changes: (1) Ownership has been changed from O'Brien Energy Systems, Inc. to O'Brien California Cogen II Limited, (2) the capacity has increased from 41 megawatts to 48 megawatts, (3) thermal output has increased from 23,750 lb/hr to 29,000 lb/hr, (4) the installation date was changed from June 1986 to August 1988. In addition, the proposed facility will not include an extraction/condensing turbine generator.

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 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. 89-488 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 5, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on December 30, 1988, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's regulations (18 CFR Part 154) and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Fifth Revised Sheet No. 31; Alternate Substitute Fifth Revised Sheet No. 31

CNG states that this filing is an out-of-cycle PGA made for the purpose of passing through the increased cost of gas from CNG's pipeline suppliers. The non-gas cost of service and rates reflected on Substitute Fifth Revised Sheet No. 31 are the same as that reflected on Fifth Revised Sheet No. 31 filed in CNG's Docket No. RP88-211 on December 29, 1988 and reflect a voluntary reduction in rates. The alternate tariff sheet is based on the same non-gas cost of service and rates that are contained on the alternate tariff sheets filed in Docket No. RP88-211 on December 29, 1988, and reflects compliance with the suspension order in Docket No. RP88-211, as amended.

CNG seeks a waiver of the Natural Gas Act and the Commission's regulations to permit the primary tariff sheets to become effective on January 1, 1989.

Copies of the filing were served upon CNG's sales customers as well as 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 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-478 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 5, 1989.

Take notice that on December 30, 1988, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Twelfth Revised Sheet No. 47; Twelfth Revised Sheet No. 48

Carnegie states that this out-of-cycle purchased gas adjustment filing is made to reflect charges in its projected gas costs resulting from rate charges by its pipeline supplier, Texas Eastern Transmission Corporation. Carnegie proposes to adjust its rates effective February 1, 1989, to reflect a $0.2269 per Dth increase in the applicable commodity components of its LVWS and CDS rate Schedules, a $0.1769 per Dth decrease in the D-1 component, and a $0.0007 per Dth decrease in the D-2 components of those Rate Schedules. The proposed increase in the LVIS Rate Schedule is $0.2176 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 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 January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-479 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 5, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on December 30, 1988 certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective February 1, 1989.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.1211 per dt in the Commodity Charge; a decrease of $0.3892 per dt in the Demand Charge 1; and a decrease of $0.0561 per dt in the Demand Charge 2 all as measured against ESNG's previously scheduled PGA filing in Docket No. TA89-1-23-000 as filed on September 2, 1988 and approved to be effective November 1, 1988. As measured against ESNG's currently effective sales rates as filed on November 30, 1988 in Docket No. TF89-2-23-000 and approved to be effective December 1, 1988 the sales rates filed hereon reflect a decrease of $0.0891 per dt in the Commodity Charge; a decrease of $0.0306 per dt in the Demand Charge 1; and a decrease of $0.0500 per dt in the demand Charge 2. The current purchased gas cost adjustment has been developed using a quarterly projection of gas supply (firm and spot) and requirements and the latest pipeline supplier rates on file with the Commission. ESNG expects its pipeline suppliers, Transcontinental Gas Pipe Line Corporation and Columbia Gas Transmission Corporation to file, on or about December 30, 1988 revised rates to comply with their quarterly PGA effective date of February 1, 1989. ESNG, therefore, anticipates amending its filing in this docket in early January, 1989, in order to reflect any necessary revisions

in its rates as a result of their new filed rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 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 January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-480 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-025]

El Paso Natural Gas Co.; Compliance Filing

January 5, 1989.

Take notice that El Paso Natural Gas Company ("El Paso"), on December 22, 1988, tendered for filing in compliance with ordering paragraph (A) of the Federal Energy Regulatory Commission's ("Commission") order issued December 8, 1988 at Docket Nos. RP85-58-022, TA85-1-33-011, RP85-58-023 and TA85-1-33-012, certain tariff sheets which reflect a reduction in jurisdictional sales rates. Such tariff sheets are identified on the appendix for inclusion in El Paso's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that on October 24, 1988, in response to the Commission's letter order dated September 30, 1988, and ordering paragraph (B) of the Commission's order issued May 18, 1988, El Paso filed certain tariff sheets which reflected the rate impact of deducting from the rate base, certain deferred income taxes related to El Paso's company-owned production that was repriced from a cost of service basis to NGPA prices effective October 1, 1983. Subsequently by order issued December 8, 1988, the Commission accepted for filing certain tariff sheets filed October 24, 1988, subject to El Paso refiling within fifteen (15) days of issuance of said order those tariff sheets effective July 1, 1985 forward, to reflect the rate reductions as stated in the order. The order accepted as filed the revised tariff sheets having effective dates prior to July 1, 1985.

El Paso further states that it has revised the tariff sheets effective July 1, 1985 forward to reflect the rate decreased stipulated by the December 8, 1988 order.

Copies of El Paso's filing were served upon all parties of record in Docket Nos. RP85-58-000 and TA85-1-33-000 and otherwise upon all interstate pipeline system customers of El Paso and all interesed 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 214 and 211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-481 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-184-007]

El Paso Natural Gas Co.; Tariff Filing

January 5, 1989.

Take notice that on December 30, 1988, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("E Paso") submitted a filing pursuant to the Commission's Order No. 500-F, "Order Extending Date for Filing Final Tariff Sheets Under Alternative Passthrough Mechanisms," issued December 9, 1988, at Docket No. RM87-34-000.

El Paso states that on December 1, 1988, at Docket No. RP88-184-005, El Paso tendered certain tariff sheets to comply with the Commission's orders issued June 30, 1988 and November 21, 1988 and filed concurrently a motion to place those tariff sheets into effect on December 1, 1988. Such tariff sheets serve to establish the procedures by which El Paso proposed to recover from its customers, as prescribed by Order No. 500, a portion of the payments (referred to herein as "buyout" or "buy-down" payments or costs) to its natural gas suppliers made in settlement of claims arising under gas purchase agreements or to terminate or suspend such agreements.

El Paso states that on December 9, 1988, the Commission issued Order No. 500-F which extended the previously set deadline of December 31, 1988 to March 31, 1989 for the filing of final tariff sheets under the alternative passthrough mechanism. Order No. 500-F stated that a pipeline must file by March 31, 1989 tariff language to be eligible to use this provision. Accordingly, El Paso filed revisions to its tariff filed on December 1, 1988.

El Paso requested that the Commission grant any and all waivers of its rules and regulations as may be necessary so as to permit the tendered tariff sheets to become effective on January 1, 1989.

Copies of the filing were served upon all parties of record in Docket No. RP88-184-000 and, otherwise, upon all interstate pipeline system sales customers and shippers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-482 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-87-029]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

January 5, 1989.

Take notice that on December 22, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 containing changes in rates and other tariff provisions for effectiveness on December 7, 1988 and January 1, 1989:

Proposed for Effectiveness December 7, 1988

First Revised Volume No. 1

Twenty-Second Revised Sheet No. 7
Eighth Revised Sheet No. 7-A
Third Revised Sheet No. 14
Sixth Revised Sheet No. 68
Third Revised Sheet No. 69
Fifth Revised Sheet No. 70
Third Revised Sheet No. 70-A
Fourth Revised Sheet No. 71
Third Revised Sheet No. 71-A
Fourth Revised Sheet No. 72
Third Revised Sheet No. 73
Third Revised Sheet No. 74
Fifth Revised Sheet No. 75
Third Revised Sheet No. 75-A
Second Revised Sheet No. 75-B
First Revised Sheet No. 75-C
Fourth Revised Sheet No. 76
Second Revised Sheet No. 77
First Revised Sheet No. 77-A
Original Sheet No. 77-B
Second Revised Sheet No. 82
Third Revised Sheet No. 112
Second Revised Sheet No. 116

Original Volume No. 2

Ninth Revised Sheet No. 27

Proposed for Effectiveness January 1, 1989

First Revised Volume No. 1

Twenty-Third Revised Sheet No. 7

According to Granite State the rate changes and revised tariff provisions are submitted in compliance with an order of the Commission issued November 23, 1988 approving a settlement in Docket No. RP87-87-000. Granite State further states that the rate filing in Docket No. RP87-87-000, originally filed on August 20, 1987, reflected its increased costs for service to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) resulting from the expanded operations approved in Docket No. CP87-39-000 to import and pu chase Canadian gas from Shell Canada Limited (Shell) for system supply.

It is further stated that the settlement certified to the Commission contained two levels of a jurisdictional cost of service because of a phasing of the Shell deliveries during an initial interim period on an interruptible basis, followed by a period during which Shell will make firm daily deliveries. Also, according to Granite State, the settlement proposed jurisdictional rates for each cost of service based on different cost allocation methods: Granite State's historical method and an allocation based on a systemwide costs. Granite State further states that, in the order approving the settlement issued November 23, 1988, the Commission directed Granite State to adopt the systemwide cost allocation procedure and to implement this method with rates effective December 1, 1988.

In its compliance filing, Granite State proposes to implement the requirements of the settlement on December 7, 1988. According to Granite State the compliance rates are based on the settlement rates for the period during which Shell provides full firm daily service to Granite State and the inauguration of such firm service commenced December 7, 1988.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulation commissions of the State of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-483 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

January 5, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on December 30, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) an interim PGA filing, which includes Eighth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective February 1, 1989. The revised tariff sheet reflects a current increase of $.1440 in the average cost of purchased gas.

Kentucky West states that, effective February 1, 1989, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.0957 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 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 January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-484 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-209-015]

Natural Gas Pipeline Co. of America; Motion Filing To Make Suspended Tariff Sheets Effective

January 5, 1989

Take notice that on December 21, 1988, Natural Gas Pipeline Company of America (Natural) filed at Docket No. RP88-209 a Motion Filing and Stipulation And Agreement Pertaining To Interim Rate Reduction. This filing includes, among other things, two separate sets of rates: (1) Motion Rates which reflect Natural's as-filed rates adjusted to comply with the Suspension Order herein, 44 FERC ¶ 61,176, *reh'g denied*, 44 FERC ¶ 61,404 (1988) and to reflect a unilateral reduction in cost of service and (2) rates resulting from the Stipulation and Agreement Pertaining to Interim Rate Reduction (Interim Settlement). Natural proposes that the Interim Settlement rates become effective January 1, 1989.

Natural states further that the Motion and Interim Settlement rates reflect the GRI charge approved by the Commission in Opinion No. 320, 45 FERC ¶ 61.344 (1988) issued November 30, 1988. Additionally, the Motion Filing shows the recomputation of Natural's Quarterly PGA adjustment effective December 1, 1988. The cumulative adjustment was restated to reflect revisions resulting from the use of costs and units underlying the settlement base tariff rates. Natural stated that as in the past, it will utilize the procedures of 18 CFR 154.309 where necessary to adjust its commodity rates.

Natural states that copies of this filing have been served on all of its jurisdictional customers, all parties at Docket No. RP88-209, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc 89-485 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-009]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

January 5, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on December 30, 1988, certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, which tariff sheets are included in Appendix A attached to the filing. The proposed effective dates of the revised sheets are indicated in Appendix A.

Transco states that the purpose of its tariff filing is to revise rates related to the recovery of producer buyout and buydown costs to comply with the provisions of Ordering Paragraph (I) of the Commission's March 31, 1988 order in the subject docket and §§ 29.3(b) and 29.5(b) of Transco's General Terms and Conditions of Volume No. 1 of its FERC Gas Tariff. The referenced order and tariff provisions require Transco to file within 30 days after November 30, 1988 revised amounts which it seeks to recover under its Order 500 recovery mechanism to reflect actual amounts paid or for which it has a written obligation to pay as of November 30, 1988.

Transco further states that copies of the instant filing are being mailed to its jurisdictional customers, State Commissions and interested parties. In accordance with the 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 offices 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 January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-486 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

January 5, 1989.

Take notice that Western Gas Interstate Company ("Western"), on December 29, 1988, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for the tariff sheets is February 1, 1989.

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) An increase in cost under Western's Rate Schedule G-N of 23.07 cents per Mcf; and (2) a decrease in cost under Western's Rate Schedule G-S of 49.72 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 No. 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 January 12, 1989. 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. 89-487 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-55-001]

Questar Pipeline Co.; Rate Change

January 4, 1989.

Take notice that on December 22, 1988, Questar Pipeline Company tendered for filing and acceptance Eighteenth Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1988, and First Revised Sheet No. 12-A to First Revised Volume No. 1 and Eleventh Revised Sheet No. 8 to Original Volume No. 3 to be effective January 1, 1989.

Questar Pipeline states that the purpose of this filing is to: (1) Adjust the purchased gas costs under Questar Pipeline's sale-for-resale Rate Schedule CD-1 effective December 1, 1988; (2) conform to the Commission's November 30, 1988, order in Docket No. TQ89-1-55-000; and (3) implement the Gas Research Institute charge adjustment authorized by the Commission in Docket No. RP88-182-000 to be effective January 1, 1989.

Questar Pipeline further states that Eighteenth Revised Sheet No. 12 shows a community base cost of purchased gas as adjusted of $2.16041/Dth for sales under its Rate Schedule CD-1 which is $0.13908/Dth higher than the currently effective rate of $2.02106/Dth. The demand base cost of purchased gas as adjusted is decreased by $0.14159/Mcf to $0.1357/Mcf.

Questar Pipeline has requested any necessary waivers of the Commission's Rules and Regulations to allow the tendered tariff sheets to become effective as proposed.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 88-435 Filed 1-9-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-48-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 4, 1989.

Take Notice that Transwestern Pipeline Company (Transwestern) on December 30, 1988 tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1. Transwestern states that the proposed changes would: *First,* adjust Transwestern's rates resulting in a decrease in revenues from sales, transportation, and production and gathering services by $9.9 million annually, based on volumes and costs for the twelve months ended August 31, 1988, as adjusted for the Test Period: *Second,* modify the transportation tariff provisions and implement fixed variable rate design prospectively. Transwestern also proposed to establish a Federal Income Tax Tracker in its Tariff. The Revised Tariff Sheets will not result in an increase in the level of charges to any of Transwestern's jusrisdictional customers. Transwestern has requested that the proposed tariff changes filed therein be made effective February 1, 1989, without suspension.

Transwestern advises that the filed-for revenue level is actually $12.5 million less than the annual revenues required to recover the Test Period Cost of Service. Transwestern states that in addition to the proposed rate decrease for certain services, it has voluntarily maintained the currently effective level of any derived rate which would have otherwise increased in order to maintain the marketability of its system in light of today's intensely competitive market environment.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff 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 29426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 285.211). All such motions or protests must be filed on or before January 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-436 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

Valley Gas Transmission, Inc.; Change in Rates Pursuant to Purchased Gas Adjustment

[Docket No. TQ89-1-50-000]

January 4, 1989

Take notice that on December 29, 1988, Valley Gas Transmission, Inc. ("Valley") tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tarriff:

Thirty-Ninth Revised Sheet No. 2A
Substitute Thirty-Nineth Revised Sheet No. 2A to Original Volume No. 1
Twelfth Revised Sheet No. 10
Substitute Twelfth Revised Sheet No. 10 to Original Volume No. 2

Valley states that these tariff sheets, which are proposed to become effective on February 1, 1989 and April 1, 1989 are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley further states that these proposed changes reflect adjustments to its current surcharge adjustment and current gas cost adjustment, and that its filing has been served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. 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 January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-438 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-197-005]

Williston Basin Interstate Pipeline Co.; Compliance Filing for Self-Implementing Transportation

January 4, 1989.

Take notice that on December 21, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing a revised tariff sheet to Original Volume No. 1-B of its FERC Gas Tariff. Williston Basin states that the revised tariff sheet is being filed in compliance with the Commission's Order of November 25, 1988 in Docket Nos. RP88-197-000 *et al.* Williston Basin requests that Third Substitute Original Sheet No. 127 submitted in its filing be made effective September 24, 1988.

Copies of the instant filing were served upon Williston Basin's affected jurisdictional customers, interested state regulatory agencies and intervenors herein.

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). All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-437 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $7.2 million, plus accrued interest, in alleged crude oil violation amounts obtained from New York Petroleum, Inc. (Case No. KFX-0052), Chevron U.S.A. Inc. (Case No. KEF-0100), Patton Oil Company (Case No. KEF-0107), and Ladd Petroleum Corporation (Case No. KEF-0112). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by October 31, 1989, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from New York Petroluem, Inc., Chevron U.S.A. Inc., Patton Oil Company and Ladd Petroleum Corporation. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by October 31, 1989, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Date: December 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Names of Firms: New York Petroleum, Inc., Chevron U.S.A. Inc., Patton Oil Company, Ladd Petroleum Corporation.

Dates of Filing: April 6, 1988, January 27, 1988, March 25, 1988, July 8, 1988.

Case Numbers: KFX-0052, KEF-0100, KEF-0107, KEF-0112.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed four Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from New York Petroleum, Inc. (NYP), Chevron U.S.A. Inc. (Chevron), Patton Oil Company (Patton), and Ladd Petroleum Corporation (Ladd).[1] These four firms remitted a total of $7.2 million to the DOE pursuant to court approved settlements, adjudications or DOE consent orders. An additional $504,000 in interest has accrued on that amount as of November 30, 1988. This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the

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[1] The OHA previously established refund procedures for the crude oil overcharge funds obtained from NYP pursuant to a court-approved settlement. *New York Petroleum, Inc.*, 12 DOE ¶ 85,047 (1984). Those procedures permitted direct purchasers of NYP crude oil to submit applications for refund. *See New York Petroleum, Inc./Ashland Oil, Inc.*, 16 DOE ¶ 85,613 (1987). Since that time, the Stripper Well Settlement Agreement has been implemented. As explained below, the Settlement Agreement permits purchasers of refined petroleum products that were injured by alleged crude oil overcharges, such as those settled in the NYP litigation, to submit applications for refund to the OHA. The remaining $115,580.42 in NYP funds are subject to the terms of the Settlement Agreement.

Ladd remitted $2,887,611.31 to the DOE pursuant to a July 27, 1987 Judgement of the United States District Court for the Eastern District of Louisiana. Chevron remitted $3,092,414.21 pursuant to Consent Order Number RGFE006A1Z, and Patton remitted $1,110,940.14 pursuant to Consent Order Number 810C00323Z.

authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the four firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides the crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737. The notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchse volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a volumetric refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The States appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decision and Order

On July 26, 1988, the OHA issued a Proposed Decision and Order (PD&O) establishing tenative procedures to distribute the alleged crude oil violation amounts obtained from NYP, Chevron, Patton and Ladd. The OHA tentatively concluded that the monies in those cases should be distributed in accordance with the MSRP and the April 10, 1987 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10, 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O.

III. Discussion of the Comments Received

In response to the PD&O, the OHA received comments from three parties: Chevron; a group of 15 States of the United States ("the States"); and Philip P. Kalodner as counsel for six electric utilities, 14 foreign-flag shipping companies, and four pulp and paper manufacturers. Mr. Kalodner's clients are all potential recipients of crude oil refunds. In general, the commenters addressed two issues: (1) The amount of funds reserved to pay injured claimants; and (2) the presumption of injury for end-users.[2]

A. The Amount Reserved for Refunds to Claimants

In his comments, Mr. Kalodner contends that the OHA should not distribute 80 percent of the alleged crude oil violation amounts to the states and federal government. According to Kalodner, such a distribution will "preclude full direct restitution to claimants." Kalodner comments at 4. Kalodner claims that the 20-percent reserve is insufficient to satisfy all of the legitimate claims that have been or will

[2] In its comments, Chevron noted a factual omission in the PD&O. The Chevron Consent Order, Number RGFE006A1Z, settled violations of the crude oil pricing regulations allegedly committed by Gulf Oil Corporation (Gulf), not Chevron. According to Chevron, it entered into this Consent Order after it had acquired Gulf. The PD&O failed to state that the Consent Order which was executed by Chevron does not actually involve any alleged crude oil violations by that firm.

be filed in these proceedings. Kalodner asserts that both the DOE and the states assured the United States District Court for the District of Kansas that the amount reserved for the claims process would be adequate to provide refunds for all successful claimants. "Having provided that asurance in order to obtain approval of the Court of the Final Settlement Agreement and the benefits to themselves, the states and the DOE are required by the doctrine of judicial estoppel to make good on that assurance." Kalodner comments at 5.

There is absolutely no evidence that the 20-percent reserve will be insufficient to pay claimants. We have examined Kalodner's assertions and find them unsupported. Moreover, the 20-percent set aside is mandated by the following terms of the Settlement Agreement:

> OHA may reserve a reasonable portion of funds from each such proceeding to satisfy potentially provable claims of identifiable injured claimants who have not waived their claims, but such reserve *shall not exceed 20 percent* of the monies in such proceeding and amounts in excess of the reserve shall be distributed while awaiting completion of the first stage refund proceedings. The percentage of the reserve will be altered * * * periodically * * * to reflect the amount of reserve that is warranted and sufficient to provide adequate funding for eligible first-stage claims, and will be lowered as justified by claims experience as a consequence of this Agreement.

Settlement Agreement at IV.B.6, 6 Fed. Energy Guidelines ¶ 90,509 at 90,665 (emphasis added).

Thus the OHA may not set aside more than 20 percent of alleged crude oil violation amounts for direct refunds to injured claimants. The OHA may reduce the size of this reserve, but it may not raise the reserve above 20 percent of the funds received. *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893 (1987). The remainder of the crude oil violation amounts must be distributed to the states and federal government prior to the completion of the refund claims process. As stated in the PD&O, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts subject to this determination in order to ensure that sufficient funds will be available for refunds to injured claimants. We will therefore adopt the procedures as proposed in the PD&O, and order the disbursement of 80 percent of the alleged crude oil violation amounts to the states and federal government.[3]

B. The Presumption of Injury for End-Users

The only matter addressed by the States in their comments is the use of a presumption of injury to allow end-users to meet their burden of proving injury. Of the many issues relating to the end-user presumption raised in the States' comments, two warrant further discussion. First, the States ask whether the presumption of injury is rebuttable. Second, the States request "clear guidelines as to what evidence is relevant or sufficient to rebut" the presumption. States' comments at 1.

1. The presumption of injury is rebuttable. We agree with the States that the presumption of injury for end-users is rebuttable, and have so indicated on numerous previous occasions. *See, e.g., Allerkamp*, 17 DOE at 88,172; *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). In *Allerkamp*, we discussed the presumption of injury and the burdens of proof as follows:

> The claimants' burden of proof is eased by the presumption. If an interested party submits evidence to rebut the presumption of injury, we must first determine whether the evidence submitted is relevant to the issue. If the evidence is relevant and sufficient to rebut the presumption, the claimant has the burden of coming forward with further evidence of injury. However, if we find the evidence submitted to rebut the presumption to be insufficient, a refund to the end-user can be approved, based on the weight of the presumption, without requiring the end-user to submit further evidence of injury.

17 DOE at 88,172–73

2. Evidence required to rebut the presumption of injury. In their comments, the States request "clear guidelines" concerning the evidence that the OHA considers "relevant and sufficient" to rebut the end-user presumption. States' comments at 1. As explained below, we cannot approve the States' request. Further "guidelines" are neither necessary nor appropriate in the context of this order establishing refund procedures, and they can be issued only in connection with individual refund claims.

The States wrongly claim that the end-user presumption is based only "on the need for efficient procedure." States' comments at 9. The end-user presumption was adopted first and foremost as an evidentiary tool so that parties injured by crude oil overcharges would have the opportunity to obtain some measure of restitution of those overcharges. As we previously noted, the DOE "has a duty to identify injured persons and, to the extent possible, to make direct refunds to them." *Tarricone*, 15 DOE at 88,894. This duty arises in part from section 209 of the Economic Stabilization Act of 1970, 12 U.S.C. 1904 (note), and the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4502(b). To fulfill this Congressional mandate and assure that restitution is achieved, the OHA must take into account the complexity of oil overcharge proceedings, as well as the difficulty in actually proving injury from crude oil overcharges, caused in part by the passage of time since the period of price controls and difficulties applicants may experience in locating records and relevant market data. *Tarricone*, 15 DOE at 88,894. *See also Report to the United States District Court for the District of Kansas, In re: Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985) (the *Stripper Well Report*) (evidentiary hearing, during which the OHA determined the amount of crude oil overcharges absorbed by refiners as a class, resulted in a record of nearly 13,000 pages of written and oral testimony from 64 public and private entities). The Subpart V regulations reflect the DOE's awareness of these factors, and specifically authorize the use of presumptions for the evaluation of individual refund claims. 10 CFR 205.282(e).

If end-user claimants were routinely required to submit detailed evidence of injury in order to receive refunds for crude oil overcharges, a great majority of claimants would find that the refunds in question were not worth the time and cost involved in pursuing them. The result would be the complete frustration of the restitutionary purposes of these proceedings, since "virtually no end-users would receive restitution for the crude oil overcharages they experienced." *Id.* at 88,895. Accordingly, the presumption satisfies the important restitutionary policy objectives outlined above. Moreover, the States' challenge to the presumption was rejected by Judge Theis, who found the States' arguments unpersuasive and upheld this fundamental element of the OHA's crude oil refund process. *See In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. at 1323. The States may not relitigate those issues in this proceeding under the guise of seeking "clear guidelines" on how to rebut the end-user presumption.

The crude oil refund procedures have been extremely effective in making refunds available to many members of the overcharged community. To date,

[3] Mr. Kalodner also suggests in his comments that we add various amounts to the numerator of the volumetric formula in order to increase the size of refunds. These suggestions were previously considered and rejected in *Allerkamp*, 17 DOE at 88,174–175. Mr. Kalodner has presented no new arguments to justify a reconsideration of those issues in this determination.

the OHA has decided over 40,000 crude oil refund applications. Our decisions on individual crude oil refund applications hold that the presumption of injury is a sufficient basis for approving a refund unless an interested party submits relevant and sufficient evidence to the contrary concerning a particular applicant. *See, e.g., Royal Crown of Angelo, Inc.*, 17 DOE ¶85,734 at 89,398 (1988). If an objecting party submits sufficient evidence to rebut the presumption, however, the burden of going forward with the evidence shifts to the applicant, who must then present relevant information to support its Application for Refund. *See Christian Haaland A/S*, 17 DOE ¶85,439 at 88,865 (1988) (factual and legal issues raised by the States rebutted the presumption and shifted the burden of going forward with the evidence to the applicants); *Cook Construction Co.*, 18 DOE ¶—, No. RF272-2005 (December 1, 1988) (issues raised by the States concerning price escalator clauses in the applicant's contracts partially rebutted the presumption of injury for that applicant).

The States are aware of the type of evidence that is necessary to rebut the end-user presumption. They successfully presented such evidence in *Christian Haaland* and *Cook Construction*. The evidence required to rebut the presumption must be of sufficient weight to cast serious doubt upon the notion that the applicant was injured by crude oil overcharges. Generalized assertions or allegations concerning injury clearly will not satisfy this standard. *See, e.g., Chicago Transit Authority*, 17 DOE ¶85,223 at 88,440 (1988) (inadequate proof of the assertion that all governmental units passed through overcharges); *Gulf States Asphalt Co.*, 18 DOE ¶85,154 at 88,250 (1988) (broad statement that "almost every industry" was able to pass through some of its increased costs found insufficient to rebut the presumption). Industry-wide data that has no relationship to the individual applicant also will be insufficient. *Royal Crown*, 17 DOE at 89,398 (evidence of pass through of increased sugar costs irrelevant to determination of pass through of increased energy costs); *Airborne Express, Inc.*, 18 DOE ¶85,170 at 88,278 (1988) (evidence of cost pass through by the scheduled passenger airlines insufficient to rebut the injury presumption for all-cargo airlines); *Mid-Atlantic Coca-Cola Bottling Co.*, 18 DOE ¶85,141 at 88,227 (1988) (industry-wide data insufficient to rebut the presumption in industries where the energy needs of individual firms vary due to firm-specific operating factors). Moreover, evidence of sustained growth and profitability of a particular firm or industry will not in and of itself rebut the presumption. *Los Angeles Times*, 18 DOE ¶85,013 at 88,022-23 (1988).

These are equitable proceedings, and the facts and circumstances of each contested case must be carefully weighed and balanced to achieve restitution to injured claimants. Therefore, the adjudication of contested crude oil refund claims under the Subpart V regulations will continue on a case-by-case basis, as envisioned in Paragraph IV.B.1 of the Settlement Agreement.[4]

IV. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that the $7.2 million in alleged crude oil violation amounts covered by this Decision, plus the $504,000 in interest which has accrued on that amount as of November 30, 1988, should be distributed in accordance with the crude oil refund procedures previously discussed. As noted in section III.A, *supra*, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or the $1.54 million including interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *MAPCO, Inc.*, 15 DOE ¶85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather then passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased, *See Tarricone*, 15 DOE, at 88,893-96. The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE at 88,797. If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury.

Reseller and retailer claimants must submit detailed revidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed by the OHA in the *Stripper Well Report*. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascase Corp.*, 16 DOE ¶85,214 at 88,411 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($7.2 million) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868. This yields a volumetric refund amount of $0.0000035658 per gallon. Refund applications submitted pursuant to this Decision must be filed by October 31, 1989, the deadline established in *World Oil Co.*, 17 DOE ¶85,568 (1988).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.[5] The

[4] The States raise other, similar theoretical objections and questions concerning the crude oil refund process. These are inappropriate for the same reasons discussed in the text. Each crude oil refund application must be analyzed individually. Differences arise from various company-specific factors, including competitive environments, the effects of long-term contracts, and the mix of products produced by a particular firm.

[5] The total volumetric refund amount approved in all proceedings finalized prior to and including *Shell*

Continued

volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

To apply for a crude oil refund, a claimant should submit an application for refund. That application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Settlement Agreement in the Stripper Well Exemption Litigation);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its retail customers.

All applications should be typed or printed and clearly labelled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $7.2 million in principal, plus $504,000 in interest, in alleged crude oil violation amounts subject to this Decision, or $6.16 million, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate $6.16 million and transfer one-half of that amount, or $3.08 million, into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states form their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remittted by New York Petroleum, Inc., Chevron U.S.A. Inc., Patton Oil Company and Ladd Petroleum Corporation may now be filed.

(2) All applications submitted prusuant to paragraph (1) above must be filed no later than October 31, 1989.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to Paragraphs (4), (5), and (6) below, all of the funds from the following subaccounts: New York Petroleum, Inc., Account No. 640C00247Y; Chevron U.S.A. Inc., Account No. RGFE006A1Z; Patton Oil Company, Account No. 810C00323Z; and Ladd Petroleum Corporation, Account No. 810C00341Z.

(4) The Director of Special Accounts and Payroll shall transfer $3,084,125.32 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from November 30, 1988 to the date of the transfer, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $1,542,062.67 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from November 30, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

Date: December 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-501 Filed 1-9-89; 8:45 am]

BILLING CODE 6450-01-M

Oil was $0.0008442315. *Shell Oil*, 17 DOE at 88,406. When the volumetric approved in *World Oil co.* and this Decision is added to that amount, the current total per-gallon refund is $0.0008478963.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3504-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the

information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202-382-2740).

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Pesticide Product Registration Fee (EPA ICR #1214). This is a new collection.

Abstract: Recent Amendments to the Federal Insecticide, Fungicide and Rodenticide Act require pesticide registrants to pay an annual fee for each pesticide registered with EPA. To aid in the collection of these fees, EPA will send a maintenance fee filing form (and instructions) to each registrant, which they must complete and return to the Agency by March 1.

Burden statement: Public reporting burden for this collection of information is estimated to average 1.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Pesticide product registrants.

Estimated no. of respondents: 5,300

Estimated total annual burden on respondents: 9,010 hours.

To obtain a copy of the ICR package contact Sandy Farmer on (202-382-2740).

Public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, must be received by January 23, 1989. Send comments to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460 and Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503 (Telephone (202) 395-3084).

Date: January 3, 1989.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89-421 Filed 1-9-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3503-9; Number SE 87-01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Colmac Energy, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 12, 1988 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 49-MW biomass fired power plant to be located on the Cabazon Indian Reservation near Mecca in Riverside County, California. The permit is subject to certain conditions, including an allowable emission rate for SO_2—12.0 lbs/hr or 20 ppm, TSP—7.5 lbs/hr or 0.010 gr/dscf, (3-hour average, corrected to 12% CO_2) CO—45.0 lbs/hr or 173 ppm, N O_x—30.0 lbs/hr or 70 ppm.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to:

Linda Barajas (A-3-1-), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: the use of an ammonia injection system for the control of NO_x emissions, a limestone injection system for the control of SO_2 emissions, a baghouse for the control of TSP emissions, and combustion controls for the control of CO emissions.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by March 13, 1989.

Date: December 29, 1988.

Kenneth Bigos,

Acting Director, Air Management Division, Region 9.

[FR Doc. 89-425 Filed 1-9-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3504-4]

Science Advisory Board, Sediment Criteria Subcommittee; Open Meeting

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two-day meeting of the Sediment Criteria Subcommittee of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board (SAB) will be held on February 2 and 3, 1989. The meeting will begin at 9:00 a.m. and will be held in the Congressional Room of the Quality Inn Capitol Hill, at 415 New Jersey Avenue, NW., Washington, DC. The meeting will adjourn no later than 5:00 p.m. on Friday.

The Subcommittee has been charged with evaluating the scientific and technical foundations of methodologies available to the Agency for estimating sediment toxicity and the biological impact of inplace contaminated sediments. In addition, the Subcommittee has agreed to comment on the feasibility of utilizing each methodology to determine the extent of contamination and risk posed to the environment and human health. Research directions will also be identified for strengthening each methodology reviewed.

PURPOSE: The specific purpose of this meeting is to review the Equilibrium Partitioning (EP) Method. The technical aspects of this methodology will be presented by Agency staff for evaluation by the Subcommittee. In addition, the relationship between water quality criteria and the EP approach will be explained. The importance of contaminated sediment issues to Superfund activities will be discussed, and a Case Study will be described by EPA Region 1 staff. Finally, the potential for further development and application of the EP method will be explored, including assessment and application to metal contaminations.

FOR FURTHER INFORMATION: This meeting will be open to the public. Any member of the public who wishes to present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Lutithia Barbee, Staff Secretary (A-101 F) Science Advisory Board, U.S. EPA, 401 M Street, SW., Washington, DC. Telephone (202) 382-2552 or FTS-8-382-2552. Written comments will be accepted and fifteen copies can be sent to Ms. Kurtz at the address above. Persons interested in making brief oral statements before the Subcommittee must contact Ms. Kurtz no later than January 26, 1989 to be assured of space on the agenda. Oral presentations should be supplemented by a written statement for the record, which may be submitted (15 copies) to Ms. Kurtz at the time of the meeting for distribution to members of the Subcommittee. Seating

at the meeting will be limited and will be on a first come basis.

Donald G. Barnes,

Director, Science Advisory Board.

Dated: January 4, 1989.

[FR Doc. 89-426 Filed 1-9-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3504-5]

Science Advisory Board, Executive Committee Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board will meet on January 30 from 9:00 a.m. to 5:00 p.m. and on January 31 from 9:00 a.m. to 12:00 noon in the Administrator's Conference Room 1101, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC.

The purpose of the meeting is to review proposed SAB reports on: Modeling Resolution; Radon Measurement; and Measurement of Lead in Drinking Water.

The Committee will be briefed by the Agency on: the EPA budgeting process and its implications for SAB operations; developments in risk assessment associated with the EPA Workshop on Cancer Guidelines; and an update on the Agency's approach to "adversity of effect".

The Committee will discuss SAB followup to modeling resolution; a discussion on the report on Acid Aerosol Health Effects; recommendations for Future Research on Acid Aerosols and a report from the Indoor Air Quality/Total Human Exposure Committee on the review of the EPA Indoor Air Quality Implementation Plan; review of CASAC actions on Ozone Standards and Forest-Related Research; review of Products of Incomplete Combustion of Hazardous Waste; and review of Agency reports to Congress on the Effects of Global Climate Change.

Committee members will brief the Executive Committee on activities of the Drinking Water Metals Subcommittee; Lead Steering Committee; Subcommittee on Halogenated Organic Solvents; Exposure Measurements Guidelines Review; Sediment Criteria Subcommittee; and Research Strategies Advisory Committee.

There will be a discussion of an ORD request to review criteria for personnel advancement to higher grades. The Advancement Criteria Subcommittee will conduct an initial meeting on the issue immediately following the main portion of the Executive Committee Meeting on January 31.

The meeting is open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202-382-4126 by January 23, 1989.

Dated: January 3, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-427 Filed 1-9-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Revision of a currently approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064-0052.

Expiration Date of Current OMB Clearance: August 31, 1990.

Frequency of Response: Quarterly.

Respondents: Insured state nonmember commercial and savings banks.

Number of Respondents: 8301.

Number of Responses Per Respondent: 4.

Total Annual Responses: 33,204.

Average Number of Hours Per Response: 20.67.

Total Annual Burden Hours: 686,369.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contract: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before February 9, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review changes to the FFIEC Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial and savings banks. The changes affect several Call Report schedules and are being made primarily to aid the banking agencies in identifying and monitoring risks for which adequate data have not been available. These risks emanate in part from the ongoing expansion of bank powers, especially at the state level, which allow banks to make investments that were previously not permissible. Memorandum items covering an area of off-balance sheet exposure for which no data are currently collected would be added at this time to fill the void prior to the anticipated adoption of other refinements to off-balance sheet item reporting in conjunction with risk-based capital. Another change relates to information needed to measure the assessment base from which all banks calculate their deposit insurance assessments. The proposed revisions would, if approved, the effective as of the March 31, 1989 report date. These changes would apply to all four sets of report forms (FFIEC 031, 032, 033, and 034).

Dated: December 30, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-475 Filed 1-9-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

Power of Receiver and Conduct of Receiverships; Repurchase Agreements; Western Savings and Loan Association

Date: December 29, 1988.

AGENCY: Federal Home Loan Bank.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is supplementing Board Resolution No. 88-572 to clarify its position concerning the protections afforded to those dealing with insured savings and loan association in "repos" of government and mortgage backed securities. With particular reference to Western Savings and Loan Association, Phoenix, Arizona ("Western") which has engaged in substantial volume of

such "repo" transaction, the Board wishes to make it clear that the protections given to securities dealers and others in the "repo" market by amendments to the Bankruptcy Code would also be afforded to securities dealers and others engaged in repo transactions with Western.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; or Debra Buie, Attorney, Office of General Counsel, (202) 377-6851: Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas, The Federal Home Loan Bank Board ("Board") has considered the particular importance of Repos (as defined below) in providing liquidity and funding for Western Savings and Loan Association, a Arizona chartered institution ("Western"), the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the potential disruption to the markets in such Repos that could arise as a result of a receivership, conservatorship, or similar proceeding with respect to Western, which disruption could have additional negative effects on the cost of the funding and liquidity of Repo Assets (as defined below) for other FSLIC insured institutions and institutions chartered by the Board; and

Whereas, the Board as operating head of the FSLIC has decided, pursuant to its powers under section 5(d)(11) of the Home Owners Loan Act of 1933, as amended, and section 406(c)(3) of the National Housing Act, as amended, to adopt the following resolutions.

Now, Therefore, the Board resolves as follows:

1. The Board commits that it shall use its powers under the National Housing Act to ensure that any receivership (and to the fullest extent permitted by law, any conservatorship or similar proceeding) with respect to Western shall be conducted solely by the FSLIC (and not the Arizona Superintendent of Banks) as receiver, conservator or similar official ("Receiver") under federal law and regulations, Board Resolution No. 84-572, and these resolutions.

2. The Receiver will perform all of Western's obligations under Repos outstanding at the time of its appointment according to their then existing terms and conditions (including payment and margin maintenance terms) and will perform all obligations under any New Repos (as defined below) in accordance with their terms and conditions.

3. The Board and the Receiver shall use their best efforts to cause the Federal Home Loan Mortgage Corporation and/or the Federal Home Loan Banks to make necessary purchases from, or loans, to, the Receiver, so as to enable the Receiver to perform the obligations assumed or incurred under Repos and New Repos to the extent necessary to maintain an orderly market in Repo Assets.

4. The Receiver shall have the power to renew, extend, to modify any Repo, and to enter into new Repos (collectively, "New Repos"), but may only exercise such power with the consent of the Repo counterparty.

5. In any termination of the receivership of Western or disposition of Western's liabilities under any Repo or New Repo, the Board and the Receiver shall provide for the performance of obligations and the exercise of remedies under Repos and New Repos in a manner consistent with Board Resolution No. 84-572 and these resolutions.

6. Notwithstanding any provision of law, regulation, or these resolutions, if the Receiver does not perform all such obligations in accordance with their terms, the counterparty to such Repos or New Repos shall have the absolute right to exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets).

7. In the event of a Cross-Default (as defined below), a counterparty to a Repo or New Repo shall have the absolute right to accelerate the repurchase and other obligations thereunder (without notice to the Receiver) and exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets to satisfy such accelerated obligations).

8. The failure or delay of a counterparty to exercise any of its rights or remedies upon a failure to perform or a Cross-Default shall not constitute a waiver of any rights or remedies in connection therewith.

9. In connection with a Repo or New Repo counterparty's exercise of remedies upon failure to perform or a Cross-Default, neither the Board nor the Receiver shall object to or seek to oppose or stay such exercise or assert or seek to assert any adverse claims (including stop-transfer instructions) against the Repo Assets or any holder or transferee thereof in connection therewith.

10. The Receiver may enforce its claim to any excess received by a counterparty upon the exercise of such remedies over the stated repurchase price (including interest to the date of liquidation of the Repo Assets) and reasonable expenses of liquidation; provided, however, that nothing herein shall be construed to limit any set-off rights that such counterparty shall have against any such excess.

11. Notwithstanding any provision of law or regulation, neither the Board nor the Receiver shall seek to avoid or recover any payment or transfer of Repo Assets or funds made in connection with any Repo or New Repo or the liquidation thereof as a preferential transfer or fraudulent conveyance (other than any fradulent conveyance made by Western, voluntarily or involuntarily, with actual intent to hinder, delay or defraud its creditors; provided, however, any transferee of such a transfer that takes for value and in good faith has a lien on or may retain any interests transferred, and shall not be subject to a fraudulent conveyance claim in respect of such transfer, in each case to the extent that such transferee gave value to Western in exchange for such transfer and provided further that in no event shall the Board or the Receiver make any such fraudulent conveyance claim against any Repo Assets).

12. Nothing herein shall limit the power of the Board or the Receiver to make a claim against a counterparty (but not Repo Assets) based on such counterparty's fraud or failure to liquidate a Repo or a New Repo in a commercially reasonable manner. In light of the substantial volume of Western's Repos, the Board and the FSLIC hereby confirm that liquidation of Repo Assets over a period, not in excess of 90 days from the date of termination of a Repo or New Repo, would constitute a liquidation of a Repo or New Repo in a commercially reasonable time, and that the counterparty shall be entitled (but in the case of a Repo only from the proceeds of liquidation of Repo Assets or by way of set-off) to interest, at the contract rate, accruing during such period; provided, however, that a liquidation of Repo Assets at any point during such period or after a linger period of time shall not in and of itself constitute a commercially unreasonable time.

13. In connection with any Repo or New Repos, the Board and the FSLIC, in its corporate capacity, each irrevocably waives compliance by counterparties to Repos or New Repos with the FSLIC right or notice and purchase (12 CFR 563.B-2) and the contractual language

required thereby, if applicable to any Repo Assets.

14. Nothing herein shall limit the exercise by a counterparty to a Repo or New Repo of its rights and remedies thereunder in reliance on the Board's Resolution No. 84–572, which Resolution shall continue in full force and effect; provided, however, that paragraphs 2, 3, 5, 6, 7, 8, 9, 11 and 13, the proviso to paragraph 10, and the second sentence of paragraph 12 of these resolutions shall not apply to a termination of a Repo prior to the stated repurchase or maturity date therefor based solely on the appointment of the Receiver for Western.

15. In recognition of the reliance counterparties to Repos and New Repos place and will place on Resolutions No. 84–572 and these resolutions in continuing to renew and enter into Repos with Western, the Board intends itself, the FSLIC, in its corporate capacity, and the Receiver to be bound by Resolution No. 84–572 and these resolutions, and will not amend or rescind them without appropriate public notice of at least 45 days and any such amendment or rescission shall operate only prospectively.

"Cross Default" means, as to any counterparty to a Repo or New Repos, the failure by Western or the Receiver to make any payment of funds or delivery of additional Repo Asset to any other Repo or New Repo counterparty when due, (b) the failure by Western or the Receiver to make any payment of funds or delivery of securities under any "securities contract" or "commodities contract" (each as defined in the federal Bankruptcy Code), or interest rate exchange agreement, when due, or (c) such counterparty is unable to finance or sell under repo, on reasonable terms and conditions, any Repo Assets (whether due to market insecurity, a breach by the Board of its commitments hereunder, or otherwise).

"Repo Assets" means assets that are "liquid assets" under 12 CFR 523.10 or assets that would be so "liquid" but for their remaining term to maturity, "mortgage-related securities" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), whole loan mortgages and interests therein.

"Repo" means an agreement, whether documented as a purchase and sale transaction or a secured loan transaction, by Western (or the Receiver, in the case of New Repos) pursuant to which Western or the Receiver transfers Repo Assets to a counterparty that is a registered broker-dealer (including a registered government securities broker-dealer) or an affiliate thereof, the Federal Home Loan Mortgage Corporation, or (to the extent that Repo Assets are securities that are direct to obligations of or that are fully guaranteed as to principal and interest by the United States or any agency thereof, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association) a Federal Home Loan Bank, against the transfer of funds with a simultaneous agreement by the counterparty to retransfer such Repo Assets to retransfer such Repo Assets to Western or the Receiver on a date certain or on demand against the transfer of funds.

Resolved further, that these resolutions shall be effective immediately upon their adoption by the Board.

Resolved further, that the Secretary to the Board shall forward this resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89–405 Filed 1–9–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Advisory Committees; Meetings for the Month of February

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 February 1989:

Name: Health Services Development Grants Review Subcommittee.

Date and Time: February 22–24, 1989, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, Montrose Room, 1750 Rockville Pike, Rockville, Maryland. Open February 23, 8:30 a.m. to 9:00 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 National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting of February 23 from 8:30 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing 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 Director, National Center for Health Services Research and Health Care Technology Assessment 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, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Services Research Review Subcommittee.

Date and Time: February 8–10, 1989, 8:00 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland. Open February 8, 8:00 a.m. to 8:30 a.m. and February 9, 8:00 a.m. to 8:30 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 National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting on February 8 from 8:00 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed session, the Subcommittee will be reviewing National Research Service Award applications. The open session fo the meeting on February 9 from 8:00 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing 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 Director, National Center for Health Services Research and Health Care Technology Assessment 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. The 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, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Care Technology Study Section.

Date and Time: February 13-14, 1989, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland. Open February 13, 8:30 a.m. to 9:30 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 tehnologies 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 from 8:30 a.m. to 9:30 a.m. on February 13 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed sessions of the meeting will be devoted to a review of health services 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 Director, National Center for Health Services Research and Health Care Technology Assessment 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. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Date: December 28, 1988.

Norman Weissman,

Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 89-446 Filed 1-9-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Calendar Year 1987

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1987 Marine Mammal Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued the 1987 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1987, and was submitted to the Congress on November 28, 1988. By this notice, the public is informed that the report is available and that interested individuals may obtain a copy by written request to the Service.

ADDRESS: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, (202) 632-2202.

SUPPLEMENTARY INFORMATION: The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species (specifically the West Indian manatee and the sea otter in California), law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

This notice was prepared by Jeffrey L. Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: December 22, 1988.

Steve Robinson,

Acting Director.

[FR Doc. 89-470 Filed 1-9-89; 8:45 am]

BILLING CODE 4310-55-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 December 31, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 25, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Covington County

Andalusia Commercial Historic District, Roughly bounded by Coffee St., Seaboard RR tracks, and S. Three Notch St., Andalusia, 88003238

Bank of Andalusia, 28 S. Court Sq., Andalusia, 88003239

Covington County Courthouse and Jail, 101 N. Court Sq., Andalusia, 88003240

Jefferson County

Phelan Park Historic District, Roughly bounded by 13th Ave. S., 14th St. S., 16th Ave. S., and 13th Pl. S., Birmingham, 88003241

Perry County

Phillips Memorial Auditorium, Lincoln Ave. and Lee St., Marion, 88003243

Tuscaloosa County

Downtown Tuscaloosa Historic District (Boundary Increase), Roughly bounded by University Blvd., 21st Ave., 6th St. and 22nd Ave., Tuscaloosa, 88003242

ARIZONA

Maricopa County

Maricopa County Courthouse, 125 W. Washington St., Phoenix, 88003237

ILLINOIS

Cook County

Northwestern Terra Cotta Company Building, 1701–1711 W. Terra Cotta Pl., Chicago, 88003245

McHenry County

Covell, Lucein Boneparte, House, 5805 Broadway, Richmond, 88003246

IOWA

Boone County

First National Bank, 8th and Story Sts., Boone, 88003232

Herman, John H., House, 711 S. Story St., Boone, 88003233

KENTUCKY

Boone County

Allen, B. M., House (Boone County MRA), 11301 Riddles Run Rd., Union vicinity, 88003290

Aylor, A. J., House (Boone County MRA), 2162 Petersburg Rd., Hebron, 88003275

Barger, Donald, House (Boone County MRA), 2972 Front St., Petersburg, 88003259

Belleview Baptist Church (Boone County MRA), 6658 Fifth St., Belleview, 88003248

Belleview Post Office (Boone County MRA), 6256 Main St., Belleview, 88003250

Big Bone Methodist Church (Boone County MRA), 3435 Beaver Rd., Union vicinity, 88003287

Blankenbeker, Clinton, House (Boone County MRA), 7414 US 42, Florence, 88003302

Boone County Distillery Cooperage (Boone County MRA), Mill and First Sts., Petersburg, 88003255

Boone County Distillery Superintendant's House and Guest House (Boone County MRA), 3073 Front St., Petersburg, 88003256

Botts House (Boone County MRA), 4752 Petersburg Rd., Petersburg vicinity, 88003269

Calvert, B. C., House (Boone County MRA), 10246 Lower River Rd., Union vicinity, 88003292

Chambers, A. E., Octagonal Barn (Boone County MRA), 5009 Petersburg Rd., Petersburg vicinity, 88003268

Chandler House (Boone County MRA), 167 S. Main St., Walton, 88003305

Christian Meeting House (Boone County MRA), 6561 Tanner St., Petersburg, 88003262

Clore House (Boone County MRA), 6001 Burlington Pike, Belleview vicinity, 88003252

Clore, Jonas, House (Boone County MRA), 6256 Main St., Belleview, 88003249

Collins, Capt. N., House District (Boone County MRA), 6255 Aurora Ferry Rd., Petersburg vicinity, 88003253

Corn, Allie, House (Boone County MRA); 2807 Graves Rd., Hebron vicinity, 88003271

Crouch, Dr. M. J., House (Boone County MRA), 2063 Hathaway Rd., Union vicinity, 88003307

Delehunty, John, House (Boone County MRA), 212 Main St., Florence, 88003300

Delph, Sam, House (Boone County MRA), 4633 Garrison Creek Rd., Petersburg vicinity, 88003270

Delph, W. T., House (Boone County MRA), 6180 Rogers Ln., Burlington, 88003277

Dew, Daniel, House (Boone County MRA), 2950 Third St., Petersburg, 88003264

Early House (Boone County MRA), 2970 First St., Petersburg, 88003297

East Bend Church (Boone County MRA), 12341 Lower River Rd., Union vicinity, 88003291

Edwards House (Boone County MRA), 143 S. Main St., Walton, 88003304

Farmers Bank of Petersburg (Boone County MRA), 3010 First St., Petersburg, 88003261

Flick House (Boone County MRA), 6282 Burlington Pike, Belleview, 88003251

Florence Fire Station (Boone County MRA), Main St., Florence, 88003301

Florence Hotel (Boone County MRA), 262 Main St., Florence, 88003280

Gaines, Benjamin R., Farm (Boone County MRA), 3895 Idlewild Rd., Burlingotn vicinity, 88003299

Gordon's Hall (Boone County MRA), 6561 Market St., Petersburg, 88003260

Hamilton School (Boone County MRA), 4837 Beaver Rd., Union vicinity, 88003308

Hebron Deposit Bank (Boone County MRA), 1871 Petersburg Rd., 1871 Petersburg Rd., Hebron, 88003274

Hicks, Harvey A., House (Boone County MRA), 1325 Hicks Pike, Walton vicinity, 88003281

Hind, Samuel, House (Boone County MRA), 417 Stephenson Mill Rd., Walton vicinity, 88003278

Hopeful Lutheran Church (Boone County MRA), 6431 Hopeful Rd., Florence vicinity, 88003279

Horton, Agnes, House (Boone County MRA), 2901 Second St,. Petersburg, 88003263

Hudson House (Boone County MRA), 12328 Gaines Way, Walton vicinity, 88003283

Huey, D. W., House (Boone County MRA), 7812 East Bend Rd., Burlington vicinity, 88003294

Hughes House (Boone County MRA), 771 Chambers Rd,. Walton vicinity, 88003282

Johnson, Cave, House (Boone County MRA), 8368 River Rd., Hebron vicinity, 88003273

Kirtley, Rev. Robert E, House (Boone County MRA), 8545 River Rd., Hebron vicinity, 88003273

Lassing, Morris, House (Boone County MRA), 10515 US 42, Union vicinity, 88003285

Loder House (Boone County MRA), 3028 Front St., Petersburg, 88003257

Mayhugh, John Clifton, House (Boone County MRA), 113 N. Maint St., Walton, 88003303

Miller, John C., House (Boone County MRA), 3700 Beaver Rd., Union vicinity, 88003288

Miller, M., House (Boone County MRA), 3805 Beaver Rd., Union vicinity, 88003289

Norman, L.C., House (Boone County MRA), 1966 Mt. Zion Rd., Union, 88003286

Parker, Richard, House (Boone County MRA), 4312 Belleview Rd., Petersburg vicinity, 88003296

Peters House (Boone County MRA), 2973 Third St., Petersburg, 88003298

Prospect Farm (Boone County MRA), 6279 Petersburg Rd., Petersburg vicinity, 88003265

Rabbit Hash General Store (Boone County MRA), 10021 Lower River Rd., McVille vicinity, 88003293

Ransom House (Boone County MRA), 1842 Messmer Rd., Crittenden vicinity, 88003284

Rogers, James, House (Boone County MRA), 6259 Sycamore St., Belleview, 88003295

Ryle's Super Market and Oddfellows Building (Boone County MRA), 6571 Tanner St., Petersburg, 88003258

Terrill, George H., House (Boone County MRA), 6002 Petersburg Rd., Petersburg vicinity, 88003266

Uitz, Ephraim, House (Boone County MRA), 5208 Bullitssville Rd., Burlington vicinity, 88003276

Wallace House (Boone County MRA), 67 S. Main St., Walton, 88003306

Wingate-Gaines Farm District (Boone County MRA), 5225 Whitton Rd,. Petersburg vicinity, 88003267

Madison County

Blythewood (Madison County MRA), Jct. of Peytontown and Duncanon Rds., Richmond vicinity, 88003330

Campbell House (Madison County MRA), KY 52 near Paint Lick, Paint Lick vicinity, 88003334

Chenault House (Madison County MRA), N of Richmond off I–75, Richmond vicinity, 88003339

Clay, Brutus and Pattie Field, House (Madison County MRA), Lexington Rd. W of Richmond, Richmond vicinity, 88003341

Cobb, Whitney, House (Madison County MRA), KY 388, Richmond vicinity, 88003312

Covington House (Madison County MRA), SW of Richmond on KY 595, Richmond vicinity, 88003329

Elk Garden (Madison County MRA), S of Kirksville off KY 595, Kirksville vicinity, 88003326

Farmers Bank of Kirksville (Madison County MRA), Near jct. of KY 595 and CR 1295, Kirksville, 88003324

Griggs House (Madison County MRA), N of Waco, Waco vicinity, 88003316

Hagan House (Madison County MRA), Hagans Mill Rd., Richmond vicinity, 88003337

Hakins—Stone—Hagan—Curtis House (Madison County MRA), 1875 Curtis Pike, Kirksville vicinity, 88003327

Homelands (Madison County MRA), NW of Richmond on US 25, Richmond vicinity, 88003332

Karr House (Madison County MRA), Lost Fork Rd., Richmond vicinity, 88003313

Kirksville Christian church (Madison County MRA), KY 595, Kirksville, 88003325

Mason House (Madison County MRA), S of Richmond off Meneleus Pike, Richmond vicinity, 88003320

Moberly House (Madison County MRA), 0.3 N of Old KY 52, Moberly vicinity, 88003315

Morrison House (Madison County MRA), E of Kirksville off KY 595, Kirksville vicinity, 88003340

Mt. Pleasant Christian Church (Madison County MRA), N of Richmond on US 25, Richmond vicinity, 88003331

Mt. Zion Christian Church (Madison County MRA), US 421 S of jct. with US 25, Richmond vicinity, 88003318

Rolling Meadows (Madison County MRA), KY 595 N of Round Hill, Round Hill vicinity, 88003321

Shearer Store (Madison County MRA), KY 1936 at Union City, Richmond vicinity, 88003314

Simmons House (Madison County MRA), Arbuckle Lane off CR 1295, Richmond vicinity, 88003323
Stephenson House (Madison County MRA), N of Round Hill on KY 595, Round Hill vicinity, 88003322
Tates Creek Baptist Church (Madison County MRA), KY 627/Boonesborough Rd., Richmond vicinity, 88003333
Taylor House (Madison County MRA), N of Baldwin, Baldwin vicinity, 88003336
Tevis House (Madison County MRA), KY 627/Boonesborough Rd., Richmond vicinity, 88003335
Turner House (Madison County MRA), SE of Richmond on Curtis Pike, Richmond vicinity, 88003338
Turner—Fitzpatrick House (Madison County MRA), Off Mule Shed Rd., Richmond vicinity, 88003328
Viney Fork Baptist Church (Madison County MRA), Jct. of CR 499 and 374, Speedwell vicinity, 88003317
Walker, William, House (Madison County MRA), Duncannon Rd., Richmond vicinity, 88003319

Mercer County

Adams House (Mercer County MRA), Van Arsdell Pike, Salvisa vicinity, 88003357
Aspen Hall (Mercer County MRA), 558 Aspen Hall Dr., Harrodsburg, 88003372
Baldin House (Mercer County MRA), S of Ebeneezer on Ebeneezer Rd., Ebeneezer vicinity, 88003349
Beaumont Avenue Residential District (Mercer County MRA), 538—338 Beaumont Ave., Harrodsburg, 88003359
Boise House (Mercer County MRA), Bohon Rd. E. of Salt River, Harrodsburg vicinity, 88003356
Bonta House (Mercer County MRA), NE of Danville on US 127, Danville vicinity, 88003354
Bowman, Col. John, House (Mercer County MRA), Kennedy Bridge Rd., Harrodsburg vicinity, 88003353
Burford Hill (Mercer County MRA), Greenville St., Harrodsburg vicinity, 88003367
Burris House (Mercer County MRA), S of Kirkwood Rd., Salvisa vicinity, 88003362
Cunningham House (Mercer County MRA), W of RR tracks in Bondville, Salvisa vicinity, 88003361
Curry, Daniel, House (Mercer County MRA), 414 N. Main St., Harrodsburg vicinity, 88003383
Dunn, Peter, House (Mercer County MRA), S of McAfee off Old US 127, McAfee vicinity, 88003358
Elms, The (Mercer County MRA), 354 E. Lexington, Harrodsburg vicinity, 88003379
Greystone (Mercer County MRA), 618 Beaumont Ave., Harrodsburg vicinity, 88003382
Gritton, Floyd, House (Mercer County MRA), Bondville Rd. W of Salt River, Salvisa vicinity, 88003363
Matheny—Taylor House (Mercer County MRA), Poplar and College Sts., Harrodsburg, 88003378
McAfee Farm Historic District (Mercer County MRA), S of McAfee on Old Lousiville Rd., McAfee vicinity, 88003360
McGee House (Mercer County MRA), Jackson Rd., Harrodsburg vicinity, 88003364
Mercer County Jailer's Residence (Mercer County MRA), 320 S. Chiles St., Harrodsburg vicinity, 88003375
Moreland House (Mercer County MRA), Off US 68, Harrodsburg, 88003371
Morgan, Joseph, House (Mercer County MRA), Moberly Rd., Harrodsburg vicinity, 88003365
Paasmore, Benjamin, House (Mercer County MRA), 111 W. Broadway, Harrodsburg, 88003376
Passmore, Benjamin, Hotel (Mercer County MRA), N. Main St. and Broadway, Harrodsburg, 88003374
Passmore, George, House (Mercer County MRA), Poplar and Greenville Sts., Harrodsburg, 88003379
Pioneer Memorial State Park (Mercer County MRA), College Ave. between Lexington and Poplars Sts., Harrodsburg, 88003377
Price, Dr. A. D., House (Mercer County MRA), 115 W. Poplar St., Harrodsburg, 88003373
Roach—Ison House (Mercer County MRA), NE of Harrodsburg off US 68, Harrodsburg vicinity, 88003352
Smith—Williams House (Mercer County MRA), S of Cane Run Pike, Burgin vicinity 88003355
St. Peters AME Church (Mercer County MRA), Lexington St. and US 127, Harrodsburg, 88003381
Sutfield House (Mercer County MRA), 304 N. Main St., Harrodsburg, 88003368
Tobin House (Mercer County MRA), 1450 Curry Pike, Harrodsburg vicinity, 88003350
US Post Office—Harrodsburg (Mercer County MRA), 105 N. Main St., Harrodsburg, 88003380
Wildwood (Mercer County MRA), 388 Curry Pike, Harrodsburg vicinity, 88003366
Williams House (Mercer County MRA), Warwick Rd., Harrodsburg vicinity, 88003351

Washington County

Barber, John R., House (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003423
Beech Fork Bridge, Mackville Road (Washington County MRA), E of Springfield on KY 152, Springfield vicinity, 88003429
Beechfork Presbyterian Church (Washington County MRA), N of Springfield off KY 555, Springfield vicinity, 88003406
Berry, Richard, Jr., House (Washington County MRA), N of Springfield on Hwy, 438, Springfield vicinity, 88003400
Blackwell, William, House (Washington County MRA), 138 Lebanon Hill, Springfield, 88003491
Cartwright Creek Bridge (Washington County MRA), W of Springfield on Booker Rd., Springfield vicinity, 88003425
Clements House (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003401
Cocanougher House (Washington County MRA), Off US 150, Mackville vicinity, 88003413
Conner, George, House (Washington County MRA), Off US 150, Fredericktown, 88003402
Cusick, Ed, House (Washington County MRA), W of Springfield opn Bearwallow Rd., Springfield vicinity, 88003426
Dog Run Trestle (Washington County MRA), W of Springfield off US 150, Springfield vicinity, 88003418
Duncan House (Washington County MRA), 206 Lincoln Park Rd., Springfield, 88003393
Edelen House (Washington County MRA), Hwy. 1183, Springfield vicinity, 88003433
Farmer's Bank of Mackville (Washington County MRA), KY 152, Mackville, 88003431
Fields' House (Washington County MRA), Hwy. 1183, Springfield vicinity, 88003422
Glenn Cottage Tract (Washington County MRA), KY 55, Maud vicinity, 88003416
Gregory—Barlow Place (Washington County MRA), S of Mooresville off KY 55, Mooresville vicinity, 88003398
Hamilton, Thomas H., House (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003403
Holy Rosary Church (Washington County MRA), Hwy. 1183, Springfield vicinity, 88003409
Johnson's Chapel AME Church (Washington County MRA), E. High St., Springfield, 88003396
Kendrick—Croake House (Washington County MRA), Hog Run, Booker Station, Maud vicinity, 88003417
Kendrick—Tucker—Barber House (Washington County MRA), Off US 150, Mooresville vicinity, 88003421
Litsey, John, House (Washington County MRA), N of Springfield off KY 438, Springfield vicinity, 88003404
Long Lick Creek Bridge (Washington County MRA), Hardesty-Polin Rd. over Long Lick Creek, Willisburg vicinity, 88003414
Lyddan, Pat, House (Washington County MRA), S of Mooresville on KY 55, Mooreville vicinity, 88003420
Mayes, Archibald Scott, House (Washington County MRA), E of Springfield off US 150, Springfield vicinity, 88003405
McElroy, T. I., House (Washington County MRA), E of Springfield on US 150, Springfield vicinity, 88003397
McElroy, Wilson, House (Washington County MRA), 321 E. High St., Springfield, 88003392
Parrot House (Washington County MRA), E of Springfield on KY 152, Springfield vicinity, 88003412
Pile, Benjanin, House (Washington County MRA), Off KY 55, Springfield vicinity 88003407
Ray—Wakefield House (Washington County MRA), Off KY 55, Maud vicinity, 88003415
Road Run School (Washington County MRA), W of Springfield off KY 152, Springfield vicinity, 88003424
Simms—Edelen House (Washington County MRA), SE of Springfield, Springfield vicinity, 88003427
Simms-Mattingly House (Washington County MRA), E of Springfield off KY 152, Springfield vicinity, 88003428
Simmstown (Washington County MRA), S of Springfield on Rineltown-Simmstown Rd., Springfield vicinity, 88003408
Smith, Levi J., House (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003411
Springfield Baptist Church (Washington County MRA), Lincoln Park Rd., Springfield, 88003394

Springfield Graded School (Washington County MRA), Mackville and Perry Rds., Springfield, 88003389
Springfield Historic Commercial District (Washington County MRA), Roughly bounded by McCord, Walnut, Ballard and Doctor Sts., Springfield, 88003434
St. Catherine of Sienna Convent (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003395
St. Dominic's Catholic Church (Washington County MRA), Main St., Springfield, 88003388
Tatham Springs (Washington County MRA), M of Willisburg on Hwy. 1796, Willisburg vicinity, 88003399
Thomas, John, House (Washington County MRA), S of Mooresville on KY 55, Mooresville vicinity, 88003419
Thompson, Dr., House (Washington County MRA), E of Springfield on Mackville Rd., Springfield vicinity, 88003430
Turner, S.F., and Company Steam Flouring and Grist Mill (Washington County MRA), 400 W. Main St., Springfield, 88003390
Walnut Street Historic District (Washington County MRA), 200—600 blocks of Walnut St., Springfield, 88003435
Williams, Thomas H., House (Washington County MRA), Hardesty Rd., Springfield vicinity, 88003410
Willisburg Central Bank and Post Office (Washington County MRA), KY 53, Willisburg, 88003432

Woodford County

Black, Charles, Farm (Pisgah Area of Woodford County MPS), Faywood Rd., Versailles vicinity, 88003347
Buck Pond (Pisgah Area of Woodford County MPS), Paynes Mill Rd., Versailles vicinity, 88003344
Calmes, Marquis, Tomb (Pisgah Area of Woodford County MPS), Paynes Mill Rd., Versailles vicinity, 88003346
Harris, A.T., House (Pisgah Area of Woodford County MPS), Big Sink Pike, Versailles vicinity, 88003345
Pisgah Rural Historic District (Pisgah Area of Woodford County MPS), Area NE of Versailles roughly bounded by S. Elkhorn Creek, US 60, and Big Sink Rd., Versailles vicinity, 88003348

MICHIGAN

Oceana County

Gay, Jared H., House, Rt. 2, 128th Ave., Crystal Valley, 88003235

St. Joseph County

US Government Land Office Building, Old, 113 W. Chicago Rd., White Pigeon, 88003234

Wayne County

Tiger Stadium, 2121 Trumbull Ave., Detroit, 88003236

MISSOURI

St. Louis County

Larimore, Wilson, House, 11510 Larimore Rd., Bellefontiane Neighbors, 88003244

MONTANA

Ravalli County

Lost Horse Fireman's Cabin (24RA197), Off Lost Horse Rd. near Bear Creek Pass, Darby vicinity, 88003437

NORTH CAROLINA

Carteret County

Cape Lookout Coast Guard Station, Cape Lookout, Beaufort vicinity, 88003436

OHIO

Summit County

East Market Street Church of Christ, 864 E. Market St., Akron, 88003440

TENNESSEE

Maury County

Ashwood Rural Historic District, Spans US 43 between Columbia and Mount Pleasant, Columbia vicinity, 88003247

UTAH

Cache County

Wellsville Relief Society Meeting House (Mormon Church Buildings in Utah, 1847—1936 MPS), 67 S. Center, Wellsville, 88003439

Weber County

Weber Stake Relief Society Building (Mormon Church Buildings in Utah, 1847—1936 MPS), 2148 Grant Ave., Ogden, 88003438

WASHINGTON

Chelan County

Bridge Creek Cabin—Ranger Station (North Cascades National Park Service Complex MPS), Bridge Creek Campground off Stehekin Valley Rd., Stehekin vicinity, 88003458
Bridge Creek Shelter (North Cascades National Park Service Complex MPS), Bridge Creek Campground off Stehekin Valley Rd., Stehekin vicinity, 88003445
Buckner Homestead Historic Distict (North Cascades National Park Service Complex MPS), Stehekin Valley Rd., Stehekin, 88003441
Flick Creek Shetler (North Cascades National Park Service Complex MPS), E side of Lake Chelan S of Flick Creek, Stehekin vicinity, 88003444
Golden West Lodge Historic District (North Cascades National Park Service Complex MPS), Stehekin Landing, Stehekin, 88003442
High Bridge Ranger Station Historic District (North Cascades National Park Service Complex MPS), Stehekin Valley Rd., Stehekin, 88003443
High Bridge Shelter (North Cascades National Park Service Complex MPS), High Bridge Campground off Stehekin Valley Rd., Stehekin vicinity, 88003461
Miller, George, House (North Cascades National Park Service Complex MPS), E side Lake Chelan on Stehekin Valley Rd., Stehekin, 88003464
Purple Point—Stehekin Ranger Station House (North Cascades National Park Service Complex MPS), E side of Lake Chelan, Stehekin, 88003460
Sulphide—Frisco Cabin (North Cascades National Park Service Complex MPS), Bridge Creek Trail, 9 mi. N of Stehekin Valley Rd., Stehekin vicinity, 88003459

Skagit County

Backus—Marblemount Ranger Station House No. 1009 (North Cascades National Park Service Complex MPS), Ranger Station Rd., 1 mi. N of WA 20, Marblemount, 88003462
Backus—Marblemount Ranger Station House No. 1010 (North Cascades National Park Service Complex MPS), Ranger Station Rd., 1 mi. N of WA 20, Marblemount, 88003463
Gilbert's Cabin (North Cascades National Park Service MPS), Cascade River Rd. W of Gilbert Creek, Stehekin vicinity, 88003453
Rock Cabin (North Cascades National Park Service Complex MPS), Fisher Creek Trail S of Diablo Lake, Diablo vicinity, 88003457
Swamp—Meadow Cabin West (North Cascades National Park Service Complex MPS), Thunder Creek Trail S of Diablo Lake, Diablo vicinity, 88003455
Swamp—Meadow Cabin West (North Cascades National Park Service Complex MPS), Thunder Creek Trail S of Diablo Lake, Diablo vicinity, 88003456

Whatcom County

Beaver Pass Shelter (North Cascades National Park Service Complex MPS), Beaver Pass, 14 mi. W of Ross Lake, Diablo vicinity, 88003448
Copper Mountain Fire Lookout (North Cascades National Park Service Complex MPS), On Copper Mountain, 10 mi. E of Wannegan Campground, Newhalen vicinity, 88003446
Deer Lick Cabin (North Cascades National Park Service Complex MPS), E of Ross Lake on Lightening Creek Trail, S. of Three Fools Trial, Hozoneen vicinity, 88003452
Desolation Peak Lookout (North Cascades National Park Service Complex MPS), On Desolation Peak E of Ross Lake, 6 mi. S of Canadian border, Hozoneen vicinity, 88003451
Fish and Game—Hozoneen Cabin (North Cascades National Park Service Complex MPS), Hozoneen Lake—Lightening Creek trailhead on E side of Ross Lake, Hozoneen, 88003454
International Boundary US—Canada (North Cascades National Park Service Complex MPS), Along US—Canada border, Hozoneen vicinity, 88003450
Perry Creek Shelter (North Cascades National Park Service Complex MPS), On Little Beaver Trail, 5 mi. W of Ross Lake, Hozoneen vicinity, 88003447
Sourdough Mountain Lookout (North Cascades National Park Service Complex MPS), On Sourdough Mountain, 4 Mi. NE of Diablo, Diablo vicinity, 88003449

WISCONSIN

Grant County

Hazel Green Town Hall, 2130 N. Main St., Hazel Green, 88003231

The following property is also being considered for listing in the National Register:

CONNECTICUT

New Haven County

River Street Historic District, Roughly bounded by Chapel St., Blatchley Ave., New Haven Harbor, and James St. New Haven 88003213

[FR Doc. 89-441 Filed 1-9-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 256X)]

CSX Transportation, Inc.; Abandonment Exemption; in Levy and Marion Counties, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 5.87 miles of rail line in Levy and Marion Countries, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 9, 1989. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 20, 1989; petitions to stay must be filed by January 25, 1989; and petitions for reconsideration must be filed by February 6, 1989. Requests for a public use condition must be January 20, 1989.

ADDRESSES: Send pleadings, referring to Docket No. AB-55 (Sub-No. 256X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washinton, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up 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: December 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley and Phillips. Commissioner Simmons commented with a separate expression. Commissioner Lamboley concurred in the result with a commenting separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-431 Filed 1-9-89; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[Finance Docket No. 31383]

Soo Line Railroad Co.; Trackage Rights Exemption; CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), has agreed to grant overhead trackage rights to Soo Line Railroad Company (Soo) over the following lines: (1) A 4.5-mile line of railroad owned by CSXT and its wholly owned subsidiary, Baltimore & Ohio Chicago Terminal Railroad Company (BOCT), between BOCT milepost 15.2 at Blue Island Junction, IL and BOCT milepost 10.7 at Dolton Junction, IL; (2) a 65.7-mile line of railroad, jointly owned by CSXT and Missouri Pacific Railroad Company, from milepost ZA 16.92 at Dolton Junction, IL to milepost ZA 82.6 at Woodland Junction, IL; and (3) a 99.6-mile CSXT line, from milepost ZA 82.6 at Woodland Junction, IL to milepost ZA 182.1 at Spring Hill, IN interlocking in Terre Haute, IN. In addition, CSXT has agreed to grant Soo the right to enter and exit these rights at milepost ZA 16.92 at Dolton Junction, IL, to enable Soo to use its pre-existing trackage rights via the Indiana Harbor Belt Railroad between Blue Island Junction and Dolton Junction as required by terminal traffic conditions. The trackage rights became effective on or after December 23, 1988.

Any comments must be filed with the Commission and served on: Larry D. Starnes, Soo Line Railroad Company, Soo Line Building, 105 South 5th Street, Minneapolis, MN 55042 and Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 4, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-430 Filed 1-9-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 53X)]

Notice of Exemption; Norfolk and Western Railway Co.—Abandonment Exemption—Huron and Erie Counties, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 8.3-mile line of railroad between milepost HN-2.3 near Mittingers and milepost HN-10.6 near Shinrock, in Huron and Erie Counties, OH, respectively.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 9, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation)

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 20, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510, (804) 629-2844.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 13, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 3, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-341 Filed 1-9-89; 8:45 am]

BILLING CODE 7035-01-M

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cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environment concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting Advisory Policy Board (APB) Uniform Crime Reporting (UCR)

The UCR APB will meet on February 14-15, 1989, from 9 a.m. until 5 p.m. and 9 a.m. until 12 noon, respectively, at the Old Colony Inn, 625 First Street, Alexandria, Virginia 22314.

The major topic of discussion will be organizational in nature, since this is the first meeting of the UCR APB. Work will be conducted in writing the Bylaws for the APB.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the APB before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, Mr. J. Harper Wilson, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain their name, corporate or Government designation, and consumer affiliation, along with the capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. J. Harper Wilson, Committee Management Liaison Officer, Office of Congressional and Public Affairs, Federal Bureau of Investigation, Washington, DC 20535, telephone number (202) 324-2614.

Dated: January 5, 1989.

William S. Sessions,

Director.

[FR Doc. 89-419 Filed 1-9-89; 8:45 am]

BILLING CODE 4410-02-M

Immigration and Naturalization Service

[INS No. 1141-89]

Direct Mail Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of a Change in the Location Where Certain Applications and Petitions are filed.

SUMMARY: This notice expands the Direct Mail Program in the Service's Northern Region by adding Form I-130 "Immigrant Petition for Relative". The Direct Mail Program is a process in which certain applicants and petitioners seeking immigration benefits mail their applications directly to an INS Regional Service Center instead of to a local office. This process has been shown to speed case processing and to be more efficient. This notice expands the program to further realize these efficiencies.

DATES: This expansion will be effective February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael L. Aytes, Senior Examiner, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW., Room 7122, Washington, DC 20536. Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: The Direct Mail Program was established in 1985. Under this program individuals and companies mail applications and petitions directly to a Regional Service Center (RSC) instead of to a local field office. This program was adopted to improve service to the public by speeding processing, to increase productivity and to free field offices to concentrate on interview cases and other field world. To date, the response has been overwhelmingly favorable. Therefore, the Service is expanding it further.

Use the following sections to determine where to file an application or petition. First use Section I to determine which region would have jurisdiction. Then use Section II to find if the application or petition is included in the Direct Mail Program in that region. If it is, you can get the center mailing address from Section III. You should also read Sections IV and V, which describe Direct Mail filing procedures.

I. Jurisdiction

The following table lists the jurisdiction of each INS Region. Jurisdiction is based on the address of the applicant or petitioner, or, in the case of a petition for a foreign worker, by the address of the intended place of employment. If a petitioner is a United States Citizen or a Permanent Resident stationed outside the United States on government business (either civilian or military), his or her home of record in the United States is used to determine jurisdiction. In such a case he or she should include a copy of his or her orders assigning him or her overseas with the petition.

Area	Region
Alabama	S
Alaska	N
Arizona	W
Arkansas	S

Area	Region
California	N
Colorado	E
Connecticut	E
Delaware	E
District of Columbia	E
Florida	S
Georgia	S
Guam	W
Hawaii	W
Idaho	N
Illinois	N
Indiana	N
Iowa	N
Kansas	N
Kentucky	S
Louisiana	S
Maine	E
Maryland	E
Massachusetts	E
Michigan	N
Minnesota	N
Mississippi	S
Missouri	N
Montana	N
Nebraska	N
Nevada	W
New Hampshire	E
New Jersey	E
New Mexico	S
New York	E
North Carolina	S
North Dakota	N
Ohio	N
Oklahoma	S
Oregon	N
Pennsylvania	E
Puerto Rico	E
Rhode Island	E
South Carolina	S
South Dakota	N
Tennessee	S
Texas	S
Utah	N
Vermont	E
Virginia	E
Virgin Islands	E
Washington	N
West Virginia	E
Wisconsin	N
Wyoming	N

Regions: E—Eastern Region, N—Northern Region, S—Southern Region, W—Western Region.

II. Direct Mail Applications

The following table lists the applications and petitions processed under the Direct Mail Program in each region. Service Center Director have the authority to accept filing fees for these forms. All other applications and petitions should be filed at the appropriate local INS office.

Form number	Short title	Region			
		E	N	S	W
I-129B	Petition for Temporary Worker.	X	X	X	X
I-129F	Petition for Finance(E).	X	X	X	X
I-128H	Petition for Temporary Worker.	X	X	X	X
I-129L	Petition for Intracompany Transferee.	X	X	X	X
I-129S	Certificate of L-1 Eligibility.	X	X	X	X
I-140	Immigrant Petition for Foreign Worker (unless filed with an I-485 Application for Adjustment of Status).	X	X	X	X
I-506	Application To Change Nonimmigrant Status.	X	X	X	X
I-1539	Application To Extend Temporary Stay (if filed with an I-506 or I-129B, I-129H or I-129L).	X	X	X	X
I-130	Immigrant Petition for Relative (unless filed with an I-485 Application for Adjustment of Status).				
I-751	Petition To Remove Conditions on Residence.	X	X	X	X
I-752	Petition To Waive I-751 Requirement.	X	X	X	X

Regions: E—Eastern Region, N—Northern Region, S. Southern Region, W—Western Region.

Symbols: X—Current Direct Mail applications and petitions; A—Applications and Petitions added by this notice.

III. Service Center Addresses

Normal mailing address	Overnight delivery address
Eastern	
INS Regional Service Center, P.O. Box 1270, St. Albans, VT 05478-1270.	INS Regional Service Center, 1A Lemnah Drive, St. Albans, VT 05478.
Northern	
INS Regional Service Center, Federal Bldg & U.S. Courthouse, 100 Centennial Mall North, Rm B26, Lincoln, NE 68508-1619.	INS Regional Service Center, Federal Bldg & U.S. Courthouse, 100 Centennial Mall North, Rm B26, Lincoln, NE 68508-1619.
Southern	
INS Regional Service Center, P.O. Box 50200, Dallas, TX 75207.	INS Regional Service Center, 311 N. Stemmons Freeway, Dallas, TX 75207.
Western	
INS Regional Service Center, P.O. Box 1-C, San Ysidro, CA 92173.	INS Regional Service Center, 801 E. San Ysidro, San Ysidro, CA 92173.

IV. How To File a Direct Mail Case

Applications and petitions processed through the Direct Mail Program within a region should be mailed directly to the appropriate service center. The form number, from the lower left corner of the application or petition, should be written on the envelope below the address. Cases can be mailed via an express mail service, but this will not affect processing after the case is received.

Direct Mail cases may only be filed with a local INS office under the emergency procedures outlined in Section IV. Non-emergent cases that are taken to a local office will not be accepted, and the applicant will be instructed to mail the case directly to the appropriate service center. Any Direct Mail cases that are mailed to a local office will be re-mailed by that office to the service center. A case that is not accepted for emergency processing will not be considered received and properly filed until it is receipt processed at a service center. Therefore, failure to follow these instructions will delay processing and will affect a petition's priority date.

V. How To File in an Emergency

An applicant or petitioner can request emergency processing by taking his or her application or petition to the local INS office along with a written explanation of the grounds for the request.

Emergency processing will only be granted where it can be shown that there is a bona fide emergency that warrants processing the case before others that were filed before it, and that the emergency could not have been reasonably foreseen and the case filed earlier. If it is granted, the case will be processed at the local office. If not, the case will be noted and then handed back to the applicant or petitioner, so he or she can mail it directly to the service center.

A request for emergency processing is reviewed outside of normal processing channels. If an applicant or petitioner makes an unwarranted request for emergency processing, the end result will be that it will take longer for him or her to get a final decision on a case than if he or she had filed it normally.

Dated: January 4, 1989.

Richard E. Norton,

Associate Commissioner, Examinations Branch, Immigration and Naturalization Service.

[FR Doc. 89-440 Filed 1-9-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 19th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Adkins Supply Incorp. (Workers)	Hobbs, NM	12/19/88	12/6/88	22,267	Oil & Gas.
Allied Products Co. (IBB)	Midfield, AL	12/19/88	12/7/88	22,268	Cement & Clinker.
Ames Company Plant #2 (Workers)	Parkersburg, WV	12/19/88	12/1/88	22,269	Hand Tools.
Athenia Audio/Disc Corp. (Workers)	Toms River, NJ	12/19/88	12/6/88	22,270	C-O Cassettes.
Borden Chemical Fabric Leather Div. (Workers)	Glen Cove, NY	12/19/88	11/28/88	22,271	Fabric.
Becton-Dickenson & Co. (Workers)	East Rutherford, NJ	12/19/88	12/2/88	22,272	Supplies.
Charms Candy (Company)	Colts Neck, NJ	12/19/88	12/6/88	22,273	Candy.
Cleveland Xray Inspection (Workers)	Cleveland, OK	11/18/88	11/17/88	22,274	Oil & Gas.
Coca Cola, Inc. (Workers)	Clarksdale, MS	12/5/88	11/28/88	22,275	Soft Drinks.
Coleman Products Co. (Workers)	Nogales, AZ	12/19/88	12/7/88	22,276	Wire Harness.
Cone Mills Corp. (Workers)	Gibsonville, NC	12/19/88	11/30/88	22,277	Yarns & Fabrics.
Consolidated NDE, Inc. (Workers)	Woodbridge	11/18/88	11/17/88	22,278	Oil & Gas.
Edwards Pipeline Testing, Inc. (Workers)	Tulsa, OK	11/18/88	11/17/88	22,279	Do.
Fina Oil (Workers)	Corpus Christi, TX	12/19/88	11/29/88	22,280	Do.
General Motors Corp., CPC (UAW)	Bay City, MI	12/19/88	12/5/88	22,281	Automotive Parts.
General Textile Printing (ACTWU)	Branford, CT	12/19/88	10/17/88	22,282	Cloth.
Herbick & Held Printing Co. (ILBW)	Pittsburgh, PA	12/9/88	12/19/88	22,283	Printing Forms.
Heritage Cable TV (Workers)	Branford, CT	12/19/88	12/8/88	22,284	Cable TV.
Howard Boat Wright (Workers)	Odessa, TX	12/19/88	12/7/88	22,285	Oil & Gas.
Intec Medical Products, Inc. (Workers)	Blue Springs, MO	12/19/88	12/5/88	22,286	Nebulizers.
J&S Sewing, Inc. (ILGWU)	Ridgefield, NJ	12/19/88	12/9/88	22,287	Sweaters.
Jan Xray Service (Workers)	Perma, MI	11/18/88	11/17/88	22,288	Oil & Gas.
John L. Cox (Workers)	Oklahoma City, OK	12/19/88	12/1/88	22,289	Do.
Johnson Controls (Workers)	Vincennes, IN	12/19/88	11/3/88	22,290	Car Seats.
Lee Co. (The) (Workers)	Broadway, VA	12/19/88	12/12/88	22,291	Jeans.
Martin Oil & Gas Co. (Workers)	Houston, TX	11/18/88	10/29/88	22,292	Oil & Gas.
Do	Phoenix, AZ	11/18/88	10/29/88	22,293	Do.
Miura Pet Co. (Company)	Chanute, KS	12/19/88	10/3/88	22,294	Do.
North American Inspection, Inc	Laurys Station, PA	11/18/88	11/17/88	22,295	Do.
Otis Engineering Corp. (Workers)	Corpus Christi, TX	11/18/88	8/08/88	22,296	Do.
Do	New Iberia, LA	11/18/88	11/17/88	22,297	Do.
PBCP Services, Inc. (Workers)	Midland, TX	12/19/88	12/7/88	22.298	Do.
Pancho's Backhoe Serv. (Workers)	Seminole, TX	12/19/88	11/30/88	22,299	Do.
Penaljo Shoe Co. (Workers)	DeSota, MO	12/12/88	11/19/88	22,300	Sandals.
Pool Co.-Special Serv. Div. (Workers)	Middland, TX	12/19/88	12/7/88	22,301	Oil & Gas.
Quest Intl Flavors U.S.A., Inc. (Company)	East Hanover, NJ	12/19/88	12/1/88	22,302	Food.
Robert Shaw Controls (UAW)	Milford, CT	12/19/88	11/9/88	22,303	Heating Controls.
Simonds Industries (Workers)	Portland, OR	12/19/88	12/8/88	22,304	Saws.
Sohmer Piano Co. (IUE)	Ivoryton, CT	12/19/88	12/8/88	22,305	Pianos.
Teledyne Turner Tube (Company)	Cranberry, NJ	12/19/88	12/8/88	22,306	Tubes.
Testmaster Inspection (Workers)	Perrysburg, OH	11/18/88	11/17/88	22,307	Oil & Gas.
Walnut Grove Mfg., Co. (Workers)	Walnut Grove, MS	12/19/88	12/5/88	22,308	Gloves.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Wisconsin Industrial Testing, Inc	Brookfield, WI	11/18/88	11/17/88	22,309	Oil & Gas.

[FR Doc. 89-458 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 12th day of December 1988.

Marin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
FN Drilling Co. (Workers)	Tuler, TX	11/18/88	11/1/88	22,136	Oil and Gas.
Fancy Stitchers Inc. (Company)	Lewistown, ME	11/18/88	11/15/88	22,137	Hanbags.
Felmont Oil Corp. (Workers)	Olean, NY	11/18/88	11/17/88	22,138	Oil & Gas.
Do	Midland, TX	11/18/88	11/17/88	22,139	Do.
Do	Houston, TX	11/18/88	11/17/88	22,140	Do.
Do	Lafayette, LA	11/18/88	11/17/88	22,141	Do.
Geoservices Inc. (Workers)	Denver, CO	11/18/88	11/9/88	22,142	Do.
Do	Houston, TX	11/18/88	11/9/88	22,143	Do.
Gearhart Industries, Inc. (Workers)	Indiana, PA	11/18/88	11/18/88	22,144	Do.
Gruy Companies (The) (Workers)	Irving, TX	11/18/88	11/17/88	22,145	Do.
Gruy & Associates (Workers)	.....do	11/18/88	11/17/88	22,146	Do.
Gruy Petroleum Management Co. (Workers)	.....do	11/18/88	11/17/88	22,147	Do.
Hamilton Brothers Oil Co. (Workers)	Denver, CO	11/18/88	11/15/88	22,148	Do.
Hilyard Drilling Co. (Workers)	ElDorado, AR	11/18/88	11/12/88	22,149	Do.
Do	Laurel, MS	11/18/88	11/12/88	22,150	Do.
Holmes & Narver Serv., Inc. (Workers)	Prudo, Bay AL	11/18/88	11/1/88	22,151	Do.
Hydril Co. (Workers)	Houston, TX	11/18/88	11/13/88	22,152	Do.
Industrial Machine Shop (Workers)	Williston, ND	11/18/88	9/14/88	22,153	Do.
Industrial Machinery Div.	Mesquite, TX	11/18/88	11/17/88	22,154	Do.
J.C. Langley Oil Co. (Company)	Smackover, AR	11/18/88	11/2/88	22,155	Do.
Jennings Hellms Trucking, Inc. (Company)	Indiana, PA	11/18/88	11/14/88	22,156	Do.
Kiewit Southern (UAJAP)	Prudoe Bay, AL	11/18/88	11/14/88	22,157	Do.
LHR Synder (Workers)	Grayville, IL	11/18/88	11/13/88	22,158	Do.
Lamb Enterprises (Workers)	Lone Star, TX	11/18/88	11/16/88	22,159	Do.
Louisiana Land & Exploration Co. (Workers)	Denver, CO	11/18/88	11/11/88	22,160	Do.
Martin Petterson (Company)	Lovington, NM	11/18/88	11/17/88	22,161	Do.
Mayers & Co. (Company)	Englewood, CO	11/18/88	11/17/88	22,162	Do.
Micro Energy Intl, Inc. (Workers)	Roswell, NM	11/18/88	10/31/88	22,163	Do.
Monroe Well Service (Workers)	Philadephia, PA	11/18/88	11/11/88	22,164	Do.
National Oilwell (USWA)	Garland, TX	11/18/88	11/17/88	22,165	Do.
Northland Maintenance Co. (Workers)	Prodoe, Bay, AL	11/18/88	11/1/88	22,166	Do.
Oceanic Butler, Inc. (Workers)	Morgan City, LA	11/18/88	11/14/88	22,167	Do.
Pennzoil Exploration (Company)	Lafayette, LA	11/18/88	11/17/88	22,168	Do.
Pennzoil Products Co (Company)	Bradford, PA	11/18/88	11/17/88	22,169	Do.
Do	Louisville, PA	11/18/88	11/17/88	22,170	Do.
Peterson Management Co. (Workers)	Midland, TX	11/18/88	11/13/88	22,171	Do.
Petroleum Information (Workers)	Casper, WY	11/18/88	11/17/88	22,172	Do.
Do	Billings, MT	11/18/88	11/17/88	22,173	Do.
Phillips Production Co. (Company)	Butler, PA	11/18/88	11/17/88	22,174	Do.
Questa Petroleum Co. (Workers)	Pittsburgh, PA	11/18/88	11/18/88	22,175	Do.
Reed Tool Co. (USWA)	Houston, TX	11/18/88	11/17/88	22,176	Do.
Roy M. Huffington, Inc. (Workers)	.....do	11/18/88	11/16/88	22,177	Do.
SSM Partnership (Workers)	Philadelphia, PA	11/18/88	11/11/88	22,178	Do.
Santa Fe Intl. Corp. (Company)	Alhambra, CA	11/18/88	11/16/88	22,179	Do.
Savage Drilling Inc. (Workers)	Houston, TX	11/18/88	11/18/88	22,180	Do.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Schlumberger Well Serv. (Workers)	Broussard, LA	11/18/88	11/10/88	22,181	Do.
Do	Lafayette, LA	11/18/88	11/10/88	22,182	Do.
Do	Magnolia, AR	11/18/88	11/10/88	22,183	Do.
Security Division of Dresser Industries, Inc. (USWA)	Dallas, TX	11/18/88	11/17/88	22,184	Do.
Storagetek (Workers)	Louisville, CO	11/18/88	11/11/88	22,185	Computer Equipment.
T.M.T. Services, Inc. (Workers)	Lafayette, LA	11/18/88	11/10/88	22,186	Oil & Gas.
Tenneco Oil Exploration & Production Pacific Coast Div. (Company)	Bakersfield, CA	11/18/88	11/1/88	22,187	Do.
Tenneco Oil Exploration & Production Rocky Mountain Div. (Company)	Denver, CO	11/18/88	11/188	22,188	Do.
Tenneco Oil Exploration Southwestern Div. (Company)	San Antonio, TX	11/18/88	11/1/88	22,189	Do.
Tenneco Oil Exploration Mid-Continent Div. (Company)	Oklahoma City, OK	11/18/88	11/1/88	22,190	Do.
Tenneco Oil Exploration Gulf Coast Div. (Company)	Houston, TX	11/18/88	11/1/88	22,191	Do.
Tenneco Oil Exploration Intl. Div. (Company)	do	11/18/88	11/1/88	22,182	Do.
Tenneco Oil Exploration South America Div. (Company)	do	11/18/88	11/1/88	22,193	Do.
Tenneco Oil Exploration Eastern Gulf Div. (Company)	Lafayette, LA	11/18/88	11/1/88	22,194	Do.
Tenneco Oil Exploration Western Gulf Div. (Company)	do	11/18/88	11/1/88	22,195	Do.
Tenneco Oil Exploration Central Gulf Div. (Company)	do	11/18/88	11/1/88	22,196	Do.
Terra Resources, Incorp. (Workers)	Denver, CO	11/18/88	11/15/88	22,197	Do.
Thymea, Corp. (Workers)	Farmington, NM	11/18/88	11/18/88	22,198	Do.
Tri-State Oil Tools, Inc. (Workers)	Bossier City, LA	11/18/88	11/16/88	22,199	Do.
Tullos Group, (Workers)	Philadelphia, PA	11/18/88	11/11/88	22,200	Do.
Unisys Corp. (Workers)	Plymouth, MI	11/18/88	11/18/88	22,201	Computer Equipment.
Vega Oil & Gas Co. (Workers)	El Dorado, AK	11/18/88	11/10/88	22,202	Oil & Gas.
Wiser Oil Co. (Company)	Corbin, KY	11/18/88	11/16/88	22,203	Do.
Witco Corp. (Workers)	Bradford, PA	11/18/88	11/15/88	22,204	Do.
Air Management Industries (Company)	Newton, NJ	12/5/88	11/29/88	22,205	Metal Modular Smokestacks.
Amerada Hess Corp. (Workers)	Seminole, TX	11/18/88	11/14/88	22,206	Oil & Gas.
Amoco Production Co. (USWA)	Farmington, NM	11/18/88	11/17/88	22,207	Do.
Bob Head Excavation (Company)	Indiana, PA	11/18/88	11/16/88	22,208	Do.
Brook's Woolen, Inc. (Workers)	Sanford, ME	11/18/88	11/22/88	22,209	Wool Fabrics
Buckeye, Inc. (Workers)	Midland, TX	11/18/88	11/18/88	22,210	Oil & Gas.
CSX (Workers)	Oklahoma City, OK	11/18/88	11/15/88	22,211	Do.
Carhartt Inc. (UGWA)	Irvine, KY	12/5/88	11/22/88	22,212	Work-wear.
Cheynne Oil Well (Workers)	Ness City, KS	11/18/88	11/16/88	22,213	Oil & Gas.
Conoco, Inc. (Workers)	Houston, TX	11/18/88	11/14/88	22,214	Oil.
Continental Car (USWA)	Milwaukee, WI	11/18/88	11/10/88	22,215	Containers.
Covington, MDM, LTD (Workers)	Covington, VA	11/5/88	11/15/88	22,216	Ladies Pants & Skirts.
Delhi Gas Pipeline Corp. (Workers)	Dallas, TX	11/18/88	11/16/88	22,217	Oil & Gas.
Dresser Atlas (Workers)	Farmington, NM	11/18/88	11/16/88	22,218	Do.
Endevco Producing Co. (Company)	Jackson, MS	11/18/88	11/8/88	22,219	Do.
Energx (Workers)	LeCenter, MN	12/5/88	11/21/88	22,220	Electric Generators.
Fandango Plant (Company)	Zapata, TX	11/18/88	11/8/88	22,221	Oil & Gas.
General Oil Field Supply Co., Inc. (Workers)	Evansville, IN	12/5/88	11/23/88	22,222	Do.
Geophysical Service Inc. (Workers)	Dallas, TX	11/18/88	11/16/88	22,223	Seismic Data.
Do	Denver, CO	11/18/88	11/10/88	22,224	Do.
Gold Seal Rubber Co. (Company)	Readville, MA	12/5/88	11/17/88	22,225	Rubber/Canvas Footwear.
Gregory & Cook Co. (Workers)	Houston, TX	11/18/88	11/18/88	22,226	Oil & Gas.
Grove Co. (The) (ACTWU)	Sikeston, MO	12/5/88	11/18/88	22,227	Ladies' Sportwear.
Haley Well Service, Inc. (Workers)	Carmi, IL	11/18/88	10/11/88	22,228	Well Maintenance & Repair.
Hazle Garment, Inc. (Workers)	Hazleton, PA	12/5/88	11/21/88	22,229	Girl's Dresses.
Heluatia Coal Co. (Workers)	Indiana, PA	12/5/88	11/18/88	22,230	Coal.
Holiday Formals, Inc. (Workers)	Hialeah, FL	12/5/88	11/16/88	22,231	Men's Shirts.
Homco International (Workers)	Oklahoma, City OK	11/18/88	11/7/88	22,232	Oil & Gas.
Houston Contracting (Laborers)	Anchorage AK	11/18/88	11/7/88	22,233	Do.
Independent Contractors (Company)	Denham Springs LA	11/18/88	11/7/88	22,234	Do.
Jaquar Manufacturing Co., Inc. (ACTWU)	Smethport, PA	11/18/88	11/7/88	22,235	Men's Slacks.
Keyston Fireworks Mfg. Co., Inc. (Workers)	Dunbar, PA	12/5/88	11/9/88	22,236	Fireworks.
Klev Bro Shoe Mfg. Co. (ACTWU)	Derry, NH	12/5/88	11/21/88	22,237	Ladies' Shoes.
Lee Co. (The) (UGWA)	Jasper, LA	12/5/88	10/31/88	22,238	Jeans.
Do	Houston, TX	11/18/88	12/5/88	22,239	Do.
Levelor Larentzen, Inc. (Workers)	Parsippany, NJ	11/18/88	11/10/88	22,240	Venetian Blinds.
Lozier Corporation/AFI Div (IAM)	Joplin, MO	12/5/88	11/18/88	22,241	Garment Racks.
Lucky's Well Service (Workers)	St. Elmo, IL	11/18/88	10/01/88	22,242	Oil & Gas.
MI Drilling Fluids, (Workers)	Olney, IL	11/18/88	11/17/88	22,243	Do.
Mobil Exploration & Producing Services, Inc. (Workers)	Dallas, TX	11/18/88	11/14/88	22,244	Do.
Mobil Oil Exploration Production Services, Inc. (Workers)	Lafayette, LA	11/18/88	11/18/88	22,245	Do.
NRG Exploration, Inc. (Workers)	The Woodlands, TX	11/18/88	11/16/88	22,246	Do.
National Mechnical (Laborers')	Anchorage, AK	11/18/88	11/7/88	22,247	Do.
New York Abrasive File Co. (Workers)	Kenmore, NY	12/5/88	11/28/88	22,248	Foot-care Files.
Pennzoil Producing Co. US. Offshore Exploration & Producing Div. (Workers).	Houston, TX	11/18/88	11/18/88	22,249	Oil & Gas.
Pickens Footwear (Company)	Jasper, GA	12/5/88	11/17/88	22,250	Rubber/Canvas Footwear.
R.E. Williams Drilling Co. (Workers)	Memphis, TN	11/18/88	11/16/88	22,251	Oil & Gas.
Scoggins Construction (Workers)	Norphlet, AR	12/5/88	11/17/88	22,252	Do.
Sheehan Pipe Line Construction Co. (Workers)	Kingsville, TX	11/18/88	11/18/88	22,253	Do.
Sohio Construction Co. (UAJA)	San Francisco, CA	11/18/88	11/14/88	22,254	Do.
Southern Automation (Workers)	Gautier, MS	11/18/88	11/9/88	22,255	Heater Repair, Electrical Upgrade.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Southport Exploration, Inc. (Workers)	Tulsa, OK	11/18/88	11/18/88	22,256	Oil & Gas.
Spartan Well Service (Workers)	Farmington, NM	11/18/88	11/18/88	22,257	Do.
Spooner Petroleum Co. (Workers)	Jackson, MS	11/18/88	11/14/88	22,258	Do.
Stowell Wood Products (Workers)	Bryant Pond, ME	12/5/88	11/21/88	22,259	Wooden Novelties.
Texaco Inc. Exploration Div. (Workers)	Denver, CO	11/18/88	11/14/88	22,260	Oil & Gas.
Texas Oil & Gas Corp. (Workers)	Dallas, TX	11/18/88	11/16/88	22,261	Do.
U Save Auto Rental (Workers)	Meridian, MS	12/5/88	11/10/88	22,262	Auto Rental.
Walters Drilling, Inc. (Workers)	Farmington, NM	11/18/88	11/18/88	22,263	Contract Drilling.
Willbros Drilling Co. (Workers)	Midland, TX	11/18/88	11/16/88	22,264	Oil & Gas.
Willbros Energy Services (Workers)	Tulsa, OK	11/18/88	11/18/88	22,265	Do.
Wyatt Drilling Co. (Workers)	Fairfield, IL	11/18/88	11/15/88	22,266	Do.

[FR Doc. 89-459 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 340]

Gates Molded Products, Milby Street Plant, Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 17, 1988 in response to a worker petition which was filed on behalf of workers at Gates Molded Products—Milby Street Plant, Houston, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

A negative determination applicable to the petitioning group of workers was issued on September 25, 1987 (TA-W-19, 978). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 16th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-460 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-30-M

Westland Oil Development Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-20,652, Montgomery TX, TA-W-20,652A, Abilene, TX, TA-W-20,652B, Levelland, TX, TA-W-20,652C, Liberty, TX, TA-W-20,652D, Winnsboro, TX, TA-W-20,652E, Tomball, TX.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 22, 1988 applicable to all workers of the Westland Oil Development Corporation, Montgomery, Texas. The certification was published in the **Federal Register** on July 6, 1988 (53 FR 25393).

Based on new employment information from the company, workers at additional locations were engaged in activities supporting the production of crude oil at Midland, Texas, whose workers are under a certification issued on February 27, 1987 (TA-W-18,854). That certification runs from December 16, 1985 until February 27, 1989. Section 223(b)(1) of the Trade Act does not allow the certification of workers who were separated prior to one year of the date of the Montgomery petition, April 21, 1988. The intent of the certification is to cover all of Westland Oil Development Corporation in all locations within the purview of section 223(b)(1) of the Act.

The amended notice applicable to TA-W-20,652 is hereby issued as follows:

All workers of Westland Oil Development Corporation, Abilene, Texas; Levelland, Texas; Liberty, Texas; Winnsboro, Texas, and Tomball, Texas, who became totally or partially separated from employment on or after April 21, 1987 and before June 1, 1988 and all workers of Westland Oil Development Corporation, Montgomery, Texas who became totally or partially separated from employment on or after April 21, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of December 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-461 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 544; 21,544A]

Williams Exploration Co.; Houston, TX, Lafayette, LA; of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1988 in response to a worker petition which was filed on October 31, 1988 on behalf of workers at Williams Exploration Company in Houston, Texas. The workers were engaged in employment related to the production of crude oil and natural gas.

The retroactive provisions of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act to the implementation of the retroactive provisions.

All workers of the Williams Exploration Company were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 23rd day of December, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-462 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1989

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) for JTPA Titles II–A and III, and for the summer youth program in Calendar Year (CY) 1988 for JTPA Title II–B; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1988.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0577. For Employment Service planning levels contact Mr. Robert A. Schaerfl, Director, U.S. Employment Service, Room N4470, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0157. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) for JTPA Titles II–A and III, and for the summer youth program in (CY) 1989 for JTPA Title II–B; and, in accord with section 6(b)(5) of the Wagner-Peyser Act, preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1989. The allotments and estimates are based on the appropriations of DOL for Fiscal Year (FY) 1988 and FY 1989.

Attached are a list of the allotments for PY 1988 for programs under JTPA Titles II–A and III, a list of the allotments for the CY 1988 summer youth program under Title II–B of JTPA, and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1989 allotments are based on the funds appropriated by Public Law 100–436 for FY 1989; the CY 1989 allotments are based on funds appropriated by Public Law 100–202 for FY 1988.

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1988 data, and published in the **Federal Register** at a later date.

Note: These Allotments and Estimates are Based on FY 1988 and FY 1989 Department of Labor Appropriations Acts. Any Subsequent Action Taken by Both Houses of Congress May Require Revisions to These Allotments and Estimates.

JTPA Title II–A Allotments. Attachment No. I shows the PY 1989 JTPA Title II–A allotments by State on a total appropriation of $1,787,772,000. The amount is composed entirely of PY 1989 formula funds. For all States, Puerto Rico, and the District of Columbia, the following data were used in developing these allotments:

—Data for areas of substantial unemployment are averages for the 12-month period, July 1987 through June 1988.

—The number of excess unemployed individuals or the area of substantial unemployment excess (depending on which is higher) are averages for this same 12-month period, July 1987 through June 1988.

—The economically disadvantaged data are from the 1980 Census.

The allotments for the Insular Areas, including the Freely Associated States (FASs), are based on estimated 1987 unemployment. The estimated unemployment data were developed using 1980 Census unemployment as a base. The 1980 data were updated according to relative shifts in the population. A 90-percent relative share hold-harmless of the Title II–A allotments for these areas and a minimum allotments of $125,000 were also applied in determining the allotments.

PY 1989 JTPA Title II–A funds are to be distributed among designated service delivery areas (SDAs) in accordance with the revised statutory formula for programs under JTPA Titles II–A and II–B as contained in Section 202(a) of the JTPA, as amended.

JTPA Title II–B Allotments. Attachment No. II shows the CY 1989 JTPA Title II–B allotments by State based on a total FY 1988 available appropriation of $718,050,000. The data used for these allotments are the same data as were used for JTPA Title II–A allotments. The amount allotted is composed entirely of CY 1989 formula funds.

For the Insular Areas, the amount is based on the percentage of Title II–B funds each area received during the previous summer.

CY 1989 Title II–B summer youth funds are to be distributed among designated SDAs in accordance with the revised statutory formula for programs under JTPA Titles II–A and II–B contained in Section 202(a) of the JTPA, as amended.

JTPA Title III Allotments. Attachment No. III shows the PY 1989 JTPA Title III Dislocated Worker Program allotments. It shows the total appropriation of $283,773,000, which includes the base allotment of federal funds totaling $227,621,803 and the national reserve of $56,151,197, to be distributed at a later date.

Except for the Insular Areas, the unemployment data used for determining these allotments, relative numbers of unemployed, and relative numbers of excess unemployed are averages for the September 1987 through August 1988 period. Long-term unemployed data used were for CY 1987.

For Insular Areas, the allotments are based on the percentages of Title II–A allotments.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates. Attachment No. IV shows preliminary Employment Service planning estimates which have been produced using the legislatively-mandated formula. See Wagner-Peyser Act Section 6 (a) and (b). These estimates are based on preliminary data on each State's relative share of civilian labor force and unemployment for the 12-month period ending September 1988. The methodology for allocating the Secretary's 3-percent setaside is unchanged from that used in the prior year. See Wagner-Peyser Act section 6(b)(4); and 53 FR 11715 (April 8, 1988).

Final Wagner-Peyser allotments will be issued within 90 days, based on CY 1988 data, and published in the **Federal Register.** The amount appropriated for public employment service activities is $763,752,000; however, $15,275,040 has been withheld from distribution to finance postage costs associated with the conduct of employment service business, leaving $748,476,960 to be distributed. Ten percent of the planning estimate may be reserved at the discretion of the Governor for activities described in section 7(b) of the Wagner-Peyser Act, as amended.

Signed at Washington, DC, this 29th day of December 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

ATTACHMENT I

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1989 JTPA TITLE II-A ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	39,536,916
Alaska	6,525,963
Arizona	23,590,066
Arkansas	25,219,161
California	183,035,142
Colorado	28,517,359
Connecticut	9,509,392
Delaware	4,457,582
District of Columbia	5,426,859
Florida	63,868,146
Georgia	40,988,178
Hawaii	4,663,848
Idaho	9,406,332
Illinois	99,565,573
Indiana	32,899,563
Iowa	17,210,087
Kansas	9,332,082
Kentucky	41,852,122
Louisiana	63,942,299
Maine	5,968,897
Maryland	19,309,657
Massachusetts	20,250,997
Michigan	95,193,607
Minnesota	20,349,307
Mississippi	32,550,450
Missouri	34,489,693
Montana	7,917,824
Nebraska	6,332,133
Nevada	6,581,597
New Hampshire	4,457,582
New Jersey	29,203,407
New Mexico	17,126,683
New York	94,544,905
North Carolina	27,612,128
North Dakota	4,457,582
Ohio	80,400,855
Oklahoma	25,755,780
Oregon	19,936,621
Pennsylvania	71,500,850
Puerto Rico	77,555,294
Rhode Island	4,457,582
South Carolina	20,389,867
South Dakota	4,457,582
Tennessee	36,341,763
Texas	170,320,426
Utah	9,580,826
Vermont	4,457,582
Virginia	25,456,830
Washington	39,265,302
West Virginia	23,556,000
Wisconsin	29,248,932
Wyoming	4,457,582
American Samoa	195,906
Guam	1,181,934
Marshall Islands	487,746
Micronesia	1,147,905
Northern Marianas	125,000
Palau	125,000
Virgin Islands	1,475,716
NATIONAL TOTAL	1,787,772,000

ATTACHMENT II

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1988 JTPA TITLE II-B ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	15,230,848
Alaska	2,509,214
Arizona	9,088,384
Arkansas	9,711,931
California	70,528,504
Colorado	10,973,032
Connecticut	5,980,781
Delaware	1,759,490
District of Columbia	4,955,670
Florida	24,621,954
Georgia	15,800,583
Hawaii	1,805,289
Idaho	3,622,102
Illinois	38,321,955
Indiana	13,626,344
Iowa	6,508,249
Kansas	3,590,204
Kentucky	16,112,017
Louisiana	24,596,400
Maine	2,304,506
Maryland	8,461,088
Massachusetts	12,443,965
Michigan	36,624,989
Minnesota	7,846,619
Mississippi	12,535,367
Missouri	13,289,183
Montana	3,049,132
Nebraska	2,433,527
Nevada	2,533,372
New Hampshire	1,759,490
New Jersey	16,151,325
New Mexico	6,593,962
New York	36,908,521
North Carolina	10,903,115
North Dakota	1,759,490
Ohio	30,959,267
Oklahoma	9,832,824
Oregon	7,517,380
Pennsylvania	26,842,002
Puerto Rico	29,889,635
Rhode Island	2,180,420
South Carolina	7,864,806
South Dakota	1,759,490
Tennessee	14,006,726
Texas	65,527,821
Utah	3,692,264
Vermont	1,759,490
Virginia	9,821,583
Washington	15,111,738
West Virginia	9,063,932
Wisconsin	11,266,722
Wyoming	1,759,490
American Samoa	54,510
Guam	664,813
Marshall Islands	19,591
Micronesia	46,428
Northern Marianas	25,499
Palau	7,688
Virgin Islands	376,958
Native Americans	13,058,321
NATIONAL TOTAL	718,050,000

ATTACHMENT III

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1989 JTPA TITLE III ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	5,275,817
Alaska	1,114,713
Arizona	2,647,363
Arkansas	3,300,286
California	20,777,981
Colorado	4,524,491
Connecticut	1,021,390
Delaware	190,617
District of Columbia	529,865
Florida	6,625,966
Georgia	4,671,188
Hawaii	338,612
Idaho	1,253,411
Illinois	15,780,341
Indiana	4,341,299
Iowa	1,931,984
Kansas	1,165,716
Kentucky	6,205,881
Louisiana	11,011,555
Maine	485,076
Maryland	1,953,493
Massachusetts	1,766,391
Michigan	14,464,854
Minnesota	2,269,537
Mississippi	4,409,215
Missouri	4,249,437
Montana	1,145,734
Nebraska	728,019
Nevada	918,218
New Hampshire	232,193
New Jersey	3,020,835
New Mexico	2,331,393
New York	8,588,141
North Carolina	2,318,402
North Dakota	349,301
Ohio	12,602,844
Oklahoma	3,767,239
Oregon	2,474,339
Pennsylvania	8,466,368
Puerto Rico	7,778,478
Rhode Island	303,387
South Carolina	2,214,285
South Dakota	298,136
Tennessee	4,182,744
Texas	24,999,936
Utah	1,151,844
Vermont	176,050
Virginia	2,247,014
Washington	5,887,534
West Virginia	3,999,471
Wisconsin	3,926,723
Wyoming	603,293
American Samoa	24,943
Guam	150,486
Marshall Islands	62,101
Micronesia	146,153
Northern Marianas	15,915
Palau	15,915
Virgin Islands	187,890
National Reserve	56,151,197
NATIONAL TOTAL	283,773,000

[FR Doc. 89-503 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-30-C

ATTACHMENT IV

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
PRELIMINARY PY 1989 WAGNER-PEYSER ALLOTMENTS TO STATES

	BASIC FORMULA	3% DISTRIBUTION STEP 1*	STEP 2**	TOTAL	TOTAL ALLOTMENT***
Alabama	11,312,358	0	223,512	223,512	11,535,870
Alaska	7,102,456	1,033,847	0	1,033,847	8,136,303
Arizona	9,262,299	0	0	0	9,262,299
Arkansas	6,969,307	0	206,987	206,987	7,176,294
California	76,879,939	0	0	0	76,879,939
Colorado	10,022,377	0	0	0	10,022,377
Connecticut	8,226,907	0	0	0	8,226,907
Delaware	2,027,755	0	62,872	62,872	2,090,627
District of Columbia	4,793,873	0	650,471	650,471	5,444,344
Florida	32,278,084	0	0	0	32,278,084
Georgia	17,444,536	0	0	0	17,444,536
Hawaii	2,565,088	0	348,051	348,051	2,913,139
Idaho	5,917,608	861,379	0	861,379	6,778,987
Illinois	34,356,520	0	0	0	34,356,520
Indiana	15,168,311	0	0	0	15,168,311
Iowa	8,186,002	0	1,110,741	1,110,741	9,296,743
Kansas	6,674,563	0	0	0	6,674,563
Kentucky	10,848,886	0	0	0	10,848,886
Louisiana	13,688,528	0	232,313	232,313	13,920,841
Maine	3,519,146	512,254	0	512,254	4,031,400
Maryland	12,464,923	0	0	0	12,464,923
Massachusetts	14,890,345	0	0	0	14,890,345
Michigan	28,261,662	0	0	0	28,261,662
Minnesota	11,867,347	0	0	0	11,867,347
Mississippi	7,377,937	0	569,594	569,594	7,947,531
Missouri	14,356,913	0	0	0	14,356,913
Montana	4,835,901	703,923	0	703,923	5,539,824
Nebraska	5,811,802	845,977	0	845,977	6,657,779
Nevada	4,701,004	684,288	0	684,288	5,385,292
New Hampshire	2,716,266	0	0	0	2,716,266
New Jersey	19,686,875	0	0	0	19,686,875
New Mexico	5,426,730	789,926	0	789,926	6,216,656
New York	49,395,737	0	6,702,400	6,702,400	56,098,137
North Carolina	16,344,304	0	0	0	16,344,304
North Dakota	4,924,393	716,804	0	716,804	5,641,197
Ohio	30,537,435	0	0	0	30,537,435
Oklahoma	11,293,961	0	1,532,452	1,532,452	12,826,413
Oregon	8,100,624	0	834,128	834,128	8,934,752
Pennsylvania	31,212,026	0	0	0	31,212,026
Puerto Rico	9,120,265	0	0	0	9,120,265
Rhode Island	2,512,896	0	138,319	138,319	2,651,215
South Carolina	8,817,523	0	0	0	8,817,523
South Dakota	4,551,271	662,492	0	662,492	5,213,763
Tennessee	13,280,779	0	0	0	13,280,779
Texas	51,193,521	0	0	0	51,193,521
Utah	9,954,184	1,448,950	0	1,448,950	11,403,134
Vermont	2,132,077	310,349	0	310,349	2,442,426
Virginia	15,289,375	0	0	0	15,289,375
Washington	13,647,341	0	0	0	13,647,341
West Virginia	5,209,380	758,287	0	758,287	5,967,667
Wisconsin	13,507,687	0	0	0	13,507,687
Wyoming	3,531,097	513,993	0	513,993	4,045,090
FORMULA TOTAL	724,198,124	9,842,469	12,611,840	22,454,309	746,652,433
Guam	350,229	0	0	0	350,229
Virgin Islands	1,474,298	0	0	0	1,474,298
Indicia Postage	15,275,040	0	0	0	15,275,040
NATIONAL TOTAL	741,297,691	9,842,469	12,611,840	22,454,309	763,752,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1988 TO THE PY 1989 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1988 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 12 STATES LOSING IN RELATIVE SHARE FROM PY 1988 TO THE PY 1989 BASIC FORMULA AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

Mine Safety and Health Administration

[Docket No. M-88-230-C]

Consolidation Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (belt conveyors) to its Buchanan No. 1 Mine (I.D. No. 44-04856) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that in all coal mines, waterlines be installed parallel to the entire length of belt conveyors and be equipped with fire hose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of fire hose with fittings suitable for connection with each belt conveyor waterline system be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry.

2. As an alternate method, petitioner proposes the following:

(a) To keep the waterline and outlets in the track entry which is adjacent to the belt entry (headgate entry);

(b) A fire hose would be strategically located and would be of sufficient length so that any affected area on the belt would be covered from the most proximate fire hose outlet. In addition, seven hundred feet of fire hose, instead of the required five hundred feet, would be maintained at a location in the immediate area of the longwall belt drive;

(c) Crosscuts leading to fire hose outlets from the belt entry would be passable by removing a portion of the stoppings at or near the fire hose outlets, or by providing stopping doors at or near the fire hose outlets; and

(d) Each fire hose outlet would be marked for easy identification.

3. In support of this request, petitioner states that—

(a) The air ventilating these track and belt entries is common to both entries, and

(b) By allowing the fire hose outlets to remain in the track entry, the advantage to manage fire fighting procedures is enhanced.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-463 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. (M-88-237-C)]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. 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 intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. Petitioner is mining in virgin coal and is developing this area for future longwall retreat mining. Large quantities of methane gas are expected, which will require large quantities of air for dilution. Due to the minimum number of airways that will be developed and to maximize effectiveness of these entries, it will be necessary to use the air that is conducted through the belt haulage entries at the working places.

3. As an alternate method, petitioner proposes to use the air in the belt entry to ventilate active working places and planned longwall panels. The belt conveyor entry would be examined at least once during each coal producing shift while persons are working.

4. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and detecting electrical malfunctions.

5. The CO system would be visually examined at least once each coal-producing shift and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

6. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using hand-held CO detecting devices.

7. The details for the fire detection system would be included as part of the Ventilation System Methane and Dust Control Plan.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-464 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. (M-88-238-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. 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 automatic fire sensor and warning device systems provide identification of any fire within each belt flight.

2. In a separate petition (M-88-237-C), petitioner proposes to use the air in the belt entry to ventilate active working places and longwall panels.

3. As an alternate method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (co) detection system in all belt entries used as intake aircourses with specific conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (February 9, 1989). Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-465 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-236-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656, has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Dominion No. 6 Mine (I.D. No. 44-06486) and its Dominion No. 9 Mine (I.D. No. 44-06482) both located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a borehole or boreholes be drilled to a distance of at least 20 feet in advance of the working place and be continually maintained to a distance of at least 10 feet in advance of the advancing working face whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas; or within 200 feet of any working of an adjacent mine.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib, restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry would be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry would be a 90 degree angle to the face and the hole drilled 5 feet from the right rib would be a 75 degree angle to the face with a margin of error of +/−5 degrees. This pattern would provide a 10-foot barrier in all directions to the cut to be taken. This pattern would also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Dated: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-466 Filed 1-9-89; 8:45 am]

BILLIING CODE 4510-43-M

[Docket No. M-88-232-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its North Branch Mine (Potomac Division) (I.D. No. 46-01309) located in Grant County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt haulage entries as intake aircourses in continuous and longwall mining sections. In addition, an early-warning fire detection system would be installed in the belt entry as follows:

(a) A low-level carbon monoxide (CO) detection system would be installed in straight Mains, the rehabilitation belt entries, and at each belt drive and tailpiece located in the intake aircourse. The low-level CO system would be capable of giving warning of a fire for a minimum of four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above the ambient level and an audible signal would sound at 15 ppm above the ambient level. All

persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and and detecting electrical malfunctions;

(b) The CO monitoring system would initiate the fire alarm signals at an attended surface location. This reponsible person would have two-way communications with all personnel who may be endangered and can hear or observe the signals and take appropriate action immediately. The responsible person would be trained in the operation of the CO monitoring system and in the proper procedures to follow in the event of an emergency or malfunction. In addition, the detector located at or near the section loading point would activate when the CO monitoring system initiates the fire alarm signals and would give a warning that could be heard on the working section;

(c) The CO monitoring system would be visually examined, at least once each coal-producing shift, and tested for functional operation weekly, to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly;

(d) If at any time the CO monitoring system or any portion of the system is deengerized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate, provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using hand-held CO detecting devices;

(e) The details for the fire detection system would be included as a part of the Ventilation System and Methane and Dust Control plan. The District Manager may require additional carbon monoxide monitors to be installed as part of said plan to ensure the safety of the miners.

3. This plan would increase the quantity of air that can be supplied to the face areas, and thereby provide increased protection to the miners against hazards created by accumulation of methane and other harmful gases, as well as respirable dust. Also, by using the belt entry as an intake, the velocity of air in the belt entry would be increased. This would provide more positive ventilation and reduce the possibility of methane accumulation in the belt entry.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or receive in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-467 Filed 1-9-89; 8:45 am]

BILLING CODE 5410-43-M

[Docket No. M-88-240-C]

Sahara Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sahara Coal Company, Inc., P.O. Box 330, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75-326 (aircourses and belt haulage entries) to its Mine No. 21 (I.D. No. 11-00784) located in Saline County, Illinois. 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 entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air coursed through designated belt haulage entries to ventilate specific active working sections.

3. In support of this request, petitioner proposes to install a carbon monoxide (CO) fire detection system. CO detectors would be located at the beginning and end of the belt flight and at intervals not greater than 2,000 feet along the belt, if the belt air velocity is greater than 50 feet per minute and does not exceed 200 feet per minute. CO detectors would be located at the beginning and end of each belt flight and at intervals not greater than 3,000 feet along the belt, if the belt air velocity is greater than 200 feet per minute.

(a) CO detectors would be capable of providing a warning at an attended location when the CO level is 10 parts per million above the ambient level;

(b) CO detectors would be visually examined weekly when belts are operating. The CO detectors would be calibrated at the time of installation and monthly;

(c) In the event that the monitoring system becomes inoperative, the belt would continue to operate provided the area is continually monitored and patrolled by a qualified person who would test for the presence of CO at frequent intervals; and

(d) In the event a warning signal is transmitted to the attended location or CO is detected by the person monitoring the area, employees would be notified and an investigation would be conducted.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-468 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-18-M]

C & M Sand and Gravel; Petition for Modification of Application of Mandatory Safety Standard

C & M Sand and Gravel, 7916 Niwot Road, Box 490, Niwot, Colorado 80544 has filed a petition to modify the application of 30 CFR 56.14132 (horns and backup alarms) to its Zweck Pit (I.D. No. 05-04375) located in Boulder County, Colorado. 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 when the operator has an obstructed view to the rear, self-propelled mobile equipment have an automatic reverse-activated signal alarm or an observer to signal when it is safe to backup.

2. As an alternate method, petitioner proposes to shut down loader activity

when pedestrians are present in lieu of an automatic reverse-activated signal alarm or an observer. In support of this request, petitioner states that—

(a) There are two loaders operating at the site. One would excavate or load pit run into a hopper for the crushing operation. There would be minimal truck or foot traffic in this area. The other would load finished products onto haul vehicles in the stockpile area. Access to this area will be by a 1,500-foot haul road and haul vehicle drivers would be required to remain in their vehicles. The traffic pattern would limit backup by the loader to those times when the loader is backing from the stockpile to load the truck. Therefore, there would be no pedestrian or truck traffic behind the loader at the times when backing is required;

(b) People routinely working near audible backup alarms become accustomed to the alarms and no longer respond to their warning; and

(c) The alarms bother people living in residential areas near the mine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: January 5, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-504 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-01)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATE AND TIME: February 1, 1989, 8:30 a.m. to 5 p.m., February 2, 1989, 8:30 a.m. to 5:30 p.m., and February 3, 1989, 8:30 a.m. to 12:30 p.m.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to review the OSSA Program, Budget, and Strategic Plan. They will also hear reports on the Federal and NASA FY 1990 Budgets and receive reports on Information Systems, Microgravity, the Space Science Board, and Center Science Assessment. The Committee is chaired by Dr. Berrien Moore and is composed of 24 members. The meeting will be open to the public up to the capacity of the room (approximately 45 including Committee members).

TYPE OF MEETING: Open.

Agenda:

Wednesday, February 1

8:30 a.m.—Open Remarks and Committee Business.
8:45 a.m.—Status of the Office of Space Science and Applications (OSSA) Program.
9:15 a.m.—Overview of the FY 1990 Federal Budget.
9:45 a.m.—NASA and OSSA FY 1990 Budget.
10:30 a.m.—Committee Discussion.
11:30 a.m.—OSSA Strategic Plan.
1:30 p.m.—National Research Council (NRC) Space Science Board Reorganization.
2:30 p.m.—Information Systems Strategic Planning.
4.15 p.m.—Committee Discussion.
5 p.m.—Adjourn.

Thursday, February 2

8:30 a.m.—Discussion of Internal Committee Business.
8:45 a.m.—Center Science Assessment Report.
9:30 a.m.—Division Subcommittee Reports.
1 p.m.—Microgravity Science Tutorial.
2 p.m.—Discussion on the Microgravity Program.
3:30 p.m.—Committee Discussion and Writing Group Assignments.
5:30 p.m.—Adjourn.

Friday, February 3

8:30 a.m.—Internal Committee Business.
8:45 a.m.—Writing Groups and Committee Discussion.
12:30 p.m.—Adjourn.

January 4, 1989.

Ann Bradley,

Advisory Committe Management Officer, National Aeronatics and Space Administration.

[FR Doc. 89-396 Filed 1-9-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of

section 552b of Title 5, United States Code.

1. *Date:* January 31, 1988–February 1, 1989.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1989.

2. *Date:* February 2, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Ancient, Classical, and Near Eastern Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

3. *Date:* February 3, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Music and other Performing Arts, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

4. *Date:* February 6–7, 1989.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1989.

5. *Date:* February 7, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Literature and Philosophy, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

6. *Date:* February 14, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools categories in the field of Linguistics, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

7. *Date:* February 21, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to the Tools and Access categories in the fields of World History and the Social Sciences, submitted to the Division of Research Programs, for projects beginning after July 1, 1989

8. *Date:* February 23, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access category in the field of American Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

9. *Date:* February 24, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools categories in the field of American Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

10. *Date:* February 28, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Art and Architecture, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

11. *Date:* January 23, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Fine Arts, submitted to the Division of Research Programs, for projects beginning after July 1, 1989. Publication of this notice was unavoidably delayed due to exceptional circumstances during the recent holdiay season.

12. *Date:* January 24, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research applications for Humanities, Science and Technology, submitted to the Division of Research Programs, for projects beginning after July 1, 1989. Publication of this notice was unavoidably delayed due to exceptional circumstances during the recent holiday season.

13. *Date:* January 30, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Philosophy and Literature, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

14. *Date:* January 31, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Archaeology, New World, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

15. *Date:* February 6, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Anthropology and Sociology, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

16. *Date:* February 13, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Archaeology, Old World, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

17. *Date:* February 14, 1989.
Time: 8:30 a.m. 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Guided Studies of Great Texts in Science, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

18. *Date:* February 24, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for World History and Religion, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 89–454 Filed 1–9–89; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Gulf States Utilities Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company, (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise the provisions in Technical Specification (TS) Definition 1.31 and in TS 4.6.1.2 to modify the primary containment integrity requirements to

permit the performance of a limited number of local leak rate tests while handling irradiated fuel within the containment. TS 3.9.4 would be modified to increase the decay time required for irradiated fuel before the vent and drain line pathways can be opened for the purpose of conducting local leak rate surveillance testing.

The proposed action is in accordance with the licensee's application for amendment dated September 28, 1988, as supplemented November 30, 1988.

The Need for the Proposed Action

The proposed change to the TS is required to relieve the licensee from the unnecessary hardship due to the current requirement to suspend handling of irradiated fuel if primary containment integrity is not maintained. As a result of this requirement, most Type C leak rate tests required by Appendix J to 10 CFR Part 50 cannot be performed while refueling is in progress. The requested TS change would permit leak rate testing in parallel with refueling to reduce the refueling outage duration because a limited number of vent and drain pathways could be opened while refueling operations are underway.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would nodify the provisions in Technical Specification Definition 1.31 and TS 4.6.1.2 to revise the primary containment integrity requirements during fuel handling to permit up to twenty vent and drain line pathways to be opened for the purpose of performing local leak rate tests. TS 3.9.4 would be modified to increase the decay time required for the irradiated fuel from 24 hours to 80 hours before the vent and drain line pathways can be opened for the purpose of performing the local leak rate tests.

The NRC staff performed an evaluation of the offsite radiological consequences resulting from a postulated fuel handling accident inside the primary containment while performing Type C leak rate testing with up to 20 vent and drain lines opened.

In the River Bend Safety Evaluation Report (NUREG–0989) dated May 1984, the staff previously evaluated a postulated fuel handling accident using assumptions contained in Positions C.1.a through C.1.k of Regulatory Guide 1.25 and the procedures specified in Standard Review Plan (SRP) section 15.7.4 (NUREG–0800). A 24 hour delay between shutdown and accident was used in the evaluation. In addition, the specified assumptions postulate a single dropped fuel assembly, the kinetic energy of which is expended with perfect mechanical efficiency in breaking open the maximum possible number of fuel rods. Instantaneous release of noble gases and radioiodine vapor from the gaps of the broken rods occurs as gas bubbles pass up through the water covering the fuel. All radioactivity reaching the primary containment atmosphere is exhausted within 2 hours through engineered safety feature filtered exhaust systems to the environment.

In this current evaluation, the staff performed the offsite dose calculations using the same assumptions previously used for a postulated fuel handling accident with the following two exceptions:

1. An unmitigated release of 70.2 CFM from the primary containment through up to 20 open vent and drain lines in addition to the maximum allowable unidentified primary containment leakage of 0.26 percent per day; and

2. A credit was given for 10 percent mixing of airborne radioactive material within primary containment atmosphere prior to release to the secondary containment (the licensee proposed 50 percent mixing credit).

The offsite doses computed for the River Bend Exclusion Area Boundary (EAB) and Low Population Zone (LPZ) boundaries using the above assumptions, assumptions contained in Regulatory Guide 1.25, and the procedures specified in Standard Review Plan (SRP) section 15.7.4, were 21 rem to the thyroid and 6 rem to the whole body at the EAB and 2.7 rem to the thyroid and 0.6 rem whole body at the LPZ. These calculated offsite doses are well within the exposure guidelines of 10 CFR 100 and are within the acceptance criteria given in Standard Review Plan section 15.7.4.

The change does not otherwise affect the probability or consequences of any accident.

The tasks that the licensee's personnel will perform to accomplish the tests will not be significantly different from those tasks performed during previous leak rate testing. Thus, there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

There are no changes being made in the types of any effluents that may be released offsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 24, 1988 (53 FR 41634). No request for hearing or petition for leave to intervene was filed following these notices.

Alternative to the Proposed Action

Since the Commission concluded that there is no significant adverse environmental effect that would result from the proposed action, alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the impact of plant operations on the environment and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit 1, dated January 1985.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 28, 1988, and supplement dated November 30, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 3rd day of January, 1989.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-444 Filed 1-9-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133]

Pacific Gas and Electric Co., Humboldt Bay Power Plant, Un. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.51(d) to Pacific Gas and Electric Company (the licensee), for Humboldt Bay Power Plant, Unit 3, located in Humboldt County, California.

Environmental Assessment

Identification of Proposed Action

By application dated June 6, 1988 as revised July 19 and September 13, 1988, Pacific Gas and Electric Company requested an exemption. The exemption will delete the requirement for an annual inventory of spent fuel at the permanently shut down Humboldt Bay Power Plant, Unit 3 provided that specified commensurate conditions and requirements are established.

The Need for the Proposed Action

The licensee is requesting an exemption from the annual physical inventory.

Humboldt Bay Unit 3 was shut down on July 2, 1976 and all spent fuel was subsequently transferred to the spend fuel pool. The operating license was modified to possess-but-not-operate status on July 16, 1985. On July 19, 1988 the NRC approved a decommissioning plan that allowed storage of spent fuel on site until a Federal repository was available to receive it.

Environmental Impact of the Proposed Action

The proposed action is administrative only and will have no environmental impact.

Alternative Use of Resources

This action does not involve the use of resources.

Agencies and Persons Consulted

The licensee initiated this exemption action. The NRC staff is reviewing their request. No other agencies or persons were consulted.

Finding of Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application dated June 6, 1988 as revised July 19 and September 13, 1988 which is available in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Eureka-Humboldt County Library, 421 I Street, Eureka, California.

Dated at Rockville, Maryland, this 4th day of January 1989.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-445 Filed 1-9-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341; License No. NPF-43; EA 88-104]

Detroit Edison Co. (Fermi 2); Order Imposing Civil Monetary Penalty

I

Detroit Edison Company (licensee) is the holder of Operating License No. NPF-43 issued by the Nuclear Regulatory Commission (NRC/Commission) on July 15, 1985. The license authorizes the licensee to operate Fermi 2 in accordance with the conditions specified therein.

II

Special safety inspections of the licensee's activities were conducted during the periods October 18, 1987 through March 31, 1988 and January 17 through April 28, 1988. The results of these inspections indicate that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated June 16, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated July 15, 1988. In its response, the licensee admitted Violation A and denied Violation B. In addition, the licensee requested remission of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice. However, escalation of the civil penalty for past poor performance was not warranted for Violation A. Consequently, the proposed escalation of the penalty on this basis has been withdrawn. In all other aspects, the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that: The licensee pay a civil monetary penalty in the amount of One Hundred Seventy-Five Thousand Dollars ($175,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and should be addressed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Assistant General Counsel for Enforcement, the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137, and a copy to the NRC Resident Inspector, Fermi 2.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made at that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation B of the Notice of Violation and Proposed Imposition of Civil Penalties referenced in section II above, and

(b) Whether, on the basis of Violations A and B, this Order should be sustained.

Dated at Rockville, Maryland this 28th day of December 1988.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluation and Conclusion

On June 16, 1988, a Notice of Violation and Proposed Imposition of Civil Penalties (NOV) was issued for violations identified during NRC inspections. Detroit Edison Company (licensee) responded to the NOV on July 15, 1988. In its response, the licensee admitted that Violation A occurred, but denied that Violation B occurred as stated in the NOV. The licensee requested partial mitigation of the civil penalty for Violation A and the withdrawal of Violation B. The violations are restated below, followed by a summary of the licensee's response, the NRC evaluation, and the NRC conclusion.

I. Restatement of Violation A

A. 10 CFR Part 50, Appendix A, General Design Criterion 56 requires, in part, that each line that connects directly to the containment atmosphere and penetrates primary reactor containment shall be provided with containment isolation valves both inside and outside primary containment unless it can be demonstrated that the containment isolation provisions for a specific class of lines, such as instrument lines, are acceptable on some other defined basis.

Contrary to the above, as of October 17, 1987, the containment isolation configuration for the primary containment radiation monitoring (PCRM) system violated the requirements of General Design Criteria 56 in that containment isolation valves were not provided on the system lines both inside and outside primary containment and this configuration was not accepted on some other defined basis.

This is a Severity Level III violation (Supplement I). Civil Penalty—$100,000.

Summary of Licensee's Response

The licensee admits Violation A as stated in the NOV but believes extenuating circumstances exist which make the proposed escalation of the civil penalty unwarranted.

1. *Corrective Action to Prevent Recurrence.* The licensee states that action was taken promptly following identification of the problem to isolate the affected system and perform leakage testing. Submittals were made to the NRC in a timely manner. Frequent communications occurred between the licensee and the NRC until the interim resolution was reached. The licensee cites the NRC letter granting the temporary exemption to GDC 56 which states that the licensee had made a good faith effort to come into compliance with GDC 56.

2. *Past Performance.* The licensee believes that increasing the civil penalty based on past performance, specifically including an original design deficiency (EA 87-232) involving the 72CF Bus design deficiency, is inappropriate. Increasing the civil penalty, it is argued, is not appropriate when two existing unrelated design problems are discovered in the same general time period. The licensee stated that it believes that the purpose of the provision in 10 CFR Part 2, Appendix C for increasing a penalty based on poor past performance is to penalize utilities for ineffective corrective action and that use of this provision is only appropriate when a licensee violates a requirement, supposedly takes corrective action, but then repeats the violation. Therefore, the licensee argues that corrective action for an original design problem discovered in September 1987 could not have affected a modification performed in 1984, and so should not form the bases for escalation of the civil penalty for poor past performance.

3. *Prompt Identification and Reporting.* Reduction of up to 50% of the base civil penalty may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In this case, the licensee argues that it identified and reported the problem.

NRC Evaluation of Licensee's Response

With respect to unusually prompt and extensive corrective action, the issue is not the licensee's good faith. The issue is the adequacy of the corrective actions. The NRC staff does not agree that the actions taken demonstrate adequate effort to either compensate for the technical deficiency or come into compliance with GDC 56. The NRC had to meet with the licensee to convince it to commit to taking compensatory actions during the time the licensee would be operating under the exemption it had requested from GDC 56. In addition, the licensee had proposed the exemption without compensatory measures. Further, the licensee's proposal to achieve compliance with GDC 56 was deficient in that the NRC had to convince the licensee that additional automatic isolation valves with proper signal diversity would be required to satisfy GDC 56. The base civil penalty was increased 50% based on these considerations which demonstrated minimal corrective actions.

With respect to past performance, 10 CFR Part 2, Appendix C, section V.B. addresses past performance in subsection 3. It states that the base civil penalty may be increased as much as 100% for prior poor performance in the general area of concern. It further states that, in weighing this factor, consideration will be given to a number of factors including the effectiveness of previous corrective action for similar problems, overall performance such as SALP evaluations, and prior enforcement history including Severity Level IV and V violations in the area of concern. It is not necessary for application of this factor that prior corrective actions be shown to be ineffective. The factor may be applied upon an assessment of overall past performance in the general area of concern. Therefore, the NRC staff does not agree with the licensee's understanding of the application of this factor.

Specifically, a correlation to corrective action is not necessary. However, after reconsidering the circumstances of this case, the staff has concluded that escalation of the civil penalty for this factor is not warranted.

With regard to the factor of identification and reporting, while the licensee reported the violation, it was the NRC who actually raised the issue of compliance with GDC 56. The Resident Inspector had to convince the licensee that it did not meet GDC 56 or an alternative as described in the UFSAR. Also, it would be inappropriate to mitigate the civil penalty based on this factor due to the length of time that a significant deficiency existed without discovery. Therefore, no reduction was made.

II. Restatement of Violation B

B.1. With the unit in Modes 1, 2, or 3, Technical Specification Limiting Condition for Operation Action Statement 3.7.2.b.2 requires that if a

Control Room Emergency Filtration System flowpath damper is inoperable for seven days, the unit be placed in HOT SHUTDOWN within 12 hours and COLD SHUTDOWN in the following 24 hours.

Technical Specification 1.25 defines a system, subsystem, train, component, or device to be OPERABLE or having OPERABILITY when it is capable of performing its specified functions and when all necessary attendant instrumentation, controls, electrical power, cooling or seal water, lubrication, or other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support functions.

Contrary to the above, at 10:15 p.m. on January 21, 1988, with the unit in Mode 1, a Control Room Emergency Filtration system flowpath damper, which had been inoperable for seven days because the necessary attendant noninterruptible air compressor was out-of-service, was not returned to service nor was the unit placed in HOT SHUTDOWN within 12 hours and COLD SHUTDOWN in the following 24 hours.

B.2. With the unit in Modes 1, 2, and 3, Technical Specifications Limiting Condition Action Statement 3.6.5.3.a.1 requires that if one Standby Gas Treatment subsystem is inoperable for seven days the unit be placed in HOT SHUTDOWN within 12 hours and COLD SHUTDOWN in the following 24 hours.

Technical Specification 1.25 defines a system, subsystem, train, component, or device to be OPERABLE or having OPERABILITY when it is capable of performing its specified functions and when all necessary attendant instrumentation, controls, electrical power, cooling or seal water, lubrication, or other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support functions.

Contrary to the above, at 10:15 p.m. on January 21, 1988, with the unit in Mode 1, the Division II subsystem of Standby Gas Treatment, which had been inoperable for seven days because the necessary attendant noninterruptible air compressor was out-of-service, was not returned to service nor was the unit placed in HOT SHUTDOWN within 12 hours and COLD SHUTDOWN in the following 24 hours.

This is a Severity Level III problem (Supplement I). Civil Penalty—$100,000 (assessed equally between the violations).

Summary of Licensee's Response

The licensee denies that Violation B occurred. The licensee references section 9.3.1.2 of the Fermi Updated Final Safety Analysis Report (UFSAR) which states in part, "There is a normally closed intertie between the Divisions I and II noninterruptible control air systems. During a maintenance outage of the supply to one of these divisions, the intertie is opened so that the division having the outage can be supplied by the other division." The licensee believes that its proposed method of operation of the Noninterruptible Air System (NIAS) as described in the UFSAR was acceptable to the NRC, based on its belief that active discussion took place between licensee representatives and NRR on this subject during the licensing of the facility. Thus, a decision not to put NIAS into Technical Specifications was made consciously with the NRC during the Technical Specifications development process.

The licensee contends that there is no regulation, order, or license condition which makes the method of operation as described in the UFSAR illegal. The licensee denies that there is a Technical Specification requirement for complete independence of the two noninterruptible air systems (NIAS), based upon the context of the licensing history of the facility discussed above.

The licensee stated that, if the NRC should find that violations did occur in this instance, a situation existed where remission or mitigation of the proposed penalty would be appropriate. The licensee argues that it relied upon the licensing history of Fermi 2 in determining its legal obligations and in taking actions which it took. In addition, additional steps were taken and self-imposed restraints imposed by the licensee when the facility was operated in the configuation which formed the bases for the violation. These actions were taken as a result of management involvement in and recognition of an operating condition which should not be allowed to continue beyond a reasonable period of time.

Detroit Edison believes that its actions are consistent with the NRC's view of greater management involvement in nuclear activities and establishment of prudent operating practices. So, if the NRC finds that a violation occurred, then Detroit Edison's actions should be considered in light of its understanding of its UFSAR and the proposed penalties should be remitted or mitigated, not doubled.

NRC Evaluation of Licensee's Response

In determining the appropriate action to take in the event one of the redundant divisions of the NIAS is inoperable, the respective action statements for the redundant equipment required to be operable by Technical Specifications should be examined. That equipment which requires the affected division of NIAS to be operable should be declared inoperable. In this case, the NIAS serves as a support system for the control room emergency filtration system, the standby gas treatment subsystem, and the main steam isolation valve leakage control system and is required for these systems to be considered operable. With a division of NIAS rendered inoperable, the affected division would be governed by a 7 day action statement, rather than the 30 day administrative action statement the licensee imposed.

It should be noted that both the staff and the licensee in the SER and USAR, respectively, stated that the noninterruptible control air is "supplied through two separate systems (Division I and Division II) to" emergency equipment. The licensee admits that its NIAS was designed to be redundant and not subject to a single failure. Furthermore, the statement in section 9.3.1.2 of the UFAR regarding the intertie between Divisions I and II is not inconsistent with requirements specified in the Technical Specifications. Reading this provision with the Technical Specifications would permit the intertie but for no longer than 7 days.

The licensee's argument that it relied on the licensing history of Fermi 2 in determining the appropriate action that it took is not controlling and may reflect an unacceptable understanding of the Technical Specifications. The decision not to include a specific Technical Specification for a support system such as NIAS is consistent with the NRC's general approach to Technical Specifications that support systems are encompassed by the concept of operability. At the time of licensing, the licensee should have understood that operability extended to the NIAS. The NIAS System serves as a support system for equipment required operable by Technical Specifications, and is therefore, addressed explicitly in Technical Specification 1.25. In other words, since the redundant NIAS System supports redundant equipment required to be operable by Technical Specifications, a loss of one division will make the affected portions of systems which NIAS supports inoperable as defined in Technical Specification 1.25. The licensee's failure to appreciate the

meaning of operability is cause for concern.

With respect to the licensee's arguments concerning mitigation and extenuating circumstances, the NRC does not believe that mitigation is appropriate. The root cause for this violation was the failure of the licensee's engineering staff to provide adequate guidance on the system interfaces to other departments and the failure of the operations staff to identify these violations when the Division II NIAS was taken out of service. The plant operations section of the SALP 8 report covering the period April 1986 thorugh March 1987 lists examples where the licensee failed to recognize the appropriate action to be taken under the license when equipment was found out of service. The licensee's response to SALP 8 acknowledged the Category 3 rating in plant operations and indicated that development of an operability matrix to facilitate better understanding of Technical Specification/FSAR nuances which could affect operation of the plant, would be investigated. SALP 9 discussed the plant operations area and noted that violations "* * * when viewed collectively indicate a negative trend showing a lack of attention to detail and poor understanding of Technical Specification actions by operational personnel." Because of prior poor performance in this area, the civil penalty was escalated 100 percent. The staff does not believe mitigation is warranted.

III. NRC Conclusions

The NRC staff has concluded that Violations A and B occurred as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty. However, the staff concluded that escalation of the civil penalty for past performance was not warranted for Violation A. Accordingly, the proposed civil penalties in the amount of $175,000 should be imposed.

[FR Doc. 89-443 Filed 1-9-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16738; 812-7117]

Allstate Life Insurance Co. of New York et al.

January 4, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Allstate Life Insurance Company of New York (the "Company") and Allstate Life of New York Variable Annuity Account (the "Account") (collectively, the "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the Company to deduct from the assets of the Account the morality and expense risk charges imposed under certain variable annuity contracts.

FILING DATE: The application was filed on September 12, 1988 and amended on December 16, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC, 20549. Applicants, P.O. Box 2898, Huntington Station, New York, New York 11746.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Company established the Account as a segregated investment account on June 26, 1987, as a facility through which assets attributable to certain flexible premium variable annuity contracts (the "Contracts") would be set aside and invested. The Account is registered as a unit investment trust under the 1940 Act and each Sub-Account of the account invests solely in shares of a particular series of the Dean Witter Variable Investment Series ("Fund"). The Fund is an open-end diversified investment company registered under the 1940 Act.

2. The Company will deduct annually a contract maintenance charge of $30.00 from the contract value to reimburse the Company for its costs in maintaining each Contract and the Account. The Company does not expect to realize a profit from this charge.

3. A Surrender Charge will be applied to amounts withdrawn in excess of a free withdrawal amount, as set forth below:

Elapsed time since purchase payment being withdrawn was made	Applicable surrender percentage
Less than 1 year	6
1 year, but less than 2 years	5
2 years, but less than 3 years	4
3 years, but less than 4 years	3
4 years, but less than 5 years	2
5 years, but less than 6 years	1
6 years or more	0

The cumulative total of all Surrender Charges is guaranteed never to exceed 7% of an Owner's actual Purchase Payments.

4. The Company deducts a daily mortality and expense risk charge equal to an annual rate of 1% of the daily net assets of the Account and the value of the assets in the fixed account attributable to the Contracts. The level of this charge is guaranteed and will not change. This charge is allocable 0.35% to the Company's assumption of morality risks, and 0.65% to the assumption of expense risks. Under the Company's current procedures, these amounts are paid to the general account monthly.

5. The Company represents that the mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. In return for this amount, the Company guarantees certain risks in the Contracts. The application states that the mortality and expense risk charge is a reasonable charge to compensate the Company for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that the contract value before the income starting date will be less than the death benefit; and for the risk that the amounts realized from the contract maintenance will be insufficient to cover actual administrative expenses. The Company represents that the mortality and expense risk charge is within the range of industry practice for

comparable annuity products. This representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. The Company will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey.

6. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the surrender charge. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission.

7. The Company represents that the Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-471 Filed 1-9-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16739; File No. 812-7134]

DSI Series Fund, Inc., et al.

January 4, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: DSI Series Fund, Inc. ("Fund" or "Applicant") and certain Life Insurance Companies and Variable Life Insurance Separate Accounts investing therein and Principal Underwriters thereof.

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

Filing Date: The application was filed on September 23, 1988 and amended on December 16, 1988.

Hearing or Notification of Hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. DSI Series Fund, Inc., 909 3rd Avenue, 19th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272-3017 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (80) 231-3282 (Maryland (301) 253-4300).

Applicant's Representations

1. The Fund is a Maryland corporation registered as an open-end diversified investment company. The Fund intends to offer shares of its existing and future series to separate accounts of any interested insurance company in order to fund variable annuity contracts and variable life insurance contracts (collectively referred to as "variable contracts"). Insurance companies whose separate accounts own shares of the Fund are referred to as "participating insurance companies." The use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

2. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e-2(b)(15) (i) and (ii), and 6e-3(T)(b)(15)(i) and (ii), provide exemptions from section 9(a) and certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

3. The partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of section 9 in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicant states that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicant believes that it is unnecessary to apply section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts, and alleges that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding. The relief provided by Rule 6e-2(b)(15)(i) and (ii) and Rule 6e-3(T)(b)(15)(i) and (ii) is requested only for participating insurance companies and their affiliated persons who do not participate directly in the management or administration of the Fund.

4. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

5. Applicants represent that the right under Rules 6e-2(b)(15) and 6e-(T)(b)(15) of the insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts and that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The application states that the potential for disagreement is limited by the requirements in Rules 6e-2 and 6e-3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determination.

6. Use of the Fund as a common investment medium for variable contracts would, according to Applicant, encourage more insurance companies to offer variable contracts. Applicant believes that this will result in increased competition with respect to both variable contract design and pricing, and that this can be expected to result in more product variation and lower charges. Applicant also believes that mixed and shared funding should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Granting the requested relief should also result in an increased amount of assets available for investment by the Fund which in turn may benefit variable contract owners by promoting economies of scale, by permitting greater safety through greater diversification, or by making the addition of new series of the Fund more feasible.

Applicant's Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the Act and Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board of Directors; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in section 16(c) of the Act) as well as with section 16(a) and, if and when applicable, section 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirments of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

3. The Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

4. Participating insurance companies and the Fund's investment adviser, Directed Services, Inc. ("Adviser"), will report any potential or existing conflicts to the Board of Directors of the Fund. Participating insurance companies and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract owners.

5. If it is determined by a majority of the Board of Directors of the Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these resonsibilities will be carried out with a view only to the interests of contract owners.

For purposes of this condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund of the Adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be

made known promptly to all participating insurance companies and the invesment manager for the Fund.

7. Participating insurance companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund. Participating insurers will be required to vote Fund shares attributable to variable life insurance policies for which no instructions have been received in the same porportion as votes cast for Fund shares for which instructions have been received.

8. The Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e-2 and Rule 6e-3(T) are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or the participating insurance companies as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

10. All reports received by the Board of Directors of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 89-472 Filed 1-9-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16736; 812-7092]

PW Private Capital Technology Fund, L.P.; Application

January 4, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act" or the "Act").

Applicants: PW Private Capital Technology Fund, L.P. (the "Partnership") (formerly PaineWebber Technology Capital Fund, L.P.), PaineWebber Technology Management, L.P. ("Managing General Partner"), PaineWebber Development Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the Act from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order determining that: (i) The Independent General Partners (as hereinafter defined) of the Partnership will not be deemed "interested persons" of the Partnership, the Managing General Partner or PaineWebber; Development Corporation solely by reason of serving as general partners of the Partnership; and (ii) that persons who become limited partners (the "Limited Partners") of the Partnership who own less than five percent of the limited partnership interests (the "Interests") will not be deemed "affiliated persons" of the Partnership or of its other partners solely by reason of their status of Limited Partners.

Filing Date: The application was filed on August 4, 1988, and amended on October 21, 1988, and December 2, 1988. The SEC staff received a supplemental letter to the application on January 4, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o PaineWebber Development Corporation, 1285 Avenue of the Americas, New York, New York 10019, Attn: Reinaldo Diaz.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, (202) 272-3022 or H.R. Hallock, Jr., Special Counsel, (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a Delaware limited partnership organized on August 5, 1988, under a Certificate of Limited Partnership. The limited partnership form will be used to avoid the adverse consequences of being taxed as a corporation while still affording investors the advantage of limited liability. The Partnership has elected to be a business development company and, therefore, will be subject to sections 55 through 65 of the Act and those sections of the Act made applicable to business development companies by section 59 thereof. Interests in the Partnership will be sold to qualified investors in a private placement transaction pursuant to Regulation D under the Securities Act of 1933. The Managing General Partner expects to raise $30-50 million in the offering but reserves the right to raise up to $75 million. PaineWebber Development Corporation, general partner of the Managing General Partner, will act as selling agent for the Interests.

2. The investment objective of the Partnership is to seek capital appreciation and current income by making investments, primarily in private companies which the Managing General Partner believes offer significant long-term growth possibilities. The Partnership is to terminate on December 31, 1998 (unless extended for up to four additional one-year terms in order to permit an orderly liquidation).

3. The Managing General Partner, a Delaware limited partnership, will be responsible for managing the investments of the Partnership, subject to the supervision of the Independent General Partners. The Managing General Partner will be registered as an investment adviser under the Investment Advisers Act of 1940. The Managing General Partner also will be responsible for the admission of additional or substitute Limited Partners. Pursuant to the Partnership Agreement and subject to the supervision of the Independent General Partners, the Managing General Partner will also perform management and administrative services in connection with the operation of the Partnership.

4. The General Partners of the Partnership will consist of (i) not less than two nor more than nine individuals (the "Independent General Partners"), the precise number of which shall be fixed from time to time by the Independent General Partners then in office, and (ii) one Managing General Partner. The number of Independent General Partners will initially be two, both of whom will be Disinterested individuals, defined as individuals who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act. If at any time the number of Disinterested Independent General Partners is less than a majority of the General Partners, the Independent General Partners shall designate one or more Disinterested successor Independent General Partners until the Disinterested Independent General Partners constitute a majority of the General Partners. In the event that no Independent General Partner remains, the Managing General Partner will, within 90 days, call a meeting of the Limited Partners for the purpose of electing Independent General Partners. The Partnership Agreement has no provision for regularly scheduled meetings of the Limited Partners for the election of General Partners. Each Independent General Partner, including any Disinterested successor Independent General Partner, will serve until the termination of the Partnership, unless such Independent General Partner either withdraws, resigns or is removed earlier pursuant to the Partnership Agreement.

5. The Partnership Agreement provides that an Independent General Partner may be removed (i) for cause by the action of at least two thirds of the remaining Independent General Partners (but only if there are at least three Independent General Partners at the time of such action) or (ii) with the consent of Limited Partners holding a majority of the Interests then outstanding. At any time at which the number of Independent General Partners is less than three, an Independent General Partner may be removed only in the manner described in clause (ii) of the preceding sentence. The Managing General Partner may be removed either (i) by the action of at least two thirds of the Independent General Partners (or by unanimous action if the number of Independent General Partners is less than three) or (ii) with the consent of Limited Partners holding a majority of the Interests then outstanding.

6. The Managing General Partner may withdraw from the Partnership only upon 60 days notice, which notice must name a successor Managing General Partner. The successor Managing General Partner must certify that it (i) has sufficient experience in the performance of such activities, (ii) has sufficient net worth such that the Partnership will not fail to be classified as a partnership for federal income tax purposes, and (iii) is willing to serve as Managing General Partner on the terms provided in the Partnership Agreement. In addition, Limited Partners holding a majority of the outstanding Interests must consent to the appointment of the successor Managing General Partner.

7. The Independent General Partners will provide overall guidance and supervision of the Partnership. Subject to the guidance and supervision of the Independent General Partners, the Managing General Partner will be responsible for the management of the Partnership's investments in companies, the admission of additional, assignee or substitute Limited Partners to the Partnership and the performance of the management and administrative services in connection with the operation of the Partnership. The General Partners will otherwise act by majority vote of the Independent General Partners. The Independent General Partners will perform the same functions as directors of a corporation.

8. The Limited Partners will have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partner as specified in the Partnership Agreement, including rights to vote and approve certain matters as required by the Act. Counsel for the Partnership will render an opinion at the initial closing of the sales of the Interests that the existence or exercise of these voting rights does not subject the Limited Partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act. In addition, the Partnership Agreement obligates the General Partners to take any action necessary or appropriate to protect the limited liability of the Limited Partners. The Partnership does not at present carry an errors and omissions insurance policy. Applicants acknowledge that the SEC staff may view such insurance coverage as appropriate when the limited partnership form is used for registered investment companies and undertake that the Independent General Partners will periodically review the appropriateness of obtaining an errors and omissions policy for the Partnership.

9. Under the Partnership Agreement, each Independent General Partner will receive an annual fee of $30,000, together with reimbursement for all out-of-pocket expenses relating to meetings of the Independent General Partners. The Managing General Partner will receive an annual management fee equal to two percent of the Annual Fee Calculation Base (as defined below), subject to certain reductions in fiscal periods in which profits of the Partnership do not exceed a money-market-based rate of return on the Annual Fee Calculation Base. The Annual Fee Calculation Base will initially be an amount equal to the gross proceeds of the offering of the Interests subject to reduction in the event of certain distributions.

10. Under the Partnership Agreement, distributions to the General Partners and the Limited Partners will be made 1% to the General Partners and 99% to the Limited Partners, reflecting the *pro rata* capital "contributions of the General Partners and the Limited Partners, until contribution payout," as defined in the Partnership Agreement, is reached. "Contribution payout" occurs when each Limited Partner has received aggregate distributions from the Partnership equal to the amount of its capital contributions to the Partnership, plus simple interest thereon accrued at 5% per annum. After contribution payout, distributions will be made 20% to the General Partners and 80% to the Limited Partners. Distributions to the Managing General Partner will be subject to certain reductions in the event that there is net cumulative unrealized depreciation at the time of distribution on securities held by the Partnership for which market quotations are readily available. The distributions to the General Partners will be allocated among the Managing General Partner and the Independent General Partners in a manner agreed to by them in a separate contract. Under such contract,

substantially all of any distribution to the General Partners will be payable to the Managing General Partner and a small fixed percentage of each such distribution will be payable to each Independent General Partner.

Applicants' Legal Conclusions

1. By virtue of their status as partners of the Partnership, the Independent General Partners could be deemed to be "affiliated persons" of the Partnership, as defined under section 2(a)(3)(D) of the Act, and, consequently, "interested persons" of the Partnership within the meaning of section 2(a)(19). The Independent General Partners could also be construed to be "interested persons" of an investment adviser and principal underwriter to the Partnership by virtue of their status as "co-partners" (and, consequently, "affiliated persons") with the Managing General Partner in the Partnership. The Managing General Partner could be construed to be an investment adviser and its general partner an underwriter, of the Partnership. Each person who becomes a Limited Partner will be a partner of the Partnership, the other Limited Partners, each Independent General Partner and the Managing General Partner. Therefore, each Limited Partner could be deemed to be an "affiliated person" of the Partnership, the Limited and General Partners, merely by having purchased an Interest and become a Limited Partner.

2. The Partnership has been structured so that the Disinterested Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Although section 2(a)(19) of the Act excludes from the definition of "interested persons" those individuals who would be "interested persons" solely because they are directors of an investment company, there is no equivalent exception for partners of an investment company. Section 2(a)(3)(D) similarly excludes shareholders of an investment company from the definition of an "affiliated person" if such shareholder owns less than five percent of the company's outstanding voting securities.

3. Applicants request that the Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of the Partnership, the Managing General Partner or PaineWebber Development Corporation, solely because such Independent General Partners are general partners of the Partnership and "co-partners" with the Managing General Partner in the Partnership. Applicants further request that any Limited Partner owning less than five percent of the Partnership Interests not be deemed an "affiliated person" under section 2(a)(3)(D) of the Act of the Partnership, any other Limited Partner, any Independent General Partner, the Managing General Partner or PaineWebber Development Corporation, solely because such Limited Partner is a partner of the Partnership or a partner with any such other person in the Partnership.

4. Applicants submit that the requested exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D) are consistent with the requirements of section 6(c) that an exemption be necessary or appropriate in the public interest, be consistent with the protection of investors, and be consistent with the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

1. The Applicants undertake that the Partnership will not commence operations until the Managing General Partner is registered as an investment adviser under the Investment Advisers Act of 1940.

2. The Partnership will be structured so that, as contemplated by the Partnership Agreement, the Disinterested Independent General Partners will be the functional equivalent of non-interested directors of an incorporated investment company under the Act. The Independent General Partners will assume the responsibilities and obligations imposed by the Act on non-interested directors of a business development company.

3. The Partnership Agreement authorizes the Partnership to make in-kind distributions of securities for which market quotations are readily available at the time of distribution. The Partnership will be structured and its Interests will be marketed in such a manner to meet the requirements of Rule 205-3 under the Advisers Act which provides an additional exemption from the prohibition on performance-based investment adviser compensation under section 105(a). In accordance with Rule 205-3, Partnership Interests will be sold only to investors who (i) will have a least $500,000 under the management of the Managing General Partner immediately after the investment or (ii) whom the Managing General Partner reasonably believes to have a net worth exceeding $1,000,000 at the time of investment. Investors in the Partnership must also meet the accredited investor criteria under Regulation D of the Securities Act of 1933.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-473 Filed 1-9-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 10:00 a.m. on Monday, January 23, 1989 at the Sugar House, Route 7, New Haven, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602, 802/828-4422.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

January 3, 1989.

[FR Doc. 89-455 Filed 1-9-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1252]

U.S. Organizations for the International Consultative Committees on Radio (CCIR) and Telegraph and Telephone (CCITT); Notice of Meeting

The Department of State announces that there will be a joint meeting of the National Committees of the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT) on January 17, 1989 from 1:00 p.m. to 5:00 p.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The National Committees provide advice on matters of policy and positions in preparation for the respective Plenary Assemblies and international Study Groups meetings, as well as on a broad range of matters relating to the International Telecommunication Union (ITU) in general. The ITU will convene a

Plenipotentiary Conference in May 1989, which will consider issues of considerable interest to U.S. CCIR and CCITT participants.

The main purposes of this third meeting of this series is to: 1. Report on national preparations for the Plenipotentiary; 2. Discussion of specific issues of interest to the CCIs; 3. Consideration of future activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, Department of State, Washington, DC; telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Date: December 19, 1988.

Earl S. Barbely,

U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89-402 Filed 1-9-89; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1253]

Overseas Security Advisory Council Notice of Meeting; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Tuesday, January 17, 1989, at 8:30 a.m. at the Indigo Lakes Resort, 2620 Volusia Avenue, Daytona Beach, Florida. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Mrs. Marsha J. Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20520, phone: 202/663-0002.

Date: December 19, 1988.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 89-403 Filed 1-9-89; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463; 5 U.S.C. App. I), notice is hereby given for the twenty-eight meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment to be held January 24, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) approval of the minutes of meeting held November 15-17, 1988, RTCA Paper No. xxx-89/SC147-xxx; (3) TCAS Program status reports; (4) report of pilot working group activities; (5) reports and discussion of New York Area TCAS capacity; (6) review of draft change 6 to RTCA Document DO-185; (7) discuss plans for proposed Document DO-185A; (8) review of draft minimum operational performance standards for TCAS III; (9) discussion of SC-147 plans and schedules; (10) other business; and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 3, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89-412 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the Executive Committee meeting to be held January 27, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) approval of the minutes of meeting held November 28, 1988; (3) Executive Director's report; (4) Special Committee Activities Report for November-December 1988; (5) report of the RTCA Awards Committee; (6) report of the RTCA Fiscal and Management Subcommittee; (7) consideration of RTCA Executive Director's letter of resignation; (8) consideration of Electronics Industries Association member's letter concerning Special Committee 147 (TCAS) Reports; (9) consideration of proposals to establish new special committees; (10) other business; and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval fo the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 3, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89-413 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-13-M

Advisory Circular: Equipment, Systems, and Installations in Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of proposed advisory circular (AC) and request for comments; Correction, dates.

SUMMARY: FAA is correcting an error on the dates line. In FR Doc. 88-29677, published Wednesday, December 28, 1988, on page 52558, please change February 29, 1989, to read February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mike Dahl, Aerospace Engineering,

Standards Office 9ACE-110, (816) 426-6941 or FTS 867-6941.

Michael D. Triplett,

Legal Technician Program Management Staff AGC-10.

[FR Doc. 89-411 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Northeast Corridor Safety Committee; Meeting

Pursuant to section 11 of the Rail Safety Improvement Act of 1988 (Pub. L. 100-342), notice is hereby given that a meeting of the Northeast Corridor Safety Committee will be held on January 17, 1989, at 10.00 a.m. in room 4338 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. This meeting will be open to the public.

This meeting is called for the purpose of providing counsel and advice to the Department of Transportation on safety improvements on the main line of the Northeast Corridor (NEC). The agenda will include reports from various members on principal activities affecting NEC safety and discussions of problem areas and priorities for action.

Written data, views or comments may be submitted (preferably with 15 copies) to the FRA Docket Clerk, RCC-30, Room 8201, 400 Seventh Street, SW., Washington, DC 20590.

Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Dated: January 5, 1989.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 89-429 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Public Forum; Air Carrier Smuggling Prevention Program

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of public forum, Air Carrier Smuggling Prevention Program.

SUMMARY: This notice is to advise that a series of public forums will be held in order to solicit input from the air transportation community with regard to Customs Air Carrier Smuggling Prevention Program.

FOR FURTHER INFORMATION CONTACT: Louis Razzino, Office of Inspection and Control (202-566-2140).

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1988, specifically Section 7369(b), establishes an Air Carrier Smuggling Prevention Program. This section mandates that a 2-year demonstration program be created at three U.S. Airports of entry. To comply with this section, Customs must develop procedures for this program within six months after the date of enactment of this law. The regulations shall be initially applied at the following three U.S. Airports: Miami International Airport (MIA), Los Angeles International Airport (LAX), and Dallas-Fort Worth International Airport (DFW).

In order to solicit input from the air transportation community, public forums will be conducted at the three demonstration airports. Through this process, U.S. Customs will be initiating dialogue with the carriers that will take into account all considerations of security and commercial needs, all the while forcused on program development. Procedures for acceptance and certification into the Air Carrier Smuggling Prevention Program will be the primary issues. Air Carriers who arrive at the aforementioned three airports and envision applying to be participating carriers should attend these forums. Other concerned members of the air transportation industry are invited to attend and are encouraged, separate from these forums, to submit, in writing, recommendations and program considerations to: Office of Regulations and Rulings, United States Customs Service, Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Dates, times and locations of these public forums are listed below:

Location	Date	Time	Forum location
MIA	Jan. 10	9:00 a.m.-1:00 p.m.	Miami Int'l. Airport Hotel, 7th Fl. Exec. Conf. Rm., Miami, FL.
DFW	Jan. 11	1:00 p.m.-5:00 p.m.	Lexington Hotel Suites, 3rd Level Meeting Room, DFW Airport North, Irving, TX.
LAX	Jan. 12	1:00 p.m.-5:00 p.m.	United Air. Training Room, Terminal 7, 700 Worldway, Room 408, Los Angeles, CA.

Further information regarding these public forums will be provided in Customs Information Bulletins that will be issued by the District Director of Customs at each cited located.

Dated: January 6, 1989.

Samuel H. Banks,

Assistant Commissioner, Inspection and Control.

[FR Doc. 89-569 Filed 1-6-89; 4:19 pm]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Goya and the Spirit of Enlightenment; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Goya and the Spirit of Enlightenment" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Fine Arts in Boston, Massachusetts, beginning on or about January 18, 1989, to on or about March 26, 1989, and at the Metropolitan Museum of Art in New York, New York, beginning on or about May 9, 1989, to on or about July 16, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Counsel.

Date: January 5, 1989.

[FR Doc. 89-570 Filed 1-9-89; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting the Office of the General Counsel of USIA. The telephone number is 202-485-7979, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., January 17 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of last meeting.
2. Thrift Savings Plan activities report by Executive Director.
3. Approval of legislative proposals.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, or Catherine Ball, Deputy Director, Office of External Affairs, (202) 523-5660.

Dated: January 5, 1989.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89-548 Filed 1-6-89; 2:42 pm]

BILLING CODE 6760-10-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 9, 16, 23, and 30, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 9

Friday, January 13

11:30 a.m.
Affirmation/Discussion and Vote (Public Meetings)
a. Policy Statement on the Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities (Tentative)

Week of January 16—Tentative

Thursday, January 19

10:00 a.m.
Briefing on Medical Use of By-Product Materials (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 23—Tentative

Monday, January 23

2:00 p.m.
Briefing on Accident Management Program (Public Meeting)

Tuesday, January 24

2:30 p.m.
Briefing on the Progress of GE Advanced BWR Standard Plant Review (Public Meeting)

Wednesday, January 25

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Thursday, January 26

10:00 a.m.
Briefing on Final Report on BWR MARK I Containment Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 30—Tentative

Thursday, February 2

10:00 a.m.
Periodic Briefing on EEO Programs (Public Meeting)

2:00 p.m.
Briefing on Proposed Rulemaking on Substandard Components (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

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.

January 5, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89-560 Filed 1-6-89; 2:43 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 9, 1989.

A closed meeting will be held on Tuesday, January 10, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of to the Commssion, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 10, 1988, at 2:30 p.m., will be:

Formal order of investigation.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

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: Alden Adkins at (202) 272-2000.

Jonathan G. Katz,

Secretary.

January 4, 1989.

[FR Doc. 89-577 Filed 1-6-89; 4:01 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53111; FRL-3488-4]

Premanufacture Notices; Monthly Status Report for October 1988

Correction

In notice document 88-28332 beginning on page 52084 in the issue of Friday, December 23, 1988, make the following corrections:

1. On page 52084, in the second column, in the seventh line, in the heading, "92" should read "91".

2. On the same page, in the third column, in the third and fourth lines, "44" and "442 P 87 0199" should be deleted.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting

Correction

In rule document 88-26411 beginning on page 46768 in the issue of Friday, November 18, 1988, make the following corrections:

1. On page 46769, in the first column, in the third complete paragraph, in the third line, "ground" should read "round".

2. On page 46773, in the second column, in the last paragraph, in the 16th line, "spillage" was misspelled.

3. On the same page, in the third column, in the first paragraph, in the 23rd line, "50 persons" should read "50 percent".

4. On page 46774, in the third column, in the first line, after "of" insert "the".

5. On the same page, in the same column, in the second complete paragraph, in the 10th line, after "magazines", insert a period. In the 14th line, after "equipment", insert a period. In the 22nd line, after "minimized", insert a period.

6. On the same page and in the same column, in the third complete paragraph, in the 10th line, "final" was misspelled.

7. On page 46777, in the third column, in the first line, "inches" was misspelled.

8. On page 46784, in the second column, in the last complete paragraph, in the second line, "to steps" should read "the steps".

§ 75.1318 [Corrected]

9. On page 46788, in the second column, in § 75.1318(e), in the third line, "of" should read "or".

BILLING CODE 1505-01-D

federal register

Tuesday
January 10, 1989

Part II

Environmental Protection Agency

40 CFR Part 60

Polypropylene, Polyethylene, Polystyrene, and Poly-(ethylene terephthalate) Manufacturing Industry; Revisions to the Basis of the Proposed Standards for Polypropylene and Polyethylene Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3501-9]

Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly-(ethylene terephthalate) Manufacturing Industry; Revisions to the Basis of the Proposed Standards for Polypropylene and Polyethylene Manufacturing

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule: reopening of public comment period.

SUMMARY: The period for receiving written comments on the proposed New Source Performance Standards (NSPS) for Volatile Organic Compounds (VOC) emissions from the Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Industry is being reopened for the limited purpose of allowing public comment on a new approach for determining which process emissions from polypropylene and polyethylene production would be subject to the proposed standards. Previously, a model plant based approach was used to identify which process emissions from all four types of polymers would be subject to the proposed standards. A new approach for polypropylene and polyethylene is being considered as a result of new information in the comments received on the standards that were proposed on September 30, 1987 (52 FR 36678). The model plant based approach for determining which process emissions from polystyrene and poly(ethylene terphthalate) (PET) production processes would be subject to control, however, is being retained.

The new approach affects both continuous and intermittent process emissions from polypropylene and polyethylene production processes. Under the new approach, the determination of which process emission streams would be subject to the proposed standards would be made on a more generic basis rather than relying on a model plant based analysis. For continuous emissions, the control determination would be based either on VOC concentration (weight percent) or annual emissions or both, depending on whether the emissions are from a new or a modified or reconstructed affected facility. For intermittent emissions, the control determination would be made on the basis of the type of release alone (i.e., normal process releases such as start-up, shut-down, and maintenance purges; overpressurizations other than decomposition emissions; or decomposition emissions).

The new approach retains process section as the designated affected facility, and, in general, does not affect the degree of control required by the standards as proposed on September 30, 1987. Continuous emissions would still be required to be controlled by 98 percent reduction or to 20 parts per million by volume (ppmv), whichever is less stringent, although the Agency is considering in this notice the requirement that allows certain continuous emission streams with flows of 8 standard cubic feet per minute (scfm) or less to be controlled in an existing or otherwise available control device without specifying the control efficiency of that control device. With regard to the standards proposed for intermittent emissions, the Agency is currently evaluating comments suggesting that control devices other than flares be allowed. These comments will be addressed in the **Federal Register** notice for final rule, and not in this notice.

As identified in this notice, documents containing the analyses that form the basis of this new approach are found in the docket (see the **ADDRESSES** section of this notice).

A public hearing will be held, if requested, to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the new approach being considered for determining which process emission streams from polypropylene and polyethylene production plants would be subject to the proposed standards.

DATE: *Comments.* Comments must be received by EPA on or before February 21, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 26, 1989, a public hearing will be held on February 2, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541-5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA January 26, 1989.

ADDRESSES: *Comments.* Submit written comments (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-82-19, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, the public hearing will be held at EPA's Office of Adminstration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Supplemental Information. The documents containing the analyses that provide the basis for the new approach being considered are contained in Docket No. A-82-19, Docket Items IV-B-1 through IV-B-13. Docket No. A-82-19 is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy (telephone number (919) 541-5263), Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

SUPPLEMENTARY INFORMATION:

Proposed Outline

I. Background

II. Revision to Proposed Standards

A. Comments of concern in this notice.
B. Review of model plant approach.
C. Review of new approach being considered:
1. Continuous emissions:
a. Control of continuous emissions from existing process sections.
b. Control of continuous emissions from new process sections.
2. Intermittent emissions.
3. Examples.
D. Summary of analyses behind new approach:
1. Continuous emissions.
2. Intermittent emissions.
E. Impacts of new approach.

III. Reopening of Public Comment Period

IV. Summary

I. Background

On September 30, 1987, NSPS were proposed for certain types of polymer manufacturing plants (52 FR 36678). The proposed standards would limit emissions of VOC from new, modified, and reconstructed polypropylene, polyethylene, polystyrene, and poly(ethylene terephthalate) production plants. In addition, the proposed standards would apply to certain sources in polymer production plants that produce copolymers consisting of at least 50 percent by weight of ethylene, propylene, or bis-(2-

hydroxylethyl)terephthalate, or at least 80 percent by weight of styrene. The proposed standards also cover fugitive equipment leak sources in all of these plants except those producing poly(ethylene terephthalate) (PET) or PET copolymers.

A public comment period was provided in the September 30, 1987, **Federal Register** notice until December 10, 1987. This comment period was extended until February 8, 1988, upon request by the Chemical Manufacturers Association (52 FR 47032). A public hearing was requested and was held on November 16, 1987. Fourteen comment letters were received, all from industry sources. A wide range of comments were received pertaining to such items as the definition of affected facility, the feasibility of applying refrigerated condensers to emission streams containing water, and the use of flow monitors. This notice addresses one set of comments, which expressed concern about the flexibility of certain sections of the regulation. These comments are described in the next section. As noted, the Agency received numerous comments on other parts of the proposed standard. These other comments received on the September 30, 1987, **Federal Register** notice will be considered before the final rule is published and will be responded to in the **Federal Register** notice for the final rule.

Because of the changes being considered and EPA's desire to ensure that the standards are based on the most complete and accurate information available, EPA is reopening the public comment period until February 21, 1989. The EPA will consider only those comments that pertain to the new approach being considered in this **Federal Register** notice for determining which process emissions from polypropylene and polyethylene manufacturing plants would be subject to the proposed standards; the comment period for all other aspects of the rulemaking ended February 8, 1988.

II. Revision to Proposed Standards

A. Comments of Concern in this Notice

Numerous comments were received concerning the use of model plants as the basis for categorizing the polyprophylene and polyethylene segments of the industry. Most of these comments expressed concern over the lack of flexibility of the proposed standards in dealing with process changes in these two segments of the industry, stating that model plant derived standards do not take into account changes, in old processes or new emerging processes. Several commenters pointed out that process changes in some existing processes have reduced the VOC concentration in certain streams to such a low level that the cost of control is no longer reasonable considering the reduced emissions. One commenter pointed out that not all polypropylene processes were represented by the model plants, while several others identified modified processes that are no longer represented by the model plant and its emission characteristics. Another commenter pointed out a situation in which the type of product was changed from a high density polyethyylene (HDPE) to a low density polyethlene (LDPE) so that the regulations that would apply are now different, but the production process and its emission characteristics have remained essentially the same. According to this commenter, the application of the standards based on the new product are not appropriate. Other concerns expressed about the model plant approach were that it would give unfair trade advantages to those companies whose processes served as the basis for a model plant and that it does not adequately consider low VOC concentration streams or copolymer plants. Commenters suggested two alternatives to the model plant based approach for the standards for polypropylene and polyethylene: (1) An approach that would be based on system pressure and (2) a generic stream-by-stream approach where cost effectiveness of control would be considered.

In considering these comments and other information provided by the commenters, the Agency identified at least two other concerns with using model plants to describe the polypropylene and polyethylene segments. First, the Agency is concerned that the apparent rapid process changes in the polypropylene and polyethylene industry may be creating new emission streams from process sections that previously had none or may be increasing emissions from process sections that previously had very little. The rapid changes in these industries may be undermining the reasonableness of using the model plants described in the background information document (BID) (EPA–450/3–83–019a) as the basis for determining which streams to control. This could result not only in the control of emissions that are no longer cost effective to control (as pointed out by the commenters), but could also allow new or larger emission streams to go uncontrolled when they are in fact cost effective to control. Second, since the proposed standards apply to certain specified process sections, process standards do not exist to control emissions from "new" process sections that may be incorporated into newer designs. For example, new information provided in the comments revealed that some polyethylene plants using the UNIPOL technology now have a material recovery process section. The UNIPOL process used to develop the model plant for LDPE, low pressure processes, however, did not have a material recovery process section.

In another general comment, it was suggested that the proposed exemption for emergency releases emitted from both LDPE high and low pressure plants and from HDPE gas phase plants be extended to other types of polymer manufacturing plants. Finally, an exemption level was requested for very small emission streams from polypropylene and polyethylene plants. Though not directly related to the flexibility issue or the model plant approach, the incorporation of an annual emission rate cutoff for small streams is now being considered for continuous emissions. As discussed later, the Agency does not believe this cutoff is appropriate for intermittent emissions.

The Agency considered three basic options for addressing the concerns identified above that were raised by the industry and the Agency for the polypropylene and polyethylene segments of the industry. These options were: (1) Develop additional model plants to cover new and modified processes identified by the commenters; (2) redefine the model plants on the basis of system pressure; and (3) develop a generic approach that would eliminate the need for defining model plants. For each of these options, the Agency also examined the feasibility and desirability of adding a small annual emission rate cutoff and a low VOC concentration cutoff.

The Agency considered the feasibility of each option as a basis for developing standards and the responsiveness of the option to the concerns raised by industry and the Agency. In general, the Agency concluded that developing additional model plants to cover new and modified processes was technically feasible. This effort would require a substantial amount of information gathering, and would likely result in a substantial increase in the number of model plants. The Agency was somewhat concerned that this option might lead to developing plant-specific standards rather than a national standard. A brief examination of

available information on system pressure and emissions led the Agency to the conclusion that this option was unlikely to be feasible. The information examined by the Agency did not show a relationship between system pressure and emissions. In addition, the amount of material recovery practiced, which is not directly related to system pressure, affects total emissions and emission characteristics of downstream emission sources. Thus, the Agency did not pursue this option any further. Lastly, the Agency concluded that a generic approach that does not rely on defining model plants could be developed. After examining various emission stream characteristics and the cost of controlling various streams, the Agency determined that a generic approach could be implemented.

Next, the Agency considered the responsiveness of the two options determined to be feasible to the concerns identified by the industry and the Agency. The Agency concluded that developing additional model plants could alleviate most of the concerns. For example, new model plants could be added to describe (1) the UNIPOL process with a material recovery section; (2) the modified HDPE process that now produces LDPE; and (3) all polypropylene production processes rather than two. By adding new model plants, many of the dilute streams for which industry claims the cost of control is not cost effective can be more directly considered. If sufficient model plants are described, then the concern over unfair trade advantages to companies whose processes served as the basis for a model plant should be reduced. However, the model plant option could become cumbersome since the Agency would have to continue to add new model plants as new processes are developed in the future when the rule is reviewed. While this option alleviates many of the concerns, it does not really address the root cause of many of these concerns, which is the rapidly changing nature of the processes within the polypropylene and polyethylene segments of the industry.

The generic approach addresses all of the concerns as well as, if not better than, does the model plant option. For example, the generic approach now directly considers the VOC concentration of emission streams in making the control/no control decision rather than relying on the average concentration of emissions from a process section in a model plant. This approach addresses in a much better manner industry concern over control of low VOC concentration streams. As another example, it may not be realistic to describe sufficient model plants in order to eliminate the concerns that may arise when one company's process is used to describe a model plant. A generic approach focusing on certain stream characteristics would provide a "level playing field" for all processes. In addition, by not relying on model plants and their specific emission characteristics and by focusing on generic aspects of emission streams (VOC concentration, annual emissions, nature of the release), the Agency believes the generic approach provides the flexibility needed to eliminate concern over the rapid process changes in these two segments of the industry.

While both options are feasible, the Agency believes a generic approach is more responsive to the concerns raised than is the development of additional model plants, and therefore has selected this option for determining which process emissions from polypropylene and polyethylene plants would be subject to the proposed standards. This new approach is based on the same information that was used in developing the standards that were proposed on September 30, 1987, but reformats that information to provide the basis for a generic approach for these two types of polymers.

The Agency is not considering changing the model plant basis for determining which streams from the polystyrene and PET segments of the industry would be subject to the proposed standards. The major factor in the decision to use a generic approach for determining which polypropylene and polyethylene emission streams to control is the rapidly changing nature of the production processes used in these segments of the industry. In contrast to the polypropylene and polyethylene segments of the industry, the production processes used in the manufacture of polystyrene and PET do not appear to be undergoing rapid changes. This suggests that the model plants used to describe polystyrene and PET production processes and their emissions are still as reasonable as when they were initially developed. Industry comments indicated that it was the polypropylene and polyethylene segments of the industry where the model plant approach was a problem. (One commenter did question the representativeness of the polystyrene model plant for its process, but did not question the model plant approach. The Agency will respond to this comment regarding the polystyrene model plant in the **Federal Register** notice for the final rule.) For these reasons, the Agency continues to believe that model plant based standards are appropriate for polystyrene and PET production processes.

In the remainder of this notice, the model plant approach is reviewed first (Part B). This review will enable the reader to understand better the relationship of the new approach with the model plant approach. In Part C, the new approach for determining which polypropylene and polyethylene emissions would be subject to the proposed standards is described, followed by examples that illustrate some of the differences between the two approaches. The purpose of Part C is to describe the new approach being considered in a straightforward factual presentation. The rationale and analyses that led the Agency to select particular aspects of this approach are summarized in Part D. The projected impacts of the new approach are presented in part E.

B. Review of Model Plant Approach

Based on information obtained from industry prior to proposal, a number of processes for producing polypropylene and polyethylene were identified. These processes were used to identify six generic or "model" plants. To the best of EPA's knowledge, which was based on information from the industry, these six model plants were representative of the processes that would be affected by the proposed standards. Further, EPA did not expect that these processes would change very much. Thus, appropriate industry-wide standards could be based on the stream characteristics associated with each model plant.

In developing the proposed standards, the Agency identified five generic process sections that could be a part of each polymer production plant. These process sections are raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage. Each model plant's emissions were identified as to the process section from which they were emitted. For analysis purposes, continuous emission streams within a process section were combined with each other to yield a single combined stream. Similarly, intermittent emission streams within a process section were combined with each other, except for emergency (decomposition) releases which were analyzed separately.

Standards were proposed for those process sections whose emissions were found to be cost effective to control. Such process sections were found to be cost effective to control based on one of the following cost scenarios: (1) Being

controlled by its own control device, or (2) being combined with streams from other process sections on both a process line basis and a whole plant basis. For each process section proposed for control, an uncontrolled emission rate cutoff was provided. If a process section's uncontrolled emissions were less than the cutoff level, the Agency determined that control would not be cost effective and, thus, that process section would be exempt from the standards.

The cutoff levels proposed were the result of an analysis to identify the uncontrolled emission level below which the cost of control is unreasonable in light of the small amount of VOC emission reduction (see Docket Item II-B-85). This analysis assumed that VOC emissions from each process section would be controlled either by their own control device if the process section is constructed, modified, or reconstructed by itself or by a shared control device (i.e., a control device controlling emissions from the other process sections for which standards were recommended) if the process section is part of a constructed, modified, or reconstructed process line or plant. Some process sections were assumed to have their own control device even when constructed as part of a new process line because of the flow characteristics of their VOC emissions. The distribution of new individual process sections, process lines, and plants was estimated for each model plant and represented the "most likely growth" distribution. The emissions from each process section were reduced by lower the flow. (Where a shared control device was assumed, the flows and emissions from the other process sections were assumed to remain at their model plant levels.) At the same time, the cost of the control device was reduced to correspond to the process section's reduced flow and emissions. Emission levels were reduced for each process section until the incremental cost of control associated with the most likely growth distribution for that model plant became unreasonable with regard to the VOC emission reduction achieved.

C. Review of New Approach Being Considered

The approach presented below is generic in that the standards are no longer linked to specified model plants, but would apply to any polypropylene or polyethylene production process regardless of how well the particular production process is represented by the specific production process sequences of the model plants. As noted earlier, process sections are retained as the affected facility. Under the new approach, any existing process section that is modified or reconstructed becomes an affected facility subject to the proposed standards. Similarly, any newly constructed process section at an existing plant or a new plant would also be an affected facility subject to the proposed standards.

The new approach affects both continuous and intermittent emissions from all affected facilities. Table la summarizes the new approach for continuous emissions from modified and reconstructed affected facilities, while Table 1b summarizes the new approach for new affected facilities and for concurrently constructed and modified or reconstructed affected facilities. Table 3 summarizes the new approach for intermittent emissions from new, modified, and reconstructed affected facilities. The new approach for continuous emissions is discussed first, followed by a discussion of the new approach for intermittent emissions. These discussions are then followed by two examples. The rationale and analyses that led the Agency to consider the new approach for both continuous emissions and intermittent emissions are summarized later in this notice in Part D.

TABLE 1a.—SUMMARY OF NEW APPROACH FOR DETERMINING WHICH CONTINUOUS EMISSIONS FROM MODIFIED AND RECONSTRUCTED AFFECTED FACILITIES AT POLYPROPYLENE AND POLYETHYLENE PLANTS WOULD BE SUBJECT TO THE PROPOSED STANDARDS

A. Exemptions:
1. No control of individual steams with uncontrolled annual VOC emissions less than 1.6 Mg/yr.
2. No control of individual streams with VOC concentrations less than 0.10 percent VOC by weight.
B. Control individual streams with flows of 8 scfm or less (except for those exempted as indicated above).
C. Control 98% (or to 20 ppmv, whichever is less stringent) each individual emission stream as follows:

Procedures[a]	Applicable weight percent range	Control/No Control Criteria
1. Sum all streams with VOC weight percent within the applicable weight percent range from all concurrent modified and reconstructed facilities at a plant site.	0.10 <5.5	1. If total combined uncontrolled emissions are equal to or greater than the calculated threshold emissions (CTE)[b], control.
2. Calculate total uncontrolled annual emissions after modification or reconstruction for each weight percent range.		2. If total combined uncontrolled emissions are less than the CTE[b], control only individual streams with volume flow rates of 8 scfm or less.
3. Calculate composite VOC concentration (weight percent) for streams in the 0.10 to less than 5.5 weight percent range and for streams in the 5.5 to less than 20 weight percent range before and after modification or reconstruction.	5.5 <20 1. If total combined uncontrolled emissions are equal to or greater than CTE, control. 2. If total combined uncontrolled emissions are less than the CTE[b], control only individual streams with volume flow rates of 8 scfm or less..	
4. Select the higher of the two VOC concentrations for each weight percent rate.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control.

Procedures[a]	Applicable weight percent range	Control/No Control Criteria
5. Calculate the threshold emissions for the 0.10 to less than 5.5 weight percent range and for the 5.5 to less than 20 weight percent range using the respective composite VOC concentration selected above.	.....	2. If total combined uncontrolled emissions are less than 18.2 Mg/yr, control in any control device.

[a] Do not include individual streams excluded under "Exemptions" in the calculation procedures. Exempted streams are those with uncontrolled annual emissions of less than 1.6 Mg/yr and those with a VOC concentration of less than 0.10 percent by weight.
[b] See Table 2 for equations to be used in calculating threshold emissions.

TABLE 1b.—SUMMARY OF NEW APPROACH FOR DETERMINING WHICH CONTINUOUS EMISSIONS FROM NEW AFFECTED FACILITIES AND CONCURRENTLY CONSTRUCTED AND MODIFIED OR RECONSTRUCTED AFFECTED FACILITIES AT POLYPROPYLENE AND POLYETHYLENE PLANTS WOULD BE SUBJECT TO THE PROPOSED STANDARDS

A. Exemptions:
1. No control of individual streams with uncontrolled annual VOC emissions less than 1.6 Mg/yr.
2. For modified and reconstructed affected facilities only, no control of individual streams with VOC concentrations less than 0.10 percent VOC by weight.
B. Control individual streams with flows of 8 scfm or less (except for those exempted as indicated above).
C. Control 98% (or to 20 ppmv, whichever is less stringent) each individual emission stream as follows:

Procedure[a]	Applicable weight percent range	Control/no control criteria
1. Sum all streams with VOC weight percent within the applicable weight percent range from all new or set of concurrently constructed, modified, and reconstructed facilities at a plant site.	0<5.5	1. If total combined uncontrolled emissions are equal to or greater than 47 Mg/yr, control 2. If total combined uncontrolled emissions are less than 47 Mg/yr, control only individual streams with volume flow rates of 8 scfjm or less.
2. Calculate total uncontrolled annual emissions for each weight percent range.	5<5<20	1. If total combined uncontrolled emissions are equal to or greater than calculated threshold emissions (CTE)[b] control.
3. Calculate composite VOC concentration (weight percent) for streams in the 5.5 to less than 20 weight percent range.	.....	2. If total combined uncontrolled emissions are less than the CTE, control only individual streams with volume flow rates of 8 scfm or less.
4. Calculate the threshold emissions for the 5.5 to less than 20 weight percent range using the composite VOC concentration.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control. 2. If total combined uncontrolled emissions are less than 18.2 Mg/yr. control in any control device.

Do not include individual streams excluded under "Exemptions" in the calculation procedures. Exempted streams are those with uncontrolled annual emissions of less than 1.6 Mg/yr from new, modified, and reconstructed affected facilities, and those with VOC concentrations less than 0.10 percent VOC by weight from modified or reconstructed affected facilities.

Equations 7, 8, or 9 as appropriate, in Table 2 are to be used in calculating threshold emissions.

TABLE 2.—THRESHOLD EMISSIONS EQUATIONS

VOC Concentration of Combined Stream (Weight Percent)	Threshold Emissions (Mg/yr)	Equation Number
0.10<0.12	(a×164)	1
0.12<0.20	(b×47.3)+96.4 ...	2
0.2<0.3	(c×24.8)+68.5 ...	3
0.3<0.4	(d×531)+52.4	4
0.4<0.6	47+30 (0.6−wt percent VOC).	5
0.6<5.5	47	6
5.5<7.0	(e×691)+30.9	7
7.0<9.0	(f×324)+25.0	8
9.0<20.0	(g×125)+18.2	9

where:

a $\left[\frac{0.12}{\text{weight percent VOC}}\right]^{5.9}$

b $\frac{\left[\frac{0.2}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$

c $\frac{\left[\frac{0.3}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$

d $(0.4 \quad \text{weight percent VOC})^{1.5}$

$\frac{\left[\frac{7.0}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$

f $\frac{\left[\frac{9.0}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$

g $\frac{\left[\frac{20.0}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$

TABLE 3.—SUMMARY OF NEW APPROACH FOR DETERMINING WHICH INTERMITTENT EMISSIONS FROM NEW, MODIFIED, OR RECONSTRUCTED AFFECTED FACILITIES WOULD BE SUBJECT TO THE PROPOSED STANDARDS

Type of emissions	Control Determination
Decomposition emissions[a]	None; no control required
Overpressurizations other than decompositions[b]	Control
Start-up, shut-down, maintenance purges, and other normal process releases.	Control

[a] Excludes emissions that occur during attempts to prevent a decomposition.
Includes emissions that occur during attempts to prevent a decomposition.

1. Continuous Emissions

As seen in Tables 1a and 1b, certain individual continuous emission streams may be exempted from any control. These exemptions are based on either an uncontrolled small annual emission rate cutoff or low VOC concentration (weight percent) cutoff. (As defined in the proposed rule, "uncontrolled" emissions refer to the emissions that would be emitted to the atmosphere in the absence of any add-on control devices, but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.) Once a continuous emission stream has been exempted by one of these two criteria, it is no longer considered in any procedure to determine whether any of the remaining continuous emission streams are to be controlled. Note that these individual stream exemptions apply only to continous emission streams; they do not apply to intermittent emission streams.

The determination of whether the remaining, nonexempt continuous emission streams are to be controlled is based on uncontrolled annual emissions, VOC concentration (weight percent), and flow rate (scfm). All nonexempt continuous emission streams are grouped into one of three VOC concentration weight percent ranges—0 to less than 5.5, 5.5 to less than 20, and 20 or greater—to determine whether control is required. Continuous emission streams within each weight percent range would be combined across all concurrently constructed, modified, and reconstructed process sections at a plant to calculate total uncontrolled annual emissions. For those streams with individual VOC concentrations between 5.5 and 20 percent VOC by weight, the weight percent VOC concentration of the combined stream would be calculated. Where the affected facilities at an existing plant are only modified or reconstructed process sections (i.e., no new process sections are constructed concurrently), the weight percent VOC concentration of the combined stream would also be calculated for continuous emission streams with individual VOC concentrations between 0.10 and less than 5.5 weight percent VOC from modified and reconstructed affected facilities. The Agency is proposing to define "concurrent" to mean the construction, modification, or reconstruction of affected facilities that is commenced or completed within a two year period after the commencement date of the construction, modification, or reconstruction of an affected facility.

Control of all nonexempt continuous emission streams within a weight percent range would be required if the sum of uncontrolled annual emissions from all nonexempt continuous emission streams in that weight percent range is equal to or greater than the annual threshold emissions applicable for that weight percent range. If the sum of uncontrolled annual emissions is less than the applicable annual threshold emissions, the continuous emission streams within that weight percent range would not be required to be controlled, except as discussed in the following paragraph.

Under the new approach, individual continuous emission streams with flows of 8 scfm or less would still be required to be controlled even when the sum of uncontrolled annual emissions for that weight percent range is less than the applicable annual threshold emissions. The Agency believes that these low flow streams can be controlled in an existing or otherwise available control device. This is based on an analysis (see Docket Item IV-B-7) that shows flows of 8 scfm or less represent a small fraction of total excess capacities of control devices expected to be found at polymer manufacturing plants. The new approach does not require that these low flow streams meet the 98 percent reduction (or to 20 ppmv, whichever is less stringent) standard. (Low flow streams that are in a weight percent range whose total uncontrolled annual emissions are equal to or greater than the applicable annual threshold emissions would be required to be controlled by 98 percent reduction or to 20 ppmv, whichever is less stringent.) Such control could take place in a flare, incinerator, boiler, or other control device located at the plant site. Note that this low flow requirement results in all nonexempt continuous emission streams in the 20 to 100 weight percent range being controlled regardless of the total uncontrolled annual emissions because all individual streams with less than 18.2 Mg/yr of emissions and a VOC concentration of at least 20 percent VOC also have flows of less than 8 scfm.

The following paragraphs explain in more detail how this new approach would be implemented for determining which continuous emissions from modified or reconstructed process sections and from new process sections are subject to control.

a. *Control of Continuous Emissions from Existing Process Sections.* Prior to any changes to an existing process section that could conceivably be a modification or reconstruction, an owner or operator of the subject process section would be required to identify each individual continuous emission stream in the subject process section and to measure each stream's VOC concentration (weight percent). For process sections that are modified or reconstructed under the Clean Air Act, the owner or operator would then determine which emission streams in the affected facilities to control as outlined in Table 1a and as described in Steps 1 through 5 below. Except as noted in Step 1, all annual emissions, flows, and VOC concentrations used for determining whether control is required are those values after the modification or reconstruction has been made. Where more than one process section is modified or reconstructed concurrently, the emissions from all such concurrently modified or reconstructed affected facilities are combined, as outlined below in Steps 3, 4, and 5, for purposes of determining which emission streams would be controlled.

Step 1. Exemption for individual continuous emission streams. Based on annual emissions after the modification or reconstruction, each individual continuous emission stream with an uncontrolled annual emission rate of less than 1.6 Mg/yr that is in an affected facility would be exempt from any control requirements. Each individual continuous emission stream with a VOC concentration less than 0.10 weight percent that is in an affected facility would also be exempt from any control requirements. The VOC concentration to be used for determining whether an individual stream is exempt from control is the higher of the two VOC concentrations (that measured prior to the modification or reconstruction or that which occurs after modification or reconstruction). The selection of the higher of the two VOC concentrations is to discourage dilution of streams during the modification or reconstruction process that would exempt from control streams that otherwise should be controlled and could be controlled cost effectively.

Once an individual stream has been exempted on one of the two bases identified in this step, it is no longer considered in any of the calculation procedures identified below. Thus, the following steps and the resulting control/no control decisions apply only to all remaining nonexempt individual continuous emission streams.

Step 2. Control of "low flow" continuous emission streams. Each individual continuous emission stream with a flow rate of 8 scfm or less that is

in an affected process facility would be required to be controlled, unless the emission stream has been already exempted under Step 1. For streams with individual flows of 8 scfm or less that are in an affected facility (or set of concurrently modified or reconstructed affected facilities) whose total emissions are required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent) as determined in Steps 3, 4, or 5 below, control by 98 percent reduction (or to 20 ppmv, whichever is less stringent) would also be required for these low flow streams. For streams with individual flows of 8 scfm or less that are in an affected facility (or set of concurrently modified or reconstructed affected facilities) whose total emissions are not required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent) as determined in Steps 3, 4, or 5 below, control of these low flow streams would still be required. However, such control can take place in a flare, incinerator, boiler, or other control device located at the plant site and the destruction efficiency of the control device would not be specified.

Step 3. Control of continuous emission streams with concentrations between 0.10 and less than 5.5 percent VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration between 0.10 and less than 5.5 percent by weight that are in an affected facility are combined across all concurrently modified or reconstructed affected facilities at the site, and the total uncontrolled annual emissions and the VOC concentration (weight percent) for the combined stream would be calculated. The VOC concentration of the combined stream would then be inserted into the appropriate equation in Table 2 to determine the threshold emissions. If the total combined uncontrolled annual emissions are equal to or greater than the calculated threshold emissions, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process section(s). If the total combined uncontrolled annual emissions are less than the calculated threshold emissions, then control of streams within this weight percent range that are in the affected process section(s) would not be required except that, as noted in Step 2 above, individual streams with flows of 8 scfm or less would still be required to be controlled. Such control can take place in a flare, incinerator, boiler, or other control device located at the plant site.

Step 4. Control of continuous emission streams with concentrations between 5.5 and less than 20 percent VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration between 5.5 and less than 20 percent VOC by weight that are in an affected facility are combined across all concurrently modified or reconstructed affected facilities at the site, and the total uncontrolled annual emissions and the VOC concentration (weight percent) for the combined stream would be calculated. The VOC concentration of the combined stream would then be inserted into the appropriate equation in Table 2 to determine the threshold emissions. If the total combined uncontrolled annual emissions are equal to or greater than the calculated threshold emissions, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process section(s). If the total combined uncontrolled annual emissions are less than the calculated threshold emissions, then control of streams within this weight percent range that are in the affected process section(s) would not be required except that, as noted in Step 2 above, individual streams with flows of 8 scfm or less would still be required to be controlled in a control device located at the plant site.

Step 5. Control of continuous emission streams with concentrations of 20 percent or more VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration of 20 percent or higher by weight that are in an affected facility are combined across all concurrently modified or reconstructed affected facilities at the site, and the total uncontrolled annual emissions would be calculated to determine the level of control required. If total combined uncontrolled annual emissions are equal to or greater than 18.2 Mg/yr, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual emission streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process section(s). As noted earlier, continuous emission streams with uncontrolled annual emissions of less than 18.2 Mg/yr and VOC concentrations of 20 percent or more by weight have flows of less than 8 scfm, and such flows can be vented to existing control devices. Thus, if the total combined uncontrolled annual emissions are less than 18.2 Mg/yr, then control of streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process section(s) would still be required. Control would take place in an existing control device located at the plant site.

b. *Control of Continuous Emissions from New Process Sections*: As seen in Table 1b, the procedures for determining which continuous process emissions from new affected facilities to control are nearly identical to those for modified or reconstructed affected facilities. There are two differences between the two sets of procedures. One difference is that the individual low VOC concentration cutoff does not apply to continous emissions from new affected facilities. The second difference concerns the threshold emissions for streams with VOC concentrations less than 5.5 percent VOC by weight. For new affected facilities, a single threshold limit of 47 Mg/yr is being considered rather than a threshold limit based on the combine stream's VOC concentration and an equation.

Where more than one new process section is added at an existing plant, the emissions from all concurrent new process sections are combined, as outlined below in Steps 3, 4, and 5, for purposes of determining which emission streams would be controlled. In addition, where the construction of one or more new process sections at an existing plant occurs concurrently with the modification or reconstruction of one or more existing process sections, emissions from all affected facilities (new, modified, and reconstructed process sections) would be combined as described in Steps 1 through 5 below. Where process sections are constructed concurrently with the modification or reconstruction of existing process sections at a plant site, the control/no control decisions for this set of concurrently constructed and modified or reconstructed affected facilities would be made according to the steps for new process sections.

Step 1. Exemption for individual continuous emission streams. Based on annual emissions, each individual continuous emission stream with uncontrolled annual emissions below 1.6 Mg/yr that is in an affected facility (or set of concurrently constructed, modified, and reconstructed affected facilities) would be exempt from any control requirements. For the reasons discussed later in Part D of this notice, a low VOC concentration cutoff for individual streams from new affected facilities is not included in the new approach being considered. Where process sections at an existing plant are constructed, modified, and reconstructed concurrently, the low VOC concentration cutoff is still applicable to exempt individual continuous emission streams from the modified or reconstructed affected facilities.

Step 2. Control of low flow continuous emission streams. Each individual continuous emission stream with a flow of 8 scfm or less that is in an affected facility (or set of concurrently constructed, modified, or reconstructed affected facilities) would be required to be controlled, unless the emission stream has been already exempted under Step 1. For streams with individual flows of 8 scfm or less that are in an affected facility (or set of concurrently constructed, modified, or reconstructed affected facilities) whose total emissions are required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent) as determined in Steps 3, 4, and 5 below, control by 98 percent reduction (or to 20 ppmv, whichever is less stringent) would also be required for these low flow streams. For streams with individual flows of 8 scfm or less that are in an affected facility (or set of concurrently constructed, modified, or reconstructed affected facilities) whose total emissions are not required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent) as determined in Steps 3, 4, and 5 below, control of these low flow streams would still be required. However, such control would take place in a control device located at the plant site and the destruction efficiency of the control device would not be specified.

Step 3. Control of continuous emission streams with concentrations between 0 and less than 5.5 percent VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration between 0 and less than 5.5 percent VOC by weight that are in an affected facility are combined across all concurrent new affected facilities at the site, and the total uncontrolled annual emissions would be calculated. If concurrent new and modified or reconstructed affected facilities are involved, then the combined stream would not include individual continuous emission streams with individual VOC concentrations of less than 0.10 percent by weight from the modified or reconstructed affected facilities. If the total combined uncontrolled annual emissions are equal to or greater than 47 Mg/yr, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range except those individual streams exempted by either its low uncontrolled annual emission rate (less than 1.6 Mg/yr) or its low VOC concentration (less than 0.10 percent VOC by weight), as appropriate, that are in the affected process section(s). If the total combined uncontrolled annual emissions are less than 47 Mg/yr, then control of streams within this weight percent range that are in the affected process section(s) would not be required except that, as noted in Step 2 above, individual streams with flows of 8 scfm or less would still be required to be controlled in a control device located at the plant site.

It is possible that the emissions from the new process section(s) do not include any with individual VOC concentrations less than 5.5 percent by weight and the emissions from the concurrently modified or reconstructed process sections do have emissions with VOC concentrations less than 5.5 percent VOC by weight. In these situations, the control/no control procedure to be used for the emissions with less than 5.5 percent VOC by weight from the modified or reconstructed process sections would "revert" to that procedure being proposed for modified and reconstructed affected facilities only, as outlined in Table 1a.

Step 4. Control of continuous emission streams with concentrations between 5.5 and less than 20 percent VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration between 5.5 and less than 20 percent VOC by weight that are in an affected facility are combined across all concurrent new process sections (or set of concurrently constructed, modified, and reconstructed process sections, as appropriate) at the site, and the total uncontrolled annual emissions and the VOC concentration (percent weight) for the combined stream would be calculated. The VOC concentration of the combined stream would then be inserted into the appropriate equation in Table 2 to determine the threshold emissions. If the total combined uncontrolled annual emissions are equal to or greater than the calculated threshold emissions, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected facility (or set of concurrently constructed, modified, and reconstructed process sections, as appropriate). If the total combined uncontrolled annual emissions are less than the calculated threshold emissions, then control of streams within this weight percent range that are in the affected process section(s) would not be required except that, as noted in Step 2 above, individual streams with flows of 8 scfm or less would still be required to be controlled in a control device located at the plant site.

Step 5. Control of continuous emission streams with concentrations of 20 percent VOC or more by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration of 20 percent or more by weight that are in an affected facility are combined across all concurrent new process sections (or set of concurrently constructed, modified, and reconstructed process sections, as appropriate) at the site, and the total uncontrolled annual emissions would be calculated to determine the level of control required. If the total combined uncontrolled annual emissions are equal to or greater than 18.2 Mg/yr, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process sections. If the total combined uncontrolled annual emissions are less than 18.2 Mg/yr, then control of streams within this weight percent range that are in the affected process section(s) with individual uncontrolled annual emission rate equal to or greater than 1.6 Mg/yr would still be required. As noted earlier, these streams have flows of less than 8 scfm, and such low flow streams can be vented to other control devices. Control

of these low flow streams would take place in a control device located at the plant site.

2. Intermittent Emissions

The new approach being considered for intermittent emissions was summarized earlier in Table 3. As seen in Table 3, the new approach would exempt all decomposition emissions from control at both existing and new plants, and would require control of all other intermittent emissions, which the Agency believes fall within one of the two remaining categories shown in Table 3, again at both existing and new plants. Intermittent emissions that occur during attempts to prevent a decomposition would be required to be controlled. The Agency has included in this notice proposed definitions for "decomposition" and "decomposition emissions."

3. Examples

The following two examples are designed to illustrate some of the differences and similarities between the model plant approach and the new approach and to illustrate further how the new approach works.

Example 1. A new raw materials preparation section is added to an existing polypropylene, liquid phase plant. This section has three continuous emission streams. The capacity of the facility is 200 Cg/yr. Emission stream characteristics are as shown in Table 4.

TABLE 4. HYPOTHETICAL EMISSION STREAMS FOR A RAW MATERIALS PREPARATION SECTION IN A EXISTING POLYPROPYLENE PLANT

	Stream A	Stream B	Stream C	Total
Emissions, Mg/yr	0.5	25	10	35.5
Weight percent VOC	100	100	93	—
Uncontrolled Emission Rate, kg VOC/Mg product	0.0025	0.125	0.05	0.1775
Flow, scfm	0.1	5.0	2.2	

Under the model plant approach, a decision is first made that the facility is classified as a polypropylene liquid phase plant. Next, it would be determined whether the new process section is an affected facility. As proposed, the raw materials preparation section in a polypropylene, liquid phase plant, is an affected facility for continuous emissions. Lastly, the uncontrolled emission rate of the *process section* is calculated (equals 0.1775 kg VOC/Mg product) and compared to the cutoff level in the standards (0.15 kg/Mg) as previously proposed. Since the total uncontrolled emission rate is greater than the cutoff level, all three streams would be subject to the standard and controlled by 98 percent reduction or to 20 ppmv, whichever is less stringent.

Under the new approach, Stream A would be excluded from control because its uncontrolled annual emissions are less than the annual emission rate cutoff for small streams (i.e., less than 1.6 Mg/yr). The two remaining streams (Streams B and C) would be combined because each stream has a VOC weight percent greater than 20 percent. Total uncontrolled annual emissions from the combined stream would be calculated. Since the total combined uncontrolled annual emissions (i.e., 35 Mg/yr) are greater than 18.2 Mg/yr, both streams would be required to be controlled by 98 percent reduction or to 20 ppmv, whichever is less stringent.

The difference in the control requirements between the two approaches is that Stream A would be controlled under the model plant approach, but not under the new approach.

Example 2. A new polypropylene plant is built. The plant has three process lines. Each line has individual process sections. Each individual process section has the *combined* emission stream characteristics shown in Table 5. A very important point in this simplified example for the new approach is the implicit assumption that the individual streams within each process section are within the same weight percent range. If individual streams within a process section are not within the same weight percent range, then they would not be combined with each other under the new approach, and the example in Table 5 would be inappropriate.

TABLE 5. HYPOTHETICAL EMISSIONS FROM NEW POLYPROPYLENE PLANT, PER LINE

[3 Process Lines in Plant]

	Raw materials preparation	Polymerization reaction	Material recovery	Product finishing	Product storage
Continuous Emissions:					
Emissions, Mg/yr	3.5	205	2,500	130	28
Wt. % VOC	100	100	100	9.3	0.4
Emission Rate, kg/Mg	0.07	4.1	30	2.6	0.4
Flow, scfm	0.07	8	46	71	800
Intermittent Emissions:					
Emissions, Mg/yr	15	100	25	30	—
Emission Rate, kg/Mg	0.075	0.5	0.125	0.15	—
Type of Emission	Purge	Decomposition	Purge	Purge	—

Under the model plant approach, the first step is to determine whether the new plant is a liquid phase or gas phase facility. Assume it is a liquid phase facility. Under the proposed standards based on the model plant approach, all process sections, except product storage, are affected facilities in polypropylene liquid phase plants for continuous emissions, and the polymerization reaction section is the only affected facility for intermittent emissions. Thus, the continuous emissions from product storage and the intermittent emissions from the raw

materials preparation, material recovery, and product finishing sections would not be subject to the proposed standards based on the model plant approach. Continuous emissions from the raw materials preparation section would be exempt because the emission rate (0.07 kg VOC/Mg product) is less than the proposed cutoff level (0.15 kg VOC/Mg product). Continuous emissions from the other three process sections would be required to be controlled by 98 percent reduction as their emission rates are greater than their respective proposed cutoff levels. The decomposition emissions from the polymerization reactor would be required to be controlled as the uncontrolled emission rate (0.5 kg VOC/Mg product) is greater than the proposed cutoff level (0.24 kg VOC/Mg product) for intermittent emissions from the polymerization reaction section.

Under the new approach, it is unnecessary to determine whether the new plant is a liquid phase or gas phase type plant. For continuous emissions at a new plant, the first step would be to see if any individual continuous streams are exempt on the basis of the annual emission rate cutoff for small streams. Although individual streams are not explicitly shown in this example, assume that no individual stream is exempted; that is, all individual streams have uncontrolled emission rates of 1.6 Mg/yr or greater. The next step is to combine all streams within the plant that are within the same weight percent range (i.e., 0 to less than 5.5, 5.5 to less than 20, and 20 to 100 percent) and calculate total uncontrolled annual emissions for the set of emissions within each weight percent range. As noted earlier, the implicit assumption for this example has already been made that all individual streams within a process section are within the same weight percent range. Keeping this in mind, continuous emissions would then be summed across: (1) All raw materials preparation, polymerization reaction, and material recovery process sections (a total of 8,126 Mg/yr); (2) across the three product finishing sections (a total of 390 Mg/yr); and (3) across the three product storage sections (a total of 84 Mg/yr). In addition, the VOC concentration (weight percent) for the combined emission stream from the product finishing section would be calculated. In this simplified example, the combined emission stream is 9.3 percent VOC by weight.

Since the sum of uncontrolled emissions from continuous streams in the 20 to 100 VOC weight percent range (that is, in this example, those emissions from raw materials, polymerization reaction, and material recovery process sections) exceeds 18.2 Mg/yr, they would be required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent). For the product finishing section, the threshold emissions are calculated by inserting the combined emission stream's VOC concentration (i.e., 9.3 percent VOC by weight) into Equation 9 in Table 2. Using this equation, the threshold emissions are calculated to be 24.5 Mg/yr. Since the sum of uncontrolled emissions from continuous streams in the 5.5 to less than 20 VOC weight percent range exceeds this, they would be required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent). Finally, since the sum of uncontrolled emissions from continuous streams in the 0 to less than 5.5 VOC weight percent range exceeds 47 Mg/yr, they too would be required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent).

For intermittent emissions, Table 3 would be used to determine which intermittent emissions would be subject to control. Under the new approach being considered, decomposition emissions, which are emitted from the polymerization reaction section, would be exempt from control. However, the purges, which are emitted from the raw materials preparation, material recovery, and product finishing sections, would now be subject to control.

The primary differences between the two approaches in Example 2 are: (1) under the model plant approach, continuous emissions from the raw materials preparation section and the product storage section are not controlled, but are controlled under the new approach; (2) decomposition emissions are controlled and purges are not controlled under the model plant approach, whereas decomposition emissions are not controlled and purges are controlled under the new approach; and (3) under the new approach, all process sections are subject to potential control, whereas in the model plant approach only those process sections specified in the proposed rule are potentially subject to regulation.

Discussion of Examples 1 and 2. The above two examples illustrate a number of points concerning the two approaches. The following items highlight the main differences between the two approaches.

1. The model plant approach requires one additional definitional step—classifying the type process to determine which standards apply. The new approach eliminates this aspect of the model plant approach.

2. The model plant approach specifies certain process sections potentially subject to control. The new approach assumes all process sections, and thus all process emissions, are potentially subject to control.

3. The model plant approach requires summing emission rates within a process section to determine if control is required or not. Under the new approach, control decisions are made for continuous emissions on either an individual stream basis or a similar combined total emissions (Mg/yr rather than kg VOC/Mg product) basis.

D. Summary of Analyses Behind New Approach

In this section of the preamble, a summary of the analyses undertaken and conclusions reached by the Agency for the major portions of the new approach are presented. The summaries for the continuous emissions portion of the generic approach being considered focus on (1) weight percent and annual emissions as the control/no control decision parameters; (2) the weight percent ranges selected for combining emissions; (3) control/no control annual emission threshold levels; (4) the low VOC concentration cutoff determination; (5) the control determination procedure to use for emissions with less than 5.5 percent VOC by weight from concurrently constructed, modified, and reconstructed process sections; (6) the annual emission rate cutoff for small streams; and (7) the control of all low flow (i.e., <8 scfm) streams. Following these discussions, analyses concerning the intermittent emissions portion of the generic approach being considered are summarized. The summaries for intermittent emissions focus on the selection of the type of release as the control/no control decision parameter and on the lack of a threshold level for intermittent emissions and an annual emission rate cutoff for small intermittent streams.

1. Continuous Emissions

Weight Percent and Annual Emissions. In response to comments received, EPA went back to the information available on the polypropylene and polyethylene plants to see if there were alternative ways of identifying the cost effectiveness of controlling continuous emissions from polypropylene and polyethylene plants other than by relying on model plant emission stream characteristics. (See Docket Item IV-B-4, which presents the

cost analyses for flares, and Docket Item IV-B-10, which presents the cost analyses for incinerators). The cost effectiveness of controlling an emission stream is a function of the amount of emission reduction and the cost of achieving that amount of emission reduction. Thus, it seemed reasonable to look for parameters that could be related to emission reduction and costs. The obvious choice for the emission reduction parameter appeared to be annual emissions. Since emission reduction for continuous emissions is essentially fixed at 98 percent within the proposed standard, annual emissions would be directly related to emission reduction.

The Agency then examined a large number of general emission streams to determine if any single emission stream parameter could be related to the cost of control; or, when used in conjunction with annual emissions, could be used for determining which continuous emission streams are cost effective to control. Emission stream characteristics that the Agency viewed as realistic potential condidates were volume flow rate (scfm), volume percent VOC concentration, and weight percent VOC concentration.

Volume flow rate is a very good surrogate for cost of control of flares and incinerators because the sizing of these control devices is largely dependent on the volume flow of the stream. In addition, a number of operating costs are a function of volume flow rate. However, when VOC concentrations drop below approximately 20 percent VOC by weight, auxiliary natural gas is required to meet certain minimum heating requirements. The cost of natural gas, which is a function of volume flow rate and weight percent VOC, increases as the weight percent of VOC decreases. If the VOC concentration is small enough, the cost of natural gas can be much larger than the cost of the control device itself. As increasing amounts of natural gas are required, volume flow rate becomes a much poorer surrogate for costs. Neither volume percent nor weight percent VOC concentration by themselves are good surrogates for costs. For example, knowing that a stream is 100 percent VOC tells nothing about the size of the stream to be controlled and thus tells little about the size and cost of the control device required.

The Agency then examined the relationship between annual emissions and these three stream characteristics to see if, when used together to define an emission stream, there was a good correlation to the cost effectiveness of controlling that stream. The Agency initially examined volume percent and annual emissions as parameters for identifying the cost effectiveness of controlling a given stream. The cost effectiveness of control was found to vary for a given VOC volume percent, primarily due to the molecular weight of the VOC. Thus, volume percent was not considered a good parameter to use in conjunction with annual emissions for evaluating the cost effectiveness of controlling a continuous emission stream. The effect of molecular weight can be negated, however, by converting volume percent to weight percent. When this is done, the two parameters of weight percent and annual emissions provide a very good correlation to the cost effectiveness of controlling a continuous emission stream. This good correlation occurs, in part, because defining an annual emission rate and a particular weight percent VOC concentration for a continuous emission stream determines the volume flow for that stream. By considering these two parameters, the two major factors affecting the cost of control (volume flow for defining the size and thus the cost of the control device, and volume flow and weight percent VOC for determining the amount of natural gas) are taken into account. Thus, relatively simple control/no control decisions for continuous emissions can be made on the basis of weight percent VOC concentration and annual emissions.

For similar reasons as for weight percent VOC concentration, volume flow rate used in conjunction with annual emissions can also provide a very good correlation to the cost effectiveness of controlling a continuous emission stream. However, when considering whether or not two streams can be combined and vented to a control device, one has to consider the VOC concentration of the individual VOC components in a stream in relation to the corresponding explosive limits of the individual VOC components. In general, one does not want to combine low VOC concentration streams with high VOC concentration streams in order to avoid creating a stream with a VOC concentration of one of the VOC components in the explosive range for that VOC component. Volume flow rates do not allow consideration of this concern nearly as well as does weight percent VOC concentrations. The Agency, therefore, selected annual emissions and weight percent VOC concentration as the two generic stream parameters for continuous emissions.

Weight Percent Ranges. The Agency examined the costs of using flares, thermal incinerators, and catalytic incinerators to control continuous emissions (see Docket Items IV-B-4 and IV-B-10). Flares were found to be the most cost-effective means of control when VOC concentrations are approximately 5.5 percent VOC by weight or higher. For VOC concentrations of less than 5.5 percent VOC by weight, catalytic incinerators were found to be the most cost effective control device.

Flares can achieve 98 percent destruction efficiencies when operated under certain conditions. For example, a steam-assisted flare requires an offgas heat content of at least 300 Btu/scf. This heating value (i.e, 300 Btu/scf) corresponds to approximately 20 percent VOC by weight (see Docket IV-B-6). Streams with higher VOC concentrations do not need auxiliary natural gas added to meet the 300 Btu/scf requirement for steam-assisted flares. On the other hand, as the VOC concentration of a stream decreases below 20 percent VOC by weight, increasing amounts of auxiliary natural gas are required to meet the 300 Btu/scf requirement. Auxiliary natural gas requirements can greatly increase the cost of controlling streams in flares. As the VOC concentration approaches 5.5 percent by weight, controlling continuous emissions in flares begins to become more costly than controlling such streams in catalytic incinerators. The cost of controlling streams in a catalytic (or thermal) incinerator is highly dependent on the flow (scfm) and natural gas requirements. The cost of control begins to rise very rapidly as the VOC concentration approaches 0.10 weight percent VOC (see Docket Item IV-B-10). It was on the basis of these findings that the various weight percent ranges were developed.

Control/No Control Annual Emission Threshold Levels. Having identified the control techniques that achieve the most cost-effective emission reduction, the Agency then determined for each of the three weight percent ranges (i.e., less than 5.5 percent, 5.5 to less than 20 percent, and equal to or greater than 20 percent) the uncontrolled annual emissions necessary so that the cost of constructing a new control device is reasonable given the amount of emission reduction achieved. The Agency determined that for emissions with a concentration of 20 percent VOC or greater by weight at least 18.2 Mg/yr of emissions are needed for cost-effective control in a newly constructed flare. For emissions with a

concentration between 5.5 and less than 20 percent VOC by weight, the Agency determined that the amount of emissions needed for cost-effective control in a newly constructed flare increases as the VOC concentration approaches 5.5 percent. Equations 7, 8, and 9 in Table 2 approximate the emissions needed for control to be cost effective. These analyses and three equations are presented in Docket Item IV-B-4.

For emissions with a concentration below 5.5 percent VOC by weight, the Agency found that approximately 47 Mg/yr of emissions was, in general, sufficient to make control in a catalytic incinerator cost effective (see Docket Item IV-B-10). Below approximately 0.6 weight percent VOC, the amount of emissions needed to make control cost effective increases above 47 Mg/yr. Below 0.10 weight percent VOC, the cost of control becomes so large that control is not cost effective regardless of the amount of emissions. Equations 1 through 6 in Table 2 approximate the emissions needed for control to be cost effective. These equations apply only to emissions from modified or reconstructed affected facilities. For new affected facilities, the Agency has elected to set a single emission control/no control level of 47 Mg/yr for streams with VOC concentrations below 5.5 percent by weight because of concerns over necessary versus excessive dilution (as discussed below).

Low VOC Concentration Cutoff. The Agency considered the desirability and practicality of using a low VOC concentration (weight percent) cutoff in the control/no control decision in response to industry concerns over controlling dilute VOC emissions. The Agency cost analysis based on incinerators (Docket Item IV-B-10) showed that control of dilute streams above approximately 0.10 weight percent VOC [approximately 3% of the lower explosive level (LEL) for ethylene] can be cost effective provided there is a sufficient quantity of emissions entering the incinerator. Below approximately 0.10 weight percent VOC, the gas volumes and auxiliary gas requirements become so large that control is not cost effective regardless of the amount of emissions. The Agency, however, is concerned that a low VOC concentration cutoff could lead to excessive dilution, especially for streams that would already be near the cutoff. The Agency does not wish to set a concentration cutoff and require potentially subjective judgments on what constitutes necessary dilution.

The Agency reviewed in-house information on polypropylene and polyethylene plants in an attempt to identify the sources of low VOC concentration streams, the levels of dilution occurring in the industry, and the reasons for such dilution levels (see Docket Item IV-B-9). This analysis showed that low VOC concentration continuous emission streams in these plants tend to come from process equipment in product finishing and product storage process sections, although some types of recovery equipment may also emit dilute streams to the atmosphere. Sources of such streams include dryers, pneumatic transfer systems, blenders/mixers, and storage bins. Most of the low VOC concentration streams are VOC in air, although some are VOC in nitrogen. Based on the information reviewed, the concentration of VOC for VOC-in-air streams ranged from less than 0.1 percent of the LEL to as high as 80 percent of the LEL (see Docket Items IV-B-1 and IV-B-9). Unfortunately, the reasons for such dilution levels were not indicated. The Agency believes that in general the purpose of dilution would be to lower the concentration of the VOC to a point below the LEL of the VOC in question. Typically, such dilution for safety reasons would be expected to result in a VOC concentration of 20 to 25 percent of the LEL. For certain equipment, such as dryers and pneumatic conveying systems, the Agency believes design factors rather than safety concerns may determine the amount of air required. Such design considerations may be the main reason that such low concentration levels occur for some of the process streams, but for blenders/mixers or storage bins it is not obvious to the Agency that dilution needs to result in VOC concentrations less than 20 percent of the LEL.

In light of this information, the Agency considered several alternatives. One alternative was to differentiate the sources of the various low VOC concentration streams according to whether the amount of dilution was the result of design parameters (as might be the case for dryers) or the result of safety (i.e., to ensure dilution to at least 20 percent of the LEL). A weight percent cutoff presumably could be applied more objectively with regard to excessive dilution by determining whether a dryer, for example, is designed according to sound engineering principles and by "limiting" dilution air from storage bins to the amount necessary to achieve VOC concentrations of 20 percent of the LEL. While the Agency believes this alternative has some merit, the implementation and enforcement of it would be time consuming and costly. Further, the identification of which sources are "process driven" and which are "safety driven" for determining allowable dilution air is not without problems.

A second alternative considered was to provide a weight percent cutoff for emission streams from existing affected facilities only, but require control of all low VOC concentration streams (i.e., those with VOC concentrations less than 5.5 percent VOC by weight) at all new affected facilities provided there are at least 47 Mg/yr of uncontrolled VOC emissions from continuous emissions at these affected facilities. Existing plants already have a given level of emissions and emission stream characteristics. By requiring companies to test these streams before modification or reconstruction occurs, a baseline set of emission characteristics can be obtained. (The Agency does not believe, however, that all existing VOC concentration levels represent necessasry levels of dilution. Changes in the production processes may have reduced concentrations in other parts of the process below previous levels.) However, the VOC concentrations of the streams may change as a result of the modification or reconstruction. Decreases in VOC concentrations could occur for several reasons, including attempts to take advantage of a VOC weight cutoff. To minimize this possibility under this alternative, the Agency has considered the requirement that the VOC concentration of streams in modified or reconstructed process sections be determined before and after such changes, and the higher of the two VOC concentrations be used as the basis for determining whether an individual stream can be excluded from control.

For new affected facilities, such given levels generally do not exist. New process sections at existing plants may match exactly existing process sections, in which case the existing process section's emission characteristics could be used to identify a given level of VOC concentration. On the other hand, a new process section at an existing plant may be partially or entirely a new design that will have emission streams for which there are no corresponding streams in existing process sections. For new plants, the Agency believes much greater freedom exists in designing equipment and determining not only total emissions, but the concentrations at which they will be emitted. Therefore, for new affected facilities, the Agency considered an annual uncontrolled emission threshold for low VOC

concentration streams, but not a low VOC concentration cutoff.

A third alternative considered by the Agency was simply to apply an annual uncontrolled emission threshold level for dilute streams from both existing and new facilities without regard to a low VOC concentration cutoff. The major concern with this alternative was that some emissions at existing facilities may be controlled under modification or reconstruction provisions that are in fact not cost effective to control. However, on the basis of current in-house information, very few instances of this occurring were identified by the Agency.

Of these alternatives, the Agency favors the second alternative. The Agency believes that this alternative provides adequate safeguards against excessive dilution and, in general, meets industry concern over unnecessary or not cost-effective control of low VOC concentration streams. The Agency welcomes comments on this particular aspect of the new approach being considered. Commenters are especially encouraged to explain how dilution levels are determined for various pieces of process equipment and to suggest alternative ways objective determinations can be made as to what constitutes necessary dilution in the industry. It should be noted that the revised rules being considered do *not* supercede the general provisions against international circumvention of a standard. Rather, the revised rules would provide a guideline for determining the weight percent to be used in making the control/no control decision.

Emissions With Less Than 5.5 Percent VOC by Weight From Concurrently Constructed, Modified, and Reconstructed Process Section. The procedures for determining which process emissions with VOC concentrations less than 5.5 percent VOC by weight would be subject to control are slightly different depending on whether they are emitted from a new process section or an existing process section. The primary reason for this, as discussed above, is the inability to assess whether the degree to which an emission stream from a new process section is diluted is "necessary" or "excessive." As a result of these slightly different procedures, the Agency had to consider what rule or procedure to use for combining emissions from concurrently constructed, modified, or reconstructed affected facilities.

It is important to remember that this concern only arises when the concurrently constructed and modified or reconstructed process sections both have at least one continuous emission stream with a VOC concentration of less than 5.5 percent VOC by weight. If the concurrently constructed process sections do not have an emission stream with less than 5.5 percent VOC by weight and the modified or reconstructed process sections do, then the procedure that applies is the same as for modified and reconstructed process sections only. Similarly, if the concurrently modified and reconstructed process sections do not have an emission stream with less than 5.5 percent VOC by weight and the new process sections do, then the procedure that applies is the same as for new process sections only.

The Agency again considered three basic alternatives. The first alternative was to apply the procedures separately. The Agency believes owners and operators would seek to combine emissions from all affected facilities, where possible, in order to minimize the number of emission points and to minimize control costs. Thus, to consider control separately was not considered to be realistic. Of the three alternatives, this alternative would result in the least amount of control, but would also provide the greatest safeguard against controlling emission streams from existing process sections that are in fact not cost-effective to control.

The second alternative considered was to apply the new affected facility procedure to both new and modified or reconstructed process sections when they occur concurrently. This would require all emissions to be combined and total uncontrolled annual emissions calculated. If the total combined uncontrolled annual emissions exceeded 47 Mg/yr, then control would be required. This alternative was considered by the Agency because there still is the concern of not being able to determine the necessary amount of dilution associated with emissions from newly constructed process sections. Since a combined stream is being considered, its VOC concentration is dependent on the VOC concentration of the emissions both from the new process sections and from the modified and reconstructed process sections. The VOC concentration of the combined stream could be manipulated to some extent. This alternative would achieve the most emission control of the three alternatives, but has the greatest risk of requiring control of emissions from existing process sections that are in fact not cost effective to control.

The third alternative considered was to apply the procedure for modified and reconstructed process sections only to the combined emission stream from the concurrently constructed, modified, and reconstructed affected facilities. The VOC concentration that would be used to calculate the threshold emissions would be the higher of either the combined stream's VOC concentration or the VOC concentration of the combined emission streams from the modified and reconstructed process sections only. (Note that the latter concentration itself would be the higher of the two VOC concentrations measured before and after the modification or reconstruction.) This alternative most likely falls in between the first two alternatives in terms of emission reduction and does the best job avoiding control of emissions from existing process sections that are not in fact cost effective to control.

Of these three alternatives, the Agency prefers the second alternative and the third alternative over the first alternative because the latter two options consider combining emissions, which better reflects what would occur at the plants. The Agency has a slight preference for the second alternative over the third alternative, because it would provide the greatest amount of emission reduction and it encourages industry to seek to minimize unnecessary dilution. The number of instances in which emissions from modified and reconstructed process sections would be required to be controlled when they are in fact not cost effective to control under the second alternative is highly uncertain. It is dependent on such factors as the number of times when process sections are constructed, modified, and reconstructed concurrently, and when such occurs concurrently, on the number of times when new process sections and the modified or reconstructed process sections both have emission streams with VOC concentrations of less than 5.5 percent VOC by weight. In addition, knowing that this procedure will be used will help minimize the number of instances where emissions that are truly not cost effective to control end up being controlled.

The Agency feels the third alternative has some merit, but also falls short in several aspects. The third alternative would allow dilution levels of the combined stream down to the existing VOC concentration of the emissions from the modified or reconstructed process section. Although the Agency considered using before or after VOC concentrations of emissions from modified or reconstructed process section as part of the control determination procedure, the Agency does not believe that all current dilution

levels represent necessary dilution levels. The Agency also believes this alternative may send the "wrong signal" to the industry by encouraging or continuing to allow unnecessarily dilute emissions, and could result in unnecessarily not controlling the combined emissions.

For the reasons stated above, the Agency has selected the second alternative as part of the new approach being presented in this **Federal Register** notice. The Agency welcomes comments on this particular aspect of the new approach being considered. Commenters are especially encouraged to offer alternatives to the ones considered by the Agency.

Annual Emission Cutoff for Small Streams. As mentioned earlier, an annual emission cutoff for small continuous emission streams is now being considered by the Agency. The concept behind this small stream cutoff is that an individual stream may be so small (in terms of total annual emissions) that it is not cost effective to control, even in an existing control device. The Agency agrees with this basic concept, and is considering setting a small stream cutoff of 1.6 Mg/yr for individual continuous emission streams. This revision would not supercede the general provisions against intentional circumvention of a standard (i.e., multiplying streams for the purpose of evasion rather than for independent process-related reasons). This cutoff level is based on the costs for ducting a stream to a control device. Such costs include piping, associated incremental operating costs of the control device, and a compressor/blower. One of the basic assumptions in setting this level is that the emission stream does not affect the size of the control device. Docket Item IV-B-5 contains the analysis for this annual emission cutoff for small streams.

Low Volume Flow Streams. Control devices are typically constructed larger than necessary, and thus generally have some amount of excess capacity. The Agency, therefore, considered whether or not individual streams with uncontrolled annual emissions of 1.6 Mg/yr or higher might be able to be vented to a control device located on the plant site. Existing facilities already have control devices as a result of safety, insurance requirements, or State regulation. New plants will also have control devices if not as a result of these proposed standards as a result of these other considerations (i.e., safety, insurance requirements, or State regulation). Therefore, the Agency examined the volume flow rates of streams with uncontrolled annual emissions of 1.6 Mg/yr and greater and whether control devices likely to exist at polymer plants would have the excess capacity to accept such streams. A continuous emission stream with 20 weight percent VOC and annual emissions of 18.2 Mg/yr has a potential flow of up to approximately 8 scfm. This maximum volume flow rate is based upon information on stream composition and characteristics found in the BID. The Agency examined the volume flow rate of 8 scfm in relationship to expected capacities of existing control devices (see Docket Item IV-B-7). This comparison showed that this low volume flow rate (i.e., 8 scfm) represents a small fraction of expected excess capacities of control devices expected to be found at polymer manufacturing plants. On the basis of this analysis, the Agency believes that low volume flow rate (i.e., $\leq$ 8 scfm) continuous emission streams can be controlled in existing control devices. Since the volume flow rate (scfm) is independent of the VOC concentration, the Agency considered extending control of low volume flow streams to those continuous emission streams with VOC concentrations of less than 20 percent VOC by weight. Because of the relatively small contribution of these streams to the total volume flow entering a control device, the Agency does not believe extending the low volume flow rate requirement to low VOC concentration streams will introduce safety problems. Finally, as noted above, as long as the low volume flow rate streams have uncontrolled annual emissions of 1.6 Mg/yr or greater, control of these low volume flow rate emission streams is cost effective. Thus, the Agency has proposed that each low volume flow rate stream (i.e., $\leq$ 8 scfm) from new, modified, or reconstructed affected facilities be controlled unless its uncontrolled annual emissions are less than 1.6 Mg/yr.

2. Intermittent Emissions

The Type of Release. As for continuous emissions, EPA went back to the information available on intermittent emissions from polypropylene and polyethylene plants to see if a similar control/no control approach could be developed. The Agency looked at annual emissions, volume flow rate, and weight percent VOC concentration as possible parameters for estimating the cost effectiveness of controlling intermittent emissions (see Docket Item IV-B-12). As noted earlier, the flow for a continuous emission stream could be calculated from a given weight percent VOC concentration and a given level of annual emissions. The resulting flow (which is an average) could then be used as a reasonable estimate of actual flow for calculating the cost of the control device. However, the resulting flow calculated for intermittent streams cannot be used in most instances. An intermittent emission stream typically will have a peak volume flow rate that is much larger than the average volume flow that is calculated from a given weight percent and a given annual emissions level. Since control devices are sized to control peak volume flow rates, the cost of control is more dependent on the peak rather than the average volume flow rate. Furthermore, there is not a unique peak volume flow rate associated with a given combination of weight percent VOC concentration and annual emissions since the time duration of the flow is unpredictable. Lacking this relationship, weight percent VOC concentration cannot be used as a parameter.

The Agency then considered using peak flow rate and annual emissions as the two parameters for a control/no control determination. For emission streams with VOC concentrations of more than 8 percent VOC by weight, the Agency found a good correlation between these two parameters and the cost effectiveness of control. For intermittent emissions with lower VOC concentrations, natural gas would be required. Since the amount of natural gas required is a function of the VOC concentration and the average volume flow and is not related to the peak flow, the cost of this natural gas would adversely affect the use of peak volume flow rate as a parameter for assessing the cost-effectiveness of control. Furthermore, the typically very high peak volume flow rates associated with decomposition emissions may require such a large control device that control of all intermittent emissions in a single flare would not be cost effective. Thus, the Agency does not believe intermittent emission streams lend themselves, as continuous emission streams do, to a simple two parameter control/no control determination.

The Agency then examined the information on intermittent emissions to see if a different type of generic approach could be used to determine which intermittent emissions would be subject to control. The Agency looked at aggregating emissions according to the type or nature of the release. In doing this, the Agency identified three basic types of intermittent emissions. These types were decomposition emissions, emergency releases other than decomposition emissions, and normal

process releases that include startup, shut-down, and maintenance purges. In reviewing the information in-hand and in anticipation of information being requested, the Agency believes that the emissions that occur due to a decomposition, regardless of the type of polymer being produced or the type of reactor being used, will be, on an incremental basis, not cost effective to control. Current available information shows that the other intermittent releases (emergency releases other than those that occur due to a decomposition and normal process releases including maintenance, start-up, and shut-down purges) may or may not be currently controlled due to State regulation or for safety purposes (see Docket Items IV-B-3 and IV-B-8). An Agency cost analysis based on the model plants' emissions as reported in BID (see Docket Item IV-B-12) shows that on a plant-wide basis sufficient intermittent emissions from these other various types of intermittent releases exist to make control cost effective. This cost analysis also examined the cost of controlling these other intermittent emissions on an individual process line basis. The cost of control on this basis was found to be less than $2,000/Mg of VOC reduction for all six model plants and less than $1,000/Mg of VOC reduction for four of the six model plants. Therefore, pending new information to the contrary, EPA is considering exempting all intermittent emissions that occur due to a decomposition from control and requiring all other intermittent releases, including intermittent emissions that may occur during an attempt to prevent a decomposition, to be controlled regardless of the type of polymer being produced and regardless of whether the affected facility is new, modified, or reconstructed.

Control/No Control Annual Emission Threshold Levels. Unlike the new approach for continuous emissions, the new approach being considered for intermittent emissions does not include a minimum threshold level of uncontrolled annual emissions before control is required. The absence of a threshold level is based upon a reconsideration by the Agency of the estimation of emissions from intermittent releases and the control of such streams. A threshold level requires the estimation or prediction of emissions beforehand so control devices can be put in place. Total emissions from an intermittent stream is dependent in many instances on the number of releases in a year, which is unpredictable in most cases. The number of releases can vary substantially from one year to another. Thus, conceivably, a particular stream may be below a threshold level one year and above it the next. As noted above, the Agency's cost analysis based on the model plant's emissions showed that sufficient emissions from intermittent releases (not including decomposition emissions) exist to make control cost effective. For these reasons, the Agency is not including a threshold level for intermittent releases in the new approach currently being considered.

Annual Emission Cutoff for Small Streams. The Agency considered an annual emission cutoff for small individual intermittent emission streams as it did for continuous emissions. Although by definition an emission stream with low annual emissions will have a low average flow (scfm), some intermittent streams may have a peak flow that would exceed the excess capacity of the existing control device or affect the size of a new control device. Thus, the same basic assumption (that control device size is not affected) used in the annual emission cutoff analysis for small continuous streams cannot be made for intermittent emissions. In addition, as the total emissions for some streams depend on the frequency and duration of reliefs in a year, a particular stream conceivably may meet the cutoff one year due to an unusually low number of reliefs, but exceed the cutoff another year due to an average or large number of reliefs. For these reasons, the Agency does not believe it is practical to provide an annual emission cutoff for small individual intermittent streams.

E. Impacts of New Approach

The Agency examined each process section, as described in the BID, to compare which process sections are projected to be controlled under the model plant approach and which are projected to be controlled under the new approach. The results of this analysis are presented in Docket Item IV-B-13. The impacts examined were for emission reductions and costs of control to the industry. Quantitative estimates were made on the basis of the effects of the new approach on emissions from new plants in order to be consistent with the previous estimated impacts reported in the **Federal Register** notice for the proposed standards. Projected effects were identified for modified and reconstructed affected facilities, but no quantitative estimates were made.

Emission Impacts. Several process sections or sets of emission streams in several of the model plants were identified as being controlled under the new approach but not under the model plant approach. In some instances, whether a process section was projected to be controlled varied depending on whether it was by itself or part of a process line or plant. In general, the process sections for which control under the new approach but not under the model plant approach was projected were: (1) The raw materials preparation section (continuous emissions) at both new and existing polypropylene, liquid phase process plants; (2) the product finishing and product storage sections (continuous emissions) at new LDPE, high pressure process plants; (3) the raw materials preparation sections (intermittent emissions) at both new and existing HDPE, slurry process plants; (4) the product finishing sections (continuous emissions) at new and existing HDPE, slurry process plants; (5) the raw materials preparation sections (continuous and intermittent emissions) at both new and existing HDPE, solution process plants; and (6) the product finishing sections (continuous emissions) at new HDPE, solution process plants.

The new approach would also result in some projected loss of emission control. The types of losses include decomposition emissions from polypropylene plants and some polyethylene plants, emission streams from modified or reconstructed affected facilities with either a VOC weight percent of less than 0.10 percent or annual emissions of less than 1.6 Mg/yr (for example, from raw materials preparation sections in polypropylene, liquid phase plants), and emission streams from new affected facilities with annual emissions of less than 1.6 Mg/yr.

Although it is difficult to estimate the exact increase or decrease in emission reductions, it has been estimated using the model plant emission data and projected growth estimates found in the BID that the new approach would result in a small net increase in emission reduction over the 5-year growth projection period.

Cost Impacts. The new approach would require model plant owners and operators to incur additional control costs in some instances (e.g., control of product finishing sections in new HDPE, slurry process plants) and may reduce control costs in other instances (e.g., streams exempted under the annual emission cutoff for small continuous emission streams). Though the cost impacts may be distributed over different owners or operators, a net cost savings is projected. For the process sections identified above as now being likely to be controlled under the new approach, an increase in annualized

costs attributable to the standards is projected to be about $900,000 spread over 5 years, while for process emissions that may now be exempt from control due to the new approach, a cost savings of approximately $1,700,000 over the next 5 years has been estimated (see Docket Item IV-B-13).

The incremental cost effectiveness of the control of the process sections which were projected to now be controlled as a result of the new approach being considered were also estimated. Incremental costs of control were calculate using the model plant emission characteristics as reported in the BID. The costs were also calculated for each type of new growth (new plant, process line, or process section) projected for the four model plant types that had process sections identified as now being controlled by the new approach.

One new plant was projected to be built for three of four model plants. (No new LDPE high pressure plant was projected to be built.) The incremental cost effectiveness of controlling emissions from the five process sections at the three new plants was estimated to be between $340/Mg to $870/Mg of VOC reduction for four of the five. The fifth process section, the product finishing section at the new HDPE, solution process plant, was projected to have an incremental cost effectiveness of almost $3,000/Mg. As noted above, these cost estimates were based on emission characteristics found in the model plant. The Agency believes new plants have much greater freedom in controlling emissions and their characteristics. Thus, the Agency believes the cost of controlling the product finishing emissions from a new HDPE, solution process plant may be overstated. The cost estimate is based on an existing facility with two streams diluted to approximately 4.3 and 0.9 percent of the lower explosive level. The latter stream is a VOC-in-air stream from a stripper. If a new plant would limit the amount of dilution from this stream to 25 percent of the lower explosive level, the Agency estimated that the cost effectiveness of control from product finishing in a new plant to be about $720/Mg.

The Agency also looked at the worst case costs where individual process sections are constructed (or modified or reconstructed). As expected, the incremental cost effectiveness of control increased. Eighteen process sections were projected to be constructed by themselves. For twelve of the process sections (six raw material preparation sections at polypropylene liquid phase plants and six at HDPE, solution process plants), the incremental cost effectiveness was less than $500/Mg of VOC reduction. For the other six process sections (three product storage sections at LDPE, high pressure plants and three raw materials preparation sections at HDPE, slurry process plants), the incremental cost effectiveness of control was between $1,300/Mg and $1,900/Mg. Where more than one of these process sections are constructed, modified, or reconstructed concurrently, the incremental cost of control would decrease.

Lastly, one new processs line was projected to be built at a LDPE, high pressure plant. The product finishing and product storage sections of this new line were projected to be controlled under the new approach, and an incremental cost effectiveness of $1,200/Mg of VOC reduction was estimated.

Applicability Date Impact. While the Agency believes the new approach more closely matches those streams that are cost effective to control with those streams that actually become controlled as a result of the regulation than would be achieved under the model plant approach, it is important to recognize, as discussed above and as illustrated in the two examples above, certain emissions and process sections not required to be controlled under the standards proposed on September 30, 1987, may be required to be controlled under the new approach. Therefore, the Agency would solve this potential compliance problem by proposing a new applicability date for those affected facilities that can be shown to have been excluded under the standards as proposed on September 30, 1987, but now would be subject to the final rule under the new approach.

Relationship to Current Levels of Control. As noted above, the approach being proposed in this notice may result in different control/no control decisions being made for certain emission streams in comparison to the previously proposed model plant approach. At the same time, the control/no control determination procedures under either approach may indicate that certain existing streams that are currently being controlled would not be required to be controlled under the approaches that have been proposed were they part of a new, modified, or reconstructed affected facility. The possibility of such instances occurring as a result of these standards does not constitute endorsement by the Agency of the removal of existing control equipment or the "decontrol" of such streams by venting them directly to the atmosphere rather than to the control device. Further, the analyses that form the basis of these approaches examined the cost incurred to control emissions that are uncontrolled and not the cost of continuing to control such streams. Thus, where such a "discrepancy" occurs, the analyses used to develop these approaches do not support the control of existing emissions. Finally, there may be reasons for continuing to control such streams that were not part of the analyses. For example, insurance requirements or State regulations may require greater levels of control than indicated by the analyses.

III. Reopening of Public Comment Period

As discussed above, the Agency is requesting comments on the new approach being considered for the standards for polypropylene and polyethylene production as outlined in this notice. Memoranda containing the analyses that form the basis of this new approach are found in the docket (see the **ADDRESSES** section of this notice). Based on the comments received, the Agency will reconsider the merits of this new approach and, if it is retained, will finalize the standard, considering any additional information that may be provided as a result of comments on this notice.

IV. Summary

In summary, the Agency has used the same basic information on emissions in the industry and has applied the same decision criteria for determining cost-effective levels of control, but has "repackaged" that information in a new approach for determining the control/no control decision. The Agency believes this new approach provides a standard that can meet the challenge of new processes and process modifications, and provide a more equitable standard for all those affected. Finally, the Agency believes that the new approach being considered is as protective of the environment as the model plant approach.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Plastic materials, synthetic resins, and nonvulcanizable elastomers (SIC 2821), and Reporting and recordkeeping requirements.

Date: December 29, 1988.

Eileen Claussen,

Acting Assistant Administrator for Air and Radiation.

It is proposed to amend 40 CFR Part 60 as follows:

PART 60—[AMENDED]

§ 60.560 [Amended]

1. In proposed § 60.560, by revising paragraphs (a)(1)(i) and (a)(1)(ii); removing paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v); redesignating paragraphs (a)(1)(vi); (a)(1)(vii), and (a)(1)(viii) as (a)(1)(iii), (a)(1)(iv), and (a)(1)(v), respectively; revising paragraphs (a)(2)(i) and (a)(2)(ii); revising paragraph (b); revising paragraph (c) and redesignating paragraph (c) as paragraph (e); redesignating paragraph (d) as paragraph (f); and adding paragraphs (c), (d), (g), and (h) as follows:

(a) * * *

(1) * * *

(i) For the manufacture of polypropylene: each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section;

(ii) For the manufacture of law density or high density polyethylene: each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section;

(iii) * * *

(iv) * * *

(v) * * *

(2) * * *

(i) For the manufacture of polypropylene: each raw materials preparation section, each polymerization section, each material recovery section, each product finishing section, and each product storage section; and

(ii) For the manufacture of low density or high density polyethylene: each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section;

* * * * *

(b) Any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after September 30, 1987, is subject to the requirements of this subpart except as provided in paragraphs (c) through (f) of this section.

(c) Any polypropylene or polyethylene facility listed in Table 1 that commenced construction, modification, or reconstruction after September 30, 1987, and before January 10, 1989 with uncontrolled emission rates at or below those identified in Table 1 is not subject to the requirements of this subpart unless and until such facility commences construction, modification, or reconstruction after January 10, 1989, or its uncontrolled emission rate exceeds that rate listed for it in Table 1.

TABLE 1. MAXIMUM UNCONTROLLED EMISSION RATE [a]

Production process	Process section	Uncontrolled emission rate, kg VOC/Mg product
Polypropylene, liquid phase process	Raw Materials Preparation	0.15 [b]
	Polymerization Reaction	0.14 [b], 0.24 [c]
	Material Recovery	0.19 [b]
	Product Finishing	0.57 [b]
Polypropylene, gas phase process	Polymerization Reaction	0.12 [c]
	Material Recovery	0.02 [b]
Low Density Polyethylene, high pressure process	Raw Materials Preparation	0.41 [d]
	Polymerization Reaction	e
	Material Recovery	e
	Product Finishing	e
	Product Storage	e
Low Density Polyethylene, low pressure process	Raw Materials Preparation	0.05 [f]
	Polymerization Reaction	0.03 [g]
	Production Finishing	0.01 [b]
High Density Polyethylene, liquid phase slurry process	Raw Materials Preparation	0.25 [c]
	Material Recovery	0.11 [b]
	Product Finishing	0.41 [b]
High Density Polyethylene, liquid phase solution process	Raw Materials Preparation	0.24 [f]
	Polymerization Reaction	0.16 [c]
	Material Recovery	1.68 [f]
High Density Polyethylene, gas phase process	Raw Materials Preparation	0.05 [f]
	Polymerization Reaction	0.03 [g]
	Product Finishing	0.01 [b]
Polystyrene, continuous process	Material Recovery	0.016 [b, h]
Poly(ethylene terephthalate), dimethly terephthalate process.	Material Recovery	0.06 [b, h]
	Polymerization Reaction	1.80 [h, i, j]
		3.92 [h, i, j]
Poly(ethylene terephthalate), terephthalic acid process	Raw Materials Preparation	l
	Polymerization Reaction	1.80 [h, j, m]
		3.92 [h, k, m]

[a] "Uncontrolled" emissions refer to the emissions that would be emitted to the atmosphere in the absence of any add-on control devices but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.

[b] Emission rate applies to continuous emissions only.

[c] Emission rate applies to intermittent emissions only.

[d] Total emission rate for non-emergency intermittent emissions from raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage process sections.

[e] See footnote d.

[f] Emission rate applies to both continuous and intermittent emissions.

[g] Emission rate applies to non-emergency intermittent emissions only.

[h] Applies to modified or reconstructed affected facilities only.

[i] Inlcudes emissions from the cooling water tower.

[j] Applies to a process line producing low viscosity poly(ethylene terephthalate).
[k] Applies to a process line producing high viscosity poly(ethylene terephthalate).
[l] See footnote m.
[m] Applies to the sum of emissions to the atmosphere from the polymerization reaction section (including emissions from the cooling water tower) and the raw material preparation section (i.e., the esterifiers).

(d) The continuous and intermittent emissions from any polypropylene or polyethylene facility listed in Table 2 that commences construction, modification, or reconstruction after January 10, 1989, are subject to the requirements of this subpart as shown in Table 2.

TABLE 2.—AFFECTED FACILITIES IN POLYPROPYLENE AND POLYETHYLENE FACILITIES WITH (DATE OF PROPOSAL IN FEDERAL REGISTER) APPLICABILITY DATES

Production process	Process section	Emissions	
		Continuous	Intermittent
Polypropylene, liquid phase process	Raw Materials Preparation		X
	Material Recovery		X
	Product Finishing		X
	Product Storage	X	X
Polypropylene, gas phase process	Raw Materials Preparation	X	X
	Polymerization Reaction	X	
	Material Recovery		X
	Product Finishing	X	X
	Product Storage	X	X
Low Density Polyethylene, high pressure process	Raw Materials Preparation	X	
	Polymerization Reaction	X	
	Material Recovery	X	
	Product Finishing	X	
	Product Storage	X	
Low Density Polyethylene, low pressure process and High Density Polyethylene, gas phase process.	Polymerization Reaction	X	
	Material Recovery	X	X
	Product Finishing		X
	Product Storage	X	X
High Density Polyethylene, liquid phase slurry process	Raw Materials Preparation	X	
	Polymerization Reaction	X	X
	Material Recovery		X
	Product Finishing		X
	Product Storage	X	X
High Density Polyethylene, liquid phase solution process.	Polymerization Reaction	X	
	Product Finishing	X	X
	Product Storage	X	X

(e) Except for new affected facilities, modified or reconstructed affected facilities at polystyrene and poly(ethylene terephthalate) plants with uncontrolled emission rates at or below those identified in Table 1 are exempt from the requirements of § 60.562–1.

(f) * * *

(g) Individual vent streams that emit continuous emissions with uncontrolled annual emissions of less than 1.6 Mg/yr in new polypropylene or polyethylene affected facilities are exempt from the requirements of § 60.562–1.

(h) Individual vent streams that emit continuous emissions with uncontrolled annual emissions of less than 1.6 Mg/yr or with a weight percent VOC of less than 0.10 percent from a modified or reconstructed polypropylene or polyethylene affected facility are exempt from the requirements of § 60.562–1.

§ 60.561 [Amended]

2. In proposed § 60.561, by adding the following definitions in alphabetical order:

* * * * *

"Concurrent" means construction, modification, or reconstruction of affected facilities that is commenced or completed within a two year period after the commencement date of the construction, modification, or reconstruction of an affected facility.

* * * * *

"Decomposition" means for the purposes of this standard an event in a polymerization reactor that advances to the point where the polymerization reaction becomes uncontrollable, the polymer begins to break down (decomposes), and it becomes necessary to relieve the reactor instantaneously in order to avoid catastrophic equipment damage or serious adverse personnel safety consequences.

"Decomposition emissions" refers to only those emissions released from a polymer production process as the result of a decomposition. For purposes of this standard, this term does not include emissions that may occur during attempts to prevent a decomposition.

* * * * *

§ 60.562–1 [Amended]

3. In proposed § 60.562–1, by revising paragraph (a)(1) introductory text, redesignating paragraphs (a)(1)(i) and (ii) as paragraphs (a)(1)(ii) and (iii); adding paragraph (a)(1)(i); revising paragraphs (a)(1)(ii) and (iii) introductory text; and revising paragraph (a)(2) introductory text as follows:

(a) * * *

(1) For each vent stream that emits continuous emissions in an affected facility as defined in § 60.560(a)(1), Table 3 shall be used to identify those continuous emissions from each new affected facility or set of concurrently constructed, modified, and reconstructed affected facilities that are required to be controlled, and Table 4

shall be used to identify those continuous emissions from each modified or reconstructed affected facility or set of concurrently modified and reconstructed affected facilities that are to be controlled. The level of control is identified in Tables 3 and 4 as one of the following:

(i) Venting the emissions to a control device located on the plant site.

(ii) Reducing emissions of total organic compounds (TOC) (minus methane and ethane) by 98 weight percent, or to a TOC (minus methane and ethane) concentration of 20 ppm by volume (ppmv), expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(iii) Combusting the emissions in a flare as follows:

* * * * *

(2) For each vent stream that emits intermittent emissions in an affected facility as defined in § 60.560(a)(2), except for decompositions:

* * * * *

TABLE 3. PROCEDURE FOR DETERMINING CONTROL AND APPLICABLE STANDARD FOR CONTINUOUS EMISSION STREAMS FROM ALL NEW AND FROM ALL CONCURRENT NEW, MODIFIED, AND RECONSTRUCTED POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES

Procedure[a]	Applicable weight percent range	Control/no control criteria	Applicable standard
1. Sum all streams with VOC weight percent within the applicable weight percent range from all new or from all concurrently constructed, modified, and reconstructed facilities at a plant site.	0<5.5[b]	1. If total combined uncontrolled emissions are equal to or greater than 47 Mg/yr, control. 2. If total combined uncontrolled emission are less than 47 Mg/yr, control only individual streams with volume flow rates of 8 scfm or less.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii) or (iii)
2. Calculate total uncontrolled annual emissions for each weight percent range. 3. Calculate composite VOC concentration (weight percent) for streams in the 5.5 to less than 20 weight percent range.	5.5<20	1. If total combined uncontrolled emissions are equal to or greater than calculated threshold emissions (CTE)[c], control. 2. If total combined uncontrolled emissions are less than the CTE, control only individual streams with volume flow rates of 8 scfm or less.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)
4. Calculate the threshold emissions for the 5.5 to less than 20 weight percent range using the composite VOC concentration.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control. 2. If total combined uncontrolled emissions are less than 18.2 Mg/yr, control.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)

Footnotes to Table 3:

[a] Individual streams excluded under paragraphs § 60.560(g) and (h) from the requirements of § 60.562-1 are to be excluded from all calculations in this table. These two paragraphs exempt all individual emission streams with individual uncontrolled annual emissions rates of less than 1.6 Mg/yr that are in a new, modified, or reconstructed affected facility and all individual emission streams with individual VOC concentrations of less than 0.10 percent VOC by weight that are in a modified or reconstructed affected facility.

[b] If the emission streams in this weight percent range (i.e., 0 < 5.5) come only from modified or reconstructed process sections, then the procedure and control/no control criteria in Table 4 for this weight percent range shall be used instead.

[c] For a composite VOC concentration between 5.5 and less than 7 percent by weight, calculate threshold emissions using Equation 1.

Equation 1. Threshold Emissions, Mg/yr=(a×691)+30.9

For a composite VOC concentration between 7 and less than 9 percent by weight, calculate threshold emissions using Equation 2.

Equation 2. Threshold Emissions, Mg/yr=(b×324)+25

For a composite VOC concentration between 9 and less than 20 percent by weight, calculate threshold emissions using Equation 3.

Equation 3. Threshold Emissions, Mg/yr=(c×125)+18.2

where: $a = \left[\frac{7.0}{\text{weight percent VOC}}\right]^{0.5} - 1$

where: $b = \left[\frac{9.0}{\text{weight percent VOC}}\right]^{0.5} - 1$

where: $c = \left[\frac{20.0}{\text{weight percent VOC}}\right]^{0.5} - 1$

weight percent VOC=weight percent of composite emission stream of all emission streams with individual weight percent VOC between 5.5 and less than 20.

TABLE 4.—PROCEDURE FOR DETERMINING CONTROL AND APPLICABLE STANDARD FOR CONTINUOUS EMISSION STREAMS FROM MODIFIED OR RECONSTRUCTED POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES

Procedure[a]	Applicable weight percent range	Control/no control criteria	Applicable standard
1. Sum all streams with VOC weight percent within the applicable weight percent range from all concurrent modified and reconstructed facilities at a plant site. 2. Calculate total uncontrolled annual emissions after modification or reconstruction for each weight percent range.	0.10 <5.5	1. If total combined uncontrolled emissions are equal to or greater than the calculated threshold emissions (CTE)[b], control. 2. If total combined uncontrolled emissions are less than the CTE[b], control only individual streams with volume flow rates of 8 scfm or less.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)

TABLE 4.—PROCEDURE FOR DETERMINING CONTROL AND APPLICABLE STANDARD FOR CONTINUOUS EMISSION STREAMS FROM MODIFIED OR RECONSTRUCTED POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES—Continued

Procedure[a]	Applicable weight percent range	Control/no control criteria	Applicable standard
3. Calculate composite VOC concentration (weight percent) for streams in the 0.10 to less than 5.5 weight percent range and for streams in the 5.5 to less than 20 weight percent range before and after modification and reconstruction.	6.5 <20	1. If total combined uncontrolled emissions are equal to or greater than CTE, control. 2. If total combined uncontrolled emissions are less than the CTE[b] control only individual streams with volume flow rates of 8 scfm or less.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)
4. Select the higher of the two VOC concentrations for each weight percent range.			
5. Calculate the threshold emissions for the 0.10 to less than 5.5 weight percent range and for the 5.5 to less than 20 weight percent range using the respective composite VOC concentration selected above.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control.. 2. If total combined uncontrolled emissions are less than 18.2 Mg/yr, control.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(ii), or (iii)

Footnotes to Table 4.

Individual streams excluded under paragraph § 60.560(h) from the requirements of §60.562-1 are to be excluded from all calculations in this table. This paragraph exempts all individual emission streams with individual uncontrolled annual emission rates of less than 1.6 Mg/yr and all individual emission streams with individual VOC concentrations of less than 0.10 percent VOC by weight.

[b] For the 0.10 to less than 5.5 weight percent range, the following equations are used:

If the percent composite VOC concentration is	Use this equation to calculate threshold emissions
0.10<0.12	(a×164).
0.12<0.2	(b×47.3)+96.4.
0.2<0.3	(c×24.8)+68.5.
0.3<0.4	(d×531)+52.4.

If the percent composite VOC concentration is	Use this equation to calculate threshold emissions
0.4<0.6	47+30 (0.6)−weight percent VOC).
0.6<5.5	47

where:

$$a \quad \left[\frac{0.12}{\text{weight percent VOC}}\right]^{5.9}$$

$$b \quad \frac{\left[\frac{0.2}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$$

$$c \quad \frac{\left[\frac{0.3}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$$

$$d \quad (0.4 \quad \text{weight fraction VOC})^{1.54}$$

For the 5.5 to less than 20 weight percent range, the following equations are used.

If the percent composite VOC concentration is	Use this equation to calculate threshold emissions
5.5<7	(e×691)+30.9.
7<9	(f×324)+25.0.
9<20	(g×125)+18.2

where:

$$e \quad \frac{\left[\frac{7.0}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$$

$$f \quad \frac{\left[\frac{9.0}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$$

$$g \quad \frac{\left[\frac{20.0}{\text{weight percent VOC}}\right]^{0.5} - 1}{\text{weight percent VOC}}$$

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Part III

Environmental Protection Agency

40 CFR Parts 61 and 763

Asbestos NESHAP Revision, Including Disposal of Asbestos Containing Materials Removed From Schools; Notice of Proposed Rule Revision and Opportunity for Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 763

[AD-FRL-OPTS-3469-4]

Asbestos NESHAP Revision, Including Disposal of Asbestos Containing Materials Removed From Schools

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule revision and opportunity for public hearing.

SUMMARY: These proposed amendments to the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) require control device and fugitive emission monitoring, recordkeeping, and reporting for asbestos milling, manufacturing, and fabricating operations. For planned demolitions and renovations, the notification requirements are revised, and safety is added as a reason for exemption from the use of wet removal methods. Recordkeeping is required for asbestos waste disposal. Clarifying revisions are made to several definitions and provisions.

The existing standard and the proposed amendments implement section 112 of the Clean Air Act (CAA) and are based on the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (see 36 FR 3031 (March 31, 1971)). The standard proposed today amends the asbestos NESHAP to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls.

These regulations also would implement, in part, section 203(h) of the Asbestos Hazard Emergency Response Act (AHERA) to the extent they apply to disposal of asbestos removed from school buildings.

A public hearing will be held, if requested, to provide interested persons with an opportunity for oral presentation of data or views concerning the proposed amendments.

DATES: *Comments.* Comments must be received on or before March 7, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 31, 1989, a public hearing will be held on February 8, 1989 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at telephone no. 919-541-5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 31, 1989.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), South Conference Center, Room 4, Attention: Docket No. A-88-28, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requestng a public hearing, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons who want to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. 919-541-5578. Persons interested in attending the hearing should call Ms. Ann Eleanor to verify that a hearing will occur.

Docket. Docket No. A-88-28, containing supporting information used in developing the proposed standards revisions, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the policy aspects of the proposed standard revisions, contact Mr. Sims Roy, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. 919-541-5263. For information concerning technical aspects, contact Mr. Bruce Moore, Industrial Studies Branch, telephone no. 919-541-5460, at the same address.

SUPPLEMENTARY INFORMATION:

Introduction

Section 112(a)(1) of the CAA defines a "hazardous air pollutant" as one that the Administrator judges "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness." Section 112(b)(1)(A) of the CAA requires the Administrator to publish a list that includes each hazardous air pollutant for which he intends to establish an emission standard under this section. Asbestos was listed as a hazardous air pollutant under section 112 on March 31, 1971 (36 FR 3031).

Initial standards controlling milling, manufacturing, demolition, spraying, and roadway sources of asbestos emissions were promulgated on April 6, 1973 (38 FR 8820). These standards were based on the 1970 conclusion by the National Academy of Science (NAS) that asbestos emissions from major manmade sources should be minimized. On October 14, 1975, the demolition standards were revised to place additional requirements on demolitions ordered by State or local governments besides notification requirements already in effect, and the standard was expanded to cover renovation activities, use of asbestos in friable insulation, and waste disposal (40 FR 48299). Work practices covering emissions from demolition and renovation were amended on June 19, 1978 (43 FR 26372), and were repromulgated on April 5, 1984 (49 FR 13658), to reinstate work practice and equipment controls held not to be emission standards by the Supreme Court in its decision in *Adamo Wrecking Company v. United States,* 434 U.S. 275 (1978). The 1977 amendments to the CAA authorize work practice standards when it is not feasible to prescribe an emission standard. Such an instance occurs, for example, when a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture such a pollutant or when a measurement methodology is not available.

A general review of the current asbestos NESHAP was undertaken to evaluate the consistency of the existing standard with current EPA policies for NESHAP regulatory development, the availability of improved emission controls, the need to improve compliance, and the integration of the NESHAP with other regulatory requirements. The EPA determined that, when complied with, the asbestos NESHAP is effective in reducing emissions and protecting the public health. However, EPA also concluded that many demolition and renovation sources do not comply with the removal and waste disposal provisions of the current standard, and that some additional work practices should be required. Also, there is a need for an explicit requirement to monitor air pollution control devices at milling, manufacturing, and fabricating sources to ensure their proper operation.

A risk-based approach was also considered in the review of the current asbestos NESHAP. However, questions regarding how EPA weighs a range of health, risk, and other factors in

establishing an ample margin of safety for NESHAPs were raised in the District of Columbia Circuit Court decision in the *Natural Resources Defense Council v. EPA*, 824 F. 2d 1146 (D.C. Cir. 1987), "vinyl chloride case." In the vinyl chloride decision, the court prescribed a two-step process under which the Administrator must first determine an acceptable risk level based on consideration of health and risk factors alone, and then determine the level at which to set the standard in order to provide an ample margin of safety, which can include consideration of costs, feasibility, and other relevant factors. In connection with regulation of some sources of benzene, the Agency has recently published in the **Federal Register** (43 FR 28496) four proposed approaches for implementing the vinyl chloride decision. Public comment on these approaches is being sought, and these comments will be reviewed before the Administrator makes a decision regarding which approach to use to develop NESHAP standards. Until the NESHAP policy is clarified, EPA cannot complete its work on risk-based proposals for revision of the asbestos NESHAP. At this time, the Agency is merely revising the portions of the standard that are not risk-based to clarify their intent and to facilitate their enforcement.

Today's notice proposes to amend the NESHAP to enhance enforcement and improve compliance by (1) permitting the use of percent by area as an expression for the asbestos content of bulk materials; (2) adding monitoring and recordkeeping provisions for asbestos milling, manufacturing, and fabricating operations; (3) revising notification requirements for demolitions and renovations; (4) adding recordkeeping and reporting provisions for waste disposal; and (5) making other revisions that clarify the rule and its intent and implement enforcement determinations previously made. None of the proposed amendments affects the stringency of controls; accordingly, the amendments are not affected by the vinyl chloride decision.

The EPA may issue a second proposal at a later date that would include a review of the stringency of controls, and propose possible changes to the stringency of controls. Such a proposal would follow the "acceptable risk" and "ample margin of safety" requirements of the vinyl chloride decision.

These rules, to the extent they apply to disposal of asbestos from schools, are also being issued under authority of AHERA. AHERA enacted Title II (sections 201 thru 214) of the Toxic Substances Control Act (TSCA), codified at 15 U.S.C. 2641 thru 2654.

Section 203 of TSCA requires EPA to promulgate regulations governing asbestos-containing material in schools. The EPA is to issue several specific kinds of rules, including inspection rules, rules for determining appropriate actions to take in response to potential asbestos hazards and rules to require implementation of management plans for asbestos.

On October 17, 1987, EPA issued most of the regulations mandated by section 203 (52 FR 41826, October 30, 1987). The regulations are codified at 40 CFR Part 763, Subpart E. However, the Agency did not promulgate rules for asbestos waste disposal required under section 203(h). Failure to promulgate the disposal rules resulted from a decision EPA made when the section 203 rules were proposed in April 1987 (52 FR 15820). The EPA had reasoned that, since the asbestos NESHAP covers wastes from all buildings including schools, the section 203(h) disposal rules should be included in the NESHAP. At the time, NESHAP revisions were expected to be proposed in the summer of 1987. Due to the vinyl chloride decision, however, the NESHAP revisions were not proposed as expected.

The EPA continues to believe that it is inappropriate to have separate regulations for disposal of asbestos from schools and from other buildings. However, because of the uncertainty caused by the vinyl chloride opinion, EPA may issue final regulations under section 203(h) applicable only to disposal of asbestos from schools and may incorporate such regulations into 40 CFR Part 763, basing them on this proposal.

The standard under which these regulations are to be issued under TSCA Title II is provided by section 203(a), which requires that any regulation promulgated under section 203 "must protect human health and the environment." The EPA believes that these regulations will protect human health and the environment under the section 203(a) standard because they will facilitate enforcement of existing regulations governing disposal of asbestos from schools, as noted in this preamble. The EPA, however, does not believe that these regulations necessarily complete its obligation under section 203(h). If at a later date risk-based revisions to the NESHAP are issued, the remainder of the Agency's obligation under section 203(h) will be fulfilled.

This preamble first provides background information in the form of a brief description of the health effects associated with exposure to asbestos and a summary of the widespread Federal authority for regulating asbestos. The preamble then summarizes the proposed amendments. Next, the environmental, health, energy, and economic impacts of the proposed amendments are summarized. The rationale is then provided for each decision made in selecting the proposed amendments. Also discussed are the impacts of the recordkeeping and reporting requirements. Administrative considerations, including Executive Order 12291 and the Regulatory Flexibility Act (RFA) are described at the end of the preamble. The preamble consists of the following:

- Background
- Summary of Changes to Asbestos NESHAP
  - —General
  - —Milling, Manufacturing, and Fabricating Sources
  - —Demolition and Renovation
  - —Waste Disposal
- Summary of Environmental, Energy, and Economic Impacts
- Rationale
  - —Demolition and Renovation
  - —Milling, Manufacturing, and Fabricating
  - —Waste Disposal
  - —Spraying
  - —Roadways
  - —Definitions
- Impacts of Reporting Requirements
- Regulatory Flexibility Act
- Public Hearing
- Docket
- Miscellaneous.

Background

Diseases associated with asbestos exposure include asbestosis, mesothelioma, cancer of the lung, and cancer of the gastrointestinal tract. Asbestosis is a pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs and is usually associated with occupational exposure to asbestos concentrations much higher than those that normally occur in outdoor air. Mesothelioma is a cancer of the pleura or the peritoneum. Mesotheliomas are rarely curable, and death usually results within a year of diagnosis. Asbestos-induced lung cancer usually has a latency period of more than 20 years, and few cases of lung cancer are curable. A number of epidemiologic studies of asbestos workers have indicated increases in esophageal, stomach, colorectal, kidney, laryngeal, pharyngeal, and buccal-cavity

cancers, though at a smaller magnitude of increased cancer risk than lung cancer and mesothelioma. The health aspects of asbestos are discussed in the Health Effects Document for asbestos, which is available from the EPA Library (MD-35), Research Triangle Park, North Carolina 27711. Please refer to *Airborne Asbestos Health Assessment Update* (EPA 600/8-84/003f).

In evaluating the coverage and effectiveness of the existing asbestos standards under section 112, it is important to recognize the widespread use of Federal authority to control asbestos use and exposure. Within, EPA, regulations for asbestos have been issued under the CAA, TSCA, the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Federal Water Pollution Control Act (FWPCA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under the authority of TSCA, EPA has promulgated regulations requiring inspection for asbestos in schools, and has published regulations to require State/local governments not covered under Federal Occupational Safety and Health Administration (OSHA) requirements for asbestos abatement projects to comply with the Federal OSHA requirements. Under AHERA, EPA has promulgated regulations to protect public health and the environment from asbestos in school buildings. Additionally, EPA, under the authority of TSCA, has proposed to ban certain asbestos products and phase out other such products (51 FR 3738, January 29, 1986). Guidelines for proper disposal of asbestos waste have been published recently by EPA. Under CERCLA, EPA has developed a Reportable Quantity (RQ) of one (1) pound for asbestos waste. The EPA also has set asbestos effluent standards for some source categories (40 CFR 427) and developed water quality criteria (45 FR 79326) for asbestos.

Outside of EPA, the Department of Labor's OSHA and Mine Safety and Health Administration (MSHA) control workplace asbestos exposure levels. The OSHA has promulgated a revised workplace standard that reduces the allowable workplace exposure level as an 8-hour time-weighted-average (TWA) from 2.0 fibers per cubic centimeter (f/cc) to 0.2 f/cc (29 CFR 1910.1001 and 29 CFR 1926.58). The OSHA regulations protect workers (the NESHAP protects public health principally) and require certain actions, such as the use of wetting techniques, to prevent the workplace concentrations from reaching the permissible exposure limit of 0.2 f/cc. Asbestos use in some consumer products is regulated by the Consumer Product Safety Commission (CPSC). The U.S. Department of Transportation (DOT) has regulations covering the transportation of asbestos and asbestos products. Recently, DOT promulgated regulations in compliance with the Superfund Amendments and Reauthorization Act (SARA) of 1986 that cover the transportation of asbestos-containing waste material (51 FR 42174, November 21, 1986). The effective date of these regulations was subsequently delayed to July 1, 1987.

Summary of Changes to Asbestos NESHAP

General

The regulation is reorganized by combining applicability, notification requirements, and procedures for asbestos emission control into a single standard for demolition and renovation. It requires milling, manufacturing, and fabricating operations to monitor visible emissions daily, inspect air cleaning devices weekly, and keep records. The regulation also requires recordkeeping and reporting for waste disposal activities.

In general, compliance with the NESHAP approaches 100 percent for all operations except demolition and renovation, including disposal of demolition and renovation waste, where it is estimated to be about 50 percent for demolition and about 80 percent for renovation. As a result of this noncompliance, significant asbestos emissions occur, with those from the disposal of demolition waste greatly exceeding other emissions, including those from asbestos milling, manufacturing, and fabricating. Several amendments are proposed to improve compliance with and enforceability of the NESHAP and to help ensure proper operation and maintenance of control equipment.

Milling, Manufacturing, and Fabricating Sources

This proposal requires asbestos milling, manufacturing, and fabricating sources to perform daily monitoring for visible emissions and weekly inspection of air cleaning devices.

Demolition and Renovation

This proposal clarifies the definition of demolition to recognize that intentional burning is a method of demolition. An additional notification provision requires owners or operators to contact EPA in advance of the actual start date if the demolition or renovation will begin on a date other than the one specified in the original notification. The requirement that the on-site supervisor at asbestos removals be trained in procedures for removal and handling of asbestos-containing material in accordance with the NESHAP is also a new provision in the regulation.

Waste Disposal

An amendment is proposed to make the waste disposal site operator responsible for complying with the waste disposal site provisions. Under the current NESHAP, the waste generator is responsible for selecting a disposal site that meets the waste disposal requirements of the NESHAP. A new requirement is added for keeping records that show the location and quantity of asbestos waste disposed of at disposal sites and for noting this information on the deed to property when the site becomes inactive.

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the proposed amendments for demolition and renovation, including waste disposal, were estimated from two baselines. One is full compliance with the NESHAP, and the other is current use of engineering controls and work practices. Enforcement experience indicates that many asbestos removal operations related to demolition and the subsequent waste disposal operations related to both demolition and renovation are performed out of compliance with the NESHAP. The lack of compliance with the NESHAP removal provisions leads to the improper disposal of some waste, especially demolition waste, with the result that emissions from the disposal of demolition waste greatly exceed other emissions, including process emissions from milling, manufacturing, and fabricating. Liability and other considerations generally lead the owners of buildings being renovated to follow or even exceed the requirements of the NESHAP. Thus, the baseline for demolition and renovation is current use of work practices rather than full compliance. At asbestos milling, manufacturing, and fabricating facilities, the required air pollution control devices are generally in place. Thus, for milling, manufacturing, and fabricating, full compliance with the NESHAP, including the waste disposal requirements, is assumed for the baseline.

Impacts of the demolition and renovation amendments are based on estimated annual emissions of asbestos. Emission estimates are the product of

emissions per unit of asbestos removed and disposed of and the average quantity of asbestos removed and disposed of annually. The annual amount of asbestos removed and waste generated was estimated using representative models of asbestos-containing structures and projections of the average number of demolitions and renovations for an 83-year period (i.e., the time during which all asbestos-containing structures are expected to be demolished or renovated to remove asbestos). Impacts of the proposed amendments, including the waste disposal provisions, for milling, manufacturing, and fabricating are based in part on information from confidential data submitted to the Office of Pesticides and Toxic Substances (OPTS) under section 8(a) of TSCA and on information obtained under section 114 of CAA.

Little emission measurement data exist for asbestos sources. Thus, emissions were estimated using engineering methods and numerous assumptions, which resulted in substantial uncertainty. A detailed description of the approaches used to estimate emissions is found in "Asbestos Emission Estimates for Milling, Manufacturing, Fabricating, Demolition, Renovation, and Waste Disposal," which is contained in Docket A-88-28. Estimated emissions from asbestos removal activities associated with demolition and renovation assuming full compliance are about 700 kg/yr. Estimated emissions from waste disposal, assuming full compliance with the NESHAP by all sources, are about 600 kg/yr. Estimated process emissions under the current NESHAP at full compliance for milling, manufacturing, and fabricating are approximately 7,400 kg/yr.

As has been stated previously, enforcement experience indicates that a significant amount of asbestos material is handled out of compliance with some of the provisions of the NESHAP. An estimated 50 percent of asbestos removal operations related to demolition and renovation are performed without EPA notification, implying that many asbestos removals and the subsequent waste disposal operations are performed out of compliance with the NESHAP. However, without precise information on the relationship between notifications and level of compliance, the actual degree of compliance with the NESHAP is uncertain. The amendments being proposed today are intended to increase the level of compliance with the demolition and renovation provisions, thereby reducing emissions, yet the extent to which emissions would be reduced by the proposed amendments cannot be quantified precisely.

The following estimates of nationwide emissions are based on current practices. Emissions for milling, manufacturing, and fabricating are the same as for full compliance. Estimated emissions from demolition and renovation are approximately 1,300 kg/yr. Estimated waste disposal emissions from all waste are 227,000 kg/yr.

The costs of the proposed amendments are expected to be small relative to normal operating costs for these industries. The amendments are intended to promote compliance and codify existing good practices. Small additional costs are associated with the recordkeeping and reporting requirements of the amendments. Economic impacts of the alternatives included in this proposal are expected to be minimal. Adverse impacts of the proposed amendments on water, noise, and energy were considered. Due to the nature of the amendments, no significant adverse impacts on water, noise, or energy are anticipated.

Rationale

Demolition and Renovation

Sections 61.145 through 61.147 of the existing asbestos NESHAP require removal of friable asbestos materials prior to demolition and require controls during removals associated with demolition or renovation. Costs and benefits attributable to the NESHAP for asbestos removal during renovation are difficult to establish because removal operations are also subject to the requirements of existing State and OSHA regulations for occupational exposure. As noted earlier, EPA has promulgated regulations under the authority of AHERA that cover asbestos removals at school buildings. Furthermore, many renovations already use controls exceeding those in the NESHAP because of the concern over occupant exposure once the renovation is completed and the building is returned to use. In demolition, however, occupant exposure is not typically a factor so that asbestos removal is generally not as strictly controlled as it is in renovation. Thus, the potential for emissions is usually greater in a demolition than in a renovation.

The major provisions of the current demolition standard are the requirement for removal (and control during removal) of friable asbestos material prior to demolition and the requirement for proper waste disposal. Because these two provisions are tied intimately to one another (i.e., the waste disposal provisions cover the waste generated by the removal requirement), the impacts related to asbestos removal and waste disposal must be considered together in evaluating amendments to the demolition standard.

As explained above, the existing NESHAP was evaluated at two levels of compliance. It was evaluated at full compliance and, because enforcement experience indicates substantial noncompliance, it also was evaluated based on current practice. At full compliance, nationwide asbestos emissions from removal and waste disposal under the current NESHAP would be an estimated 1,100 kg/yr. The uncertainty associated with estimates of emissions is very large.

The extent to which asbestos is handled out of compliance with the NESHAP demolition and renovation regulations is uncertain and depends on various factors. For example, because of OSHA and State and local regulations and pressures from other sources, including the general public, renovations and waste from renovations may be well-controlled even if EPA is not notified. Removal emissions associated with renovation are small and do not constitute a significant fraction of the total emissions from removal and waste disposal combined. Demolitions, however, are not affected by other regulations to the extent that renovations are. Thus, the absence of a notification may indicate that an asbestos-containing structure is demolished with the asbestos left in place. However, asbestos emissions from the disposal of the demolition debris may be overstated because some of the waste might still be incidentally deposited in a landfill and covered. Under the existing NESHAP, assuming 50 percent compliance with the notification requirement, nationwide asbestos emissions are estimated as about 228,000 kg/yr. Increasing compliance to 100 percent would reduce estimated emissions to 1,100 kg/yr, a decrease of approximately 227,000 kg/yr. Considering the magnitude of asbestos emissions associated with current practice, amendments are being proposed to facilitate enforcement and promote compliance.

A proposed revision to the standard includes the addition of a volume equivalent of 1 m^3 (35 ft^3) in addition to the 15 m^2 (160 ft^2) and 80 m (260 ft). A volume of 1 m^3 is equivalent to 15 m^2 of asbestos assuming a typical thickness of 7.6 cm (3 in.). This was requested by enforcement officials who stated that they often arrive at asbestos removal

operations, for which no notice was given, and find the asbestos already in containers. A volume equivalent will facilitate the determination of how much asbestos is involved.

A statement is added to clarify that the asbestos-containing materials to which the standards are applicable are friable asbestos materials and also materials that are nonfriable but may be broken or crumbled and emit asbestos fiber during demolition operations if not removed and disposed of properly. For example, asbestos cement board is not considered friable or likely to emit asbestos fibers under normal usage. However, if fractured or crushed during a demolition or renovation, it will emit fibers and, under today's proposal, would be considered friable under those conditions. Some nonfriable asbestos-containing materials, such as packings, gaskets, asphalt roofing, and vinyl flooring, that normally do not emit asbestos fibers are not subject to the removal and disposal provisions of the standard; however, even these nonfriable materials may be subject to regulation under certain conditions e.g., during the sanding of vinyl-asbestos flooring or when asphalt roofing is old and severely weathered. Under the proposed amendments, the amounts of these nonfriable materials must be estimated and reported if a notification is required. The amounts of nonfriable materials, such as asbestos-cement products, that potentially can emit fibers must be included in the quantities reported in the notification.

Several amendments being proposed today are intended to promote notification and increase compliance. These provisions include allowing a uniform 10-day period for written notification of all planned demolitions or renovations. This uniform notification requirement has been requested by industry and enforcement representatives and, in conjunction with the other notification requirements that would be added, is expected to improve compliance because it is simpler and easier to understand. However, the degree to which compliance would be improved over current practices cannot be quantified precisely. To assist enforcement personnel in tracking asbestos demolitions, notification is required by the following workday for demolitions ordered by State or local government agencies and not later than the following working day after stripping or removal work begins for emergency renovations. If asbestos removal at a demolition or renovation site starts on a date other than that specified in the notice or if the other reported information changes, renotification is required and must be postmarked at least 5 working days or received at least 3 working days prior to the new start date. Notices that are mailed are required to be sent by certified mail, return receipt requested, in order to allow the contractor to demonstrate that EPA was notified. Further, § 61.145(b) is amended by prohibiting asbestos removal at demolitions and renovations from starting on any date other than the one contained in the applicable notification. The purpose of this amendment is to allow enforcement personnel to observe removal operations at demolition and renovation sites. This requirement is needed because some asbestos removal operations are completed before the starting dates specified in the notification, precluding inspections for compliance by enforcement personnel.

The notification provisions have been revised to require, in addition to the name and address, the telephone number of both the owner and operator to provide enforcement personnel with information necessary to track compliance activity and to prioritize inspections. The proposed amendments clarify that, if the demolition or renovation operation will involve less than the total amount of asbestos material in the facility, only the amount to be removed has to be reported. The revised notification provisions require that information on the amount of potentially friable asbestos-containing material and the amount of nonfriable asbestos-containing material that will not become friable in the course of the demolition and renovation be reported in the notification. In addition, the owner or operator submitting a notification is required to include the procedure employed to detect the presence of asbestos materials as part of the notification. Knowing the procedure used, enforcement personnel are better able to evaluate the adequacy of the building survey and asbestos analysis already required by the current standard. Because building survey and analysis are already required, the additional cost of describing the procedure employed is negligible.

To ensure that an effort is made to locate all of the asbestos, the current notification provisions require owners or operators of demolitions and renovations to identify all asbestos, including asbestos that is encased or covered by a nonasbestos material, prior to beginning operations that would break up or preclude access to the material for subsequent removal. For example, the current NESHAP has been correctly interpreted to require that friable asbestos pipe lagging covered with a nonfriable painted canvas or metal jacket must be included in the notification and removed prior to a demolition or renovation that would disturb the asbestos or preclude access to it. Given the nature and complexity of some renovations and demolitions, it is possible that some asbestos may not be discovered until after demolition or renovation has begun or previously nonfriable material may become friable. To cover these situations, the proposed amendments will add a requirement for owners or operators to include contingency plans in their notifications describing what they will do if they find unexpected asbestos or if previously nonfriable material becomes friable. Under the current standards, the demolition or renovation work would have to cease until EPA was notified, but EPA decided that this would be unnecessary provided contingency plans are included in the notification. For asbestos that is not discovered until after demolition begins, the owner or operator is given the choice of removing the asbestos or, if removal cannot be done safely, keeping the asbestos and asbestos-contaminated debris wet. This revision is proposed in recognition of a situation in which worker safety may be threatened and provides a reasonable alternative while adequately controlling emissions. The only other exceptions to the requirements to remove friable asbestos are found in § 61.145(a)(3), which applies to facilities demolished under a State or local government order, and in § 61.145(c)(1)(i), which applies to friable material encased in concrete. In both of these instances, wetting of the asbestos is still required.

Another proposed amendment requires the owner or operator submitting a notification to certify that at least one on-site representative, such as a foreman or management-level person trained as required by § 61.145(c)(8), will supervise the demolition and renovation covered by the notification. Another amendment to this section specifies that the start and completion dates required in the notification pertain to the dates that asbestos removal and related operations, such as site preparation, will begin and end in addition to the scheduled starting and completion dates of the demolition, wrecking, or renovation. Waiting periods between notification and initiation of work also are clarified to state explicitly that they refer to the initiation of asbestos stripping and removal and related work. This clarifies the regulation to read as it

currently is interpreted and would permit certain demolition and renovation activities (such as site preparation, the removal of salvageable fixtures and equipment, and other activities that do not disturb asbestos or preclude access to the material) to begin before the required waiting periods expire. It does not permit the demolition of nonasbestos structures before the required waiting period. This accommodates the contractors' need to initiate various activities at demolition and renovation sites while giving enforcement personnel adequate advance notice.

The notification must state whether it is for a demolition or a renovation. In addition, a proposed amendment clarifies the current requirement that notifications must be made for all demolitions, even when no asbestos is present, in order to promote compliance and aid enforcement. In addition, a provision is added that makes it clear that planned renovations involving less than the specified amounts of asbestos are not subject to the notification provisions of the regulation.

Additional notification requirements have been added for State or local government-ordered demolitions, § 61.145(b)(4)(xiii), and emergency renovations, § 61.145(b)(xiv). Notification regarding ordered demolitions must now include the date the order was issued and the date on which the demolition was ordered to begin. This change was requested by enforcement officials who were concerned that, without this requirement, the notification provisions for ordered demolitions would be abused. For emergency renovations, additonal information is required on the nature of the sudden unexpected event that necessitated the emergency renovation. This change was also requested by enforcement officials to prevent circumvention of the notification requirements by contractors claiming that a renovation was an emergency.

To clarify whether planned renovations involving individual, nonscheduled operations must comply with the notification provisions of § 61.145(b), paragraph (a)(4)(i), is modified to require that the additive amount of asbestos to be removed or stripped over a calendar year of January 1 through December 31 be used instead of over the "maximum period of time a prediction can be made not to exceed 1 year." This clarifies the intent of the current regulation to cover individual, nonscheduled asbestos removal operations involving small amounts of asbestos if the total amount of asbestos that will be removed in 1 year is projected to exceed the quantities of asbestos specified in § 61.145(a). When individual renovations exceed the cutoff, a separate notification is required.

In the interest of worker safety, safety will be permitted as a reason for exemption from the requirement to use wet methods during removal although § 61.145(c)(3) will be revised to require that the Administrator's approval is obtained before removal begins. This provision is intended to cover obvious safety hazards such as electrical hazards and, in some instances, hot pipes or other facility components, which are not now mentioned in the regulation. The EPA recognizes that what constitutes safety hazard may be open to interpretation; however, the Administrator must make that determination on a case-by-case basis. For example, hot pipes may be the basis for an exemption from wetting. In some situations, however, the Administrator may determine that it is reasonable for a process to be shut down to allow the use of wet methods. The EPA does not intend for OSHA regulations to be violated in order to comply with the NESHAP.

Provisions are added that specify the conditions under which large pieces of asbestos-covered or asbestos-coated equipment can be removed from a facility and transported, stored, and reused without first stripping the asbestos. The addition of this provision recognizes that situations arise where certain large pieces of equipment can be removed and eventually reused without disturbing the asbestos.

An amendment to § 61.145(c)(3)(i)(B) will allow two new work practices in addition to the local exhaust ventilation system currently permitted for renovations where wetting would damage equipment or pose a safety hazard. The new work practices are use of glove bag systems and covering friable material in leak-tight wrapping prior to removal.

The glove bag is similar in principle to glove boxes used to confine and handle hazardous materials in laboratories and is a proven control technology widely used for small jobs. Glove bags, when properly designed, installed, and used, provide nearly complete isolation of the asbestos material. When properly used, they are at least as good as and probably superior to the use of local exhaust ventilation. They typically are used in conjunction with wet removals where the wetting is done inside the bag, but glove bags also can be used with dry removal techniques as well as with a High-Efficiency Particulate Air (HEPA) powered vacuum system for evacuating the bag. The EPA intends for glove bags to be used with wet removal methods inside the glove bags. While glovebags offer potential advantages, recent EPA and NIOSH studies have indicated potential problems with their use. Work place asbestos concentrations during glovebag use have exceeded the OSHA permissible exposure limit. Although the source of the elevated asbestos levels was not identified, potential sources of fiber release include air leaks, and vibrations in the pipe outside the glovebags. Workers should be made aware of these potential problems and instructed in the proper installation and use of glovebags. In addition, it is recommended that any worker using glove bags be protected by a respirator.

Covering friable material with leak-tight wrapping prior to removal also prevents asbestos emissions from being released into the air and provides an alternative to stripping the asbestos, which increases the likelihood of asbestos emissions. Permitting the use of these two work practices acknowledges changes that have taken place in removal methods and increases the number of options open to demolition and renovation contractors for compliance with this regulation.

Section 61.145(c)(4) is revised to allow operators to cover and seal facility components with a lead-tight wrapping for removing the components intact from a facility. This method is an effective means of emission control and is currently in use. A provision also is added that permits the Administrator to approve equivalent control methods other than the wetting, glove bags, or leak-tight wrapping methods already allowed. (This provision is also covered under the General Provisions, but it is included in this subpart for convenience.) So that inspectors can readily determine if alternative methods have received Administrator approval, a copy of the approval is required to be kept at the demolition or renovation site for inspection. Section 61.145(c) is revised to apply to all asbestos material including materials that have been stripped or removed. This is intended to clarify that materials that were not stripped but may have fallen off facility components must be treated the same as those that were stripped. Section 61.145(c)(6)(iv) is added to clarify that materials that have been removed and were contained in leak-tight wrappings do not need to be unwrapped and wetted.

Section 61.145(c)(8) adds the requirement that all asbestos material be stripped, removed, and otherwise handled by a contractor or by a representative of the facility owner or operator trained in the provisions of this regulation and the means of complying with them. This requirement will ensure that an on-site supervisor, such as a foreman or management-level person, has a knowledge of this regulation and approved methods of asbestos removal and handling. The training on-site supervisor does not have to be at the site at all times but must present for a time sufficient to provide supervision of asbestos-related operations. In addition, this proposed amendment requires that evidence that training has been accomplished be made available for inspection by EPA during normal business hours. This training does not replace the training requirements of OSHA's workplace regulation (29 CFR 1926.58) or the general training recommended by EPA. The ultimate objective of this requirement is increased compliance with this regulation and decreased emissions. The annual cost of training in the provisions of NESHAP is estimated to be about $1.9 million.

Comments made to EPA question the intent of the requirements in § 61.145(c) for lowering stripped or removed materials to the ground or lower floors. The standard requires all facility components that have been removed in units or sections to be carefully lowered to the ground. Asbestos material, other than that on facility components removed in sections or units, also must be carefully lowered to the ground or lower floors. If the asbestos-containing material is more than 50 feet above the ground, it may be transported by a leak-tight chute or container. In all cases, it is the intent of the standard that asbestos materials be lowered carefully to the ground or a lower floor to the greatest extent possible, not dropped or thrown. The use of a leak-tight chute to transport material stripped or removed 50 feet above ground level is one exception to this. Another exception occurs during the stripping of asbestos material from facility components. In these instances, it is not always practical to prevent the stripped material from falling to the ground or floor, e.g., during the stripping of asbestos material from ceilings.

In addition to the proposed revisions discussed above, several editorial changes are proposed that are intended to clarify the intent of the regulation as it is now written and make it more understandable. The changes consist primarily of adding a phrase or substituting terms for clarity and are based on comments from both enforcement agencies and industry. One significant clarifying revision to the demolition and renovation requirements deals with the friability of materials and is discussed under the Definitions section of this preamble.

The overall costs associated with these proposed amendments cannot be quantified but are expected to be small compared to actual removal and disposal costs. Benefits also cannot be quantified precisely but should be commensurate with the increase in compliance up to the benefits estimated for full compliance.

Comments on the proposed demolition and renovation standards were submitted by the National Association of Demolition Contractors (NADC), many of whose members perform asbestos removal work. In general, NADC believes that an increasingly stringent regulation increases noncompliance and results in increased emissions rather than producing the desired opposite effect. The NADC cites as reasons for current noncompliance the notification requirements that treat late notifications the same as no notification, and the difficulty of identifying all asbestos in a structure prior to demolition. Contractors' concerns that an inspection may discover the unsuspected presence of asbestos resulting in a citation and the job delayed while notifying EPA are additional reasons notification may not be given. The NADC claims that the contractors feel that no matter how hard they try to comply with the NESHAP, they are going to be found out of compliance with some provision. They believe that by not notifying EPA, their chances of being found in violation are substantially decreased. Finally, NADC feels that another reason for noncompliance is the perception that the current NESHAP is not effective in reducing emissions.

In describing ways to promote compliance with the NESHAP, NADC suggests developing separate requirements for demolition and renovation because of differences in job characteristics, the extensive use of large equipment in demolitions as opposed to slower manual techniques in renovations, differences in resulting waste characteristics, and less concern about water damage at the job site from controlling dust with water at demolitions. A property owner who wants a building demolished is not as concerned about having a careful asbestos removal job done as a property owner who wants to have the asbestos removed as part of a renovation and is concerned about his liability as a result of the removal operation. The NADC suggests that simplification of the regulation would help promote compliance because most demolition contractors are small businesses lacking the educational and technical background to fully understand all the details of the regulation. The NADC also suggests that asbestos materials that are tightly bound in a matrix and difficult to break should be excluded from the regulation because they are not likely to release many asbestos fibers. Several NADC recommendations are intended to facilitate notification, including a 10-day notice for all jobs with approximate start and completion dates followed by a telephone notification giving specific starting dates. The written notification would be on a form required by EPA.

The NADC recommends that each on-site supervisor be trained and suggested giving contractors some discretion in selecting appropriate control methods rather than prescribing specific work practices to be followed in all situations. Finally, the NADC suggests that there be a procedure whereby unintentional violations could be corrected quickly without severe economic consequences resulting from imposed fines or lengthy delays.

The NADC comments include recommendations for reducing asbestos emissions, including development of regulations for abandoned buildings and reduction of disposal costs to promote proper disposal. Disposal costs could be reduced, according to NADC, by avoiding requirements for special handling or segregation methods and avoiding special recordkeeping requirements that will cause some disposal site owners to charge more for asbestos waste in order to cover potential liability costs and will discourage others from accepting asbestos waste. To promote the use of proper disposal sites, disposal sites should be encouraged to accept all asbestos waste and not question its source or condition.

The EPA has been evaluating NADC's comments and believes some have merit. Several of their comments have already been addressed in the proposed standard. The EPA is interested in receiving comments on any of the issues suggested by NADC as likely to improve compliance.

Milling, Manufacturing, and Fabricating

Under the existing standard, the owner or operator of an affected milling, manufacturing, or fabricating source may meet a no-visible-emission limit or

install emission control equipment meeting the specifications described under § 61.154. Section 61.154 includes specifications for baghouses, but it also allows the use of wet collectors (i.e., scrubbers) if fabric filters create a fire or explosion hazard.

Amendments are being proposed that will retain the existing controls now in place and add monitoring and recordkeeping provisions at a reasonable cost that will help ensure continued low emissions. Under these amendments, the owners or operators of milling, manufacturing, or fabricating operations are required to perfom daily monitoring for visible emissions from operating control devices and process fugitive sources and weekly inspections of control devices, maintain records of monitoring and inspections results, and submit quarterly reports to EPA of results of visible emission monitoring, if visible emissions occur during the reporting period. The recordkeeping and reporting requirements will provide information to EPA that can be used to alert enforcement personnel of operating problems at individual sources and aid in determining compliance.

Some control device inlet loadings are high enough that visible emissions could occur during a malfunction of a control device. For these sources, visible emissions could be useful as an early indicator of a malfunction. A 15-second observation period for visible emission monitoring of each control device is proposed. Visible emission monitoring will identify problems and help to ensure that pollution control equipment achieves its design emission reduction potential; weekly inspection of control devices will permit the early identification and correction of problems that could lead to baghouse failure and increased emissions. Some small air-cleaning devices do not permit ready access for the interior inspection of bags. For such devices, the owner or operator will be required to submit a maintenance plan for the Administrator's approval. The maintenance plan must include, as a minimum, recordkeeping and a maintenance schedule. According to industry sources, visual monitoring and inspection are already practices at many facilities.

The EPA is proposing to delete the 4-inch water gage requirement in § 61.152 for all existing and new baghouses because many baghouses remove particles at high efficiencies at higher pressure drops. The proposed standard allows the Administrator to authorize the substitution of a wet collector for a fabric filter when it is determined that a fabric filter is not feasible. Such situations may occur, for example, when a gas stream has a high moisture content or the particles are sticky and would cause blinding of a fabric filter. The current standard only permits the use of wet collectors when a fire or explosion hazard attends the use of a fabric filter.

Visible emissions from fugitive sources at milling, manufacturing, and fabricating operations are also prohibited. This amendment is not a new requirement because it clarifies the intent of the regulation as it is currently implemented.

Assuming 100 percent compliance with the existing control requirements, nationwide asbestos emissions from milling, manufacturing, and fabricating are estimated to total 7,400 kg/yr. The uncertainty associated with estimates of emissions is large and was discussed previously. The actual degree of compliance at present is unverifiable because of the lack of explicit monitoring, inspection, recordkeeping, and reporting requirements. However, industry sources indicate that monitoring and inspection are currently practiced by most asbestos milling, manufacturing, and fabricating sources; therefore, additional costs resulting from these provisions should be small. The recordkeeping and reporting costs also are estimated to be small and are included in the impacts of the reporting requirements. The benefits of the monitoring, inspection, recordkeeping, and reporting provisions are unquantifiable, but the provisions will aid enforcement and improve compliance so that emissions and health risks close to the estimates for 100 percent compliance are attained.

Section 61.144(a)(9) is also revised by specifying that chlorine manufacturing that uses asbestos diaphragm technology is regulated by the NESHAP and not chlorine manufacturing that uses other technologies. This is a clarifying amendment; therefore, no costs are associated with this change.

Paragraph (a) of § 61.153 on reporting requirements is clarified to instruct new and existing million, manufacturing, and fabricating operations under what conditions and when they must report certain information on emission control equipment and processes that generate asbestos emissions. Because this amendment is a clarification, there are no associated costs.

Waste Disposal

Provisions for the disposal of asbestos-containing waste material are contained in the NESHAP under the authority of the CAA and AHERA. RCRA regulates the disposal of solid waste as either a hazardous or nonhazardous waste. Asbestos is not listed as a hazardous waste under Subtitle C of RCRA; therefore, it is regulated as a Subtitle D waste and is subject to the standards contained in 40 CFR Parts 257 and 258. Revised Subtitle D standards were proposed recently (53 FR 33314, August 30, 1988), and changes to 40 CFR Parts 257 and 258 apply to asbestos-containing waste. The waste shipment records being proposed in the asbestos NESHAP are similar to the manifest requirements of Subtitle C, whereas Subtitle D contains no recordkeeping requirements. The current asbestos NESHAP requirement for daily cover is more specific than are the requirements of Subtitle D. Asbestos is generally thought not to be a threat to ground-water quality, although asbestos-containing waste may contain constituents other than asbestos that may pose a threat to ground-water quality. For all of these reasons, EPA has determined that the asbestos NESHAP is the most efficient way for the Agency to regulate the disposal of asbestos-containing waste material at this time. Other regulations have been promulgated that cover specific problems. The DOT has promulgated regulations that cover the transportation of asbestos-containing waste material, and EPA has promulgated regulations specifically governing removal of asbestos from school buildings under the authority of AHERA.

The existing asbestos NESHAP defines responsibilities for asbestos waste disposal and requires either no visible emissions or the use of specific disposal methods for asbestos mills; manufacturing, fabricating, demolition, renovation, and spraying operations; inactive disposal sites for asbestos mills and manufacturing and fabricating operations; and active disposal sites. As was stated earlier, enforcement experience indicates that approximately 50 percent of asbestos removal operations related to demolition and renovation are performed without EPA notification. This implies that a significant volume of demolition and renovation waste may be disposed of out of compliance with the existing NESHAP. The actual degree of noncompliance cannot be determined because of a lack of reasonably available information on the relationship between notifications and compliance with the waste disposal requirements. Risks from uncontrolled sources can be very large; therefore, amendments to the existing NESHAP are being proposed to aid enforcement and improve compliance. In addition,

responsibility for waste management and disposal is explicitly defined. Also, the proposed reporting and recordkeeping requirements are consistent with EPA guidelines published in *Asbestos Waste Management Guidance* (EPA/530-SW-85-007, May 1985) for asbestos waste disposal.

A provision is added that requires the broken edges of nonfriable asbestos material to be wetted or encapsulated. This change is intended to help clarify the intent of the regulation as it is now written. This is aimed principally at many asbestos-cement products that are normally nonfriable when whole but that may release fibers when broken. If the broken edges are treated so that the asbestos fibers are sealed in, the material does not have to be put into leak-tight enclosures prior to its disposal in a NESHAP landfill. If the edges are wetted but not sealed, the material would have to be placed in leak-tight enclosures for disposal in a NESHAP landfill.

The handling and disposing of waste resulting from the demolition of buildings where the asbestos is encased in concrete is clarified to include similarly hard material. A compliance option is added for the situation where the asbestos was not discovered until after demolition began. The types of nonfriable asbestos that needed not be removed before demolition are specified § 61.145(c)(1)(iii)).

A new provision (§ 61.155) is added that allows the Administrator to approve waste treatment methods that destroy or transform asbestos-containing waste into nonasbestos material and specifies the information that the Administrator needs to make such determinations. Provisions that specify testing for the presence of asbestos in the output material are added in addition to provisions that require key process parameters to be continuously monitored. Prior to disposal, process output materials will be determined to be asbestos-free using transmission electron microscopy (TEM), or the location of their disposal recorded. These provisions are needed in view of requests received by EPA for approval of new asbestos waste treatment methods.

Milling, manufacturing, and fabricating facilities and demolition and renovation contractors will be required to prepare and maintain records of waste shipments and submit semiannual reports to EPA summarizing waste shipment records. In addition, they will be required to furnish a copy of the record of the waste shipment to the owner or operator of the disposal site. The most likely mechanism will be to send a copy of the record along with the waste transporters. This requirement will establish a record of the chain-of-custody and alert enforcement personnel of potential violations of the waste disposal requirements. In addition, all containers of waste will be required to be labeled with the waste generator's name and location of the site where the asbestos waste was generated. This requirement will enable enforcement personnel to enforce the requirements for leak-tight containers where asbestos from multiple job sites are in a single vehicle. It will assist enforcement officials in tracking asbestos waste shipments and in determining that asbestos waste is being properly disposed of and result in increased compliance.

At present, the waste generator is responsible for selecting a disposal site that meets the asbestos waste disposal requirements of the NESHAP. The proposed amendments also make the disposal site owner or operator responsible for complying with the NESHAP provisions for waste disposal sites. Enforcement officials have stated that the current waste disposal provisions are difficult to enforce because the responsible party, the generator, does not have sufficient control of the disposal practices used at the disposal site. This proposed amendment should increase compliance with the NESHAP provisions at an active disposal site by making each party responsible. Specifically, the waste generator is responsible for selecting a disposal site that meets the NESHAP requirements, and the waste site operator is required to comply with the work practice provisions at the waste disposal site. All waste must be disposed of at the site specified on the waste shipment record. The generator may haul his own waste, contract with the disposal site operator for hauling services, or contract with an independent hauler. A requirement also is added to require the Administrator's approval before removal or disturbance of previously deposited asbestos material at both active and inactive disposal sites. In making a decision on the request, the Administrator will consider the following: (1) Reason for moving or removing the waste, (2) procedures to be used to control emissions, and (3) location of the final disposal site. At a minimum, the asbestos waste should be handled in a wet condition until final disposal. In addition, waste disposal site operators will be required to document all asbestos waste shipments that are received, document the arrival of improperly contained waste, investigate discrepancies between waste shipment records and waste actually received, document the location and quantity of asbestos in a landfill, and record the presence and location of asbestos and the asbestos NESHAP regulatory authority over the disposal site on the property deed. Waste disposal site operators also will be required to submit semiannual reports to EPA summarizing activities involving the disposal of asbestos-containing waste. Enforcement personnel have noted that asbestos waste that is not properly documented may lead to future exposures if sites are disturbed. These requirements will aid enforcement in tracking shipments of waste to ensure compliance and help avoid possible recurrence of inadvertent exposure incidents as have been found by EPA by ensuring that future owners and users of land are alerted to the presence of asbestos waste and take adequate precautions if the waste is disturbed. These requirements are consistent with EPA's intent to prevent public exposure to asbestos emissions from waste disposal sites. These requirements are considered reasonable because expected costs are small and some sites already use special precautions when disposing of asbestos waste.

To retain control over disposal sites that have already become inactive, the current provisions of § 61.151 for inactive disposal sites are retained with only a few modifications. A provision is added allowing the use of crushed stone as a final cover in desert areas where a vegetative cover is difficult to establish and maintain. This amendment offers greater flexibility without affecting control stringency. The provisions for inactive tailing piles are revised to clarify the standard's current intent that dust suppression agents be used in a manner to maintain dust control.

The provisions that allow the Administrator to approve alternative control methods are modified to give more detailed instructions on requesting approval of alternative methods. This change is intended to clarify the regulation by indicating what criteria are used by the Administrator in ruling on alternative control methods.

Vehicles used to transport waste are required to display placards warning of the presence of asbestos during the loading and unloading of waste. Such a measure will warn persons of the asbestos hazard and help prevent accidental exposures to asbestos during loading and unloading. The DOT regulations require placards during

transportation of asbestos-containing waste.

Table 1 presents the estimated nationwide asbestos emissions from disposal of demolition and renovation wastes for different levels of control. Full compliance with the current NESHAP would result in estimated emissions of about 400 kg/yr. However, if (as enforcement experience implies) a significant percentage of demolition and renovation wastes may be disposed of out of compliance, estimated emissions are actually 227,000 kg/yr. Most of these emissions, an estimated 226,000 kg/yr, result from the improper disposal of asbestos waste from demolition and greatly exceed other asbestos emissions. These revisions are intended to improve compliance that will reduce asbestos emissions.

TABLE 1.—ESTIMATED NATIONWIDE ASBESTOS EMISSIONS FROM DEMOLITION AND RENOVATION,[a] kg/yr

Level of control	Asbestos removable		Waste disposal		Total
	Demolition	Renovation	Demolition	Renovation	
Current NESHAP (full compliance)	700	9	380	2	1,100
Current NESHAP (current practice)[b]	1,300	13	226,000	1,000	228,300

[a] See Preamble test for discussion of uncertainties associated with estimated emissions.
[b] Emission estimates under the current NESHAP, assuming current practice, are uncertain. Emission estimates are based on EPA enforcement personnel estimates of the level of compliance with the NESHAP notification requirements, rather than on the actual level of compliance with the removal and disposal requirements.

In addition to the proposed revisions discussed above, several editorial changes are proposed (but not discussed) that are intended to clarify the intent of the regulation as well as make it more understandable. The changes consist primarily of adding clarifying phrases or substituting terms for clarity and are based on comments from both enforcement agencies and industry.

The costs associated with the proposed amendments are expected to be small. The recordkeeping and reporting costs are included in the impacts of the reporting requirements. The benefits of the amendments cannot be precisely quantified, but the above assessment of the effectiveness of the current NESHAP at full compliance and at current practice gives a measure of the magnitude of the increase in benefits that could be achieved.

Spraying

The current NESHAP prohibits the use of materials that contain greater than 1 percent asbestos on a dry weight basis for spray-on application on buildings, structures, pipes, and conduits unless the asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying. This requirement is amended by substituting percent by area for percent by weight as the expression for asbestos concentration as discussed under "Friable asbestos material" in the Definitions section of this preamble.

Roadways

Section 61.143, "Standard for roadways," is clarified by substituting "construct or maintain" for "surface." This revision will codify a determination already made by EPA.

The amendment will make it clear that unbound tailings are not allowed in a road base, based on a prior EPA applicability determination, unless the road is a temporary roadway on an area of asbestos ore deposits, i.e., an asbestos mine. Tailings are permitted in temporary roadways at asbestos mill sites if they are encapsulated with a resinous or bituminous binder. Periodic maintenance of the encapsulated road surface to prevent dust emissions will be required. Asbestos tailings are not permitted to be used in road construction unless they are encapsulated in asphalt concrete meeting Federal Highway Administration (FHWA) roadway construction specifications. Because of their aggregate characteristics which give them some value for use in road construction, tailings encapsulated in asphalt concrete will continue to be allowed. This change explicitly will permit the use of asbestos tailings which have been encapsulated, and which, because of the milling process, typically have a low asbestos content.

Definitions

"Adequately wetted" is changed to "Adequately wet" because in most places in the regulation, the verb "wet" is used. The definition clarifies that the owner or operator must wet asbestos to a sufficient degree to prevent any particulate emissions.

To be consistent with other revisions to the standard, the definition of "Asbestos material" was changed to "Asbestos-containing material" and expanded to include both friable material and nonfriable material that potentially can become a source of emissions.

The definition of "Asbestos-containing waste material" is modified to give additional examples of waste material that are covered by the regulation. The part of the definition pertaining to waste from demolition and renovation is modified to clarify that the standard applies to nonfriable material that can be broken, crumbled, pulverized, or reduced to powder by operations covered by the regulation.

The definition of "Commercial asbestos" is modified to clarify that it includes any material that contains asbestos and has value because of its asbestos content. This is consistent with EPA's previous applicability determination.

The definition of "Demolition" is modified to clarify that the intentional burning of load-supporting structures or the intentional burning of facilities is considered a demolition. This more clearly specifies that buildings that are intentionally burned, usually under the supervision of a fire department, to make way for new structures, for example, would have to comply with the provisions for demolition and renovation, thus avoiding occasional emissions from a previously unregulated source. Economic impacts of this amendment would be negligible because occurrences are so few.

The definition of "Emergency renovation operation" is modified to give more explicit criteria for what constitutes an emergency renovation.

The definition of "Fabricating" is clarified by stating that, for friction products, bonding and debonding are included.

The definition of "Facility" is modified by adding the terms "residential," "public," "ships," and "active and inactive disposal sites." Adding these terms serves to clarify the regulation to read as it is interpreted currently to include residential

structures, publicly owned buildings, ships, and waste disposal sites.

The meaning of "Facility component" is clarified by defining it as any part of a facility, including equipment.

The current definition of "Friable asbestos material" contains a threshold of 1 percent for the amount of asbestos that must be present before friable material is subject to the demolition and renovation provisions. The intent of the 1 percent threshold was to distinguish between material that contained asbestos and material that did not contain asbestos within the limits of detection of the available analytical methods. The current definition also expresses the asbestos threshold as percent by weight. The proposed standard expresses asbestos content as percent by area to make the regulation consistent with preferred analytical methodology, which gives results as percent by area, and with current practice; it does not change the stringency of the standard.

The mass of asbestos present in a bulk sample cannot be determined directly. In the context of bulk sample analysis, mass is a derived property because it is obtained by counting and sizing asbestos particles under a microscope, assuming a geometric shape for the particles, calculating their volume, and multiplying by an assumed density. The mass of nonasbestos material present in a bulk sample would be obtained by the same procedure.

On the other hand, the area and type of asbestos present in a bulk sample can be determined directly through microscopic analysis. Appendix A, Subpart F, 40 CFR Part 763, contains the approved method of bulk sample analysis for asbestos—polarized light microscopy (PLM) and point counting and is incorporated by reference in the definition. In this method, the area of an analytical slide occupied by asbestos particles and the area occupied by matrix are both measured directly. The Agency is considering incorporation of this method explicitly in the final rule if it would be more convenient to use. Therefore, EPA is requesting comments on whether the method should be incorporated by reference as it is in this proposal, or whether the method should be stated explicitly in the rule.

The relationship between percent weight and percent area has been studied by EPA *(Draft Relationship Between Visual Estimates and Weight Percentage of ACM)*. This study discusses ways to convert percent area measurements to percent weight equivalents, generally concluding that percent weight and percent area are equivalent for most matrices in which asbestos is found. Furthermore, using percent area will serve the same purpose as was intended initially, i.e., whether asbestos is present or not.

The cost and availability of methods for the identification and quantitation of asbestos vary greatly depending on the particular method. The TEM, for example, is relatively expensive with costs ranging from about $500 to $700 per sample analyzed. PLM costs, however, average about $25 to $50 per sample. Numerous laboratories are capable of performing PLM, while the number of laboratories with TEM capabilities for asbestos analysis are somewhat more limited.

An informal survey by EPA's Office of Research and Development (ORD) of analysts performing asbestos bulk sample analyses reveals that in practice they determine and report percent asbestos by area, not be weight. This is considered to be the norm rather than an exception.

The EPA also considered, but rejected, a revision to the definition of "Friable asbestos material" to include materials that can be crumbled, pulverized, or reduced to powder by the mechanical forces expected to act on the material. The intent of such a change would be to codify an interpretation already made by EPA. The interpretation states that, in effect, the demolition and renovation regulations apply to materials that are normally nonfriable (e.g., asbestos-cement sheet), which because of forces acting on the material during demolition or renovation and subsequent handling, transportation, storage or disposal operations, would result in asbestos emissions. However, as a result of numerous comments from government and industry stating that the existing definition of friable was well established and widely accepted, EPA has decided to retain the existing definition with the exception that "broken" is inserted ahead of "crumbled, pulverized, or reduced to powder." This is consistent with EPA's current interpretation and application of this definition. Throughout the regulation where the phrase "crumbled, pulverized, or reduced to powder" is used, the word "broken" has been added.

The standard will be revised where appropriate to regulate materials that are normally nonfriable but potentially can be broken, crumbled, pulverized, or reduced to powder as a result of the regulated operations. Such materials include, for example, A/C products and paper insulation. These materials must be removed from a facility prior to its demolition because they are likely to be broken up during demolition and inaccessible after demolition for segregation and separate disposal in a NESHAP landfill. To the extent that these materials can be removed without breaking or crumbling, they do not have to be wetted and sealed in leak-tight containers, although they are to be included in determining applicability and their quantity must be included in the notification. In addition, they must be disposed of in a NESHAP landfill. Nonfriable materials that are likely to remain nonfriable and, therefore, not be subject to the demolition and renovation provisions, include packings and gaskets, floor tile, asphalt roofing shingles, roofing felt, coatings, and sealants. However, even these nonfriable materials may be subject to regulation under certain situations. For example, the sanding of asbestos floor tiles that can produce asbestos emissions is considered a renovation and subject to the regulation. Severely weathered asphaltic materials may become brittle and, therefore, be subject to the regulation. Because handling even normally nonfriable materials can result in asbestos emissions under some conditions, case-by-case determinations of friability will still be required in many instances.

A definition of "Fugitive sources" is added to help clarify the modified provisions for mills, manufacturing, and fabricating.

A definition of "Glove bag" is added because the use of glove bags will be permitted in renovations when wetting is determined not to be feasible for safety reasons or because of the potential to damage equipment. However, EPA intends for glove bags to be used with wetting inside the glove bags.

The definition of "Inactive waste disposal site" in revised by deleting reference to vehicular traffic and stipulating that an inactive site is one at which asbestos-containing waste material has not been deposited within the past year.

"Installation" is defined as a building or group of buildings at a demolition or renovation site. This definition is added to clarify the existing applicability requirements for demolition or renovation. For purposes of determining the amount of asbestos to be stripped or removed, the amounts of asbestos in a group of buildings to be demolished or renovated are summed.

"Leak-tight" is defined to help clarify the intent of the demolition and renovation and waste disposal requirements as they pertain to the use of leak-tight containers, wrappings, and

(in the case of demolition and renovation) the use of leak-tight chutes to convey waste from aboveground stripping and removal operations. Leak-tight implies that, in the course of operations covered by this regulation, the contents are sealed adequately to prevent any asbestos or asbestos-containing material, including contaminated water, from escaping. Although it is impractical to identify in advance what is considered leak-tight, the use of certain containers or seals may be considered unacceptable in many instances. For example, the use of flimsy twist ties or bags of less than 6-mil thickness would not constitute "leak-tight" under most conditions. A case-by-case determination will be required in many instances.

A definition of "Malfunction" is added to clarify conditions covered by the requirements for air pollution control devices in milling, manufacturing, and fabricating.

The definition of "Manufacturing" is revised to clarify that chlorine manufacturing is covered by the definition. Chlorine manufacturers use asbestos in the production of chlorine rather than processing asbestos into a final or intermediate product.

"Natural barrier" is defined to help clarify the intent of the waste disposal requirements and, specifically, that remoteness of a disposal site alone does not constitute a natural barrier.

A definition of "Nonscheduled operation" is added to help clarify the intent of the applicability provisions for renovation.

The definition of "Outside air" is clarified by specifying that outside air means air outside buildings and structures and includes air under bridges and open air ferry docks.

"Owner or operator of a demolition or renovation activity" is defined to help clarify responsibility for compliance. The definition of "owner or operator of a demolition or renovation activity" includes the owner of the facility being demolished or renovated. It also includes the current owner of the property on which the facility is situated, if the owner sells the facility to another party for demolition or renovation. In such circumstances, the property owner, while no longer holding title to the facility, causes the demolition or renovation to occur, and thereby owns, leases, operates, controls, or supervises the demolition or renovation operation. See, e.g., *U.S. v. Geppert Bros., Inc. et al.*, 638 F. Supp. 996 (E.D.Pa. 1986).

The definition of "Planned renovation operations" is revised to require knowledge that "some" friable asbestos material will be stripped or removed rather than knowledge of "the amount of" material to be stripped or removed.

"Remove" is clarified to include the taking out of "asbestos-covered facility components."

"Renovation" is clarified by specifying stripping and removal of asbestos as renovation activities. An additional change makes clear that wrecking or taking out load-supporting structural members is demolition.

The definition of "Roadways" is clarified by adding the term "public and private" so that it is clear that the regulation is applicable to roadways regardless of ownership.

The definition of "Strip" is clarified by adding "or facility components" at the end of the definition.

In order to facilitate enforcement of the visible emission limitations, the definition of "Visible emissions" is revised to mean any emissions coming from asbestos-containing material.

"Working days" is defined as Monday through Friday to help clarify the notification requirements for demolition and renovation.

Impacts of Reporting Requirements

The proposed amendments to the asbestos NESHAP will impose several reporting and recordkeeping requirements. Owners or operators of milling, manufacturing, and fabricating sources will be required to maintain records of monitoring and inspections and of waste shipments and will be required to submit quarterly reports of visible emission monitoring. Each owner or operator involved in a demolition or renovation operation will be required to maintain records of waste shipments. All generators of waste will also be required to submit semiannual reports summarizing their records of waste shipments. Owners or operators of active waste disposal sites will be required to maintain records of all asbestos waste shipments, document the arrival of improperly contained waste, maintain records of the location and quantity of asbestos in the landfill, make semiannual reports to the Administrator summarizing disposal activities, and record on the property deed the presence and location of asbestos. As is discussed in the rationale for the selection of the proposed amendments, the recordkeeping and reporting requirements will assist enforcement efforts.

The information collection provisions summarized above have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA," as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

An analysis of the burden associated with the proposed reporting and recordkeeping requirements has been made. During the first 3 years of this regulation, the annual burden of the reporting and recordkeeping requirements for asbestos mills; manufacturing, demolition, renovation, spraying, and fabricating operations; and active and inactive waste disposal sites is estimated to be about 308,000 person-hours.

Regulatory Flexibility Act

The RFA (5 U.S.C. 601 *et seq.*) requires EPA to consider the potential impacts of proposed standards on small "entities." If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number (i.e., 20 percent or more) of small entities, then a regulatory flexibility analysis must be prepared. Current RFA guidelines indicate that an economic impact should be considered significantly adverse if it meets one of the following criteria: (1) Annual compliance costs increase production costs by more than 5 percent; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; and (4) regulatory requirements are likely to result in closures of small entities. Effects of the proposed standard on small firms in the milling, manufacturing, and fabricating industry cannot be estimated because of lack of data on the existing distribution of plant sizes and on plant ownership by size of firm. It is likely that differences in unit compliance costs between large and small entities (higher unit costs for smaller firms) are not large enough to create significant interplant cost differences. In the demolition services industry, the increases in demolition costs and the nature of the industry itself are such that no significantly disproportionate impacts will be experienced by smaller entities. In the renovation services industry, the effects on smaller firms are likely to be quite small because cost increases are slight.

Thus, a regulatory flexibility analysis is not required.

Public Hearing

A public hearing will be held, if requested, to discuss the proposed amendments to the asbestos NESHAP, in accordance with sections 112(b)(1)(B) and 307(d)(5) of the CAA and the Administrative Procedure Act. Persons wishing to make oral presentations should contact EPA at the address given in the Addresses section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the Addresses section of this preamble and should refer to Docket No. A-88-28.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see Addresses section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of the proposed amendments. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can participate effectively in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials (Section 307(d)(7)(A)).

Miscellaneous

When the amended asbestos NESHAP is reviewed again, the review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and reporting requirements. The reporting requirements in this standard will be reviewed as required under the EPA sunset policy for reporting requirements in regulations.

In accordance with section 117 of the CAA, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, numerous meetings were held with industry representatives and trade associations during development of the proposed amendments. The Administrator will welcome comments within the public comment period, on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test method.

Comments are specifically invited on the following aspects of the proposed amendments:

- Expressing asbestos content of materials as percent by area;
- Requiring weekly inspections of air cleaning devices at mills, and manufacturing and fabricating operations, and keeping records of same;
- Requiring notification of demolitions where no asbestos is involved;
- Training of asbestos removal contractors;
- Comments by NADC to improve compliance.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it would result in none of the adverse economic impacts set forth in section 1 of the Executive Order as grounds for finding a regulation to be major. The industry-wide annualized costs in the fifth year after the standards would go into effect would be approximately $9.3 million, less than the $100 million established as the first criterion for a major regulation in the Order. The estimated price increases on asbestos products would not be considered "major increases in costs or prices" specified as the second criterion in the Order. The analysis of the proposed amendments' effect on the asbestos industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion of the Order).

This regulation was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments will be included in Docket No. A-88-28. This docket is available for public inspection at EPA's Central Docket Section, which is listed under the Addresses section of this preamble.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 61 and 763

Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride, Blast furnaces, Steel mills.

Date: December 22, 1988.

Lee M. Thomas,

Administrator.

It is proposed that 40 CFR Chapter I be amended as follows:

PART 61—[AMENDED]

I. In Part 61:

1. The authority citation for 40 CFR Part 61, Subpart M is revised to read as follows:

Authority: Secs. 101, 112, 114, 116, 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601); Sec. 203 of the Toxic Substances Control Act, 15 U.S.C. 2643.

2. The table of sections is revised in its entirety to read as follows:

Subpart M—National Emission Standard for Asbestos

Sec.
61.140 Applicability.
61.141 Definitions.
61.142 Standard for asbestos mills.
61.143 Standard for roadways.
61.144 Standard for manufacturing.
61.145 Standard for demolition and renovation.
61.146 Standard for spraying.
61.147 Standard for fabricating.
61.148 Standard for insulating materials.
61.149 Standard for waste disposal for asbestos mills.
61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.
61.151 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.
61.152 Air cleaning.
61.153 Reporting.
61.154 Standard for active waste disposal sites.
61.155 Standard for sites that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.
61.156 Cross reference to other asbestos regulations.
61.157 Delegation of authority.
Figures to Subpart M

3. Section 61.140 is revised to read as follows:

§ 61.140 Applicability.

The provisions of this subpart are applicable to those sources specified in §§ 61.142 through 61.151, 61.154, and 61.155.

4. In § 61.141, the following definitions are revised: "Asbestos-containing waste materials," "Commercial asbestos," "Demolition," "Emergency renovation operation," "Fabricating," "Facility," "Facility component," "Friable asbestos material," "Inactive waste disposal site," "Manufacturing," "Natural barrier," "Outside air," "Particulate asbestos material," "Planned renovation

operation," "Remove," "Renovation," "Roadways," "Strip," and "Visible emissions." The following definitions are added: "Adequately wet," "Asbestos-containing material," "EPA identification number," "Fugitive sources," "Glove bag," "Installation," "Leak-tight," "Malfunction," "Natural barrier," "Nonscheduled renovation operation," "Owner or operator," "Waste generator," "Waste shipment record," "Working days." The definitions, "Adequately wetted" and "Asbestos material," are removed.

§ 61.141 Definitions.

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

* * * * *

"Adequately wet" means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

* * * * *

"Asbestos-containing material" means friable asbestos material, and nonfriable asbestos material that potentially can be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this subpart.

"Asbestos-containing waste materials" means any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes asbestos mill tailings, asbestos waste including filters from control devices, friable asbestos waste material, and bags or containers that previously contained commercial asbestos. As applied to demolition and renovation operations, this term also includes nonfriable asbestos waste that can be broken, crumbled, pulverized, or reduced to powder in the course of demolition and renovation operations covered by this subpart, and materials contaminated with asbestos including equipment and clothing.

* * * * *

"Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

"Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

"Emergency renovation operation" means a renovation operation that was not planned but results from a sudden, unexpected event that results in unsafe conditions. This term includes operations necessitated by nonroutine failures of equipment.

"EPA identification number" means the number assigned by EPA to each waste generator.

"Fabricating" means any processing of a manufactured product that contains commercial asbestos, with the exception of processing, or field fabricating, at temporary sites for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding and debonding.

"Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (residential buildings having four or fewer dwelling units are excluded); any ship; and any active and inactive waste disposal site.

"Facility component" means any part of a facility including equipment.

"Friable asbestos material" means any material containing more than 1 percent asbestos by area as determined by the method specified in Appendix A, Subpart F, 40 CFR Part 763 that, when dry, can be broken, crumbled, pulverized, or reduced to powder by hand pressure.

"Fugitive sources" means any source not controlled by an air pollution control device.

"Glove bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration's (OSHA) final rule on occupational exposure to asbestos (Appendix G to 29 CFR 1926.58).

"Inactive waste disposal site" means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

"Installation" means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of a single entity (i.e., one owner or one operator).

"Leak-tight" means that solids or liquids cannot escape or spill out. It also means dust-tight.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operations, or any other preventable equipment breakdown.

"Manufacturing" means the combining of commercial asbestos—or, in the case of woven friction products, the combining of textiles containing commercial asbestos—with any other material(s), including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

"Natural barrier" means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

"Nonscheduled renovation operation" means a renovation operation that is not planned but is caused by the routine failure of equipment.

"Owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

"Outside air" means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open air ferry dock.

"Particulate asbestos material" means finely divided particles of asbestos or material containing asbestos.

"Planned renovation operations" means a renovation operation, or a number of such operations, in which some friable asbestos material will be removed or stripped within a given period of time and which can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

"Remove" means to take out asbestos-containing materials or asbestos-covered facility components from any facility.

"Renovation" means altering in any way one or more facility components including the stripping or removal of asbestos-containing material from facility components. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

"Roadways" means surfaces on which motor vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

"Strip" means to take off asbestos-containing materials from any part of a facility or facility components.

* * * * *

"Visible emissions" means any emissions, which are visually detectable without the aid of instruments, coming from asbestos-containing material. This does not include condensed uncombined water vapor.

"Waste generator" means any owner or operator of a source covered by this subpart whose act or process produces asbestos-containing waste material.

"Waste shipment record" means the shipping document, originated and signed by the generator, used to substantiate the disposition of asbestos-containing waste material.

"Working days" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

5. Section 61.142 is revised to read as follows:

§ 61.142 Standard for asbestos mills.

(a) Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(b) Each owner or operator of an asbestos mill shall meet the following requirements:

(1) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during operation. The monitoring period shall be of at least 15 seconds duration per source of emissions.

(2) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator and revise as necessary, a written maintenance plan to include at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(3) Maintain records of the results of visible emissions monitoring and control device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of bags, including presence of tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of bags.

(v) Brief description of corrective actions taken including date and time.

(vi) Daily hours of operation for each control device.

(4) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

(5) Retain a copy of all monitoring and inspection records for at least 2 years.

(6) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

6. Section 61.143 is revised to read as follows:

§ 61.143 Standard for roadways.

No person may construct or maintain a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless, for asbestos tailings,

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or

(b) It is a temporary roadway at an asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a minimum frequency of once per year to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in Section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985, or their equivalent.

7. In § 61.144, paragraph (a)(9) and paragraphs (b) (1) and (2) are revised and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.144 Standard for manufacturing.

(a) * * *

(9) The manufacture of chlorine utilizing the asbestos diaphragm technology.

* * * * *

(b) * * *

(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours, for visible emissions to the outside air during operation. The monitoring period shall be of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of bags, including presence of tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of bags.

(v) Brief description of corrective actions taken including date and time.

(vi) Daily hours of operation for each control device.

(6) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to

the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

§§ 61.146 and 61.147 [Removed]

8. Sections 61.146 and 61.147 are removed, and § 61.145 is revised to read as follows:

§§ 61.145 Standard for demolition and renovation.

(a) *Applicability.* The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity including the removal of asbestos-containing material as follows:

(1) If the amount of asbestos-containing material in a facility being demolished is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or a total of at least one cubic meter (35 cubic feet) on or off all facility components in a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section.

(2) If in a facility being demolished, the amount of asbestos-containing material is less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components and if the total amount present in or off all facility components in a facility being demolished is less than one cubic meter (35 cubic feet) or there is no asbestos, only the notification requirements of paragraphs (b) (1), (2), (3) (i) and (iv), and (4) (i) through (vi) and (4) (viii) and (xv) of this section apply.

(3) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(vii)), (b)(5), and (c) (4), (5), (6), (7), (8), and (9) of this section apply.

(4) If at least 80 linear meters (260 linear feet) of asbestos-containing materials on pipes or at least 15 square meters (160 square feet) of asbestos-containing materials on other facility components or a total of at least one cubic meter (35 cubic feet) on or off all facility components are stripped, removed, or otherwise disturbed from a facility being renovated including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply.

(i) To determine whether paragraph (a)(4) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the additive amount of asbestos-containing materials to be removed or stripped from one or more facilities during a calendar year of January 1 through December 31.

(ii) To determine whether paragraph (a)(4) of this section applies to emergency renovation operations, estimate the amount of asbestos-containing materials to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(5) For the purpose of determining applicability, do not include materials that cannot become friable, such as packings, gaskets, asphalt roofing, and vinyl floor tile that are in good condition. Owners or operators of demolition and renovation operations are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

(b) *Notification requirements.* Each owner or operator of a demolition or renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Update notice, as necessary, including when the amount of asbestos affected changes.

(2) Send the notice by certified mail, return receipt requested, or hand deliver the written notice.

(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or other activities such as site preparation which would disturb any asbestos material in a demolition or renovation begin, if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(i) and (a)(4)(ii)), of this section. If the operation is described in paragraph (a)(2) of this section, notification is required 10 working days before demolition begins.

(ii) For renovations described in paragraph (a)(4)(i) of this section, send by certified mail, return receipt requested and postmarked or hand deliver notice 10 working days before the end of the calendar year preceding the year for which notice is being given.

(iii) As early as possible before, but not later than the following working day after asbesto stripping or removal work in a renovation begins, if the operation is described in paragraph (a)(4)(ii) of this section or as early as possible before or by the following working day if the operation is a demolition described in paragraph (a)(3) of this section.

(iv) If asbestos stripping or removal work in demolition or renovation operations, described in paragraphs (a)(1) and (4) (except (a)(4)(i) and (a)(4)(ii)) of this section, will begin on a date other than the one contained in the notice, written notice of the new start date must be sent by certified mail, return receipt requested and postmarked at least 5 working days or received at least 3 working days before asbestos stripping or removal work in a demolition or renovation begins and postmarked at least 5 working days or received at least 3 working days before the original start date. For demolitions covered by paragraph (a)(2) of this section, written notice of the new start date must be sent by certified mail, return receipt requested and postmarked at least 5 working days or received at least 3 working days prior to commencement of demolition. In no event shall an operation covered by this provision begin on a date other than the date contained in the written notice of the new start date.

(4) Include the following in the notice:

(i) Name, address, and telephone number of owner and operator.

(ii) Type of operation: Demolition or renovation.

(iii) Description of the facility including the size (square meters) (square feet) and number of floors), age, and present or prior use of the facility.

(iv) Procedure employed to detect the presence of asbestos-containing materials.

(v) Estimate of the approximate amount of asbestos-containing material, including nonfriable asbestos material that will not be broken, crumbled, pulverized, or reduce to powder in the course of operations regulated by this section, to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, and volume on both in cubic meters (cubic feet). Provide separate estimates of the amounts of friable asbestos-containing material; the amount of nonfriable asbestos-containing material that has the potential to be broken, crumbled, pulverized, or reduced to powder; and the amount of nonfriable asbestos-containing material that will not be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section.

(vi) Location and address of the facility being demolished or renovated.

(vii) Scheduled starting and completion dates of asbestos removal work in a demolition or renovation; planned renovation operations involving

individual nonscheduled operations shall only include the beginning and ending dates of the report period as described in paragraph (a)(4)(i) of this section.

(viii) Scheduled starting and completion dates of demolition or renovation.

(ix) Description of planned demolition or renovation work to be performed and method(s) to be employed including demolition or renovation techniques to be used and description of affected facility components.

(x) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste handling emission control procedures and the procedures to prevent nonfirable material from being broken, crumbled, pulverized, or reduced to powder in course of operations regulated by this section.

(xi) Name and location of the waste disposal site where the asbestos containing waste material, including nonfriable asbestos that has the potential to be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section will be deposited.

(xii) A certification that only an owner or operator of a demolition or renovation activity trained as required by paragraph (c)(8) of this section will supervise in the stripping and removal described by this notification.

(xiii) For facilities described in paragraph (a)(3) of this section, the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin.

(xiv) For emergency renovations described in paragraph (a)(4)(ii) of this section, the date and hour that the emergency occurred, a description of the sudden unexpected event, and an explanation of how the event has caused unsafe conditions.

(xv) Description of procedures to be followed in the event that unexpected asbestos is found or previously nonfriable asbestos material becomes broken, crumbled, pulverized, or reduced to powder.

(5) The information required in paragraph (b)(4) of this section must be reported using a form similar to that shown in Figure 3.

(c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this section applies shall comply with the following procedures:

(1) Remove asbestos-containing materials from a facility being demolished or renovated before any activities that would disturb the materials or preclude access to the materials for subsequent removal. However, asbestos-containing materials need not be removed before demolition if:

(i) They are on a facility component that is encased in concrete or other similarly hard material and are adequately wetted whenever exposed during demolition; or

(ii) They were not accessible for testing and were not discovered until after demolition began and, as a result, cannot be safely removed. If not removed for safety reasons, the exposed asbestos-containing material and any asbestos-contaminated debris must be adequately wetted.

(iii) They are materials that cannot become friable during demolition or renovation, such as, packing, gaskets, asphalt roofing, and vinyl floor tile in good condition.

(2) When a facility component that contains asbestos or that is covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:

(i) Adequately wet any asbestos-containing materials exposed during cutting or disjoining operations; and

(ii) Carefully lower the units or sections to ground level not dropping, throwing, sliding or otherwise damaging them.

(3) When asbestos-containing material is stripped from facility components in a facility, adequately wet the asbestos-containing material during the stripping operation.

(i) In renovation operations, wetting is not required if the owner or operator has obtained written approval from the Administrator by:

(A) Asking the administrator to determine whether wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard, and supplying the Administrator with adequate information to make this determination before beginning to strip asbestos-containing material; and

(B) Using one of the following when the Administrator does determine that equipment damage would be unavoidable or that a safety hazard would exist:

(*1*) A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements of § 61.152.

(*2*) A glove-bag system designed and operated to capture the particulate asbestos material produced by the stripping of the asbestos materials.

(*3*) Leak-tight wrapping to contain all asbestos-containing material prior to dismantlement.

(ii) In renovation operations where wetting or the methods allowed in paragraph (c)(3)(i) of this section cannot be used, other methods may be used after obtaining written approval from the Administrator upon determination that they are equivalent to wetting or the methods allowed in paragraph (c)(3)(i) of this section.

(iii) A copy of the Administrator's written approval shall be kept at the worksite and available for inspection.

(4) After a facility component covered or coated with asbestos-containing material has been taken out of the facility as units or in sections, it must be stripped or contained in leak-tight wrapping for disposal, except as described in paragraph (c)(5) of this section. If stripped, either:

(i) Adequately wet asbestos-containing materials during stripping; or

(ii) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams, the asbestos is not required to be stripped if the following requirements are met:

(i) They can be removed, transported, stored, and reused without disturbing or damaging the asbestos.

(ii) They are encased in a leak-tight wrapping.

(iii) It is labeled according to § 61.149(d)(1)(i), (ii), and (iii) during all loading and unloading operations and during storage.

(6) For all asbestos-containing materials including those that have been removed or stripped:

(i) Adequately wet the materials to ensure that they remain wet until they are collected and contained or treated in preparation for disposal in accordance with § 61.150; and

(ii) Carefully lower the materials to the ground or a lower floor, not dropping, throwing, sliding, or otherwise damaging them; and

(iii) Transport the materials to the ground via leak-tight chutes or containers if they have been removed or

stripped more than 50 feet above ground level and were not removed as units or in sections.

(iv) Asbestos-containing materials contained in leak-tight wrapping that have been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(*3*) of this section need not be wetted.

(7) When the temperature at the point of wetting is below 0°C (32°F):

(i) The owner or operator need not comply with paragraph (c)(2)(i) of this section and the wetting provisions of paragraph (c)(e) of this section.

(ii) The owner or operator must remove facility components coated or covered with asbestos-containing materials as units or in sections to the maximum extent possible.

(iii) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature at the beginning, middle, and end of each work day and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the records of temperature for at least 2 years.

(8) All asbestos-containing material shall be stripped, removed, and otherwise handled by an owner or operator of a demolition or renovation activity with at least one on-site representative, such as a foreman or management level person, trained in the provisions of this regulation and the means of complying with them. The required training shall include as a minimum: applicability; notifications; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been accomplished shall be made available for inspection by the Administrator during normal business hours at the demolition or renovation site. This requirement shall become effective one year after promulgation of this regulation. This training does not replace the training requirements of the Office of Pesticides and Toxic Substances nor the training requirements of OSHA in 29 CFR 1926.58.

(9) For facilities described in paragraph (a)(3) of this section, adequately wet the portion of the facility that contains asbestos-containing materials during the wrecking operation.

§ 61.148 [Redesignated as § 61.146 and Amended]

9. Section 61.148 is redesignated as § 61.146 and is amended by revising paragraphs (a), the introductory text of (b), paragraph (b)(2), and paragraph (d) to read as follows:

§ 61.146 Standard for spraying.

* * * * *

(a) Use materials that contain 1 percent asbestos or less by area for spray-on application on buildings, structures, pipes, and conduits, except as provided in paragraph (c) of this section.

(b) For spray-on application of materials that contain more than 1 percent asbestos by area on equipment and machinery, except as provided in paragraph (c) of this section:

* * * * *

(2) Discharge no visible emissions to the outside air from spray-on application of the asbestos-containing material or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

* * * * *

(d) Owners or operators of sources subject to this paragraph are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

§ 61.149 [Redesignated as § 61.147 and Amended]

10. Section 61.149 is redesignated as § 61.147, paragraphs (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.147 Standard for fabricating.

* * * * *

(b) * * *

(1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the fabricating facility including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during operation. The monitoring period shall be of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions including, to the maximum extent possible, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of bags, including presence of tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of bag.

(v) Brief description of corrective actions taken including date and time.

(vi) Daily hours of operation for each control device.

(6) Furnish upon request and make available during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

§ 61.150 [Redesignated as § 61.148 and Revised]

11. Section 61.150 is redesignated as § 61.148 and revised to read as follows:

§ 61.148 Standard for insulating materials.

No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this paragraph do not apply to spray-applied insulating materials regulated under § 61.146.

§ 61.151 [Redesignated as § 61.149 and Amended]

12. Section 61.151 is redesignated as § 61.149 and is amended by revising paragraphs (a), (b), (c)(1)(ii) and (iii), and (c)(2), and adding new paragraphs (d) through (f) to read as follows:

§ 61.149 Standard for waste disposal for asbestos mills.

* * * * *

(a) Deposit all asbestos-containing waste material at a waste disposal site operated in accordance with the provisions of § 61.154; and

(b) Discharge no visible emissions to the outside air from the transfer of control device asbestos waste to the tailings conveyor, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with § 61.150(a) or paragraph (c) of this section; and

(c) * * *

(1) * * *

(ii) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(iii) Wetting may be suspended when the ambient temperature at the waste disposal site is less then −9.5 °C (15 °F), as determined by an appropriate measurement method with an accuracy of ±1°C (±2°F). During periods when wetting operations are suspended, temperature must be recorded at least at hourly intervals and records must be retained for at least 2 years in a form suitable for inspection.

(2) Use an alternative treatment that has received prior approval by the Administrator. To obtain approval for an alternative treatment, a written request must be submitted to the Administrator. The Administrator will use the following criteria to evaluate the alternative treatment method:

(i) The ability of the method to control asbestos emissions to levels equivalent to those achieved by currently required methods.

(ii) The suitability of the method for the intended application.

(iii) The likelihood that the method would contravene other regulations.

(iv) The likelihood that the method would result in increased water pollution, land pollution, or occupational hazards.

(d) If waste is transported by vehicle to a disposal site:

(1) Placard vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The placards must:

(i) Be posted in such a manner and location that a person can easily read the legend.

(ii) Conform to the requirements for 51 cm × 36 cm (20″ × 14″) upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

LEGEND
ASBESTOS DUST HAZARD
Do Not Remain In Area Unless
Your Work Requires It
Breathing Asbestos Dust is Hazardous
to Your Health
Notation

2.5 cm (1 inch) Sans Serif, Gothic or Block

1.9 cm (¾ inch) Sans Serif, Gothic or Block

14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(2) Provide a copy of the waste shipment record described in paragraph (e)(1) of this section, to the disposal site owner or operator at the same time as the asbestos-containing waste material arrives at the disposal site.

(e) For all asbestos-containing waste material transported off site:

(1) Maintain records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, EPA identification number, address, and telephone number of the waste generator.

(ii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iii) The name and telephone number of the disposal site operator.

(iv) The name and location of the disposal site.

(v) The date transported.

(vi) The names, address, and telephone number of the transporter(s).

(2) Retain a copy of asbestos waste shipment record for at least 2 years.

(3) Maintain records of all waste shipments for which a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received within 35 days of the date the waste was accepted by the initial transporter.

(4) Prepare and submit a single copy of a semiannual report to the Administrator and include the following information concerning off-site waste disposal activities during each consecutive 6-month period:

(i) The name, EPA identification number, address, and location of the waste generator.

(ii) The calendar period covered by the report.

(iii) Using a format similar to that shown in Figure 5, a list of all off-site waste shipments including the date shipped, the date received by the disposal site, the quantity of asbestos-containing waste in each shipment (both the quantity that is friable and that which is nonfriable), the name of the disposal facility to which waste was shipped, the name of the transporter, and an indication of whether 35 days or more have elapsed since the waste was shipped without having received a copy of the waste shipment record signed and dated by the disposal site owner or operator.

(f) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

§ 61.152 [Redesignated as § 61.150 and Revised]

13. Section 61.152 is redesignated as § 61.150 and is revised to read as follows:

§ 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material generated by the source, or use one of the treatments specified in paragraphs (a) (1) through (4) of this section. Paragraphs (a) (1), (2), and (4) of this section do not apply to nonfriable materials.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section as follows:

CAUTION
Contains Asbestos

Avoid Opening or
Breaking Container
Breathing Asbestos is Hazardous
to Your Health

Alternatively, use warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast as to be readily visible and legible.

(v) Label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes; and

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Broken areas of nonfriable asbestos material that potentially can be further broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section must be either adequately wetted using a wetting agent or encapsulated. If encapsulated, these materials need not be sealed in leak-tight containers or wrapping. If adequately wetted, these materials must be sealed in leak-tight containers or wrapping.

(4) For facilities demolished where the asbestos-containing material is not removed prior to demolition according to § 61.145 (c)(1) (i) and (ii), or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste after demolition and while loading for transport to disposal site.

(5) Use an alternative treatment that has received prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(b) All asbestos-containing waste material from manufacturing and fabricating and, for demolition and renovation, all friable and nonfriable asbestos-containing waste material that potentially can be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section must be deposited as soon as is practical at—

(1) A waste disposal site operated in accordance with the provisions of § 61.154, or

(2) A site that converts asbestos-containing material into nonasbestos (asbestos-free) material according to the provisions of § 61.155.

(3) The requirements of paragraph (b) of this section do not apply to nonfriable materials from demolition and renovation operations that normally will not be broken, crumbled, pulverized, or reduced to powder, such as, packing, gaskets, asphalt roofing, and vinyl floor tile in good condition.

(c) When transporting asbestos-containing waste material to a storage or disposal site:

(1) Placard vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The placards must conform to the requirements of § 61.149(d)(1) (i), (ii), and, (iii).

(2) Provide a copy of the waste shipment record, described in paragraph (d)(1) of this section, to the disposal site owners or operators at the same time as the asbestos-containing waste material arrives at the disposal site.

(d) For all asbestos-containing waste material including nonfriable material that potentially can be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section:

(1) Maintain records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, EPA identification number, address, and telephone number of the waste generator.

(ii) The quantity in cubic meters (cubic yards) that is friable and the quantity that is nonfriable.

(iii) The name and telephone number of the disposal site operator.

(iv) The name and location of the disposal site.

(v) The date transported.

(vi) The name of the transporter(s).

(2) Retain a copy of asbestos waste shipment records for at least two years.

(3) Maintain records of all waste shipments for which a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received within 35 days of the date the waste was accepted by the initial transporter.

(4) Prepare and submit a single copy of a semiannual report to the Administrator and include the following information concerning waste storage and disposal activities during each consecutive 6-month period:

(i) The name, EPA identification number, address, and location of the waste generator.

(ii) The calendar period covered by the report.

(iii) Using a format similar to that shown in Figure 5, a list of all waste shipments including the date shipped, the date received by the disposal site, the quantity of asbestos-containing waste in each shipment (both the quantity that is friable and that which is nonfriable), the name of the disposal facility to which waste was shipped, the name of the transporter, and an indication of whether 35 days or more have elapsed since the waste was shipped without having received a copy of the waste shipment record signed and dated by the storage or disposal site owner or operator.

(e) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

§ 61.153 [Redesignated as § 61.151 and Amended]

14. Section 61.153 is redesignated as § 61.151 and is amended by revising the introductory text, paragraphs (a)(2), (a)(4), and (b)(3), and adding paragraphs (d) and (e) to read as follows:

§ 61.151 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that was operated by sources covered under § 61.142, 61.144, or 61.147 and received desposits of asbestos-containing waste material generated by the sources, shall:

(a) * * *

(1) * * *

(2) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material. In desert areas where vegetation would be difficult to maintain, at least 8 additional centimeters (3 inches) of well-graded, nonasbestos crushed rock may be placed on top of the final cover instead of vegetation and maintained to prevent emissions; or

* * * * *

(4) For inactive waste disposal sites for asbestos tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used instead of the methods in paragraphs (a)(1), (2), and (3) of this section. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent to achieve and maintain dust control. Obtain prior

approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, waste oil is not considered a dust suppression agent.

(b) * * *

(3) When requesting a determination on whether a natural barrier adequately deters public access, supply information enabling the Administrator to determine whether a fence or a natural barrier adequately access by the general public.

* * * * *

(d) Obtain the Administrator's approval in writing prior to disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. Provide the following information to the Administrator:

(1) Reason for disturbing the waste.

(2) Procedures to be used to control emissions.

(3) Location of the final disposal site.

(e) Within 60 days of a site becoming inactive and after the effective date of this subpart, record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during a title search—that will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used for the disposal of asbestos-containing waste material;

(2) The survey plat and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in § 61.154(g) have been filed with the Administrator; and

(3) The site is subject to 40 CFR Part 61 Subpart M.

§ 61.154 [Redesignated as § 61.152 and Amended]

15. Section 61.154 is redesignated as § 61.152 and amended by removing paragraph (a)(1)(i), redesignating paragraphs (a)(1)(ii)–(iv) as paragraphs (a)(1)(i)–(iii), redesignating paragraph (b)(2) as paragraph (b)(3), revising the introductory text of paragraph (a) and paragraphs (b)(1) and (b)(3), and adding paragraphs (a)(3) and (b)(2) to read as follows:

§ 61.152 Air cleaning.

(a) The owner or operator who uses air-cleaning, as specified in §§ 61.142(a), 61.144(b)(2), 61.145(c)(3)(i)(B)(*l*), 61.145(c)(4)(ii), 61.146(b)(2), 61.147(b)(2), 61.149(b), 61.149(c)(1)(ii), 61.150(a)(1)(ii), 61.150(a)(2)(ii), and 61.155(e) shall:

* * * * *

(3) For fabric filter collection devices installed after (the date of proposal of this NESHAP revision), provide for easy inspection for faulty bags.

(b) * * *

(1) After (the date of proposal of this NESHAP revision), if the use of fabric creates a fire or explosion hazard, or the Administrator determines that a fabric filter is not feasible, the Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(2) Use a HEPA filter that is at least 99.97 percent efficient as determined by ASTM method D-2986-71.

(3) The Administrator may authorize the use of filtering equipment other than described in paragraphs (a)(1) and (b)(1) and (2) of this section if the owner or operator demonstrates to the Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

§ 61.155 [Redesignated as § 61.153 and Amended]

16. Section 61.155 is redesignated as § 61.153 and amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, revising the introductory text of paragraphs (a), (a)(4), and (a)(5) and paragraphs (a)(2), (a)(4)(ii) and (iii), and (b), and adding paragraph (a)(3) to read as follows:

§ 61.153 Reporting.

(a) Any new source to which this subpart applies (with the exception of roadways, demolition and renovation, spraying and insulating materials), which has an initial startup date preceding the effective date of this revision, shall provide the following information to the Administrator within 90 days of the effective date. In the case of a new source which did not have an initial startup date preceding the effective date, the information shall be provided within 90 days of the initial startup date. Any owner or operator of an existing source who provided this information prior to the effective date is not required to resubmit it. Any changes in the information provided by any existing source shall be provided to the Administrator within 30 days after the change.

* * * * *

(2) If a fabric filter device is used to control emissions,

(i) The airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$) if the fabric filter device uses a woven fabric, and; if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(ii) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$).

(3) If a HEPA filter is used to control emissions, the efficiency as determined by ASTM method D-2986-71.

(4) For sources subject to §§ 61.149 and 61.150:

* * * * *

(ii) The average volume of asbestos-containing waste material disposed of, measured in cubic meters (cubic yards); and

(iii) The emission control methods used in all stages of waste disposal; and

* * * * *

(5) For sources subject to § 61.151:

* * * * *

(b) The information required by paragraph (a) of this section must accompany the information required by § 61.10. Roadways, demolition and renovation, spraying and insulating materials are exempted from the requirements of § 61.10(a). The information described in this section must be reported using the format of Appendix A of this part as a guide.

§ 61.156 [Redesignated as § 61.154 and Amended]

17. Section 61.156 is redesignated as § 61.154 and amended by revising the introductory text of § 61.154, paragraphs (c) and (d), and adding paragraphs (e) through (k) to read as follows:

§ 61.154 Standard for active waste disposal sites.

Each owner or operator of an active waste disposal site that receives asbestos-containing waste material under §§ 61.149 and 61.150 shall meet the requirements of this section:

* * * * *

(c) Rather than meet the no visible emission requirement of paragraph (a) of this section, at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous 24-hour period shall:

(1) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(2) Be covered with a resinous or petroleum-based dust suppression agent which effectively binds dust and controls wind erosion. Such agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of

this paragraph, waste oil is not considered a dust suppression agent.

(d) Rather than meet the no visible emission requirement of paragraph (a) of this section, use an alternative control method for emissions that has received prior approval by the Administrator according to the procedures described in § 61.149(c)(2).

(e) For all asbestos-containing waste material received, the owner or operator shall:

(1) Maintain records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, EPA identification number, address, and telephone number of the waste generator.

(ii) The name of the transporter.

(iii) the quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.

(v) The date of receipt.

(2) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the generator.

(3) Retain a copy of the records required by this paragraph for at least two years.

(4) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report to the Administrator, describing the discrepancy and attempts to reconcile it and submit a copy of the waste shipment record along with it.

(f) The owner or operator of a disposal site shall prepare and submit a single copy of a semiannual report to the Administrator and include the following information concerning activities during each consecutive 6-month period.

(1) The name, address, and location of the disposal site.

(2) The calendar period covered by the report.

(3) The method of disposal.

(4) Using a format similar to that shown in Figure 5, a list of all asbestos-containing waste shipments including, the date received, the name and EPA identification number of the generator, the date shipped from the generator, the quantity of asbestos-containing waste in each shipment (both the quantity that is friable and that which is nonfriable), the name of the storage site and transporter, and the date that a copy of the waste shipment record was sent back to the generator and storage site.

(g) Maintain until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(h) Upon closure, comply with all the provisions of § 61.151.

(i) Submit to the Administrator, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(j) Furnish upon request and make available during normal business hours for inspection by the Administrator all records required under this section.

(k) Obtain the Administrator's approval in writing prior to disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. Provide the following information to the Administrator:

(1) Reason for disturbing the waste.

(2) Procedures to be used to control emissions.

(3) Location of the temporary storage and final disposal site.

18. Section 61.155 is added to Subpart M to read as follows:

§ 61.155 Standard for operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

Each owner or operator of an operation that converts asbestos-containing waste material into nonasbestos (asbestos-free) material shall meet the requirements of this section.

(a) Obtain the written approval of the Administrator to construct. To obtain approval, provide the Administrator with the following information:

(1) Application to construct pursuant to § 61.07.

(2) In addition to the requirements of § 61.07(b)(3), supply the following process information to the Administrator:

(i) Description of waste feed handling and temporary storage.

(ii) Description of process operating conditions.

(iii) Description of end product handling and temporary storage.

(3) Performance test protocol, including provisions for obtaining information required under paragraph (b) of this section.

(4) The Administrator may require that a demonstration of the process be performed prior to approval of the application to construct.

(b) Conduct a start-up performance test. Test results shall include:

(1) A detailed description of the types and quantities of nonasbestos material and asbestos-containing wastes processed, e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc. Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(3) Results of analyses, using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as 8-hour composite samples (one 200 gm sample per hour), beginning with the initial introduction of asbestos-containing waste material and continuing until end of performance test.

(4) A description of operating parameters, such as temperature and residence time, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(5) The length of the test.

(c) During the initial 90 days of operation,

(1) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(2) Collect and analyze samples, taken as 10-day composite samples (one 200 gm sample collected every 8 hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than 10 days. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos. During the initial 90-day period all output materials must be stored onsite until analysis shows the material to be asbestos-free or disposed of as asbestos-containing waste material according to § 61.150.

(d) After the initial 90 days of operation,

(1) Continuously monitor and record the operating parameters identified during start-up performance testing and any subsequent performance testing. Any product produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output materials shall be:

(i) Disposed of as asbestos-containing waste material according to § 61.150, or

(ii) Recycled as waste feed during process operation within the established range of operating conditions, or

(iii) Stored temporarily onsite until analyzed for asbestos content. Any product material that is not asbestos-free shall be either disposed of as asbestos-containing waste material or recycled.

(2) Collect and analyze monthly composite samples (one 200 gm sample collected every 8 hours of operation) of the output material. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos.

(e) Discharge no visible emissions to the outside air from any part of the operation or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(f) Maintain records and include the following information:

(1) Results of start-up performance testing and any subsequent performance testing including operating parameters, feed characteristics, and analyses of output materials.

(2) Results of the composite analyses required during the initial 90 days of operation under § 61.155(c).

(3) Results of the monthly composite analyses required under § 61.155(d).

(4) Results of continuous monitoring and logs of process operating parameters required under § 61.155 (c) and (d).

(5) The information on waste shipments received as required in § 61.154(e).

(6) For output materials where no analyses were performed to determine the presence of asbestos, record the name and location of the disposal site to which the output materials were deposited, and the date of disposal.

(7) Retain records required by paragraph (f) of this section for at least 2 years.

(g) Submit the following reports to the Administrator:

(1) A report for each analysis of product composite samples performed during the initial 90 days of operation.

(2) A quarterly report including the following information concerning activities during each consecutive 3-month period:

(i) Results of analyses of monthly product composite samples.

(ii) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.

(iii) Disposition of any product produced during a period of deviation including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily onsite until analyzed for asbestos content.

(iv) The information on waste disposal activities as required in § 61.154(f).

(h) Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this subpart. Output materials in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by transmission electron microscopy (TEM) analysis to be asbestos free, shall be considered to be asbestos-containing waste and shall be handled and disposed of according to §§ 61.150 and 61.154 or reprocessed while all of the established operating parameters are being met.

19. Section 61.156 is added to Subpart M to read as follows:

§ 61.156 Cross reference to other asbestos regulations.

In addition to this subpart, the regulations referenced below also apply to asbestos and may be applicable to those sources specified in §§ 61.142 through 61.151, 61.154, and 61.155 of this subpart. These cross references are presented for the reader's information and to promote compliance with the cited regulations.

Agency	CFR Citation	Comment
EPA	40 CFR Part 763, Subpart E	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR Part 427	Effluent standards for asbestos manufacturing source categories.
	40 CFR Part 763, Subpart G	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training; labeling, respiratory protection, bagging of waste, 0.2 f/cc permissible exposure level.
	29 CFR 1926.58	Worker protection measures for all construction work involving asbestos, including demolition and renovation—work practices, worker training, bagging of waste, 0.2 f/cc permissible exposure level.
MSHA	30 CFR Part 56, Subpart D	Specifies exposure limits, engineering controls and respiratory protection measures for workers in surface mines.
	30 CFR Part 57, Subpart D	Specifies exposure limits, engineering controls and respiratory protection measures for workers in underground mines.
DOT	49 CFR Parts 171 and 172	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.

20. Section 61.157 is added to Subpart M to read as follows:

§ 61.157 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under Section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States:

(1) Section 61.149(c)(2).

(2) Section 61.150(a)(5).

(3) Section 61.151(c).

(4) Section 61.152(b)(3).

(5) Section 61.154(d).

(6) Section 61.155(a).

Figures to Subpart M

FIGURE 1. RECORD OF VISIBLE EMISSION MONITORING

Date of inspection (mo/day/yr)	Time of inspection (am/pm)	Control device or fugitive emission source designation or number	Visible emissions observed (yes/no), corrective action taken	Daily operating hours	Inspector's initials

FIGURE 2. AIR POLLUTION CONTROL DEVICE INSPECTION CHECKLIST

1. Control device designation or number .....
2. Date of inspection .....
3. Time of inspection .....
4. Is control device operating properly (Yes/No) .....
5. Tears, holes, or abrasions in bags (Yes/No) .....
6. Dust on clean side of bags (Yes/No) .....
7. Other signs of malfunctions or potential malfunctions (Yes/No) .....
8. Describe other malfunctions or signs of potential malfunctions .....
9. Describe corrective action(s) taken .....
10. Date and time corrective action taken .....
11. Inspected by:

(Print/Type Name) (Title) (Signature) (Date)

(Print/Type Name) (Title) (Signature) (Date)

Figure 3. Notification of Demolition and Renovation

I. Name, address, and telephone number of:
(a) Facility owner or operator

(name)

(address)

(phone number)

(person to contact and telephone number)
(b) Asbestos removal contractor

(name)

(address)

(phone number)

(person to contact and telephone number)

II. Type of operation: demolition ____ renovation ____

III. Description of facility
(a) Location
(b) Address
(c) Size (square meter [square feet] and number of floors)
(d) Age
(e) Prior use

IV. Is asbestos present? yes ____ no ____

V. Procedure used to detect the presence of asbestos material:

VI. Approximate amount of asbestos that is friable; nonfriable, but has the potential to be broken, crumbled, pulverized, or reduced to powder; and nonfriable. Specify amount of asbestos in terms of: linear meters (linear feet) on pipes; square meters (square feet) for surface area and cubic meters (cubic feet) for volume on both.
(a) Friable
(b) Nonfriable, but may become broken, crumbled, pulverized, or reduced to powder
(c) Nonfriable

VII. Scheduled dates of asbestos removal
Start
Completion

VIII. Scheduled dates of demolition or renovation
Start
Completion

IX. Description of planned demolition or renovation work, and method(s) to be used.

X. Description of work practices and engineering controls to be used to prevent emissions of asbestos.
(a) At the demolition and renovation site

(b) During storage of the waste

(c) At the waste disposal site

XI. If you are claiming an exemption from certain requirements of the asbestos NESHAP (40 CFR Part 61, subpart M) for all or part of the nonfriable asbestos reported in item VI (b) and (c) above, describe the procedures to be used to prevent nonfriable material from being broke, crumbled, pulverized, or reduced to powder.
(a) At the demolition site

(b) At the storage site

(c) At the waste disposal site

XII. Name and location of the waste disposal site

XIII. If ordered by a government agency, name, title, and authority of government agency requiring the demolition.

Date order issued
Date demolition ordered to begin

XIV. For emergency renovations
(a) Date and hour that the emergency occurred
(b) Description of the sudden unexpected event

(c) Explanation of how the event caused unsafe conditions or serious disruption of industrial operations

XV. Description of procedures to be followed in the event that unexpected asbestos is found or previously nonfriable asbestos material becomes broke, crumbled, pulverized, or reduced to powder.

XVI. I certify that the following individual will be on site during the demolition or renovation and has been trained in the provisions of this regulation (40 CFR Part 61, subpart M) and evidence that the required training has been accomplished by this person will be available for inspection during normal business hours.

(name)

(title)

(years with firm)

(Signature of owner or operator)

(Date)

Figure 4. Asbestos Waste Tracking System

1. Work Site Name and Mailing Address ——

Owner's Name ——
Owner's Phone No. ——
Owner's Phone No. ——
2. Operator's Name and Address ——

Operator's Phone No. ——
Operator's US EPA ID No. ——
3. Waste Disposal Site (WDS) Name and Mailing Address ——

WDS Phone No. ——
WDS US EPA ID No. ——
4. Description of Materials
(a) ——
(b) ——
(c) ——
(d) ——
(e) ——
5. Containers No. and Type
(a) ——
(b) ——
(c) ——
(d) ——
(e) ——
6. Total Quantity ft^3 or yd^3
(a) ——
(b) ——
(c) ——
(d) ——
(e) ——
7. Special Handling Instructions and Additional Information

8. OPERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.
Printed/Typed Name & Title ——
Signature ——
Month Day Year
9. Transporter 1 (Acknowledgement of Receipt of Materials)
Printed/Typed Name & Title ——
Signature ——
Month Day Year
10. Transporter 2 (Acknowledgement of Receipt of Materials)
Printed/Typed Name & Title ——
Signature ——
Month Day Year
11. Discrepancy Indication Space ——

12. Waste Disposal Site—Owner or Operator: Certification of receipt of asbestos materials covered by this manifest except as noted in item 11. ——
Printed/Typed Name & Title ——
Signature ——
Month Day Year

INSTRUCTIONS

Waste Generator Section (Items 1–8)

1. Enter the name of the facility at which asbestos waste is generated and the address where the facility is located. In the appropriate spaces also enter the name of the owner of the facility and the owner's phone number.

2. If a demolition or renovation, enter the name and address of the company and authorized agent responsible for performing the asbestos removal. In the appropriate spaces, also enter the phone number and the US EPA ID Number of the operator.

3. Enter the name and address of the waste disposal site (WDS) which will be receiving the asbestos materials. In the appropriate spaces also enter the phone number and US EPA ID Number of the WDS. Enter "on site" if the waste will be disposed of on the generator's property.

4. Indicate the types of asbestos waste materials generated. If from a demolition or renovation, possibilities include, but are not limited to:

—Spray-on asbestos insulation from piping
—Wrapped asbestos insulation from piping
—Spray-on asbestos ceiling/wall insulation
—Asbestos ceiling tile
—Asbestos wallboard

5. Enter the number of containers used to transport the asbestos materials listed in item 4. Also enter one of the following container codes used in transporting each type of asbestos material (specify any other type of container used if not listed below):

DM—Metal drums, barrels
DP—Plastic drums, barrels
BA—6 mil plastic bags or wrapping

6. Enter the friable and nonfriable quantities of each type of asbestos material removed in units of cubic feet (ft^3) or cubic yards (yd^3) as appropriate.

7. Use this space to indicate special transportation, treatment, storage or disposal or Bill of Lading information. If an alternate waste disposal site is designated, note it here. Emergency response telephone numbers or similar information may be included here.

8. The authorized agent of the operator must read and then sign and date this certification. The date is the date of receipt by transporter.

Note: The operator must retain a copy of this form.

Transporter Section (Items 9–10)

9. & 10. Enter name of transporter firm, if applicable. Print or type the full name and title of person accepting responsibility and acknowledging receipt of materials as listed on this waste shipment record for transport. Enter date of receipt and signature.

Note: The transporter must retain a copy of this form.

Disposal Site Section (Items 11–12)

11. The authorized representative of the WDS must note in this space any discrepancy between waste described on this manifest and waste actually received. Any rejected materials should be listed and destination of those materials provided. A site that converts asbestos-containing waste material to nonasbestos material is considered a WDS.

12. The signature (by hand) of the authorized WDS agent indicates acceptance and agreement with statements on this manifest except as noted in item 11. The date is the date of signature and receipt of shipment.

Note: The WDS must retain a completed copy of this form. The WDS must also send a completed copy to the operator listed in item 2.

FIGURE 5. INFORMATION REQUIRED ON INDIVIDUAL WASTE SHIPMENTS FOR SEMIANNUAL REPORTS

Generator						Name of first transporter	Name of second transporter	Disposal site[a]		
Name	EPA ID No.	Date shipped	Quantity (ft^3, yd^3)		Excepted shipment (Yes/No)[b]			Name	Date received	Date WSR[c] returned to generator
			Friable	Nonfriable						

NOTE: Indicate "NA" if not applicable.

[a] A site that converts asbestos-containing waste material to nonasbestos material is considered a disposal site.

[b] Indicate "yes" if more than 35 days have elapsed since the waste was shipped and a signed and dated waste shipment record (WSR) has not been returned by the disposal site.

[c] WSR=Waste Shipment Record.

II. In Part 763:

PART 763—[AMENDED]

1. The authority citation for 40 CFR Part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c). Subpart E also issued under 15 U.S.C. 2641, 2643, 2646, and 2647.

2. By adding § 763.96 to Subpart E to read as follows:

§ 763.96 Disposal.

All persons participating in disposal activities affecting friable asbestos-containing material removed from a school building must comply with the provisions of 40 CFR Part 61, Subpart M—National Emission Standards for Asbestos. If such persons violate any provision of such subpart, it will be a violation of this section also.

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

Traffic Alert and Collision Avoidance System; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

[Docket No. 25355; Amdt. Nos. 1-35, 91-208, 121-201, 125-11, 129-17, and 135-29]

RIN 2120-AC34

Traffic Alert and Collision Avoidance System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments require the installation and use of a Traffic Alert and Collision Avoidance System (TCAS) in large transport type airplanes and certain turbine powered smaller airplanes. The TCAS, which uses the Air Traffic Control Radar Beacon System transponder reply from other aircraft, will provide a collision avoidance capability that operates independently of the ground-based Air Traffic Control (ATC) system, and in areas where there is no ATC radar coverage. The Airport and Airway Safety and Capacity Expansion Act of 1987 directs the FAA to require the installation and operation of TCAS in commercial aircraft flying in the United States. The intended effect of this action is to minimize the possibility of midair collisions involving air carrier airplanes.

EFFECTIVE DATE: February 9, 1989.

Compliance Dates (Where Later Than Effective Date):

1. *Part 121.* TCAS II requirement for operations conducted under Part 121 with more than 30 passenger seats: December 30, 1991.

2. *Part 125.* TCAS II requirement for operations conducted under Part 125 with more than 30 passenger seats: December 30, 1991.

3. *Part 129.* TCAS I requirement for operations conducted under Part 129 with 10 to 30 passenger seats February 9, 1995. TCAS II requirement for operations conducted under Part 129 with more than 30 passenger seats: December 30, 1991.

4. *Part 135.* TCAS I requirement for operations conducted under Part 135 with 10 to 30 passenger seats: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division, AIR-120, FAA, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-9567.

SUPPLEMENTARY INFORMATION:

Background

Regulatory History

On August 21, 1987, the Federal Aviation Administration (FAA) issued Notice of Proposed Rulemaking (NPRM) No. 87-8 (52 FR 32268; August 26, 1987). The NPRM proposed to amend Parts 91, 121, 125, 129, and 135 to require the installation and use of a family of Traffic Alert and Collision Avoidance Systems (TCAS) onboard certain airplanes, as follows:

14 CFR part	Applicability	Equipment	Compliance
91	All	TCAS	Voluntary
121	Large airplanes	TCAS II/Mode S	3 years after effective date
125	do	do	3 years after effective date
129	Turbine powered airplanes/10 to 19 passenger seats.	TCAS I	5 years after effective date
	Turbine powered/20 to 30 seats	TCAS II/Mode S	4 years after effective date
	Turbine powered/30 seats or more	TCAS II/Mode S	3 years after effective date
135	Turbine powered/10 to 19 seats	TCAS I	5 years after effective date
	Turbine powered/20 seats or more	TCAS II/Mode S	4 years after effective date

All comments received in response to NPRM No. 87-8 were considered in adopting these amendments.

On December 30, 1987, the President of the United States signed the Airport and Airway Safety and Capacity Expansion Act of 1987, which, among other amendments, amended the Federal Aviation Act of 1958, Section 601, by adding a new section (f), titled "Collision Avoidance Systems." Title III, section 203 of that act states:

"SEC. 203. Aircraft Collision Avoidance Systems

"(a) Findings.—Congress finds that—

(1) the number of near midair collisions is an indication that additional measures must be taken to assure the highest level of air safety in the United States;

(2) public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States;

(3) the Traffic Alert and Collision Avoidance System promises to reduce the threat to life caused by midair collisions, particularly collisions between general aviation aircraft and commercial aircraft;

(4) the Traffic Alert and Collision Avoidance System will succeed only to the degree that other aircraft posing a collision threat use operating transponders with automatic altitude reporting capability; and

(5) the Federal Aviation Administration should continue at a deliberate pace the development of additional technologies, including the collision avoidance system known as TCAS III, to ensure the safe separation of aircraft.

"(b) General Rules.—Section 601 is amended by adding at the end the following new subsection:

(f) Collision Avoidance Systems.—

(1) Development and Certification.—

(A) Standards.—The Administrator shall complete development of the collision avoidance system known as TCAS II so that such system will be operable under visual and instrument flight rules and will be upgradeable to the performance standards applicable to the collision avoidance system known as TCAS III.

(B) Schedule.—The Administrator shall develop and implement a schedule for development and certification of the collision avoidance system known as TCAS II which will result in completion of such certification not later than 18 months after the date of the enactment of this subsection.

(2) Installation.—The Administrator shall require by regulation that, not later than 30 months after the date of certification of the collision avoidance system known as TCAS II, such system be installed and operated on each civil aircraft which has a maximum passenger capacity of more than 30 seats and which is used to provide air transportation of passengers, including intrastate air transportation of passengers."

Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100-223, section 203 (December 30, 1987).

The FAA has informed Congress that a schedule requiring a "complete" certification of TCAS II equipment within 18 months is extremely difficult because of the different equipment manufacturer designs to be approved; the number of different aircraft types and models; and the large number of commercial carriers requesting approval. Currently, the FAR require

that operators apply for a separate supplemental type certificate for each equipment manufacturer's design and each type/model aircraft. Since the ultimate goal of Congress is clearly the actual installation of TCAS, the FAA is promulgating this rule to require the air carriers to install the system prior to the 48-month overall deadline. Therefore, after consideration of the legislation and the particular circumstances, the FAA concluded that these amendments requiring certification and installation of TCAS within 48 months from the date of enactment of Pub. L. 100-223 (December 30, 1987) constitute compliance with that amendment to the FA Act.

Public Law 100-223 also mandated an FAA regulation requiring the use of altitude-encoding transponders in certain airspace and terminal areas. An automatic altitude-encoding transponder, designated as Mode C (or Mode S, since all Mode S transponders incorporate this feature), provides the air traffic controller with aircraft altitude in 100-foot increments. This information is displayed on the controller's radar screen with the data block for each tracked aircraft. The information is transmitted automatically in response to radar interrogations of the aircraft's radar transponder, and no communication with the pilot is required.

In response to Pub. L. 100-223 and previous FAA regulatory proposals, the agency adopted Amendment 91-203, *Transponder Automatic Altitude Reporting Capability Requirement*, in June 1988 (53 FR 23356, June 21, 1988). The rule requires the use of a Mode C transponder for all operations within and above a terminal control area (TCA) or airport radar service area (ARSA); within 30 miles of a TCA or within 10 miles of certain other airports; and above 10,000 feet above mean sea level (MSL).

A TCAS II or III unit receives information from the Mode C transponder on a target aircraft. The TCAS unit processes the information to provide the pilot of the TCAS airplane with altitude information on potentially conflicting aircraft and to provide vertical resolution advisories (RA's) (to climb or descend) to avoid the conflict. Mode C equipment installed on other aircraft is the only source of altitude information for a TCAS unit.

Discussion of Comments

Seventy commenters responded to Notice No. 87-8. Thirty-three respondents favor the proposed rule to require TCAS; however, seventeen from this group expressed reservations about the phase-in period and ten stated that the final rulemaking should be postponed.

A breakout of the respondents showed the following number of commenters by interest category:

Commercial aviation—6 foreign and 13 domestic carriers	19
Public comment—7 general public, 2 state representatives, and 1 consumer group	10
Government agencies—8 foreign and 2 domestic	10
Industry governing bodies	7
Industry/technical groups	9
Associations	8
Research organizations	2
Airframe manufacturers	4
Training/educational group	1
Total	70

Phase-In Period

Thirty-five commenters expressed concern regarding the phase-in period for TCAS. Of these, 12 requested an implementation time of 4 years minimum up to 7 years, with a 5-year period as the most popular timeframe mentioned.

Four commenters wanted a uniform time schedule for installation, instead of the uneven phase-in time proposed in the NPRM.

Only one person, a state government representative, mentioned shortening the phase-in period. That commenter wants TCAS installed as soon as possible.

Three commenters, including two manufacturers, expressed the opinion that the proposed deadline could be met.

Public Law 100-223 mandated the installation and operation of TCAS II on each civil aircraft that has a passenger capacity of more than 30 seats and that is used to provide air transportation of passengers including intrastate air transportation of passengers. The FAA cannot promulgate rulemaking contrary to the Public Law even in response to public comments to the proposed rule. Therefore, those comments proposing an extended phase-in time for aircraft with more than 30 passenger seats will not be addressed here.

The FAA agrees that those aircraft with 30 passenger seats or less and operated under FAR Parts 125 and 135 should not be required to have installed a TCAS II. Part 129 and Part 135 operators of turbine-powered aircraft with 10 to 30 passenger seats will be required to have a TCAS I system installed and operating.

While the technology required to build a TCAS I is fully developed, currently, there is no TCAS I design approved, and no manufacturer has built a TCAS I unit. There are three or four manufacturers considering the merits of developing a TCAS I design. One system is based on a passive design concept, another design is based on active interrogation, and a third concept is a combination of active/passive. These concepts have not been developed to a point where it can be judged whether any of the concepts will function as required. Considering the time required to develop, test, and obtain approval of TCAS I design and the time required to develop production facilities, coupled with user installation and training requirements, the need to allow additional calendar time became apparent. The additional time reflected in this final rule provides for the fabrication, certification, and operational evaluation of a TCAS I unit prior to installation on passenger carrying airplanes.

In consideration of the absence of an approved TCAS I system at this time, the compliance dates for TCAS I installation and operation have been extended from 5 years to 6 years for those aircraft operating under Parts 129 and 135 with 10 to 30 passenger seats. Additionally, the FAA will provide test data and certain test assistance, and will participate with interested manufacturers and users to evaluate and test TCAS I units in accordance with Technical Standard Order (TSO)-C118, and participate in a field evaluation of TCAS I units with Part 135 carriers.

Two manufacturers announced publicly at the Airlines Electronic Engineering Committee (AEEC) International Conference on TCAS Implementation, December 1 and 2, 1987, that their production of TCAS II systems can be adjusted to accommodate any air carrier installation schedules.

Postpone Final Rulemaking

Most commenters stated that the final rulemaking should be postponed until the results of the Limited Installation Program (LIP) system tests could be analyzed. The LIP, which continues the operational evaluation of TCAS II, requires analysis and periodic reporting to the FAA. The primary objective of the LIP is to evaluate the TCAS II preproduction units in air carrier service using line pilots. United Airlines, the first airline to apply for supplemental type certificate for installation of a TCAS II system for the LIP, completed their 6-month evaluation and currently is in the process of completing the data analysis. During the United evaluation a

total of 2,066 flight hours were logged on the two TCAS II equipped airplanes. The system generated a total of 933 traffic advisories (TA's) and 68 RA's. Northwest Airlines is scheduled to begin their LIP evaluation on or about September 1, 1988. Northwest will use two MD 80 airplanes for the evaluation.

The FAA believes that any fundamental problem existing would have shown up early in the LIP program. None has to date, nor has any major problem been identified in the Piedmont Phase I or II programs. (The 5-month evaluation of TCAS II on two Piedmont Airlines B-727 airplanes between November 1981 and May 1982 is referred to as Piedmont Phase I. The primary objectives of this evaluation were to assess the operation of TCAS in an air carrier operational environment and to develop an understanding of the potential effect of alerts on air carrier flight operations, flight crews, and ATC controllers and on the frequency of alerts and the circumstances under which they occur. The operational evaluation of TCAS II on a Piedmont Airlines B-727 airplane between March 1987 and January 1988 is referred to as Piedmont Phase II. The primary objectives of this operational flight evaluation were to assess the impacts of TCAS operation on flight crew workload; evaluate the impacts of TCAS on the ATC system and individual controllers; and obtain flight crew comments on the system's design parameters, displays, and operational procedures. The evaluation was also designed to provide additional data on the frequency of TCAS alerts and the circumstances under which TCAS alerts occur, evaluate the effectiveness of the flight crew training program, and identify and resolve equipment certification issues. See NPRM 87-8).

Most non-U.S. commenters expressed varying degrees of displeasure at the proposed unilateral action of the United States to mandate the installation and use in U.S. airspace of a collision avoidance system *in the absence of internationally agreed-upon technical specifications and operational procedures* for such an important system. These international standards, normally developed through the vehicle of the International Civil Aviation Organization (ICAO) for equipment such as this prior to introduction into the international aviation system, are designed to insure equipment interoperability and avoid equipage redundancy. Hence, most foreign observers would like to see the U.S. equipage/use requirement delayed and, at the very least, its application to foreign operators under 14 CFR Part 129 delayed until such international standards are in place (currently expected to occur in late 1990) and a sufficient period of time is permitted for system acquisition and installation.

With regard to the present status of the effort to standardize the Airborne Collision Avoidance System (ACAS—the international equivalent of the U.S. TCAS), ICAO is relying on the services of technical and operational experts provided by 15 countries and 4 international organizations—organized into the Secondary Surveillance Radar Improvements and Collision Avoidance Systems Panel (SICASP)—to develop these important technical equipment specifications and operational procedures, which will result in the safe and efficient use of this system internationally. United States participation in this effort has been very active and has included the FAA, the National Aeronautics and Space Administration (NASA), U.S. industry groups, and FAA's two major TCAS contractors, MITRE and Lincoln Labs. At the behest of U.S. and other participants, a concerted effort is being made by this group to complete its work at a spring 1989 meeting, at which time proposed ACAS international standards will be presented to ICAO's Air Navigation Commission and Council for final review and approval. Assuming no unexpected difficulties materialize during this review process, the most critical changes to ICAO documents—the technical ACAS equipment specifications in ICAO Annex 10—should become applicable internationally in late 1990.

Four commenters mentioned postponing the rule until after the Radio Technical Commission for Aeronautics (RTCA) Minimum Operational Performance Standards (MOPS) changes 6 and 7 were complete and Aeronautical Radio Inc. (ARINC) specifications were in final form. The RTCA MOPS, change 6, was not completed in time for publication in TSO C-119, TCAS II; therefore, the TSO references FAA Report No. DOT/FAA/SA-88/3, *Required Modifications to the Traffic Alert and Collision Avoidance System (TCAS II) Minimum Operational Performance Standards (MOPS).* When change 6 is approved by the RTCA Council, the TSO will be revised to reference RTCA DO-185 changes 1 through 6. Change 7 is not required for FAA approval.

One manufacturer recommended delaying the rule and holding the docket open until the LIP is finished and all reports are made available and the MITRE report 87W000157 is released and reviewed. The United Airlines LIP report has been completed and made available in the docket. The Mitre report 87W000157 was revised and adopted in the TSO.

Public law 100-223, section 203, does not permit compliance dates for TCAS II later than those adopted in this rule, and the FAA could not consider comments requesting later dates.

Technical Discussion

Thirty-three commenters included a discussion of TCAS, ACAS, Mode S, Mode C, or ATC technologies in their comments. Many in this group expressed the opinion that the technology still needed to be "fine tuned" before implementation. The FAA has provided for fine tuning of TCAS through the RTCA SC-147 committee working groups. The RTCA MOPS change 6 will contain additional fine tuning features, including simplification of the TCAS-to-TCAS coordination process, elimination of the advisory invalid indication, and many other recommendations.

One commenter postulated that the requirements for all aircraft to have "active TCAS systems would overload and violate the FAA's own requirement of limiting radio use for TCAS purposes to 1 percent of the total usage of the frequency that TCAS would operate on." This issue is not new. It was identified as one of the main development questions when, in 1982-84, the Beacon Collision Avoidance System (BCAS) design was extended to TCAS by increasing the ability to operate effectively under high density conditions. In the Lincoln Laboratory report that documents this development effort, "TCAS II: Design and Validation of the High-Traffic-Density Surveillance Subsystem," this issue is clearly identified (ATC-126, Feb-85, pages 2-6 to 2-9).

The TCAS II includes a provision called "Interference Limiting," the purpose of which is to insure that TCAS transmissions will not cause any degradation of any other systems operating in the 1030/1090 MHz frequency bands. During the TCAS development, it was recognized that a number of possible interference mechanisms needed to be considered: (1) Reception of TCAS interrogations by transponders, (2) reception of TCAS replies by ground-based ATCRBS equipment, and (3) self-suppression of the transponders on the TCAS aircraft. It was decided to place limits on TCAS transmissions in such a way as to give TCAS a low priority in these frequency bands. In doing this, a rather severe

limit of 2 percent was adopted as the maximum interference that can be contributed by all of the TCAS transmissions in a given area. The Interference Limiting standards were initially determined analytically from basic principles of physics. It was found that a relatively simple model could be implemented to provide the ability to adapt to any given density of aircraft and any percentage that are TCAS equipped. Subsequently, the interference limiting design was assessed by a large interference simulation of the 1030/1090 MHz bands. This simulation study was conducted by the Electromagnetic Compatibility Analysis Center (ECAC), making use of their experience in assessing many other similar interference issues. The simulation included a large number of aircraft, each with a given flight path, acting together with a large number of ground-based interrogators, with power levels, beamwidths, and other characteristics relating to operating conditions predicted for the 1995 timeframe. Two main conclusions resulted from this study. One was that the 2 percent interference allocation for TCAS was not exceeded. The other was that radio transmissions attributable to TCAS were completely insignificant in their effects on the performance of the ground-based ATCRBS equipment. As a result of this analysis and testing, the FAA concluded that there will not be a frequency interference problem.

One manufacturer submitted the following comments not previously addressed.

Comment: Equipment designs tested to date have not represented production TCAS II equipment. Representative equipment must be tested so that its acceptability in service can be assessed. Logic included in equipment tested, or to be tested (LIP), does not include corrective logic for "Altitude Crossover" or "TCAS-Invalid" deficiencies.

FAA response: The FAA will conduct flight tests of production units to validate the corrective logic.

Comment: Display requirements for "Glass Cockpits" will not be defined before mid-1988.

FAA response: The FAA defined and issued display requirements for "Glass Cockpits" in an advisory circular (AC) entitled *Airworthiness and Operational Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders*, AC No. 20-131, October 3, 1988.

Comment: Certification requirements, analysis, simulation, and flight test are not adequately defined, nor is a flight criticality level for TCAS II certification specified.

FAA response: As previously mentioned, AC No. 20-131 was published on October 3, 1988. It proposes acceptable certification criteria. The TCAS II system must be certified to the essential level, and the software programs to level 2 of RTCA DO-178A.

Comment: Certification requirements for compliance with foreign regulatory agency requirements for TCAS deactivation are unknown.

FAA response: There is a possibility that a foreign government may request a U.S. TCAS-equipped airplane to deactivate the TCAS system, which is provided for in the TCAS equipment standards. Section 91.1 of the FAR's provides for compliance with the foreign government regulatory requirements.

Comment: Certification requirements for U.S. carriers with airplanes dedicated to service abroad, such as Pan Am, are unknown.

FAA response: Public Law 100-223 requires installation "on each civil aircraft which has a maximum passenger capacity of more than 30 seats and which is used to provide air transportation of passengers. . . ." An air carrier operator who experiences hardship due to this regulation may petition for an exemption under section 601 of the FA Act of 1958.

Comment: The means of providing integrated TA's and RA's on older airplanes without color weather radar displays has not been economically addressed.

FAA response: The FAA minimum requirements specified in the TSO will require only a minimum of a three-target display. Any display beyond this minimum will be evaluated at the time of certification.

Comment: Required crew response to TA's and RA's should be specified. For TCAS to be effective, a standard mandatory response is necessary.

FAA response: The FAA does not believe that a mandatory response to TA's or RA's is necessary or appropriate. The AC for TCAS II certification and operation [AC No. 20-131; October 3, 1988] addresses crew training objectives.

Mode C

Five commenters addressed the issue of using Mode C. Generally, the respondents expressed the opinion that Part 125 aircraft should be allowed to use Mode C as an alternative to the TCAS II system, as the TCAS equipment costs would be prohibitive for such a class of operator. As previously mentioned, if the Part 125 operator's aircraft is configured for 30 passenger seats or less, then that aircraft is exempt from the TCAS requirement.

ICAO/PART 129 Foreign Carriers

The majority of comments mentioning ICAO (15) suggest that the FAA should coordinate TCAS implementation with Standards and Recommended Practices (SARPS) for international standardization. A standard for an ACAS generated by ICAO is especially important to foreign carriers. The FAA is actively participating with various ICAO technical groups through SICASP in an effort to generate this standard. The SICASP group will have been provided all FAA data concerning TCAS.

Of the comments addressing only the issue of TCAS implementation in Part 129 aircraft, two are against, two are for, and three request additional time to comply. Public law 100-223 did not exempt foreign air carrier operations, within U.S. airspace, from TCAS II requirements. The Congressional finding states that public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States. However, the FAA is extending the compliance time from 5 to 6 years for airplanes with 10 to 30 seats. These operators may elect to install TCAS I, II, or III. If they install a TCAS II or III unit, it must be compatible with TSO C-119.

Foreign air carrier aircraft with more than 30 passenger seats will be required to have installed and operating a TCAS II system, compatible with TSO C-119, when operating in the United States after December 30, 1991.

Upgrade TCAS II to TCAS III

In responding to the issue of upgrading TCAS II to TCAS III, most comments addressed the need for clarification. The respondents stated that the implied requirement for upgrading was questionable and should be more definitive. The upgrading has the support of one manufacturer, and another is supportive of the idea to require that TCAS III include the same operational criteria that will be used for TCAS II. One manufacturer stated that the "incentive to provide TCAS III growth is too vague to justify economic commitments."

Although the FAA has not required or proposed a compliance date for TCAS III, it will continue to develop, test, and evaluate TCAS III and provide data and technical support to RTCA for development of a TCAS III MOPS. Although the FAA may support a particular design for testing, it is more

important that it fosters the development of the MOPS. The FAA continues to support a LIP for TCAS III.

Other than the air-to-air coordination logic, the manufacturer has freedom of design of the TCAS systems. The FAA agrees with the commenter who expressed concerns regarding the interoperability of TCAS II and III. The TCAS II design shall not preclude the upgradeability to, nor the interoperability of, TCAS II and III. This rule does not mandate a TCAS III system. New rulemaking would have to be initiated for the requirement of TCAS III.

Training

Eight commenters were evenly divided concerning the need for standardized training prior to TCAS II implementation. Those who favor training requirements want training to focus on end-level performance, and do not believe that a specific technique is important. Training should focus also on difficulties involving the upgrade from TCAS II to TCAS III. The FAA intended the training requirements proposed in the NPRM to be training objectives, and the training program may not necessarily be limited to the proposed items. The training items, as proposed, appear in AC No. 20–131 dated October 3, 1988. The AC prescribes a means, but not the only means, of complying with the regulatory requirements.

Advisory Circular

Five commenters addressed the need to publish AC's regarding the TCAS system. Domestic industries that responded to this issue requested that such a circular be published 24 months in advance of the rule adoption. The FAA published AC No. 20–131 on October 3, 1988, to provide guidance for the installation and operational approval of TCAS III.

Product Liability

Several commenters, some foreign, addressed the issue of product liability. The commenters suggested that, as a result of the FAA's requirement to install a system designed and developed by the FAA, the Government will be subject to product liability claims for use of TCAS equipment. Some commenters further requested that the FAA voluntarily indemnify the regulated operators from such liability.

The FAA considers the TCAS requirement similar to other operating requirements involving the use of certain equipment, and the agency does not consider it necessary or beneficial to make any special provision for liability claims against the Government or regulated operators.

Applicability

Thirty-six commenters addressed this issue. Four of the comments were sent by private individuals, nine were sent by foreign agencies, and the remainder were submitted by domestic (U.S.) industries. The primary concern expressed was that TCAS I should be required for Part 135 operators, but not TCAS II. Many commenters expressed the opinion that there is no justification for the use of the TCAS system over other collision avoidance systems. As previously stated, the FAA relaxed the TCAS requirement and compliance times proposed in the NPRM for Part 135 operators. Additionally, the FAA will evaluate passive/active TCAS I systems.

Foreign operators stated that it was necessary to continue to allow ATCRBS to be used, due to the cost of installing and operating Mode S, and that the installation of the TCAS system should be limited to new U.S.-registered aircraft. Many comments addressed the need for uniform installation of the TCAS system, and a few respondents expressed the opinion that Mode C should be mandatory in all aircraft.

The FAA addressed the Mode C requirement in another rulemaking action, "Transponders With Automatic Altitude Reporting Capability Requirement," Amendment No. 91–203 (53 FR 23356; June 21, 1988). Mode S is a necessary component of TCAS II. The Mode S air-to-air data link provides TCAS II with the coordination procedures necessary for the proper RA in a TCAS to TCAS conflict. The TCAS I does not require a Mode S transponder to be installed.

The introduction of TCAS I and II is expected to reduce substantially the threat of midair collision. To equip only new U.S.-registered aircraft would be inconsistent with the requirements of Pub. L. 100–223 and would delay the benefits of a TCAS program. A high degree of protection can be realized for those operators with the expanded requirement for Mode C in general aviation aircraft and TCAS II in air carrier aircraft. Concerns were raised about the size, weight, and interfacing of the new equipment, and some comments cited the need to test representative equipment to assess its service acceptability. Some commenters stated that the display of aircraft was an essential component in the Minimum Equipment List (MEL). The FAA promulgates minimum standards and evaluates manufacturers' designs to those standards. Size, weight, and interface are market place decisions. Service acceptability will be assessed in that the system is compatible with other TCAS designs with respect to coordination logic and human factor considerations. The FAA evaluates the display systems for minimum requirements and functional compatibility during the certification evaluation in the aircraft.

Nine commenters expressed concerns relative to Part 125 aircraft. Four of these respondents stated that Part 125 aircraft should be exempt from the rule or be allowed to maintain the existing ATCRBS system requirements. The Congressional mandate covers all commercial aircraft with passenger seating configuration of more than 30 seats. With respect to aircraft with 30 seats or less, the FAA agrees with the comments. Under the rule adopted, those aircraft operating under the provisions of Part 125 in nonrevenue passenger service, with passenger seat configuration of 30 seats or less, will not be required to have a TCAS system installed.

Include All Aviation

Fifteen commenters stated that the only way to ensure maximum effectiveness of the proposed TCAS system is to extend the requirement to include Part 125, Part 129, Part 135, and military aviation aircraft. The final rule does include aircraft operating under these parts to varying degrees, but it does not apply to military aircraft. However, the U.S. Navy is studying the feasibility of using TCAS I on military trainers, and the FAA is cooperating with the Navy to pursue certification of a passive/active system for the Navy T–34C trainer aircraft.

One commenter questioned whether the rule is to apply to air cargo carriers. The Part 121 rule specifically addresses aircraft with passenger configuration of more than 30 seats. However, if there is a split cargo/passenger aircraft with more than 30 seats, the airplane must have a TCAS II installed; 10 to 30 seats, the airplane must have at least a TCAS I installed. However, the FAA will not require installation of a TCAS on a large combination cargo/passenger airplane simply because of the capability for increasing passenger capacity, if the aircraft is not operated with 10 or more passenger seats.

One commenter suggested issuing a supplemental NPRM that airworthiness regulations be amended to require TCAS and to adjust the requirement of Section 25.1309 to recognize the value of TCAS in reducing overall risk. The FAA does not believe this is necessary in that

all Part 25 aircraft are not required to have TCAS II installed according to the operating rules.

FAA Responsibility

Several comments received expressed a desire that configuration of the Collision Avoidance System (CAS) software be the responsibility of the FAA. The FAA does control the configuration of the CAS logic software by requirements in the TSO and subsequent installation approval. To change the software of the CAS logic would require the TSO holder to apply to the FAA for approval of a major change to the original approved design data. Deviations (major changes) to TSO's are only approved by the Aircraft Engineering Division of the Office of Airworthiness in Washington, DC.

Pilot Immunity for TCAS

There are several commenters who desire the FAA to grant blanket immunity to pilots for following or failing to follow an RA from the TCAS. The FAA cannot support this proposal from the industry for the following reasons:

(a) The pilot will always be ultimately responsible for his/her actions and must be held accountable for them. In the case of TCAS, there is no doubt that there may be instances where the pilot will be "off-altitude" in response to a TCAS-generated RA, and may indeed be involved in a near midair collision or an actual collision. During the review process of the incident, as in all incidents, all factors will be considered, including the factors that are TCAS related, and a determination made. This is the only position that the FAA can take on this matter and it must be made clear to all operators of TCAS.

(b) The FAA has never granted blanket immunity to flightcrews for any operation regardless of the criticality of that operation. There is no legal precedent for granting such broad relief from responsibility. Section 91.3 of the FAR states, "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." Introducing TCAS into the National Airspace System does nothing to change this regulation.

Every consideration will be given to the flightcrew in the review process for TCAS-related incidents. All factors will be thoroughly reviewed and determination made as to responsibility.

Aviation Trust Fund

One commenter expressed the opinion that the FAA would be well advised to use the Aviation Trust Fund to upgrade and improve the existing ATC system. This comment is outside the scope of this NPRM.

Economic Considerations

Of the 32 comments received mentioning economic considerations, only two respondents, both elected government representatives, were of the opinion that the cost involved is minimal. Most commented that the economic impact is not adequately addressed. Specific concerns voiced include those from small operators who believe they will be forced out of business, and large airlines who believe that the upgrade from TCAS II to TCAS III will be costly. As previously mentioned, the FAA relaxed the time for compliance for airplanes having a seating capacity of 10 to 30 passenger seats. This change will definitely reduce the economic impact on small operators. Four commenters proposed less costly alternate systems to TCAS.

In the NPRM the FAA agreed to consider passive versus active TCAS I systems as long as the applicant can demonstrate that the passive system provides the equivalent level of safety as active TCAS I. To date, the FAA has received no valid data to show that a passive TCAS I can meet the safety intent of the rule, so this final action assumes an active TCAS I. If passive TCAS I can be demonstrated to meet the rule, than the FAA would be amenable to follow-on regulatory action to allow its use.

The FAA does not expect to mandate TCAS III at this time. The economic considerations for TCAS II are discussed in the regulatory impact analysis summary.

Other Comments Not Previously Addressed

One manufacturer suggested new standards for automatic altitude reporting be required similar to an ATA petition dated March 25, 1986. Although the FAA would have to agree that reduced altitude error does increase the accuracy of the projected flight path of the intruder aircraft during TCAS tracking, the safety analysis done on the current altitude encoder errors would conclude safe TCAS operation.

One commenter was concerned that there was no data on the performance characteristics of TCAS II in high wing with engines mounted on the wing. The FAA does not have any information or data that indicates there will be any adverse effect of TCAS operation on these aircraft. However, the FAA will conduct in-service evaluations in such aircraft to obtain system performance and aircraft performance information.

One commenter, James Pope, was critical of the FAA's TCAS program and supported an ACAS unit not dependent on radar transponders. Pope alleged that 770 lives have been lost in ACAS-preventable midair collisions during the development of TCAS. This commenter asserts that NPRM 87-8 must be promptly withdrawn and immediate action taken by FAA to certify the proven and ready-to-go ACAS.

This commenter has previously made these same allegations to the FAA which were subsequently investigated on two occasions by the General Accounting Office and found to be without basis. The FAA believes that it has previously provided detailed answers to the commenter's allegations, and does not believe it is necessary to give an indepth analysis here. Anyone wishing a copy of the investigative reports can contact the person identified under the section, "**FOR FURTHER INFORMATION CONTACT.**"

Discussion of Rule

The FAA currently operates a complex network of facilities and subsystems designed to ensure the safe and efficient operation of the National Airspace System (NAS). Operations within the NAS and its many components are governed by an array of Federal Aviation Regulations (FAR) and procedures. Consequently, a wide variety of facilities and services are available. Nevertheless, the primary function of separating aircraft is predicated on the fundamental concepts of ground-based control and the see-and-avoid responsibility of the flightcrew.

Under the see-and-avoid concept, the level of safety is related to the ability of pilots, individually and collectively, to detect and avoid encounters with other aircraft. Although common sense and the FAR require continuous adherence to the principles of see-and-avoid, the concept does have limitations. The pilot's ability to acquire aircraft visually on collision courses is reduced under heavy workload conditions, in areas of high traffic densities, and when the aircraft is in conditions of poor visibility.

The second fundamental concept upon which the separation of aircraft is predicated is ground-based control. Through the issuance of instructions, clearances, and advisories, air traffic controllers ensure that prescribed separation standards are applied between aircraft. Since these instructions are based on known and projected flight information, this system does not rely totally on the pilot's ability

to acquire traffic visually to achieve acceptable levels of safety. In some segments of the NAS, such as terminal control areas, positive control is exercised, and operations in such airspace are conducted under ATC instructions. A terminal radar service area is an example of upgrading of the see-and-avoid concept and represents a complex control environment, since both controlled and uncontrolled aircraft are operating in the area. The overall collision avoidance system design must address the unique problems of such a mixed traffic environment.

The FAA's approach to TCAS is to encourage the development of a family of onboard collision avoidance systems, to demonstrate the operational and technical feasibility of the concept, and to support the development of national/international standards for the equipment. A principal objective of the TCAS approach is to provide a range of collision avoidance equipment alternatives for the full spectrum of airspace users ranging from small airplanes to large transport category airplane. The TCAS Program consists of the following three program elements: TCAS I, which provides only TA's; TCAS II, which provides TA's and RA's in the vertical plane only; and TCAS III, which provides TA's and RA's in both the vertical and the horizontal planes.

On December 30, 1987, the President of the United States signed Pub. L. 100-223 which among other provisions, amended the FA Act of 1958, Section 601, by adding a new paragraph (f) entitled "Collision Avoidance Systems." This new section requires TCAS II on "each civil aircraft which has a maximum passenger capacity of more than 30 seats and which is used to provide air transportation of passengers, including intrastate air transportation of passengers." The amendment does not provide for the exception of any class of civil operation or operator, U.S. or foreign, from the basic rule.

The rule adopted provides for the installation of appropriate TCAS units on airplanes used in commercial air carrier, selected air taxi/commuter operations, and on airplanes used by foreign carriers flying in the U.S. airspace. The categories of commercial aircraft for which TCAS I or II will be required are based on the provisions of Pub. L 100-223 and on the relative speed of the aircraft, the size of the aircraft, and the number of passengers per aircraft who would benefit from TCAS installation.

Aircraft operating exclusively under Part 91, General Operating and Flight Rules, are not required to have installed any TCAS equipment. However, if an operator or owner elects to install a TCAS unit, the system must be FAA approved and operated according to FAA prescribed procedures. The TCAS system installed must be shown to operate in the ATC system and in coordination with other FAA approved active TCAS systems.

Part 135 commuter and air taxi operators of turbine powered airplanes with 10 to 30 passenger seats will be required to install a TCAS I system to provide TA's from other transponder-equipped aircraft. These advisories should give bearing and distance from the TCAS-equipped airplane in the case where the other aircraft have only a Mode A transponder (no altitude reporting). If the intruder aircraft is Mode C- or Mode S-equipped, the TCAS I unit should also display altitude, which provides the pilot a sector both in the vertical as well as the horizontal plane to look for the threat aircraft. TCAS I, although not providing an RA, does provide sufficient alerting time for the pilot to visually acquire the threat aircraft and take evasive action if necessary. Although the RTCA MOPS has been approved for TCAS I, no system has been built to date. The FAA believes that development of collision avoidance equipment that can meet the TCAS I MOPS is well within the state of the art for equipment manufacturers and that adequate quantities to supply the commuter/air taxi fleet can be manufactured and installed during the time period prescribed.

Part 135 operators of 10 to 30 passenger seat turbine powered airplanes are required to have installed a TCAS I within 6 years after the effective date of the rule. Installation of TCAS I does not require the installation of a Mode S transponder.

Part 121 and 125 operators of large airplanes of more than 30 seats are required to have TCAS II and Mode S installed and operating by December 30, 1991. These operators may wish to upgrade to TCAS III units when they become available. Much research is necessary to develop TCAS III to the point that it can be type certificated. The ability to produce operational TCAS III units is many years away.

Part 129 foreign air carrier operators of turbine powered airplanes with passenger seating configurations of 10 to 30 are required to have installed and operating a TCAS I when operating in U.S. airspace 6 years after the effective date of this rule. Foreign air carrier operators of airplanes with more than 30 passenger seats are required to have installed and operating a TCAS II and Mode S transponder when operating in U.S. airspace after December 30, 1991. The FAA believes that this final rule will encourage affected foreign airplane operators, and their airworthiness authorities, to become familiar with the associated TSO's and RTCA documents that form the basis of approval and manufacture of a TCAS approved by the FAA. The TCAS systems approved by foreign airworthiness authorities must be compatible with and perform with the FAA-approved TCAS, transponders, and ATC system when operating in United States airspace.

Where the rules require a TCAS I or II unit, the intended minimum TCAS units are those complying with the requirements of TSO C-118 and TSO C-119 as appropriate, with the exception of Part 129 foreign air carrier operators. Where the rule specifies an approved TCAS, the installer may elect TCAS I, II, or III. Where the rule requires a TCAS II, the installer may elect TCAS II or III. There is no requirement, at this time, for the installation of a TCAS III system. The TCAS III system is being developed to enhance the basic TCAS II system by providing a more accurate surveillance capability and alternative escape maneuver selection in the horizontal plane. The FAA can envision that some operators may want to update their TCAS II units to TCAS III when available. The required TCAS III system design as will be defined in the applicable TSO and MOPS will permit the upgrading of a TCAS II unit to a TCAS III. In the applicable standards for TCAS II, whenever a choice exists between TCAS II and TCAS III elements (i.e., antenna, etc.), the TCAS III element will be specified in the TSO and MOPS. The FAA is committed to support the development of TCAS III. Any rulemaking concerning mandatory use of TCAS III will be handled separately from this rulemaking.

Flight Manual Requirements and Operational Approval

Where the rule requires TCAS to be used in air carrier service, operational approval must be obtained from the FAA at the time that certification (TC or STC) application is made. The applicant must submit for approval flight crew qualification, training program, and TCAS inoperative items to be included in the appropriate Master Minimum Equipment List.

Technical Standard Order

The RTCA Special Committee SC-147 has developed RTCA Document DO-197, Minimum Operational Performance Standards (MOPS) for An Active Traffic Alert and Collision Avoidance System I (Active TCAS I). This document forms

the basis of a TSO that will permit the active TCAS I to be manufactured under the TSO approval system.

The RTCA Document DO-185, Volume I and II, Changes 1 thru 5, *Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment* and FAA Report No. DOT/FAA/SA-88/3, *Required Modifications to the Traffic Alert and Collision Avoidance System (TCAS II) Minimum Operational Performance Standards (MOPS)* set forth standards for TCAS II equipment. These documents will also form the basis of a TSO to permit manufacturing under the TSO approval system. The TCAS III MOPS will be a new RTCA document separate from DO-185 but will identify a system functionally compatible and interchangeable with TCAS II. The three TCAS systems I, II, and III will be identified under the TSO system by different TSO numbers. Concurrent with the publication of this rule, the FAA is publishing TCAS I and TCAS II TSO's defining the minimum standards for such units.

While FAA research, to date, has focused on an active TCAS I, it has been suggested by some people that a passive (listen only) device may be able to meet the same objective intended by the active TCAS I units. While this regulatory action on a TCAS I TSO presupposes an active TCAS I, the FAA wishes to go on record as not being opposed to a passive TCAS I, as long as it meets the same safety objectives of DO-197.

TCAS Training Requirements

The introduction of TCAS into revenue service need have little impact on the existing regulations regarding required crew training, and therefore should not require a change to the existing training requirements. As specified in § 121.401, a Part 121 certificate holder is required to establish, obtain the appropriate initial and final approval of, and provide a training program that meets the requirements of Part 121, Subpart N, and insure that each crewmember is adequately trained to perform his/her assigned duties. Section 121.401 will have the effect of requiring training on TCAS. Section 121.415(g) requires that each crewmember qualify in any new equipment, including modifications to airplanes. Section 121.407(a)(3) requires that each airplane simulator and other training device be modified to conform with any modification to the airplane being simulated.

The pilot training program for TCAS should provide the flightcrew the necessary knowledge, skills, and abilities to safely conduct TCAS operations.

Regulatory Impact Analysis Summary

Introduction

This section summarizes the cost impact and benefit assessment of the final rule to amend Parts 1, 91, 121, 125, 129, and 135 of the Federal Aviation Regulations (FAR) to require the installation and use of a Traffic Alert and Collision Avoidance Systems (TCAS) in large transport airplanes and certain turbine-powered smaller airplanes. TCAS II, which utilizes a signal from existing transponders equipped with altitude encoding capability, provides collision avoidance guidance in the airplane independent of the ground Air Traffic Control (ATC) system. These amendments also require that all operators of TCAS-equipped airplanes have an FAA-approved training program for flight crewmembers. Finally, this rule requires that certain small aircraft be equipped with TCAS I, a simpler system providing collision alert warning but no flight guidance. The amendments are in response to legislation that mandates the FAA to require the installation and operation of TCAS in certain commercial airplanes flying in the United States.

These amendments stem from a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 26, 1987. Comments on the proposal were submitted by individuals, foreign and domestic air carriers, air carrier and airplane pilot associations, foreign and domestic Government agencies, research and consultant organizations, avionics manufacturers, and the National Transportation Safety Board. Approximately half of the 70 respondents expressed support of the proposed rule to require TCAS. The remaining respondents, however, opposed certain proposed requirements and disagreed with the economic impact estimates presented in the preliminary regulatory analysis. The FAA has evaluated the public comments and made a final determination regarding their impact. The comments have caused the FAA to revise its estimates of economc impacts and increase compliance costs. The final rule amendments to Parts 121, 125, and 129 require that after December 30, 1991, no person may operate a large airplane that has a passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with an approved TCAS II and the appropriate class of Mode S transponder.

A substantial change in the final rule is the elimination of the requirement contained in the notice that airplanes operated under 14 CFR Parts 125, 129, and 135 having a passenger seating configuration of 20 to 30 seats be equipped with TCAS II. The final rule, therefore, requires that turbine-powered airplanes operated under Parts 129 and 135 having a passenger seating configuration of 10 to 30 seats, excluding pilot seats, be equipped with TCAS I under a longer than normal compliance period.

Cost-Benefit Analysis

Executive Order 12291 of February 17, 1981, requires that to the extent permitted by law, regulatory action not be taken unless the potential benefits to society for the regulation outweigh potential societal costs. This determination is normally made on the basis of a regulatory evaluation. In this case, however, the Congress may be said to have already determined that this final rule is in the public interest; that is, its collective public benefits outweigh its costs to the public, because Congress has required the rule be promulgated (The Airport and Airway Safety and Capacity Expansion Act of 1987: Pub. L. 100-223). Nevertheless, the FAA has prepared this conventional regulatory evaluation of the rule. The purpose of this evaluation is not to justify taking this rulemaking action (which has already been done through congressional action), but to estimate dollar costs and benefits to promote understanding of the impact of the rule.

Costs

The FAA finds that the revisions to Parts 1 and 91 will have no cost impact. The amendments, however, to Parts 121, 125, 129, and 135 will cause affected certificate holders to incur costs.

The FAA recognizes that there will be costs associated with the amendments to Part 129. These costs are likely to be similar to those incurred by affected Parts 121 and 135 certificate holders, but have not been quantified because the burden of compliance will not be directly borne by any sector of U.S. society.

The methods and assumptions used in this analysis to prepare the final cost and benefit estimates for the revisions to Parts 121, 125, and 135 have been developed by the FAA. Data used to develop cost estimates at the NPRM stage of rulemaking were obtained from manufacturers, air carriers, avionics repair facilities, and industry trade associations. The FAA has updated this information and conducted additional

research to respond to the comments concerning the economic impact estimates of various proposals. The information obtained has been used to formulate the final cost estimates of the rule. The cost and benefits calculated for the final rule are projected over the estimated 15-year life cycle of TCAS equipment. Therefore, this analysis compares the costs and benefits of TCAS II equipment for Parts 121 and 125 over a 15-year period of 1989 to 2003. To allow sufficient time for the development and certification, this rule does not require the use of TCAS I until 1996. Accordingly, to reflect the longer than normal compliance period, the analysis for Part 135 has been extended over the 15-year period of 1993 to 2007.

New § 121.356 will have an economic impact on the 3,365 existing airplanes expected to be in service in 1989 and 3,100 airplanes expected to be manufactured between 1989 and 2003 because these airplanes will be required to be equipped with a TCAS II system. The estimated cost of this requirement is $806.3 million in 1987 dollars and $543.0 million at a present worth discount rate of 10 percent over the 15-year period of 1989 to 2003.

The amendments to Part 121 will also require that air carriers develop and implement an FAA-approved TCAS II training program for their captains and first officers. The training program will require that air carriers install approved TCAS II aerodynamic data programs in their flight simulators and provide an additional one and a half hours of classroom instruction during initial training for their existing and newly-hired flightcrews. As part of the classroom instruction, certificate holders will be required to use a real time interactive device to complete transfer of system knowledge from the classroom to the cockpit. The estimated cost of modifying the 150 flight simulators currently in use by Part 121 certificate holders is $2.2 million in 1987 dollars and $2.0 million discounted at a present worth rate of 10 percent in the first year the rule is in effect. The cost of acquiring the small computers to be used as interactive training devices to transfer and reinforce classroom instruction is estimated to be $462 thousand in 1987 and $420 thousand discounted the first year the rule is in effect.

The estimated cost of requiring captains and first officers of the 149 affected Part 121 certificate holders to undergo additional classroom training is $24.5 million and $13.7 million discounted over the projected time period. Finally, the onetime cost of developing an FAA-approved TCAS II training program is estimated to be $3.7 million in 1987 dollars and $3.4 million discounted at a rate of 10 percent in the first year the rule is in effect. This analysis indicates that the total cost of compliance to Part 121 certificate holders with the equipment acquisition, installation, maintenance, and flight crewmember training requirements contained in this rule is estimated to have a present value of $562.5 million over the 15-year period of 1989 to 2003.

The addition of § 125.224 will require that airplanes with a passenger seating configuration, excluding any pilot seats, of more than 30 seats be equipped with TCAS II. The estimated cost of equipping the 22 airplanes now operating under the rule of Part 125 is $2.5 million in 1987 dollars and $2.3 over the 15-year period of 1989 to 2003.

The amendments to Part 135 will require that all turbine powered airplanes with 10 to 30 passenger seats be equipped with TCAS I. In addition, the rule will require that all operators of TCAS I equipped airplanes have an FAA-approved TCAS I training program for flight crewmembers.

The estimated cost of equipping 2,772 airplanes with TCAS I units is $34.1 million in 1987 dollars and $14.7 million discounted over the 15-year projected service life of the equipment of 1994 to 2008. The estimated cost of requiring the flightcrews of affected air taxi and commuter operators to undergo additional classroom training during the initial phase of flight training is $1.3 million in 1987 dollars and $0.7 million at a 10 percent present worth rate. Finally, affected Part 135 operators required to have an FAA-approved training program will incur a one-time cost estimated to be $1.0 million in 1987 dollars and $.9 million discounted at 10 percent the first year the rule is in effect. On the basis of the above, the aggregate impact of these amendments on affected air taxi and commuters is $36.5 million in 1987 dollars and $16 million when discounted at 10 percent over the 15-year period of 1993 to 2007.

Benefits

The TCAS rule is expected to provide potential benefits primarily in the form of improved safety to the aviation community and flying public. Such safety, for example, will take the form of reduced casualty losses (namely, fatalities and property damages) as the result of a lowered likelihood of midair collisions.

In general terms, the benefits of an effective airborne traffic alert and collision avoidance system in reducing the risk of midair collisions system in reducing the risk of midair collisions have been obvious for many years. As air traffic continues to increase and concentrate at terminal areas, the growing consensus of both the general public and most aviation professionals is that such a system would be a valuable safety addition. In 1987, Congress determined that requiring TCAS II in most large aircraft is in the public interest. Although experienced airspace system operators also agree that the system would be beneficial, accurately quantifying benefits is difficult because (fortunately) there have been few actual Part 121 midair collisions in recent years. At the time of the notice, the FAA developed a mathematical model to assess the increase in collision risk that would result from the projected growth in aviation traffic activity. The FAA used a "square law model" to forecast that four midair collisions involving a large airplane and 24 midair collisions of taxi and commuter airplanes would occur if no additional safety measures were taken to offset the affects of traffic growth. Since that time, the FAA has analyzed the issue further, and has concluded that although the "square law model" is simple to apply and yields specific results, the air traffic control system is too complex for the model to be expected to provide reasonably accurate results. For this reason, the FAA has changed the basis of its benefits analysis for the final rule. The fact is, that given the very few midair collisions involving large aircraft that have occurred in recent years, and given the air traffic control improvements that have occurred and will occur shortly (such as new Mode C requirements), it is not possible to reasonably forecast specific numbers of future midair collisions. Also, the FAA is unable to allocate specific numbers of future midair collisions that will be avoided in the future between the new Mode C requirements and this TCAS rule. Instead of attempting to do this, the FAA has chosen to estimate a range of midair collisions that may occur. Currently, the stage is set for a midair collision only when one or both pilots of two aircraft make a mistake *and* the ATC system fails *and* TCAS fails. In the enroute system, TCAS plays a somewhat stronger role where ATC radar coverage does not exist.

The above factors tend to reduce the number of future midair collisions. On the other hand, steadily increasing traffic levels tend to increase the risk. In an attempt to estimate the range of midair collisions within which the actual number of future midair collisions of large aircraft will fall, the FAA

employed a Poisson distribution. Based on a history of two collisions in the recent past, the Poisson distribution indicates that there is a 60 percent probability two or more collisions in the future forecast period, and a 95 percent probability that the number will not exceed seven. The FAA believes that the range of two to seven is a reasonable expectation of the number of midair collisions involving a large aircraft during the next 15 years. In monetary terms, over the subject time period, this rule is expected to accrue potential benefits ranging between $207 million and $724 million (discounted, in 1987 dollars).

A similar analysis of the number of Part 135 midair collisions that may be avoided through TCAS I yields a range of 4 to 14 during the 15-year analysis period. Based on the moderate cost of TCAS I, this part of the rule is cost-beneficial throughout the range of potential midair collisions avoided. For example, in monetary terms, over the subject time period, this rule is expected to accrue potential benefits ranging between $27 million and $97 million (discounted, in 1987 dollars), compared to costs of $18 million (which included $2 million for the Mode C rule).

In view of the aforementioned discussion on benefits for Parts 121 (including Part 125) and 135, the FAA believes that a share of the potential benefits expected to accure from implementation of this rule must be attributed to the Mode C rule, though to what extent is not known. This situation is due to the belief that the benefits of the TCAS and Mode C rules are inextricably linked.

Comparison of Parts 121 and 135 Costs and Benefits

Addressing only 14 CFR Parts 121 and 135 costs and benefits of this TCAS rule, the cost of compliance is estimated to be $563 million and $18 million, respectively (discounted) in 1987 dollars. The benefits of this rule, however, are difficult to quantify for two reasons. The first is associated with the uncertainty of estimating the number of midair collisions that will occur in the future absent any improvements in the airspace system over and above what currently exists. This difficulty has already been discussed at length in the detailed regulatory evaluation and the FAA has chosen to consider ranges of 2 to 7 and 4 to 14 collisions involving Parts 121 and 135 operators, respectively, may occur in the forecast period.

The second reason benefits are difficult to forecast accurately is that at about the same time this rule becomes effective a separate rule will become effective expanding Mode C requirements. Both rules are aimed at reducing the risk of midair collisions and are inextricably linked. The FAA is unable at this time to document the separate impacts of these two rules in reducing the risk.

The FAA made an earlier estimate of the dollar value benefits associated with avoiding future midair collisions as part of its evaluation of the Mode C rule. That estimate was significantly lower than the updated estimate prepared for this rule. The difference is only partly explained by the fact that the Mode C rule estimate was for a 10-year period while the estimate for this rule covers a 15-year period into the future (to allow for the relatively long periods before compliance is required).

Both evaluations used a Poisson distribution model as a basis to estimate the number of future midair collisions that might be expected in the absence of any further airspace system improvements to prevent them. In the Mode C analysis, the FAA very conservatively accepted the low side of the distribution (two accidents) in calculating benefits. However, based on the belief that U.S. commercial aircraft operations are forecast to more than double during the analysis period, the FAA now believes that a better approach is to analyze a range of values.

In view of the difficulties discussed above, the FAA believes that the most realistic approach to comparing benefits and costs is to compare the total Part 121 costs of the TCAS rule plus the Mode C rule with the full estimated range of possible Part 121 benefits. In a similar manner, total Part 135 TCAS rule plus Mode C rule are compared to the total range of Part 135 benefits.

In the case of Part 121 operator, the cost of the Mode C rule is negligible because virtually all Part 121 aircraft are already in compliance with the rule. Table 1 shows the cost of saving one life through the range of estimated Part 121 midair collisions. As indicated in the table, these cost-per-life-saved figures are based on an estimated total Part 121 TCAS cost of $563 million and no attempt was made to allocate some benefits to the Mode C rule. (A similar exercise can be performed for Part 135 from Table 1.)

TABLE 1.—ESTIMATED TCAS II (PART 121) AND TCAS I (PART 135) COST OF SAVING LIVES

[1987 dollars]

Range of potential midair collisions		Estimated discounted benefits (TCAS plus Mode C rules) ($ millions)		Estimated cost of saving one life in ($ thousands)	
Part 121	Part 135	Part 121	Part 135	Part 121	Part 135
7	14	$724	$97	$710	$0
6	12	621	83	880	20
5	10	517	69	1,120	70
4	8	414	55	1,480	120
3	6	310	42	2,080	290
2	4	207	27	3,280	550
1	2	103	14	6,830	1,360

The FAA concludes that this TCAS rule is warranted because it will contribute to an overall enhancement of transport and commuter categories airplane safety and utility which will both promote and enhance public confidence in, and utilization of, the U.S. air transportation system. Although the FAA has not yet quantified the value of public confidence in air transportation, it believes there is a very real cost to the system when public confidence is reduced through media coverage of each major midair collision tragedy. The fragility of public confidence is difficult to quantify, but the potential benefits in this regard stemming from avoidance of a major midair collision is very real and substantial. For example, the near-to-midair term loss of passenger bookings following the publicity of a midair collision is readily acknowledged within the industry. Even a special Government safety review of a particular air carrier

can have a temporary adverse impact on yields. The qualitative nature of this consideration does not render it less significant as a factor in determining to proceed with the TCAS rulemaking action.

The Regulatory Impact Analysis that has been placed in the docket contains detailed information related to the potential costs and benefits of those amendments to Parts 121, 125, and 135 that are expected to accrue from implementation of this rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of rules to assess their impact on small business. In consideration of the cost information discussion under the Regulatory Impact Analysis, the FAA concludes that these amendments to Parts 121, 125, and 135 will have a significant economic impact on a substantial number of small entities. However, the FAA finds that there are no viable alternatives for small air carriers to adopt that will reduce the cost of compliance yet achieve the levels of protection sought by these amendments. It can be pointed out, however, that the majority of small entities affected by this rule are Part 135 operators (small air taxis and small commuters). These small businesses will have 6 years to comply with this rule (as opposed to 3 years for Parts 121 and 125 operators). The average total cost impact of this rule on a small air taxi operator or small commuter for TCAS I units is estimated at $36,000 (or $4,700 annualized) and $76,000 (or $10,000 annualized), respectively, over the 15-year period 1989 to 2003. For Parts 121 and 125 operators, the average total cost for TCAS II units is estimated to be $734,000 (or $96,000 annualized) over the 15-year period.

International Trade Impact Statement

These amendments will have little or no impact on trade opportunities of U.S. firms doing business overseas or for foreign firms doing business in the United States. These rules will impose the same requirements on both domestic operators under Parts 121, 125, and 135 of the FAR and foreign air carriers subject to Part 129. The cost of compliance with these rule amendments to foreign carriers flying into the United States under Part 129 is likely to be very similar to the cost incurred by domestic operators. Thus, neither domestic nor foreign air carriers will be affected disproportionately by these amendments. These rules, therefore, will not cause a competitive fare disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

Federalism Implications

The regulations adopted 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. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination, and the International Trade Impact Analysis, the FAA has determined that this rule is a major rule under Executive Order 12291. In addition, in consideration of the cost information discussion under the Regulatory Impact Analysis, the amendments to Parts 121, 125, and 135 will have a significant economic impact on a substantial number of small entities. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory impact analysis of this final rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects

14 CFR Part 1

Air carriers, Aircraft, Airplanes, Air safety, Aviation safety, Safety.

14 CFR Part 91

Air Traffic control.

14 CFR Part 121

Air carriers, Aircraft, Airspace, Air traffic control, Aviation safety, Safety.

14 CFR Part 125

Aircraft, Airplanes, Air traffic control.

14 CFR Part 129

Air carrier, Aircraft, Air traffic control.

14 CFR Part 135

Aircraft, Airplanes, Airspace, Air traffic control, Aviation safety, Safety.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Parts 1, 91, 121, 125, 129, and 135 of the Federal Aviation Regulations (14 CFR Parts 1, 91, 121, 125, 129, and 135) as follows:

PART 1—DEFINITION AND ABBREVIATIONS

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

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 1.1 is amended by adding new definitions to read as follows:

§ 1.1 Definitions.

* * * * *

"TCAS I" means a TCAS that utilizes interrogations of, and replies from, airborne radar beacon transponders and provides traffic advisories to the pilot.

"TCAS II" means a TCAS that utilizes interrogations of, and replies from airborne radar beacon transponders and provides traffic advisories and resolution advisories in the vertical plane.

"TCAS III" means a TCAS that utilizes interrogation of, and replies from, airborne radar beacon transponders and provides traffic advisories and resolution advisories in the vertical and horizontal planes to the pilot.

* * * * *

3. Section 1.2 is amended by adding a new abbreviation as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"TCAS" means a traffic alert and collision avoidance system.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for Part 91 continues to read as follows:

Authority: U.S.C. 1301(7), 1303, 1344, 1352 through 1355, 1401 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

5. Section 91.26 is added to read as follows:

§ 91.26 Traffic alert and collision avoidance system equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* Any traffic alert and collision avoidance system installed in a U.S.-

registered civil aircraft must be approved by the Administrator.

(b) *Traffic alert and collision avoidance system, operation required.* Each person operating an aircraft equipped with an operable traffic alert and collision avoidance system shall have that system on and operating.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

6. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a,) 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

7. Section 121.356 is added to read as follows:

§ 121.356 Traffic Alert and Collision Avoidance System.

(a) After December 30, 1991, no person may operate a large airplane that has a passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

(b) After February 9, 1995, no person may operate a combination cargo/passenger airplane that has a passenger seat configuration, excluding any pilot seat, of 10 to 30 seats unless it is equipped with an approved traffic alert and collision avoidance system.

(c) The appropriate manuals required by § 121.131 of this part shall contain the following information on the TCAS II System required by this section:

(1) Appropriate procedures for—

(i) The operation of the equipment; and

(ii) Proper flightcrew action with respect to the equipment.

(2) An outline of all input sources that must be operative for the TCAS to function properly.

PART 125—CERTIFICATION AND OPERATION: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6000 POUNDS OR MORE

8. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

9. Section 125.224 is added to read as follows:

§ 125.224 Traffic Alert and Collision Avoidance System.

(a) After December 30, 1991, no person may operate a large airplane that has a passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

(b) The manual required by § 125.71 of this part shall contain the following information on the TCAS II system required by this section.

(1) Appropriate procedures for—

(i) The operation of the equipment; and

(ii) Proper flightcrew action with respect to the equipment.

(2) An outline of all input sources that must be operating for the TCAS II to function properly.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

10. The authority citation for Part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

11. Section 129.18 is added to read as follows:

§ 129.18 Traffic Alert and Collision Avoidance System.

(a) After December 30, 1991, no foreign air carrier may operate in the United States a turbine powered airplane that has a maximum passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with—

(1) A TCAS II traffic alert and collision avoidance system capable of coordinating with TCAS units that meet the specifications of TSO C–119, and

(2) The appropriate class of Mode S transponder.

(b) After February 9, 1995, no foreign air carrier may operate in the United States a turbine powered airplane that has a passenger seating configuration, excluding any pilot seat, of 10 to 30 seats unless it is equipped with a traffic alert and collision avoidance system. If a TCAS II system is installed, it must be capable of coordinating with TCAS units that meet the specifications of TSO C–119.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

12. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

13. Section 135.180 is added to read as follows:

§ 135.180 Traffic Alert and Collision Avoidance System.

(a) After February 9, 1995 no person may operate a turbine powered airplane that has a passenger seating configuration, excluding any pilot seat, of 10 to 30 seats unless it is equipped with an approved traffic alert and collision avoidance system.

(b) The airplane flight manual required by § 135.21 of this part shall contain the following information on the TCAS I system required by this section:

(1) Appropriate procedures for—

(i) The use of the equipment; and

(ii) Proper flightcrew action with respect to the equipment operation.

(2) An outline of all input sources that must be operating for the TCAS to function properly.

Issued in Washington, DC, on January 5, 1989.

T. Allan McArtor,

Administrator.

[FR Doc. 89–451 Filed 1–5–89; 4:15 am]

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January 10, 1989

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 175

Implementation of the ICAO Technical Instructions; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. HM-184E; Amdt. No. 171-99, 175-42]

Implementation of the ICAO Technical Instructions

January 3, 1989.

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Hazardous Materials Regulations (HMR) in order to permit the offering, acceptance and transportation by aircraft, of hazardous materials shipments conforming to the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft when the 1989-90 edition of the ICAO Technical Instructions becomes effective on January 1, 1989, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-0656.

SUPPLEMENTARY INFORMATION: On September 15, 1988, RSPA published a notice of proposed rulemaking (Docket HM-184E, Notice No. 88-4) in the **Federal Register** (53 FR 35968) which requested comments on RSPA's intention to incorporate by reference the 1989-1990 edition of the ICAO Technical Instructions in § 171.7(d) of the HMR, and revise § 175.10(a)(21) to align the requirements in the HMR with the ICAO Technical Instructions. The proposed amendment to § 175.10(a)(21) would permit "hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element at all times. Gas refills for such curlers are not permitted in checked or carry-on baggage."

Four comments were received in response to Notice 88-4. One commenter expressed support for the incorporation by reference of the 1989-1990 ICAO Technical Instructions into the HMR. The three other commenters suggested editorial revisions to the provision. The National Business Aircraft Association (NBAA) recommended that a qualifying term such as box, package, or hair curling unit be added following the word "one", and noted that the proposed provision contains no limitation on the size of the hair curling unit. RSPA believes that the proposed wording adequately conveys that no more than one hair curling unit is permitted per passenger or crew member. Further, NBAA provided no information to support the need for a restriction on the size of these hair curling units. RSPA has not adopted these suggested changes in this final rule. The Air Transport Association (ATA) and the Airline Pilots Association (ALPA) both suggested that the words "at all times" be included in the provision, with ALPA going a step further by suggesting that the phrase "the hair curler shall not be used on board the aircraft" be added. As suggested by both ATA and ALPA, the provision would read: "Hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element *at all times. The hair curler shall not be used on board the aircraft.*" ATA and ALPA stated that these changes are needed to emphasize that the hair curling units may not be used on board an aircraft. RSPA finds the suggested language is redundant. The requirement that the safety covery be securely fitted over the heating element is unqualified, that is, the cover cannot be removed in order to use the hair curler in flight. Because the additional language is not necessary, and for consistency with the ICAO Technical Instructions, RSPA has not adopted the suggested change in this final rule.

Administrative Notices.

Executive Order 12291

The RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.)* A regulatory evaluation is available for review in the Docket.

Executive Order 12612

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

Regulatory Flexibility Act

Based on limited information concerning size and nature of entities likely to be affected by this final rule, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, 49 CFR Parts 171 and 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted

2. In § 171.7, paragraph (d)(27) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(27) International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284-AN/905 (ICAO Technical Instructions), 1989-1990 edition.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for Part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 175.10, paragraph (a)(21) is revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(21) Hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element. Gas refills for such curlers are not permitted in checked or carry-on baggage.

* * * * *

Issued in Washington, DC on January 3, 1989.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-271 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-60-M

federal register

Tuesday
January 10, 1989

Part VI

The President

Executive Order 12664—Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the Brotherhood of Locomotive Engineers

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

Presidential Documents

Title 3—

The President

Executive Order 12664 of January 6, 1989

Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the Brotherhood of Locomotive Engineers

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood of Locomotive Engineers.

The dispute has not heretofore been completely adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. section 159a).

Section 9A(e) of the Act provides that the President, upon such a request, shall appoint a second emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective January 7, 1989, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
January 6, 1989.

[FR Doc. 89-643
Filed 1-9-89; 11:00 am]
Billing code 3195-01-M

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Note: The list of public laws enacted during the second session of the 100th Congress has been completed.

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The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3. 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).