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Tuesday
October 11, 1983

Selected Subjects

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Selected Subjects

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R-0484]

Reserve Requirements of Depository Institutions; Reserve Requirements on Nonpersonal Time Deposits; Regulation D

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) to modify the reserve requirements on nonpersonal time deposits. Under the amendment, nonpersonal time deposits with original maturities of 1½ years or more will be subject to a reserve requirement ratio of zero percent. Nonpersonal time deposits with original maturities of less than 1½ years will continue to be subject to a three percent reserve requirement ratio. This action was taken to facilitate the offering by depository institutions of longer maturity time deposits that are exempt from interest rate ceilings.

EFFECTIVE DATE: October 6, 1983. The first reserve maintenance period to which the amendment applies commences October 20, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Paul S. Pilecki, Senior Counsel (202/452-3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 (Title I of Pub. L. 96-221; 94 Stat. 132) ("MCA") authorizes the Board to prescribe, solely for the purpose of implementing monetary policy, reserve requirements against nonpersonal time deposits within a reserve ratio range of zero to nine percent. The MCA requires the reserve requirement against nonpersonal time deposits to be applied uniformly to the deposits at all depository institutions, except that such requirement may vary by deposit maturity. Nonpersonal time deposits are defined by the MCA as time deposits that are transferable, regardless of the nature of the holder, and time deposits in which any beneficial interest is held by a depositor who is not a natural person. Nontransferable time deposits in which the entire beneficial interest is held solely by a natural person are not subject to reserve requirements.

Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) currently imposes a three percent reserve requirement on nonpersonal time deposits with original maturities or required notice periods of less than 2½ years. Nonpersonal time deposits with maturities or required notice periods of 2½ years or more are subject to a zero percent reserve requirement.

The Depository Institutions Deregulation Committee ("DIDC"), pursuant to its authority under the Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221; 12 U.S.C. 3501 *et seq.*), authorized federally insured commercial banks, mutual savings banks, and savings and loan associations to offer, effective May 1, 1982, a new category of ceiling-free time deposit with an original maturity or required notice period of 3½ years or more. Such time deposits may be issued in negotiable or nonnegotiable form at the option of the issuer to any holder. Effective April 1, 1983, the minimum maturity of this deposit category was reduced to 2½ years. In conjunction with the establishment of this instrument and its subsequent reduction in maturity, the Board modified the maturity break for reserve requirements on nonpersonal time deposits to facilitate the DIDC's objectives in authorizing this instrument in negotiable form. In this regard, a negotiable time deposit was viewed as more attractive to depositors since it could be sold as an alternative to incurring an early withdrawal penalty.

Effective October 1, 1983, the DIDC removed interest rate ceilings on all time deposits with original maturities or required notice periods of 32 days or more and on all time deposits of more than $2,500 with original maturities or required notice periods of 7 to 31 days. To continue to facilitate the DIDC's objectives, the Board has amended the reserve requirements on nonpersonal time deposits so that, after the completion of the transition periods set forth in the MCA, nonpersonal time deposits with original maturities of 1½ years or more will be subject to a zero percent reserve requirement ratio and nonpersonal time deposits with original maturities or less than 1½ years will be subject to a three percent reserve requirement ratio. The Board estimates that the amount of reserves held on nonpersonal time deposits with maturities of 1½ to 2½ years is small, and, thus, this action will not advesely affect monetary control. However, the Board notes that reducing further the nonpersonal time deposit maturity break could have an adverse effect on monetary control by eroding the reserve base and loosening the linkage between reserves and deposits in the money stock.

This action is effective for depository institutions that report deposits and maintain reserves on a weekly basis with the reserve computation period beginning October 6, 1983. The first reserve maintenance period to which this action applies for these institutions commences October 20, 1983. For depository institutions that report deposits and maintain reserves on a quarterly basis, the change in reserve requirements on nonpersonal time deposits with maturities of 1½ years to 2½ years will commence with the reserve maintenance period that begins on January 12, 1984, based on data submitted for the computation period of December 15-21, 1983.

In view of the fact that commercial banks, mutual savings banks, and savings and loan associations may offer time deposits with a broad range of maturities not subject to interest rate ceilings effective October 1, 1983, the Board finds that application of the notice and public participation provisions of 5 U.S.C. § 553 to this action would be contrary to the public interest, and that, since this action relieves a restriction, good cause exists for making this action effective October 6, 1983.

List of Subjects in 12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

PART 204—[AMENDED]

Pursuant to its authority under sections 19, 25, and 25(a) of the Federal Reserve Act (12 U.S.C. 461, 601 *et seq.*, 611 *et seq.*) and under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), the Board amends Regulation D (12 CFR Part 204) effective October 6, 1983, by revising paragraph (a)(1) of § 204.9 to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
0 to $26.3 million	3 percent of amount
Over $26.3 million	$789,000 plus 12 percent of amount over $26.3 million
Nonpersonal time deposits:	
By original maturity (or notice period):	
Less than 1½ years	3 percent
1½ years or more	0 percent
Eurocurrency liabilities	3 percent

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 3, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-27480 Filed 10-7-83; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

Flood Insurance

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: In accordance with its established policy of reviewing its regulations at regular intervals, the National Credit Union Administration (NCUA) has reviewed its Flood Insurance regulations. As a result of this review, NCUA is adopting a plain English question and answer version of these regulations. This rule was published for comment on October 15, 1980, in the **Federal Register** (45 FR 68396). This rule is being updated, but no substantial changes have been made.

EFFECTIVE DATE: November 21, 1983.

FOR FURTHER INFORMATION CONTACT: Todd Okun or Bryan Rachlin, Department of Legal Services, 1776 G Street, N.W., Washington, D.C. 20456. Telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Act), as amended, requires NCUA to issue Flood Insurance regulations and largely dictates the contents of those regulations. Pursuant to NCUA's program of ongoing review of regulations, NCUA has conducted a review of its existing Flood Insurance regulations in order to update, clarify and simplify them.

NCUA now takes the following actions: (1) NCUA has updated the regulations by amending them to reflect the transfer of authority for flood insurance matters from the Secretary of the Department of Housing and Urban Development to the Director of the Federal Emergency Management Agency. Section 202 of Reorganization Plan No. 3 of 1978, 43 FR 41943 (1978), 5 U.S.C.A. ch. 9.; (2) NCUA has simplified these regulations by placing the provisions in a more logical order, by rewriting them in plain English, and in question and answer form.

Procedures for Regulatory Development

The NCUA Board hereby certifies that the plain English version of its Flood Insurance regulation, if adopted, will not have a significant economic impact on a substantial number of small credit unions because there have been no substantial changes made to the rules and they will continue to apply equally to all credit unions. Therefore, a Regulatory Flexibility Analysis is not required.

Since the plain English version of the Flood Insurance Regulation will reduce confusion, and delay would cause unnecessary harm, the NCUA Board finds that full and separate consideration of all of the requirements of the Financial Regulation Simplification Act is impractical and unnecessary.

List of Subjects in 12 CFR Part 760

Insurance.

By the National Credit Union Administration Board on the 4th day of October 1983.

Rosemary Brady,

Secretary of the Board.

Accordingly, 12 CFR Part 760 is revised to read as follows:

PART 760—FLOOD INSURANCE

Sec.

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 401.2a, 4106.

§ 760.0 When should this regulation be consulted?

It should be consulted when a federally insured credit union is going to make, increase, extend or renew a loan secured by improved real property or a mobile home.

§ 760.1 What information is needed to comply with this regulation?

To comply with this regulation a federally insured credit union has to determine three things. First, it has to determine if the improved real property or mobile home that will secure the loan is or will be located in an area that the Director of the Federal Emergency Management Agency (FEMA) has determined to present special flood hazards. Second, the credit union has to determine if the property is or will be located in a community that participates in the National Flood Insurance Program. Third, if the property is or will be located in a community participating in the National Flood Insurance Program, the federally insured credit union must then determine if that community is participating in the Emergency Program or in the Regular Program.

§ 760.2 How can this information be obtained?

(a) *Question:* How can one determine if the property is or will be located both in a special flood hazard area and in a community participating in the National Flood Insurance Program?

Answer: A federally insured credit union should consult the current Flood Insurance Rate Map or the current Flood Hazard Boundary Map for the area in question. These maps may be obtained by contacting FEMA at the following address:

The National Flood Insurance Program, P.O. Box 499, Lanham, Maryland 20706 (301) 731-5300 or 1-800-638-6620

(b) *Question:* How can a credit union determine if a community participating in the National Flood Insurance Program

is participating in the Emergency Program or the Regular Program?

Answer: A credit union can call or write FEMA at the address above. The employees in Program Information will be able to advise the credit union as to whether or not the community is participating in the Emergency Program or in the Regular Program.

§ 760.3 How does the flood insurance requirement work?

(a) *Question:* When does the borrower have to buy flood insurance?

Answer: The borrower has to buy flood insurance if the improved real property or the mobile home is or will be located both in a special flood hazard area and in a community participating in the National Flood Insurance Program. The borrower can buy flood insurance from any property insurance agent or broker licensed to do business in the state where the property is located.

(b) *Question:* How much flood insurance does the borrower have to buy?

Answer: The amount of insurance has to be at least equal to the outstanding balance of the loan or to the maximum amount available under the Flood Disaster Protection Act for the particular improved real property or mobile home, whichever is less. The maximum amount of flood insurance available will vary depending on whether the community is participating in the Emergency Program or in the Regular Program. To determine the maximum amount of flood insurance for the particular improved real property or mobile home, a Federal credit union may contact either a licensed property insurance agent or broker who is in good standing or FEMA. When contacting FEMA inquiries should be directed to: The National Flood Insurance Program, P.O. Box 459, Lanham, Maryland 20706.

(c) *Question:* Are there any other requirements?

Answer: The insurance must cover the building or the mobile home and any personal property securing the loan and must remain in effect until the loan is repaid. (It does not have to cover the land.)

(d) *Question:* Any exceptions?

Answer: Flood insurance is not required on State-owned property covered under a policy of self-insurance that the Director of FEMA decides is satisfactory. FEMA periodically publishes lists of states that come wihtin this exception.

(e) *Question:* What if the borrower does not buy flood insurance that meets these requirements?

Answer: If the borrower does not buy flood insurance that meets these requirements, a federally insured credit union cannot make, increase, extend or renew a loan secured by the improved real property or mobile home.

§ 760.4 What notices have to be given?

(a) *Notice of special flood hazard area.* If a federally insured credit union determines that the improved real property or mobile home is or will be located in a special flood hazard area, then before a mortgage or any other security agreement is signed, a credit union has to give the borrower written notice of that fact. This notice does not have to be given if the seller or lessor of the property states in writing that he or she has already given the notice to the borrower and the borrower acknowledges such notice.

(b) *Notice about Federal flood disaster assistance.* A federally insured credit union has to give the borrower written notice that states whether Federal disaster relief assistance will be available if the property is damaged by flooding in a federally-declared disaster. Federal disaster assistance will be available if the property is located in a community participating in the National Flood Insurance Program.

(c) *Acknowledgement.* Before the loan agreement is signed, a federally insured credit union must obtain the buyer's written acknowledgement that he or she received these notices. The credit union has to keep the written acknowledgement until the loan is repaid.

§ 760.5 What records have to be kept?

In each instance, a federally insured credit union has to keep records that show how it determined whether flood insurance would be required and how it determined whether to give the Federal Disaster Assistance Notice for participating communities or the one for nonparticipating communities. If a Flood Insurance Rate Map or Flood Hazard Boundary Map was used, the address of the property and the number of the Map are all that are necessary.

Appendix A: Sample Notices

A federally insured credit union will comply with the notice requirements if it uses these forms:

(1) Notice to Borrower of Special Flood Hazard Area

Notice is hereby given to _____ that the improved real estate or mobile home described in the attached instrument is or will be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area. This area is delineated on _____'s Flood Insurance Rate Map (FIRM) or, if the FIRM is unavailable, on the Flood Hazard Boundary Map (FHBM). This area has a 1% chance of being flooded within any given year. This risk of exceeding the 1% chance increases with time periods longer than one year. For example, during the life of a 30 year mortgage, a structure located in a special flood hazard area has a 26% chance of being flooded.

(2) Notice to Borrower About Federal Flood Disaster Assistance

(Lender Check (a) or (b))

(a) *Notice in participating communities.* The improved real estate or mobile home securing your loan is or will be located in a community that is now participating in the National Flood Insurance Program. In the event that such property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance may be available. However, such assistance will not be available if your community is not participating in the National Flood Insurance Program at the time such assistance would be approved (unless such approval is granted within one year from the date your community was identified by the Director of the Federal Emergency Management Agency as being flood prone). This assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of the amount of your flood insurance.

(b) *Notice in nonparticipating community.* The improved real estate or mobile home securing your loan is or will be located in a community that is not now participating in the National Flood Insurance Program. This means that you are not eligible for Federal flood insurance. In the event that your property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance will not be available (unless approval for such assistance is granted within one year from the date your community was identified by the Director of the Federal Emergency Management Agency as being flood prone). In other words, Federal flood disaster relief assistance will be available only if, at the time such assistance would be approved, your community is participating in the National Flood Insurance Program, or approval for such assistance is granted within one year from the date your community was identified as being flood prone.

(3) Acknowledgement of the Borrower

I, _____, a member of the _____, Credit Union, hereby acknowledge that on the date indicated below I have received a Notice To Borrower of Special Flood Hazards, indicating that the property securing my loan is in an area identified as having special flood hazards, and a Notice to Borrower About Federal Flood Disaster Assistance, indicating whether such assistance will or will not be available for such property.

Dated:_____

_____

(Signature and address of borrower)

[FR Doc. 83-27496 Filed 10-7-83; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

[Amdt. 2]

Assigned by OMB Under the Paperwork Reduction Act

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration amends Part 133 of its rules and regulations pertaining to its reporting and recordkeeping requirements. The amendment is being made to advise the public of SBA reporting and recordkeeping requirements that have been cleared in accordance with the Paperwork Reduction Act of 1980 and the Agency official to contact regarding the Public Protection Clause of that Act. The Act requires an agency to obtain a review and approval of its information collection requirements from the Office of Management and Budget (OMB) and to give public notice of such approval.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Zaic, Chief, Paperwork Management Branch, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. Telephone No. (202) 653-8538.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501) seeks, in part, to minimize the Federal paperwork burden. The Act requires that agencies obtain OMB review and clearance of certain reporting and recording requirements and give public notice of the clearance numbers and expiration dates.

OMB has reviewed and approved the reporting and recordkeeping requirements to be included in Part 133. Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) requiring advance notice and comment.

List of Subjects in 13 CFR Part 133

Reporting and recordkeeping requirements.

PART 133—[AMENDED]

13 CFR 133.1(c) is amended by revising 3245-0099 and adding 3245-0104 through 3245-0141 to read as follows:

(c) *Index to OMB-Approved Reporting and Recordkeeping Requirements:*

*	*	*	*
3245-0099	Survey on Significant New Products, etc. in U.S. Mfg., 1970-1982.		3-31-84
*	*	*	*
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3245-0118	SBA 856	107.1101	6-30-86
3245-0121	Governor's request for disaster declaration.	123.24	6-30-86
3245-0122	Reconsideration request.	123.11	7-31-86
3245-0123	SBA 888	101-2.7	9-30-85
3245-0124	Notice of duplication of benefits.	123.22	6-30-86
3245-0125	SBA 898	Pub. L. 92-463	7-31-86
3245-0126	Survey to assess the effects of decision criteria on small business investment.		1-31-84
3245-0128	SBA 1160	123.	8-31-86
3245-0129	SBA 1238A		8-31-86
3245-0130	SBA 1238		8-31-86
3245-0131	SBA 172	Agency's participant handbook.	8-31-86
3245-0132	SBA 1149		8-31-84
3245-0133	SBA 2014A	Pub. L. 95-454	8-31-86
3245-0137	SBA contract requirements.	OMB circulars A-110; A-21; A-102; A-122.	8-31-86
3245-0140	SBA grants mgmt. and program applications (SBA 1222, 1223, 1224).	OMB circulars A-110; A-21; A-102; A-122.	8-31-86
3245-0141	SBA 843	SBA SOP 60 02.	8-31-86

Dated: September 29, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-27571 Filed 10-7-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-25-AD; Amdt. 39-4734]

Airworthiness Directives: British Aerospace Corporation Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) applicable to British Aerospace Corporation BAC 1-11 200 and 400 series airplanes which requires the repetitive inspection of the emergency oxygen system. Service experience has shown that the inspection interval specified in the existing AD is inadequate to provide timely detection of cracked oxygen hoses. This amendment decreases the inspection interval from two to one year. Damaged hoses were found close to electrical equipment, creating a potential fire hazard.

EFFECTIVE DATE: November 14, 1983.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041 or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2976. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The CAA has classified British Aerospace Corporation BAC 1-11 Service Bulletin 35-A-PM5394 as mandatory. Issue 3 of this service bulletin specifies yearly inspections of the emergency oxygen hoses.

A proposal to further amend AD 76-24-06, requiring inspection of the emergency oxygen flexible hoses once a year instead of every two years was published in the **Federal Register** on May 26, 1983 (48 FR 23658). The comment period closed on July 15, 1983, and interested parties have been afforded an opportunity to participate in the making of this amendment. Only one comment was received and it stated no objection to the proposal.

It is estimated that 63 U.S. registered airplanes will be affected, that it will take approximately 13 manhours per airplane to accomplish the required actions, and that the average labor cost will be $35 per manhour. Repair parts are estimated at $100 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators will be $34,965. For these reasons, this rule is not considered to be a major rule under

the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending Airworthiness Directive AD 76-24-06, Amendment 39-2779 (41 FR 52292, November 29, 1976), as amended by Amendment 39-2800 (42 FR 2054, January 10, 1977), as follows:

A. In paragraph (a), replace "2500 hours" with "1500 hours" and replace "Issue 2, dated February 2, 1976" with "Issue 3, dated June 29, 1979."

B. Replace the entire paragraph (c) with: "Inspect and rework the flexible hoses of the emergency oxygen system within the next 1000 hours time in service or six months after the effective date of this AD, whichever occurs sooner, unless already accomplished within the preceeding 1500 hours time in service, and thereafter at intervals not to exceed one year, in accordance with paragraph 2.4, Figures 1 through 3, and Table 1 of the service bulletin."

This amendment becomes effective November 14, 1983.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT 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 rule will not have a significant economic effect on a substantial number of small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on September 27, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-27494 Filed 10-7-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-NM-81-AD; Amdt. 39-4740]

Airworthiness Directives: McDonnell Douglas Model DC-6, -6A, -6B, R6D (Navy), and C118 (USAF) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspections and repairs, if necessary, of the horizontal stabilizer rear spar caps on McDonnell Douglas DC-6 series airplanes. This AD is prompted by reports of two airplanes with cracked horizontal stabilizer rear spar caps. This AD is needed to detect cracks and prevent possible in-flight loss of the horizontal stabilizer.

DATES: Effective October 19, 1983.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750-(54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: William Roberts, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: Two operators, one domestic and one overseas, experienced horizontal stabilizer spar cap failure due to stress corrosion cracking at the attachment of the stabilizer outboard panel to the stabilizer root. In-flight failure could cause loss of the aircraft.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the horizontal stabilizer rear spar caps at the attach point and repair, if necessary.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Adminstrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-6, -6A, -6B, R6D (Navy), and C118 (USAF) series airplanes, certificated in all categories.

Compliance required as indicated, unless previously accomplished.

To detect cracks and prevent failure of the horizontal stabilizer rear spar caps accomplish the following:

A. Within the next 30 days after the effective date of this AD, unless already accomplished, inspect and repair, if necessary, the horizontal stabilizer upper and lower rear spar cap attach fittings on both sides of station 63 in accordance with the Accomplishment Instructions of McDonnell Douglas Service Rework Drawing J060265 "N/C" dated July 29, 1983, hereinafter referred to as Rework Drawing, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, as follows:

1. If no cracks are found in the rear spar attach fittings, apply primer and lacquer top coat (lacquer top coat optional). Apply LPS-3 corrosion inhibiting oil, or equivalent when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, throughout the attach fitting (bathtub area) and reinstall the bolt per the Rework Drawing. Conduct repetitive inspections per the Rework Drawing at intervals not to exceed 12 calendar months.

2. If a crack is found equal to or exceeding ½" at location A, 3" at location B, or 6" at location C as defined in figure 2 of the Rework Drawing, accomplish the repair in (a) or (b) below, prior to further flight:

(a) If the crack is inboard of station 63, repair in accordance with the Accomplishment Instructions of the Rework Drawing.

(b) If the crack is outboard of station 63, repair per the McDonnell Douglas DC-6 Structural Repair Manual, Tail Group, Page 138, Figure 134, dated October 15, 1952.

3. If a crack is found that is less than ½" at location A, 3" at location B, or 6" at location C, repetitively inspect per the Rework Drawing at intervals not to exceed:

(a) for location A: 7 calendar days, or prior to further flight, whichever occurs later.

(b) for location B: 14 calendar days, or prior to further flight, whichever occurs later.

(c) for location C: 21 calendar days, or prior to further flight, whichever occurs later.

B. Repairs per Paragraph 2, above, constitutes terminating action for the repetitive inspections required by this AD only at those locations repaired.

C. If more than one crack is found, repair all cracked areas as specified in Paragraphs. A. 2(a) and/or 2(b), above.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base to comply with the repair requirements of this AD when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

This Amendment becomes effective October 19, 1983.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, and evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on September 29, 1983.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 83-27490 Filed 10-7-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-ANM-15]

Revise Transition Area & Control Zone; Eagle, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The current geographical boundaries of the Eagle, Colorado Transition Area and Control Zone are described, in part, by reference to the Wolcott Nondirectional Radio Beacon (NDB). The Wolcott NDB no longer exists and new descriptions are required. This action provides the revised descriptions.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Ted Melland (206) 431-2533.

SUPPLEMENTARY INFORMATION: The Eagle, Colorado Transition Area and Control Zone were established to ensure segregation of aircraft operating in instrument weather conditions, and other aircraft operating in visual weather conditions or instrument weather conditions. The geographical areas and associated airspace will remain unchanged, and will continue to be shown on aeronautical charts enabling pilots to circumnavigate the areas or otherwise comply with visual or instrument flight rules.

Removal of Wolcott NDB from the National Airspace System leaves a void in the airspace descriptions and requires new points of reference for accuracy. This involves only minor editorial clarification in the descriptions, and makes no substantive changes. Therefore, notice and public procedure on the rule are unnecessary and the amendments may be made effective in less than 30 days.

For further information, contact Ted Melland, Airspace & Procedures Specialist, ANM-533, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2533.

List of Subjects in 14 CFR Part 71

Transition areas, Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.181 and 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended effective 0901 GMT, October 11, 1983, as follows:

§ 71.181 [Amended]

Eagle, Colorado (Revised)

That airspace extending upward from 700 feet about the surface within a 9-mile radius of the Eagle County Airport (lat. 39°38'42"N., long. 106°54'43"W.); within 3.5 miles each side of the 072° true bearing from the Eagle County Airport extending from the 9-mile radius area to 19 miles northeast of the airport; and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 40°01'30"N. long. 106°34'00"W.; to lat. 39°35'15, long. 106°10'30"W.; to lat. 39°34'00"N., long. 106°35'40"W.; to lat. 39°25'00"N., long. 107°07'10"W.; to lat. 39°45'45"N., long. 107°15'45"W.; to point of beginning.

§ 71.171 [Amended]

Eagle, Colorado (Revised)

Within a 5-mile radius of the Eagle County Airport (lat. 39°38'42"N., long. 106°54'43"W.); within 3 miles each side of the 072° true bearing from the Eagle County Airport extending from the 5-mile radius to 18.5 miles northeast of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)); (Sec. 1165 of the Federal Aviation Regulations and 14 CFR 11.69))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. For this reason and the reasons given earlier in the preamble, it, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (14 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Seattle, Washington on October 7, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-27492 Filed 10-7-83; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 145, 146, and 147

Schedule of Fees for Requests for Commission Records, Reports of the Commission, and Transcripts of Commission Meetings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Schedule of Fees.

SUMMARY: The Commission recently proposed to revise its schedule of fees for requests for copies of Commission records, reports of the Commission and transcripts of Commission meetings. 48 FR 34971 (August 2, 1983). The Commission is now adopting the fee schedule, as proposed, with one clarification. The Commission is adopting this schedule of fees to reflect the actual costs to the Commission in rendering these services.

EFFECTIVE DATE: November 10, 1983.

FOR FURTHER INFORMATION CONTACT: Stacy L. Dean, Counsel to the Executive Director, or Tena Friery, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254-7360 and (202) 254-9880, respectively.

SUPPLEMENTARY INFORMATION: On August 2, 1983, the Commission published for comment in the Federal

Register a proposed schedule of fees to be charged in connection with requests for Commission records, reports and transcripts. The Commission proposed to revise its fees for search and copying services (including those provided under the Freedom of Information Act (FOIA)), transcripts of Commission meetings and Commission reports, consistent with the requirement of Section 237 of the Futures Trading Act of 1982 that fees not exceed the actual cost to the Commission. (Pub. L. 97-444, 96 Stat. 2294, 2326, Jan. 11, 1983.) No comments were received on the Commission's proposed fee schedule. The Commission is adopting the fees,[1] as proposed, with one clarification.

In discussing charges to be assessed in connection with public access to records of Commission meetings, the proposal pointed out that "duplicate cassette tapes of open meetings are . . . available . . . at a cost of 90 cents each." As with duplication of documents, however, there is additional cost to the Commission in terms of personnel time spent in reproducing electronic recordings of Commission meetings. Accordingly, under § 145.9b(5), as proposed and adopted, the Commission will specifically charge for time spent by clerical personnel (i.e., $2.50 per quarter hour) in reproducing electronic recordings.[2] Charges for time spent by personnel in copying tape recordings has also been included in § 146—Appendix A(a)(2) as adopted.

At the time this revised schedule of fees was proposed, the Commission noted that the fees represent either reductions or relatively small increases in fees, based on actual costs for documents, reports and other materials requested from the Commission. Accordingly, the Acting Chairman, on behalf of the Commission, has certified, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these rule changes will not have a significant economic effect on a substantial number of small entities.

List of Subjects

17 CFR Part 145

Freedom of Information, Commission records and information, Fees.

17 CFR Part 146

Privacy records maintained on individuals, Fees.

17 CFR Part 147

Sunshine Act, Open commission meetings, Fees for transcripts and tapes.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(11) and 26, 7 U.S.C. 4a(j) and 16a (1982), and the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, and the Government in the Sunshine Act, 5 U.S.C. 552b, the Commission hereby amends Parts 145, 146 and 147 of Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 145—COMMISSION RECORDS AND INFORMATION

1. In § 145.9b, paragraph (a) is amended by redesignating paragraph (a)(9) as paragraph (a)(10).

2. In § 145.9b, the introductory text of paragraph (a) and paragraphs (a)(1)–(a)(9) are revised to read as follows:

§ 145.9b Schedule of Fees.

(a) The following charges will be made for services in locating or making available records or copies thereof:

(1) Two dollars and fifty cents for each one-quarter hour spent by clerical personnel in searching for and producing a requested record.

(2) Where, because of the generality of a request or otherwise, a search cannot successfully be performed by clerical personnel, $4.00 for each one-quarter hour spent by professional or managerial personnel in searching for a requested record.

(3) For searches for records stored in computer formats, the actual cost of computer operator search time involved in connection with locating the requested information shall be charged at the professional search time rate of $4.00 per one quarter hour.

(4) For requests for copies of documents, including computer printouts, the charge will be $0.15 per page.

(5) For materials other than paper records, which are in existance at the time a request is made, including computer and cassette tapes, the requesting party shall be charged the direct cost of the materials and reproduction costs, including time spent by clerical personnel in reproducing electronic recordings. The person making the request shall be notified of an estimated amount of the charges and shall give specific approval before the request is processed.

(6) When, in accordance with § 145.7(e), a request has been made and granted to examine Commission records at an office of the Commission other than the office at which the records are normally maintained, the Commission shall transmit the records in a manner which the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts compliance matters considers best calculated to assure that the records will not be lost or damaged in transit, and the requesting party (i) shall reimburse the Commission for the actual cost to the Commission for transporting the records; and (ii) shall be charged at the rate of $2.50 for each quarter-hour devoted by a Commission employee in preparing the records to be transported.

(7) For certifying that requested records are true copies, the fee will be $3.00 per certification in addition to other fees, if any.

(8) The Commission may, upon application by the requester, furnish any records without charge or at a reduced rate, if it determines that such fee waiver or reduction of fees is in the public interest.

(9) Upon request, records will be mailed by means of an overnight/express service at the fee of $10.00 per unit mailed.

* * * * *

3. New Section 145.9c is added to read as follows:

§ 145.9c Schedule of Fees—Reports.

(a) Three dollars ($3.00) will be charged per monthly copy of the Commitment of Trader's Report.

(b) Requests for individual copies and annual subscriptions of the Commitments of Trader's Report shall be made by mail addressed to the Office of Public Information, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Requests must be accompanied by a nonrefundable check or money order in the correct amount made payable to the Commodity Futures Trading Commission.

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

4. In part 146, Appendix A is revised to read as follows:

Appendix A—Fees for Copies of Records Requested Under the Privacy Act of 1974

a. The following schedule of fees shall apply to copies of records requested pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a and § 146.5(f).

(1) For requests for copies of documents, the charge will be 15 cents per page.

[1] As the Commission noted previously, these rules are intended to establish an agencywide schedule of fees for use by any Commission office which provides copies and services.

[2] The Commission notes that the Government in the Sunshine Act specifically authorizes the assessment of charges for the actual costs of duplication. *See* 5 U.S.C. 552b(f)(2). Similarly, the Privacy Act authorizes a fee for making copies of an individual's record. *See* 5 U.S.C. 552a(f)(5)

(2) For materials other than paper records, including computer and cassette tapes, the direct cost of the materials and, if required, time spent by clerical personnel copying the materials shall be charged. Persons making the request shall be notified of the amount of the charge and shall give specific approval before the request is processed.

(3) For certifying that requested records are true copies, the fee will be $3.00 per certification in addition to other fees, if any.

(4) Upon request, records will be mailed by means of an overnight/express service at the fee of $10.00 per unit mailed.

(5) The Commission may, upon application by the individual, furnish any records without charge or at a reduced rate, if it determines that such wavier or reduction of fee is in the public interest.

b. Requests for copies of documents shall be addressed to FOI, Privacy and Sunshine Acts compliance staff, Office of Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

PART 147—OPEN COMMISSION MEETINGS

5. In § 147.9, paragraph (a) is amended by removing references to 17 CFR 145.9b (a)(3), (a)(4), (a)(5), (a)(7), (d) and (e) and inserting in lieu thereof, "17 CFR 145.9b (a)(4), (a)(5), (a)(7), (a)(8), (a)(9), (d) and (e)".

* * * * *

Issued in Washington, D.C., on October 3, 1983, by the Commission.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 83-27403 Filed 10-7-83; 8:45 a.m.]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 231, 239, 240, 241, 270, and 274

[Release Nos. 33-6486A; 34-20220A; 35-23069A; IC-13529A; File No. S7-958]

Disclosure of Executive Compensation; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects a final rule amendment, concerning disclosure of executive compensation, that was made in connection with the adoption of new Item 402 of Regulation S-K. The amendment appeared at page 44467 of the **Federal Register** on Thursday, September 29, 1983. This action is necessary to corrrect the amendatory language.

EFFECTIVE DATE: Revised Item 402 and the conforming amendments, including the conditional amendments to Form S-18, are effective for all documents filed on or after December 31, 1983. A registrant may comply with these provisions prior to that date, but if it elects to do so, it must comply with all applicable provisions and continue to do so in any subsequent filings.

Interested persons will have until October 31, 1983, to comment on the coordinating amendments to Form S-18, after which the Commission will review the comments and make such charges, if any, that it deems necessary and appropriate.

FOR FURTHER INFORMATION CONTACT: With respect to Item 402, prior to the effective date, contact Elliot M. Pinta, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. After the effective date, Ann Glickman, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. With respect to Form S-18, contact H. Steven Holtzman, Special Counsel, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On page 44475, column 2, the amendatory language for number 5 is corrected to read as follows:

PART 239—[CORRECTED]

"5. By removing Releases Nos. 5856, 5904, 6166, and 6364."

Dated: October 3, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27551 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Release No. 34-20091A]

Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rule.

SUMMARY: On August 16, 1983 the Commission announced the adoption of amended Rule 14a-8 relating to proposals by security holders (Release No. 34-20091; 48 FR 38218 through 38223 [August 23, 1983] FR Doc. 83-23104). The purpose of this document is to correct the citation of authority appearing in Section V of the Release.

DATE: The correction announced today is effective October 11, 1983.

FOR FURTHER INFORMATION CONTACT: William E. Morley or John J. Gorman, (202) 272-2573, Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 16, 1983 the Securities and Exchange Commission announced the adoption of amendments to Rule 14a-8 [17 CFR 240.14a-8] under the Securities Exchange Act of 1934 [the "Exchange Act"] [15 U.S.C. 78a *et seq.* [1976 and Supp. IV 1980)] and certain interpretations thereunder (Release No. 20091; 48 FR 38218 through 38223 [August 23, 1983]).

On page 38223 of the **Federal Register** toward the bottom of the second column, there are incorrect citations of authority in the third and fourth lines of the bracketed paragraph preceding the Secretary's name. The correct citation of authority should read in its entirety as follows:

[Sec. 14(a) and 23(a), 48 Stat. 895 and 901; sec. 12(e) and 20(a), 49 Stat. 823 and 833; sec. 20(a) and 38(a), 54 Stat. 822 and 841; 15 U.S.C. 78n(a); 78w(a), 79(e), 79t(a), 80a-20(a), 80a-37(a)]

George A. Fitzsimmons,

Secretary.

October 3, 1983.

[FR Doc. 83-27552 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket Nos. RM81-38-001 etc.]

Construction Work in Progress for Public Utilities

Issued: October 4, 1983.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting in part and denying in part applications for rehearing.

SUMMARY: The Commission grants, in part, and denies, in part, applications for rehearing of order No. 298. The Commission grants rehearing, in part, to modify the initial rate impact limitation in the Contruction Work in Progress (CWIP) rule. Order No. 298 is a final rule which provides that any public utility engaged in the sale of electric power for

resale may file to include in rate base (1) up to 50 percent of CWIP, subject to a rate impact limitation in the first two years, and (2) all CWIP associated with pollution control and fuel conversion facilities.

EFFECTIVE DATE: October 4, 1983.

FOR FURTHER INFORMATION CONTACT:

Michael R. Postar, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

Ronald L. Rattey, Federal Energy Regulatory Commission, Office of the Regulatory Analysis, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8154.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part the applications for rehearing filed pursuant to the Commission's Order No. 298, a final rule that establishes new regulations to govern the inclusion of construction work in progress (CWIP) in the rate base of public utilities.[1] The new rule replaces present CWIP policy, codified in 18 CFR 2.16, with a new § 35.26 which provides that any public utility engaged in the sale of electric power for resale may file to include in rate base up to 50 percent of CWIP, subject to a rate impact limitation in the first two years, and all CWIP associated with pollution control and fuel conversion facilities. In addition, the rule amends the requirements of certain cost of service statements in § 35.13 in order to obtain information about construction programs pertinent to the utility's rate change filing. Under these new filing requirements, applications for inclusion of CWIP in rate base will enable the Commission, at an earlier stage in each rate proceeding than under present policy, to evaluate the prudence of the claimed costs, including the extent to which the investment is part of a least-cost power supply strategy.

On rehearing, the Commission clarifies the final rule, in part by modifying the rate impact limitation, and addresses the issues raised by applicants.

II. Background

Applications for rehearing of Order No. 298 were filed on June 15, 1983 by: Alabama Electric Cooperative, Inc., jointly with Kansas Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Oglethorpe Power Corporation, Old Dominion Electric Cooperative, Inc., Sam Rayburn G&T, Inc., and the South Mississippi Electric Power Association (ACE); Public Systems; Consumer-Owned Power Systems (COPS); Municipal Electric Distribution Group (MEDG) (above are "wholesale customers"); Edison Electric Institute (EEI); Montaup Electric Company (Montaup); New England Power Company (NEPCO); American Public Power Association (APPA); National Rural Electric Cooperative Association (NRECA); American Paper Institute (API); and Consumers Union of United States, jointly with Natural Resources Defense Council (CU). Two untimely applications for rehearing were filed, one by the Mountain Plains Congress of Senior Citizens Organization, *et al.* (Mountain Plains) (June 16, 1983), and a second by the U.S. Small Business Administration, (SBA) (June 22, 1983). The Commission considers these as petitions for reconsideration.

Applicants claim that the Commission erred in several fundamental respects. First, while several applicants support the Commission's approach, they claim that the new rule restricts utilities from filing superseding rate schedules for 10 months if the superseded rate schedule contains any CWIP under subparagraph (c)(3), *i.e.*, CWIP other than that associated with pollution control and fuel conversion facilities, even if the superseding rate does not increase the level of such CWIP. Second, some other applicants believe the Commission failed to ensure that wholesale utilities are not assessed CWIP costs for any plant that will not serve them due to their imminent departure from the utility's system. Third, some applicants address certain inadequacies in the environmental analysis, the regulatory flexibility analysis and the record support for the rule generally. Finally, applicants argue that public utility management is not necessarily biased against capital investment under current rate regulation with respect to the FERC-jurisdictional portion of utility rates. Applicants also request rehearing on other issues discussed in the final rule, including the price signal and rate stability rationales used by the Commission, the intergenerational matching of costs and benefits, price squeeze, how the prudence of construction is determined, the industry's financial condition, and the benefits of alternatives to CWIP such as contributions in aid of construction and joint ventures.

On July 15, 1983, the Commission issued an "Order Granting Rehearing for Purposes of Further Consideration and denying Petitions for Stay of Final Rule" which tolled the period for consideration of the issues raised by the rehearing applications.[2]

III. Discussion of Applications for Rehearing

A. *Limitation on Rate Filings Under the CWIP Rule*

NEPCO, Montaup, and EEI apply for rehearing with respect to the operation of the initial limitation in paragraph (d) of § 35.26 of the final rule,[3] as it applies to CWIP allowed under paragraph (c)(3), that is, CWIP other than that associated with pollution control and fuel conversion facilities. First, these applicants state that paragraph (d) has the potential to restrict utilities that have received any CWIP under subparagraph (c)(3) from requesting additional CWIP in rate base for a much longer period than the Commission intended, due to the Commission's ability to suspend rates for up to 5 months from the proposed effective date. In other words, utilities may not be able to request additional CWIP in rate base for possibly as long as 17 months from the initial request for CWIP in rate base of the CWIP-related rate is suspended for five months. Second, these applicants read paragraph (d) of § 35.26 to prevent any general rate change requests during the ten-month restriction, even if that request does not increase the level of CWIP in rate base. The three applicants state that the Commission did not intend to restrict general rate applications that do not change the level of existing CWIP In rate base but intended only to prevent, for a specified time, higher rates due solely to requests for increased amounts of CWIP in rate base under paragraph (c)(3). Consequently, the applicants recommend amending § 35.26(d).

In the final rule, the Commission stated that the initial limitation under paragraph (d) of the rule "is intended to restrict rate increases directly related to CWIP in rate base. . . ." Applicants recognize an ambiguity in the rule which results in an implicit restriction on the filing of general rate changes that do not change the level of paragraph (c)(3) CWIP in rate base. The Commission agrees that it did not intend for paragraph (d) to restrict the filing of any general rate change applications by utilities that already have CWIP in rate base, if the utility is not proposing to

[1] 48 FR 24 323 (1983).

[2] 48 FR 33 252 (1983).

[3] Section 35.26(d) limits the rate impacts attributable to CWIP allowed in rate base under the rule during in the first two years after the effective date of the rule.

increase the amount of revenues attributable to CWIP already in rate base. The Commission, therefore, clarifies paragraph (d) to apply to initial requests under paragraph (c)(3) and only those subsequent rate filings that would increase the amount of such CWIP in rate base. This minor clarification is effective immediately because it relieves an unintended restriction on general rate filings. 5 U.S.C. 553(d).

With respect to the impact of suspensions, the Commission agrees that, if it were to suspend a CWIP-related rate for the maximum time allowed under law, the filing utility would be delayed in placing CWIP in rate base or increasing it. This possibility is a recognition of the Commission's mandate to protect consumers from unjust and unreasonable rates through the suspension power. As an incentive to file reasonable rates, the limitation in the CWIP rule assures no suspension or a short suspension in allowing a maximum of two CWIP filings in the first two years. The Commission also recognizes that the initial limitation may lessen the "pancaking" of CWIP-related rate filings during the first two years of the rule. The Commission is not persuaded that a limitation on its exercise of the suspension power with respect to any CWIP-based rate is warranted, even though the rate impact limitation already affords a measure of consumer protection. There are other elements in any rate schedule that, in any instance, may require that a rate schedule change be suspended. The Commission, therefore, rejects the applicant's proposal. [4]

B. *The "Double Whammy"*

Two applicants, namely AEC and APPA, assert that the final rule is inequitable to wholesale purchasers who are presently constructing their own generating facilities. In effect, these applicants contend that wholesale purchasers will be required to pay for capacity twice, that is, once for their own facilities under construction and once for their current supplier's CWIP. The Commission agrees in part with applicants and clarifies its position.

As explained in the preamble, the rule amends certain statements in the existing § 35.13(h) of the Commission's regulations to require utilities to identify and functionalize, as appropriate, CWIP "facilities which are dedicated to a particular customer or group of customers, such as unit sales transactions." [5] This requirement was intended to provide information which would be the basis for determining whether particular construction projects will serve wholesale customers whose rates are being changed. This approach conforms to the principal set forth in Opinion No. 164, *Public Service Company of New Mexico*,[6] that a wholesale customer should not be required to pay CWIP-based rates related to facilities which are shown will not be used to serve them. In Opinion No. 164, the Commission reasoned as follows:

> This issue is not one of intergenerational equity, but one which involves a totally separate and distinct situation. It is a situation where the identities of the CWIP charged entity and the entity provided service by the plant are different.

The Commission recognizes one implicit flaw in the statement quoted from Opinion No. 164. There its was assumed that non-receipt of power from a plant is sufficient to absolve a wholesale customer from responsibility for CWIP. However, there is a crucial reality that assumption ignores. Utilities decide to plan and construct new plant on the basis of their and their customers' load forecasts. Thus a wholesale customer who subsequently decides to obtain power from an alternative source may also be at least partially responsible for the decision to construct a plant for which CWIP is sought. Under those circumstances there seems little reason to absolve the wholesale customer for CWIP responsibility. Accordingly, we allow wholesale customers to escape liability for CWIP if they can prove that they bear no responsibility for the decision to build a new plant and will, in fact, purchase no full or partial firm power requirements which involve the new plant.[7]

The modified § 35.13(h) identification and functionalization requirement should operate to permit, on a case-by-case basis where all of the pertinent facts are known, consideration of whether a facility under construction will serve the needs of a specific wholesale customer or group of wholesale customers. A utility must first adequately support its requests for CWIP in rate base, including the proper allocation of CWIP plant to wholesale customers. While the utility retains the ultimate burden of persuasion with respect to its rate application, the burden of going forward to establish both that the customer's demand was not a significant factor in the utility's decision to build a facility and that the customer will definitely leave the filing utility's system by the time the plant is operational or during its operational life, shifts to the customer making such a claim. This burden might be met by documentary evidence such as a notice of cancellation or a contractual agreement to terminate purchases by a specific date.

This approach should preclude improper CWIP allocation where CWIP generation or transmission projects will be serving other customers, possibly including situations where wholesale customers will partially or totally leave the utility system.

C. *Analysis of Impacts and NEPA Compliance*

Several applicants state that the Environmental Assessment (EA) prepared by the Commission for the final rule does not comply with the National Environmental Policy Act of 1969 ("NEPA") [8] because the final rule constitutes a "major federal action significantly affecting the quality of the human environment." The EA concludes that the economic and ecological impacts of the final rule do not warrant the preparation of an Environmental Impact Statement (EIS). Applicants challenge both the methodology of the EA and its conclusions regarding the impacts of the CWIP rule.

The applicants raise four issues with respect to the methodology of the environmental study. They first state that the EA failed to consider what the impact would be if state commissions follow the Commission's rule, *i.e.*, the potential precedential impact of the rule.

The EA does analyze the effects of possible adoption by the states of the Commission's CWIP policy. The EA considers the impact of allowing 50 percent of all CWIP in rate base, at both the Federal and state levels.[9] This kind of analysis enhances the EA's usefulness in some respects because it presents an extreme scenario. In any case, the EA addresses the concern of applicants to that extent. However, the Commission notes that there are comments on the proposed rule, including some from commenters that

[4] In passing, the Commission notes that utilities will not be allowed to circumvent the 6 percent rate impact limitation by filing, for example, a two-phase rate increase application or two separate applications which would increase the rate impact attributable to CWIP above the allowed ceiling by requesting the permissible amount of paragraph (c)(3) CWIP in one filing and an increase in the rate of return in another.

[5] 48 FR 24353.

[6] 23 FERC ¶ 61,218, 61,458, *rehearing denied*, Opinion No. 164–A, 24 FERC ¶ 61,051 (1983), *petition for review pending*.

[7] See Appalachian Power Co., *et al.*, Reply Comments, at 71.

[8] 42 U.S.C 4321 *et seq.* (1969).

[9] Environmental Assessment, at S–2, 4–4, and 4–26.

oppose the CWIP rule, indicating that state regulatory authorities will not, and in many cases cannot, follow the Commission's CWIP policy. The Commission is not obligated to anticipate and analyze actions that are entirely within the discretion of other regulatory agencies or state legislatures.

Second, applicants state that the statistical studies in the EA did not include "nuclear fuel in process" within the definition of CWIP § 35.26(b)(1)). While the statistical studies did not include nuclear fuel, the EA finds, on the basis of data from the Energy Information Administration, that the size of this item is very small in relation to total CWIP, at least in the aggregate.[10] In effect, the EA concludes that, if nuclear fuel had been included in the statistical analysis, the estimated impacts would vary only slightly and would not change the Commission's conclusion.

A third criticism of the methodology raised by two applicants is that the study fails "to do a complete and accurate assessment of the likelihood of . . . price squeezes" which they perceive to be significant under the rule. In particular, AEC states that the price squeeze impact analysis contained in the EA is flawed because the analysis compared rates of return for classes of customers that are allegedly based upon differing cost-of-service methods; *i.e.*, that only one of the customer classes was assumed to have CWIP in rate base. Therefore, AEC argues that this method is different than that which has been used in cases before the Commission.

AEC misunderstands the Commission's price squeeze analysis. The comparison of rates of return by class was performed precisely as AEC suggests that it would have done. This price squeeze analysis is also consistent with cases decided by the Commission. The comparisons of rates of return assume that the costs of service for classes of customers include the same amounts of CWIP in rate base. The EA states that the Commission "has used this methodology in price squeeze decisions to date, and it has been affirmed by the courts."[11]

The EA simulated the effect of the CWIP rule on five cases in which price squeeze had been alleged by municipal or cooperative intervenors. The analysis indicated that there was no basis for finding that the CWIP rule will have a significant impact on the existence of price squeeze in the industry. Moreover, the price squeeze analysis does not reflect the 6 percent rate limitation which further lessens the initial rate increase of the rule and thus the likelihood of price squeeze. Therefore, the price squeeze arguments of both applicants are found to be without merit.

Fourth, Public Systems claims that the EA underestimates the total number of individuals affected by price increases that will occur as a result of the CWIP rule. This claim is founded only on the statement that over 11% of the U.S. population is served by rural electric cooperatives (co-ops) alone, as compared to the aggregate number of ratepayers which the EA states will be affected by the rule, *i.e.*, 8% of the U.S. population. Public Systems also believes that the Commission underestimates the proportion of low-income ratepayers affected by the rule. In support, it cites data that family incomes of the population group served by co-ops are 23.5% lower than the average U.S. family income. Therefore, concludes the applicant, this large segment of the population is "disproportionately poorer," which skews the Commission's assumption that low-income persons affected by the rule will be proportional to their percentage of the U.S. population.

The applicant's arguments on this issue are predicated on partial analyses and rhetoric rather than fact. First, with respect to the number of persons affected by the rule, the Commission points out that most co-ops do not purchase power from utilities regulated by the Commission. Consequently, the number of retail customers of co-ops affected by the CWIP rule will be far less than Public Systems alleges. Second, the Commission stands by its analysis in the EA with respect to the likely impacts on low-income persons that are directly subject to the Commission's ratemaking policies. Public Systems' argument is not entirely clear but is based on general information about the income levels of families served by rural electric co-ops compared to those nationally. The Commission does not believe, as the applicant apparently claims, that it follows from the income statistics cited that the proportion of poor people affected by the Commission's rule is larger in relation to the total population affected by the rule than the overall proportion of poor people to the general population. Public Systems presents no statistical evidence that is clearly inconsistent with or contradicts the conclusion of the EA. Even Public Systems' implied and unsubstantiated claim that the rural population served by co-ops is poorer in absolute terms, because its average income is lower, does not substantiate the inference that the impact of the Commission's rule is severe for those few affected.

Several applicants state that the impact of the CWIP rule will be significant. Public Systems claims first, that the impact on utility fuel mix will be significant. Public Systems states that although the national impacts are predominantly beneficial, due to a decrease in emissions from reduced coal use, the EA fails to consider whether this reduction is significant. Public Systems implies that the decrease in coal use is a significant impact.

In response, the Commission notes that the EA does evaluate the impact of a national decrease in fossil fuel use, and in particular in the use of coal, on the physical environment. The EA concludes that, with respect to oil and natural gas use, the environmental impacts would be "negligible" and that, with respect to coal use, the impact would be "small but detectable."[12]

Public Systems also states that under the CWIP rule fuel use will vary among regions and that some regions will experience significant adverse effects. In particular, Public Systems states that by 1995 "the Midwest region will be burning more of all three major fossil fuels to generate power than in the base case."

In response, the Commission reiterates its analysis in the EA. Table 4.8 of the EA presents the relative use of oil, gas, and coal on regional bases. In the Midwest, to use Public Systems' example, oil and gas by 1995 will each comprise five percent or less of total fossil fuel use and coal will constitute the remaining fossil fuel source. Table 4.8 also shows that, in 1995, if 50 percent of all CWIP is put in rate base, oil use will be 1.49 percent above the base case, natural gas will be 3.54 percent above the base case, and coal 0.02 percent above the base case. However, because oil and gas presently constitute a small percentage of total fossil fuel use, the small increases projected in the EA for these fuel categories will have a negligible impact on the fuel mix. Although coal use is relatively high in the Midwest region, the percentage change projected for coal use (0.02%) will result in a minimal impact in the fuel mix. Therefore, the Commission believes that the study is correct in finding no significant effects in terms of fuel use in the Midwest. The impacts in other regions are similarly found to be insignificant.

[10] *Environmental Assessment*, at 4-11.

[11] *Environmental Assessment*, at 4-42.

[12] See Environmental Assesament, at 4-29 through 4-32.

CU states that the CWIP rule change will impose disproportionate impacts on low-income and small business electricity consumers that are less able to meet the increase in electricity cost.

The Commission addresses the socio-economic impacts in the preamble [13] and also at section 4.2.4 of the EA. The impacts on low income and small business consumers are studied to the maximum extent practicable. Because rate structures differ throughout the country, the CWIP rule results in diverse impacts. However, on the average, the percentage of income expended by low-income households for electricity would increase by about 0.7 precent. While low-income households are less able to adjust to changes in the cost of basic necessities, among which are several uses of electricity, the magnitude of this price change is generally insufficient to cause significant adverse effects, in the Commission's estimation. In sum, the Commission has confidence that its EA arrives at a fair and balanced evaluation of the impacts of the rule.

D. *Adequate Record and Public Procedures*

Several applicants, including AEC, MEDG, and NRECA, contend that, in the CWIP final rule, the Commission committed several basic procedural errors. First, these applicants claim that the final rule exceeds the scope of the Notice of Proposed Rulemaking that the Commission issued on the subject and therefore is inadequate under 5 U.S.C. 553(b) of the Administrative Procedure Act. Second, applicants state that the Commission relied upon non-record evidence in the final rule. Third, some petitioners also believe that the EA should have been subject to notice and comment.

The NRECA states that the thrust of the Commission's Notice of Proposed Rulemaking was "a refinement of its existing policy of allowing CWIP solely to relieve certain utilities of their severe financial difficulties" and that the solution was "specific criteria for establishing a *prima facie* case of financial hardship." NRECA indicates that the basis for the action taken in the final rule differs from the reasoning offered for the original proposal. Therefore, the NRECA concludes that "it simply cannot be said that the original notice 'adequately frame[d] the subjects for discussion'." The NRECA also notes that it did not comment on the proposal to allow inclusion of a fixed percentage of CWIP in rate base.

The Commission's Notice of Proposed Rulemaking cannot be viewed as a narrow proposal to make one specific correction in the mechanics of its rulemaking procedures and policies. Rather, the Notice dealt with various methods for properly treating construction financing costs. The Notice discussed the Commission's ideas on this broad topic, presented several possible approaches, and highlighted a single approach based on providing CWIP relief according to a measure of the financial distress of particular utilities.

The Notice retained for the Commission an open view of the policies and approaches under consideration. The Notice set forth with specificity the issues relevant to any of several CWIP approaches and even requested that commenters address all possible justifications for including CWIP in rate base.[14] Alternative formulations of a revised CWIP policy, such as including all CWIP in rate base, are specifically referred to in the NOPR, and generated significant comments.

The final rule is foreshadowed by the proposed rule and is a logical outgrowth not only of the Notice but of the record developed during the protracted comment periods. The Commission believes that the very breadth of the Notice demonstrates the Commission's desire to investigate all available policy options and its intention to fashion the best possible approach in light of the diversity of comment that it expected would be submitted. Although it may choose to do so, nothing requires the Commission to make only one specific proposal on an issue and then to abandon the entire proposal in the face of criticism or any conflicting record evidence on that proposal. Such a circumstance would render the rulemaking process unproductive. The essence of its responsibilities under the Administrative Procedures Act is both to be fair and exercise its expert judgment, particularly where reasonable persons differ.

The Commission addresses applicants' contentions with respect to the sufficiency of the EA in Part C of this Order. The question remains whether an EA must be issued for public comment prior to formal issuance of the underlying Commission action. Applicants cite no authority to support such contention and the Commission does not believe that it is obliged to take such action. The Commission has considered the issues raised with respect to the EA on rehearing and has responded to all significant arguments.

Several applicants also cite as procedural error the Commission's references in the final rule to the EA. Since the EA was not available for public comment, the applicants believe that the public was denied an opportunity to comment on a part of the record support for the final decision.

Environmental Assessments are prepared to assist in determining whether an Environmental Impact Statement must be prepared. The Commission recognizes that preparation of NEPA documents can frequently improve the quality of agency decisions overall, for other than environmental purposes, particularly by examining available alternatives. The Commission's EA had that salutary effect in this case and the information and perspective that it furnished the Commission was useful. However, an agency's obligations under the National Environmental Policy Act of 1969 to engage in environmental analysis is based on there existing a sufficiently direct connection between the agency's action, in this case the inclusion in rate base of some costs at an earlier time than previously allowed, and an actual environmental consequence, in this case the construction of utility plant.[15] Regardless of whether such a causal relationship exists with respect to the CWIP rule, the preparation of an EA ensures that a reviewable environmental records exists, including an examination of available alternatives that the Commission believes were less than fully explicated by the commenters.

The references to the EA in the final rule provide collateral support for the Commission's analysis and the studies submitted by commenters that the Commission relies upon in the final rule. The Commission wishes to ensure recognition of the information in the EA which lends perspective and understanding to the other analyses in the record. The Commission sees no reason not to utilize the information that was developed in the course of preparing the EA.

MEDG claims that the Commission dealt inadequately, procedurally and substantively, with empirical studies relied upon in its final rule. MEDG claims the Commission relied upon an EIA study and two other studies[16] which were not part of the record nor made available for public comment. MEDG also contends that the Commission failed to respond to the comments made by parties on three other cited studies that were part of the record.[17]

[13] See 48 FR 24342.

[14] 46 FR 39447, 39453.

[15] For a helpful discussion on this point, see Order No. 94-C, 46 FR 24039 (1983).

[16] Argonne National Laboratory Study and Southwest Energy Associates Study.

[17] FERC staff study, Appalachian Power Co., *et al.*, study and Oglethorpe Power Co. Corp., study.

Any non-record studies that the Commission considered in reaching its decision complemented and supported the findings of the on-the-record studies and the Commission's policy analysis contained in the final rule. Among those non-record studies were the time trend analyses for CWIP-based rates relative to AFUDC-based rates. The Commission believes that the disparity between CWIP-based and AFUDC-based rates would obviously be greatest in the early years and diminish over time, unless one hypothesized unreasonably high growth rates in CWIP. While the EIA study provided initial rate impacts which may have been less accurate than the FERC study (due to data and modeling problems), the results over time and regionally were consistent in showing decreasing disparities over time. With regard to the initial rate impacts, primary reliance is placed by the Commission on the FERC study which *was* issued for public comment and which forms part of the rulemaking record.[18] There is thus an adequate basis for the rule without the EIA study.

With regard to MEDG's criticism of the Commission for failing to respond to comments on the FERC staff study or other record impact studies, no one—including MEDG—commented on or criticized the FERC study. With regard to the Commission's purported failure to respond to comments on the other record impact studies (by Oglethorpe and Appalachian Power), MEDG has provided no specific references to such comments that the Commission may have overlooked except with regard to MEDG's own reply comments. However, MEDG's reply comments were responding to a cost of capital study rather than the challenged rate or cash flow impact studies, as MEDG seems to allege. Review of the EA and the final rule indicates that the Commission relied extensively upon comments on the cost of capital studies, including those of MEDG.[19]

E. *The Investment Bias Question*

Several applicants assert that the rationale for the CWIP rule is flawed because the primary cause of any bias against capital investment attributable to earnings attrition[20] is, they assert, inadequate retail rate regulation by the various state commissions. The absence of earnings attrition at the wholesale level is ascribed by these applicants to the "pancaking" of rate cases, this Commission's practices of using forecasted test years, and the policy of granting one-day suspensions for rate increases that fall within specified bounds. In addition, these applications claim that any need for CWIP has been eliminated by changes in economic conditions, especially the moderation of inflation and the decline in nominal interest rates. As a result, applicants claim, there is no need to allow utilities to file to include CWIP in rate base.

The fact that the financial condition of utilities has improved somewhat does not undermine the Commission's fundamental point since there is no guarantee that the dramatic fluctuations in economic conditions that strained the financial condition of utilities in the 1970's will not prove cyclical, i.e., that the improved circumstances will be more than a short-lived phenomenon. Further, while inflation has moderated and nominal interest rates have fallen, interest rates remain very high. Accordingly, the carrying costs on an investment remain unusually high in real terms.

A review of the comments on the Notice of Proposed Rulemaking indicates that it is not possible to determine whether earnings attrition is attributable solely to the state-regulated retail rates level, as claimed by some applications. This is an area which may benefit from further study and, in fact, members of the Commission staff are presently engaged in further analysis of the question. The results of this study will be released upon completion. But, at least on the basis of presently available information and analysis, it cannot be shown that wholesale rates are immune from earnings attrition.

Moreover, concern over attrition is not the only source of a possible investment bias. As long as utilities are required by reasonable demand projections to maintain large construction programs, their cash flow requirements will be large. Under present ratemaking practices, the utility must capitalize the carrying costs on its investment as AFUDC, which of course represents *non-cash* earnings. The comments support the conclusion that AFUDC earnings are viewed by investors as inferior quality earnings.[21] The prevalence of a high proportion of such non-cash earnings tends to result in lower interest coverage ratios which then tend to restrict a utility's flexibility in meeting its public utility obligations and may encourage the utility to pursue short-term strategies designed more to respond to these financial constraints ratther than to meet long term demand for electric power at the lowest reasonable cost.

As stated in Order No. 298, conversion of non-cash AFUDC into cash earnings under the CWIP approach will significantly improve utilities' cash flow with respect to their jurisdictional operations. This improvement in cash flow should result in higher interest coverage ratios and improve bond ratings.[22] Utilities would then be in a better posture to pursue lowest cost generating strategies which will ultimately benefit the ratepayers when the new facilities go into service.[23] The concern over *financing* will remain even where utilities are earnings their allowed rates of return.[24] Thus, even if earnings attrition is controlled, the utility faced with a cash flow problem will be encouraged to favor less capital-intensive facilities, which may have higher operating costs with higher overall costs, over more capital intensive facilities with lower overall costs.

It is emphatically not in the Nation's interest for a regulatory policy to encourage utilities to favor high-cost power supply alternatives over low-cost strategies. Yet the Commission's present ratemaking practice may do just that. By allowing the utility to recover on a current basis the carrying costs on new investments, the CWIP rule will mitigate the financial drain and allow the utility to pursue a least-*total*-cost generating strategy, even if immediate cash flow requirements associated with such a least-cost approach are high. This should also tend to reduce the cost to

[18] 48 FR 24340, n. 70, *citing* 46 FR 58148. The Commission concedes the possibility that CWIP-based rates may indefinitely exceed AFUDC-based rates. *See*, n. 28, *infra*. The general agreement on this possibility among the EIA or other studies and the general agreement between commenters and the studies with respect to the dollar impact of the CWIP rule militate against the need for further public procedures to ascertain in the facts on this point.

[19] *Environmental Assessment* at 4-21 and 4-5.

[20] For a definition of this term, *see* 48 FR 24325, n. 11.

[21] 48 FR 24333. The survey of investors cited in Order No. 298 confirms the common sense notion that cash in hand is worth more than a promise of cash later.

[22] *See* 48 FR 24339 (discussion of studies in Order No. 298).

[23] Under the Commission's past CWIP policy, one key issue was whether the utility was faced with severe financial distress. Cash flow was a common way of evaluating whether such a condition existed. While the Commission has eschewed such a policy in this rule, specifically because of the problems involved in defining "severe financial distress", this does not mean that cash flow is no longer important. As explained, insufficient or inadequate cash flow can produce an investment bias.

[24] In this regard, the Commission reaffirms the analysis in Order No. 298 that including CWIP in rate base reduces financing costs. *See* Order No. 298, 48 FR 24327 n.20. The Commission's review of the record does not indicate that any applicant disputes this conclusion.

the utility of financing the construction. Any such reduction in financing costs redounds to the benefit of the ratepayer, of course.

Applicants are correct in noting that the Commission's action alone will not materially affect any attrition-related bias where the FERC regulates only a small portion of a utility's sales as is the case generally. In determining the proper policy to apply in setting electric rates, the Commission must rely on its best judgement of the facts and circumstances as it understands them. The states must also use their best judgement. The Commission's limited jurisdiction over electric rates cannot be the guiding factor in the Commission's decisions. State commissions have widely varying policies on CWIP. In those states where CWIP is allowed in rate base, the Commission's CWIP rule will work in tandem with theirs. If CWIP is not allowed in rate base at the retail level, the Commission's final CWIP rule may have little impact on the utilities' overall operations. This is the same for all of the Commission's ratemaking policies.

Nor ought the Commission try to make major changes in our ratemaking policies on the basis of today's financial headlines which change from month to month. For example, while the average market to book ratio of one group of utilities did attain 1.0 for one month during the spring of 1983, it since has drifted back down under 1.0, as shown by Table 1, below.

The concerns underlying the CWIP rule go further than daily fluctuations in utility stock performance. As detailed in Order No. 298, the Commission is also attempting to take some fairly modest steps to coordinate utility decisions as to how much capacity needs to be constructed with consumer decisions as to how much power to purchase.

In so doing, the Commission is essentially predicting that a CWIP in rate base policy will benefit the ratepayer over the long run notwithstanding the recognized increased in present rates. The Commission can offer no historical proof [25] beyond the appeal to economic analysis and common sense detailed in Order No. 298 and with which the extensive comments in this proceeding are replete. This is not surprising since "the very essence of policymaking is predicting what kind of behavior will be effected by what kind of incentives or sanctions." [26]

In any event, no CWIP will be allowed to be collected without a proper filing that conforms to the revised regulations, including the information required by the expanded reporting requirements of § 35.13. As a result, the Commission, the parties, and the public will have the necessary information to review and monitor developments under Order No. 298. Accordingly, while the Commission relies today on predictive judgments as to the effects of Order No. 298 on utilities, their customers, and their financial situation, the Commission expressly does not foreclose the public and the Commission's ability *tomorrow* to assess the accuracy of those predictions. [27]

The CWIP rule is not experimental in the sense of striking out on uncharted seas. Rather the rule represents the *fruit* of our past experience under the CWIP rules as they have evolved over the last decade. But in another sense the expanded CWIP rule is plainly "experimental," in that it represents a fairly significantly modification of existing practice. The Commission retains all the necessary information and the procedural capability for modifying the rule in the future should future experience so dictate. Thus, the Commission holds to its approach, fully anticipating that "a month of experience will be worth a year of hearings." [28]

F. *Price Signals and Rate Stability.*

Applicants argue that the inclusion of CWIP in rate base is counterproductive in terms of price signals because in many cases that policy overstates the present and future cost of electricity, including the cost relative to substitute energy sources. For example, several applicants state that the CWIP policy fails to account for any reduction in fuel cost associated with the new plant, or the ability to spread fixed costs over an expanding customer base.

In response, Order No. 298 states that new generating capacity will not inevitably reduce the price of electricity in the future. [29] In fact, the opposite seems to be the general rule. For this reason, present customers should be fairly apprised that the cost of future capacity is likely to be more expensive. While applicants' assertion that the price signals from a CWIP in rate base policy will prove misleading to consumers if costs decline may be technically correct, the possibility of declining costs is nonetheless remote. The Commission continues to believe that signalling consumers that electricity costs can be anticipated to increase as old facilities are retired and new ones are built is a valid and important reason for the CWIP policy adopted.

Another basis for placing CWIP in rate base, as the Commission explained, [30] is the rate surge that inevitably occurs when a new plant becomes operable and, under the old rules, is eligible for rate base treatment. However, several applicants state that rate stability does not justify the CWIP rule. AEC states that the examples of "rate shock" relied upon in the final rule reflect retail rate situations. This applicant states that the effect of the rule will be to create rate shock for wholesale customers.

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[25] The fact that many municipal utilities and cooperatives have a *de facto* "CWIP in rate base" policy, funding construction costs with current contributions, might by itself be viewed as *prima facie* evidence that at least some utilities recognize the overall financial benefits of the CWIP approach notwithstanding the higher present cost. *See* Statement of Mr. McHugh, representing Electri-Cities of North Carolina, *et al.*, transcript of December 7–8, 1981 public hearing, at 420. *See also* Statement of Mr. Ritts on behalf of APPA, transcript at 336 ("I must be frank with you that there are some of our systems that may currently charge customers for part of the cost of the plant"). *See also*, Reply Comments of Appalachian Power Co., *et al.* at 65–71.

[26] Wald, "Judicial Review of Complex Administrative Agency Decisions, 426 *The Annals of the American Academy of Political and Social Science* 72, 83, n.29 (July 1982).

[27] *Cf.* Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413, 1442 (D.C. Cir. 1983) (remanding to FCC for further consideration that portion of its rules deregulating much of the radio broadcast industry which might provide information necessary for monitoring effects of the new rules).

[28] American Airlines v. CAB, 359 F. 2d 624, 633 (D.C. Cir.) (en banc) (opinion by Leventhal, J.), *cert. denied*, 385 U.S. 843 (1966).

[29] 48 FR 24,331. On this point, AEC claims that the Commission erred in not stating definitively that CWIP in rate base will produce higher rates than an AFUDC policy for an indefinite period in the future. In this connection, AEC argues that the Commission misinterpreted the Livingstone and Sherali study upon which the Commission relied. The Commission used the study in explaining the conditions under which AFUDC-based rates would fall below CWIP-based rates over time. The Commission stated that it believed it unlikely that CWIP-based rates would remain indefinitely above AFUDC-based rates since realistic rates of growth in CWIP are most likely to be less than utilities' after-tax cost of capital. AEC claims that the cited study also found that consumer discount rates exceeding utilities' after-tax cost of capital leads to the conclusion that CWIP-based rates would exceed AFUDC-based rates.

AEC is in error. The Livingstone and Sherali study found that under a CWIP policy compared to an AFUDC policy, consumers would be penalized financially (from a present value perspective) if either the rate of growth in CWIP or the consumer discount rate exceeds the utility's after-tax cost of capital. This study did not conclude, however, that CWIP-based rates would be continually higher than AFUDC-based rates. Continually higher CWIP rates result only from a CWIP growth rates in excess of the company's cost of capital. Further, with regard to AEC's major point, the Commission concedes the possibility that CWIP-based rates will indefinitely exceed AFUDC-based rates, though the Commission believes the probability of that occurrence is low. The Commission has no basis to make a more definitive statement one way or another.

[30] 48 FR 24,331.

As a general proposition, rate stability is one goal of ratemaking. Ratepayers should not face rates that fluctuate radically according to the completion of base load units. In the case of wholesale customers, this concern is particularly important because of the power planning and price decisions that they face. In recent years, the Commission has witnessed the rising tide of substantial wholesale rate change filings attributable to new plant in-service.[31] The effects of inflation and increased construction costs over the last decade are just beginning to be reflected in wholesale rate base as new plant becomes operable. Moreover, as large central station generation plants presently under construction are completed over the next few years, the Commission anticipates that the rate shock phenomenon will continue. By revising its CWIP policy, the Commission is attempting to minimize this problem, to the extent possible.

One applicant claims that policies that phase new plant into rate base over a number of years may also achieve a measure of rate stability. The final rule reduces the adverse effects on consumers caused by the sudden spike in electric rates when new base load units are added to rate base without requiring that utilities carry the costs of operating plant while being unable to earn a return on that investment, as a phasing proposal would do. The final CWIP rule does not exclude the possibility of phasing-in facilities if the need arises in individual cases. However, a phase-in policy, while reducing present rates plainly increases future rates since ratepayers will be charged for the additional financing costs incurred during the phase-in period. The Commission believes it a fairer policy to consumers and stockholders to use CWIP in rate base as a phase-in technique rather than merely continue to defer costs out into the more distant future. Full discussion of the rate stability issue is also present in the record in this proceeding.[32]

G. *Price Squeeze*

Several applicants state that the analysis of the issue of price discrimination and price squeeze in the final rule is legally insufficient because it ignores the benefits of competition, fails to consider the relationship of federal to state treatment of CWIP, and does not remedy the discrimination that may exist during the pendency of rate cases before the Commission. In addition, applicants state that CWIP-based rates will limit the ability of wholesale customers to change suppliers after paying the financing costs on new plant.

In response, the Commission reiterates the position it has taken both in the Notice of Proposed Rulemaking and in the Final Rule that the Commission retains the flexibility to deny CWIP in rate base or modify other cost of service methods as possible remedies after a finding of undue discrimination. Wholesale customers may seek to show, in any case, that price discrimination or a price squeeze exists. The Commission will then, as appropriate, consider such evidence in its determination relative to requested rates.

The potential for a price squeeze or other undue price discrimination in particular cases is not an obstacle to a change in CWIP policy. It is impossible to say that the occurrence of price squeeze is more likely as a result of the utilities' ability to file for inclusion of CWIP in rate base under the rule. Therefore, the Commission finds it more appropriate to consider this once a *prima facie* showing of price squeeze is made in individual cases. A remedy for price squeeze or undue price discrimination will be fashioned in light of the facts of the particular case. This approach is consistent with the Commission's mandate under the Federal Power Act.

H. *Utility Industry Financial Difficulties*

APPA states that the CWIP rule is premised on a weakened financial condition of the electric utility industry, although, claims APPA, inflation and high interest rates have not severely affected all utilities and the industry as a whole is in good financial health. Moreover, APPA asserts that, as the inflation/interest rate bind has eased in recent months, the capital markets have responded favorably to electric utility financing needs. Another applicant indicates that the Commission did not attempt to determine the source or extent of the utility difficulties. In addition, applicants cite financial and trade reports as support for the proposition that the financial position of the electric utility industry is growing stronger.

In Order No. 298, Part IV.B.1, the Commission discusses in detail the evidence presented by commenters on the financial condition of the industry. The Commission concludes that the industry has been in a weak financial position for a number of years, in part as a result of the Nation's general economic condition and the industry's sizeable capital needs with respect to its construction program. Its primary concern is the long-term outlook of the industry and the adverse effect that economic cycles have on the industry. While the Commission remains concerned that "the financial condition of the industry at a particular point in time is not necessarily indicative of the health of the industry. . .",[33] the Commission's objective is to minimize cyclical financial strains on the industry like those it undoubtedly experienced in recent years.

The CWIP rule implements a policy that is appropriate to aid utilities in their efforts to meet the needs of wholesale customers. The rule will help utilities construct necessary facilities even during periods in which capital markets are constricted. All this notwithstanding, the Commission emphasizes that the rule is not predicated upon the current financial condition of the industry or of a particular utility. The various bases for the rule are fully articulated in Part III of Order No. 298.

I. *Intergenerational Equity*

The applicants state that the CWIP rule will allow utilities to charge customers for plant not yet in-service. This is claimed to create an intergenerational inequity because the retail customers not benefitting by the facility under construction will bear a portion of the cost burden associated with the facility. The result is a mismatch of the costs and benefits of future service. The applicants' arguments on this issue repeat the discussion in public comments on the NOPR that were addressed in the final rule.[34]

In the final rule, the Commission sought to balance both the Nation's interest in reliable service at the most reasonable cost and any mismatch of costs and benefits that might result from CWIP in rate base. The Commission concluded that, in the case of CWIP, strict adherence to assigning cost responsibility to customers that will be serviced by a new plant was not justified. For ratepayers who pay CWIP costs, the likelihood of receiving benefits are relatively great. Moreover,

[31] *See e.g.*, South Carolina Electric & Gas Company, ER83-487 (1983) (23.8% rate increase); Pacific Gas & Electric Company, ER81-679 (1981) (50%); Florida Power Corporation, ER82-701 (1982) (10.7%); Delmarva Power & Light Company, ER80-383 (1980) (20.8%).

[32] *See, e.g.*, American Electric Power Corporation, Initial Comment, at 15; Edison Electric Institute, Initial Comment, at 38; Public Service Company of Ohio, Initial Comment, at 4.

[33] *See* 48 FR at 24,334

[34] *See* 48 FR at 24,336.

CWIP-based rates will provide benefits in terms of permitting utilities to more accurately gauge the need for future capacity while relieving any bias against additional investment. That reasoning is sufficient to warrant the rejection of the applicants' argument regarding intergenerational equity.[35]

Moreover, the claim that a wholesale customer will have left the system prior to the in-service date of CWIP facilities does not raise intergenerational questions. As noted above, the issue here involves the appropriate allocation of costs between jurisdictional and non-jurisdictional services. A wholesale purchaser may challenge the accuracy or appropriateness of a utility's cost allocation proposal.

J. *Construction Prudence*

The NRECA states that requiring electric utilities that request CWIP in rate base to file a construction program statement "fundamentally reorient[s] the Commission's assessment of the reasonableness of construction programs" by duplicating state licensing decisions. "[T]he CWIP rule", states the applicant, "strains the historic relationship between federal and state governments concerning energy regulation, and may create conflicts with the NRC."

Under an AFUDC policy, consideration of the prudence of a project was generally deferred until the plant was completed and rate base treatment requested. The CWIP policy now presents the prospect of including some of the costs of a facility in rate base earlier in the construction cycle. The Commission must therefore change the time frame of its prudence considerations. Section 35.13 is therefore amended to require a general statement of the utility's program for providing reliable and economic power.

In any case, the Commission does not believe that its concern that wholesale rates be based on prudent decisions by utility managers involves either substituting its judgment for that of utility management or usurping the authority of state regulators to exercise their own legal responsibilities to examine the need for, and prudence of, any construction program, in states where such express authority exist. In fact, state findings are useful to the Commission's deliberations in those cases where the state requires the utility to justify construction expenditures and to seek authorization. Moreover, the exercise of this Commission's mandate cannot be said to interfere with the responsibilities of other Federal departments or agencies, and no one substantiated that view. The Commission, therefore, sees no reason to modify its approach with respect to management prudence.

K. *Alternatives to CWIP*

In response to the Notice of Proposed Rulemaking, commenters presented several proposals that are claimed to be superior to including construction costs in rate base. Once again, applicants for rehearing ask the Commission to reconsider joint ventures, contributions in aid of construction or even 100 percent of all CWIP in rate base, as alternatives to the approach in the final rule.

Public Systems alleges that the Commission failed to "meaningfully consider" joint ventures as an alternative to the inclusion of CWIP in rate base. It does not present any new evidence on joint ventures as an alternative to CWIP, however. According to Public Systems, the success of some joint venture projects establishes that this approach is a means of ensuring construction of least-cost facilities. On review, the Commission is unable to discern a specific proposal on joint ventures by Public Systems. Rather it appears Public Systems would like the Commission to require that utilities actively seek municipal and cooperative partnerships in all new projects, something the Commission believes is beyond its role. The Commission's experience is that joint ventures can be a valuable tool for utility management in terms of financing new construction programs. Nonetheless, the Commission believes that joint ventures, even if desired by the parties, are available in only limited instances. Although joint ventures may be explored where feasible, the Commission does not believe that this approach offers an industry-wide solution to the problems that prompted this rule. The Commission prefers CWIP because it provides utilities with cash flow during construction when the utility is exposed to the greatest financial pressures and risk.

Contributions in aid of construction (CIAC) is an alternative method of obtaining capital from ratepayers to finance the cost of constructing new facilities which the Commission fully discussed in the final order.[37] There, the Commission stated that whether a CIAC approach is beneficial to ratepayers compared with a CWIP policy, in part, depends upon the contibutions not being taxed as income to the utility. In Order No. 298, the Commission expressed concern regarding "the federal tax treatment that will be accorded capital provided by ratepayers in the form of CIAC." Applicants present no new evidence to support the conclusion that the CIAC will be afforded favorable federal tax status. In addition, the Commission stated in the final rule that if the CIAC are not treated as revenues to utilities, *i.e.*, if favorable tax status is accorded the CIAC, "there will be no direct changes in either the quality of earnings or interest coverage ratios," because the CIAC would not be income to the utility. This remains a significant inadequacy of the CIAC approach as a general approach to resolving the problems that the Commission seeks to address in its rule.

EEI recommends that the Commission "follow the logic" of the CWIP rule and permit all CWIP in rate base. The fixed percentage approach adopted by the Commission provides a measure of predictability to the utility in terms of the "quantum of rate relief [that a utility can anticipate] over the entire construction period . . . ".[38] In choosing a 50 percent level for CWIP, the Commission balanced the equities of reapportioning costs among present and future ratepayers. The Commission chose the 50 percent approach, in part, because it evenly splits the cost responsibility for financing the construction of new plant. While a higher level of CWIP would arguably bring the Commission closer to achieving its goals announced in this rulemaking, the balance that is achieved by this rule will help "to create a regulatory setting within which the utility can supply the nation's" need for electricity at the lowest reasonable cost and which is equitable to present ratepayers. While the record in this proceeding arguably supports the inclusion of additional CWIP in rate base, the Commission believes that the 50 percent approach represents a balanced solution to a significant regulatory issue.

L. *Regulatory Flexibility Act Certification*

The Commission certified in the Notice of Proposed Rulemaking and

[35] The Commission notes that allowing utilities to file to include CWIP in rate base does not alter its rules governing cost recovery for failed or abandoned power supply facilities. To the extent that costs are prudently incurred, utilities may be able to file to recover both the principal invested and the interest accrued up to the time of abandonment. If, pursuant to the CWIP rules, carrying charges have already been paid on facilities which are subsequently abandoned, the utility will not be allowed to double recover those costs.

[37] *See* 48 FR at 24,348.

[38] *See* 48 FR at 24,348.

again in the final rule that the CWIP rule change would not have a significant economic impact on a substantial number of small entities. According to the comments of the Small Business Administration (SBA) on the Notice of Proposed Rulemaking, the Commission should consider the impact of its rule on wholesale and retail customers of the jurisdictional entities subject to rate regulation by the Commission. This suggestion was rejected in the final rule because the Regulatory Flexibility Act does not require the Commission to consider the effect of a federal rate standard on non-jurisdictional entities whose rates are not subject to the rule.[39]

Two applications for rehearing, including the untimely petition for reconsideration by the SBA, again state that the Commission's analysis under the Regulatory Flexibility Act is deficient because it fails to consider the effect of the CWIP rule change on non-jurisdictional entities. Neither the application nor the petition present new arguments or citations to authority not previously considered by the Commission in this rulemaking proceeding.

The applicants do not contend that the Commission's analysis is incorrect with respect to the effect of the rule on jurisdictional entities. The Commission's final rule nevertheless analyzes the impact of its rule on wholesale and retail customers. However, the Commission declines to adopt the suggestions of applicants insofar as the formal requirements of the RFA are concerned.

The Commission orders that, for the reasons stated above:

The Applications for Rehearing and Petitions for Reconsideration are hereby denied, except to the extent that 18 CFR 35.26(d) is amended as set forth in this order.

(Federal Power Act, 16 U.S.C. 791–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O No. 12009, 3 CFR 142 (1978))

List of Subjects in 18 CFR Part 35

Electric rates.

In consideration of the foregoing, Part 35 of Title 18, Code of Federal Regulations, is amended as set forth below, effective October 4, 1983.

By the Commission.

Kenneth F. Plumb,

Secretary.

[39] *See* 48 FR. 24,350.

PART 35—[AMENDED]

1. In § 35.26, the introductory text of paragraph (d)(1) is revised to read as follows:

§ 35.26 Construction work in progress.

* * * * *

(d) *Initial limitation.*—(1) *Limit.* Beginning on July 1, 1983 and ending on July 1, 1985, a public utility may file to include CWIP in rate base under subparagraph (c)(3) of this section, either initially or to increase the amount of such CWIP provided for in any rate schedule to be superseded, only if:

* * * * *

§ 35.26 [Amended]

2. In § 35.26, paragraph (d)(1)(ii) is amended by removing the word "has" and substituting in lieu thereof the word "have".

Note.—The following table will not appear in the Code of Federal Regulations.

TABLE 1.—AVERAGE MARKET TO BOOK RATIOS FOR 100 ELECTRIC UTILITIES

September 1982	.88
October	.92
November	.91
December	.94
January 1983	.96
February	.97
March	.97
April	1.00
May	.98
June	.94
July	.96
August	.96

Source: Salomon Brother Inc., *Electric Utility Monthly*, various dates.

[FR Doc. 83-27473 Filed 10-7-83; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 157

[Docket Nos. RM81-19-000, RM81-19-010 Through 021; Docket Nos. RM81-29-000 Through 014]

Interstate Pipeline Blanket Certificates for Routine Transactions, Sales and Transportation by Interstate Pipelines and Distributors; Order Granting Rehearing For Purposes of Further Consideration

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: On July 20, 1983, the Federal Energy Regulatory Commission (Commission) issued two final rules which expanded the categories of activities that may be authorized under a blanket certificate issued to natural gas pipelines pursuant to Subpart F of Part 157 of the Commission's regulation (Order Nos. 234-B and 319, 48 FR 34873 (August 1, 1983)). The Commission received fourteen applications for rehearing of the final rules. In order to have sufficient time to consider the applications, the Commission grants rehearing of the final rules solely for purposes of further consideration.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

In the matter of Interstate Pipeline Certificates for Routine Transactions: Docket Nos. RM81-19-000, -010, -011, -012, -013, -014, -015, -016, -017, -018, -019, -020, -021: Sales and Transportation; by Interstate Pipelines and Distributors: Docket Nos. RM81-29-000, -001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014.

Order Granting Rehearing For Purposes of Further Consideration

Issued: September 19, 1983.

On July 20, 1983, the Federal Energy Regulatory Commission (Commission) issued two final rules in Docket No. RM81-29-000 (Order No. 319, 48 FR 34875, Aug. 1, 1983) and Docket Nos. RM81-19-000 and RM81-29-000 (Order No. 234-B, 48 FR 34872, Aug. 1, 1983). The final rules expand the categories of activities that may be authorized under a blanket certificate issued pursuant to Subpart F of Part 157 of the Commission's regulations (§§ 157.201 through 157.218).

Texas Eastern Transmission Corp. and Associated Gas Distributors filed applications for rehearing of Order No. 319. The Peoples Gas Light and Coke Co. and North Shore Gas Co., Northern Natural Gas Co., Consolidated Gas Supply Corp., Maryland People's Counsel, Valero Interstate Transmission Corp., Process Gas Consumers Group and the American Iron and Steel Institute, Yankee Resources, Inc., Natural Gas Pipeline Company of America, United Distribution Companies, Brooklyn Union Gas Co., Columbia Gas Transmission Corp., and Consolidated Edison Company of New York, Inc., requested rehearing of Order Nos. 319 and 234-B.

In order to have sufficient time to consider the applications, the Commission grants the applications for rehearing filed by the above named groups solely for purposes of further consideration. This action does not

constitute a grant or denial of the applications on the merits in whole or in part. Pursuant to § 385.713(d) of the Commission's regulations, no answers to the applications will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27472 Filed 10-7-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

FD&C Red No. 3 Externally Applied Drugs and Cosmetics and the Lakes of FD&C Red No. 3 in Food and Ingested Drugs; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice; final rule-related.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a meeting of the Scientific Board of Counselors (the Board) of the National Toxicology Program (NTP), at which the Board will peer review studies on the use of FD&C Red No. 3, has been scheduled.

DATE: The meeting will be held on October 27, 1873.

FOR FURTHER INFORMATION CONTACT: Marvin Mack, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of October 4, 1983 (48 FR 45237), FDA postponed the closing date for the provisional listing of the use of FD&C Red No. 3 for coloring externally applied drugs and cosmetics and of the lakes of FD&C Red No. 3 for coloring food and ingested drugs. FDA announced in that document that it had arranged for peer review by the Board at its October meeting of the data on the thyroid neoplastic lesions in treated rats fed FD&C Red No. 3. NTP has now scheduled that meeting for October 27, 1983. See NTP's notice published elsewhere in this issue of the **Federal Register** for details of that meeting.

Dated: October 4, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-27500 Filed 10-7-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 179

[Docket No. 83F-0083]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the isotope Californium-252 as a sealed neutron source for the measurement of moisture in the inspection of food, the inspection of packaged food, and in controlling food processing. This action responds to a petition filed by Ohmart Corp.

DATES: Effective October 11, 1983; objections by November 10, 1983.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 22, 1983 (48 FR 17391), FDA announced that a food additive petition (FAP 3M3706) has been filed by Ohmart Corp., Cincinnati, OH 45209, proposing that § 179.21 (21 CFR 179.21) be amended to provide for the safe use of the isotope Californium-252 as a sealed neutron source for the measurement of moisture in the inspection of food, the inspection of packaged food, and in controlling food processing. The total neutron irradiation dose absorbed by food shall not exceed 200 millirads.

In the review process, the agency has utilized information submitted by the petitioner, as well as information gathered by the agency. FDA has evaluated the available data and concludes that the proposed use of Californium-252 as a sealed source of neutron radiation is safe and that the regulations should be amended as set forth below. This amendment permits a new energy source for the limited use authorized in this regulation to meaure moisture. It does not deal with the agency's general policy regarding the irradiation of food to destroy insects, inhibit growth and maturation of fresh fruits and vegetables, and destroy insects and microbes in spices described in the advance notice of proposed rulemaking published in the **Federal Register** of March 27, 1981 (46 FR 18992).

This amendment to § 179.21 adds new paragraph (a)(3), revises paragraph (b)(2)(ii), and adds new paragraph (b)(2)(iii).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

List of Subjects in 21 CFR Part 179

Food additives, Food packaging, Irradiation of foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 179.21 is amended by adding new paragraph (a)(3), by revising paragraph (b)(2)(ii), and by adding new paragraph (b)(2)(iii) to read follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

§ 179.21 Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing.

* * * * *

(a) * * *

(3) Sealed units producing neutron radiation from the isotope Californium-252 (CAS Reg. No. 13981-17-4) to measure moisture in food.

(b) * * *

(2) * * *

(ii) A statement that no food shall be exposed to radiation sources listed in paragraph (a) (1) and (2) of this section so as to receive an absorbed dose in excess of 1,000 rads.

(iii) A statement that no food shall be exposed to a radiation source listed in paragraph (a)(3) of this section so as to receive an absorbed doese in excess of 200 millirads.

Any person who will be adversely affected by the foregoing regulation may at any time on or before November 10, 1983, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective October 11, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: October 4, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-27512 Filed 10-7-83 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Dinoprost Tromethamine Sterile Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co., providing for use of dinoprost tromethamine injectable for the treatment of pyometra (chronic endometritis) in cattle.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, has filed a supplement to NADA 108–901 providing for the intramuscular use of dinoprost tromethamine (Lutalyse® 1Sterile Solution) for the treatment of pyometra (chronic endometritis) in cattle. Upjohn also holds approval for intramuscular use of the drug in beef cattle and nonlactating heifers for synchronization of estrus; in nonlactating cattle to induce abortion; in lactating dairy cattle for treatment of unobserved (silent) estrus; and in mares to induce estrus. The supplemental application is approved and the regulations amended accordingly. The basis for the approval is discussed in the freedom of information (FOI) summary referred to below.

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

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1 (f)(1)(iv) and (g)) may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.690 by revising paragraph (d)(2) to read as follows:

§ 522.690 Dinoprost Tromethamine Sterile Solution.

* * * * *

(d) * * *

(2) *Cattle*—(i) *Amount.* 5 milliliters (equivalent to 25 milligrams of dinoprost).

(ii)(*a*) *Indications.* For its luteolytic effect to control timing of estrus and ovulation in estrous cycling cattle that have a corpus luteum.

(*b*) *Limitations.* For use in beef cattle and nonlactating dairy heifers, as follows: Inject a dose of 5 milliliters intramuscularly either once or twice at a 10- to 12-day interval. With a single injection, cattle should be bred at the usual time relative to estrus. With the two injections, cattle can be bred after the second injection either at the usual time relative to detected estrus or at about 80 hours after the second injection. Estrus is expected to occur 1 to 5 days after injection if a corpus luteum was present. Cattle that do not become pregnant to breeding at estrus on days 1 to 5 after injection will be expected to return to estrus in about 18 to 24 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(iii)(*a*) *Indications.* For treatment of pyometra (chronic endometritis).

(*b*) *Limitations.* For intramuscular use as a single injection. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Effective date. October 11, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: October 4, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-27501 Filed 10-7-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A. H. Robins Co., providing for use of a combination of previously approved premixes containing salinomycin and roxarsone for making finished feed for broiler chickens for prevention of coccidiosis.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., 1211 Sherwood Ave., P.O. Box 26609, Richmond, VA 23261, filed NADA 132–447 providing for the use of salinomycin sodium premix in combination with roxarsone premix to make finished feeds for broilers containing 40 to 60 grams salinomycin and 45 grams of roxarsone per ton of feed. The finished feeds are used for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* including some field strains of *E. tenella,* which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone. The NADA is approved and the regulations amended accordingly. The basis of approval is discussed in the freedom of information summary.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

1. In § 558.530 by designating the first sentence in paragraph (f)(4) as paragraph (f)(4)(i), by redesignating paragraph (f)(4)(i) through (iv) as (f)(4)(i) (*a*) through (*d*), and by adding new paragraph (f)(4)(ii). As revised paragraph (f)(4) reads as follows:

§ 558.530 Roxarsone.

* * * * *

(f) * * *

(4) *Additional combinations.* (i) Roxarsone may be used in combination "as an aid in the reduction of lesions due to *E. tenella*" as follows:

(*a*) Lasalocid as in § 558.311.

(*b*) Lasalocid plus bacitracin methylene disalicylate as in § 558.311.

(*c*) Lasalocid plus lincomycin as in § 558.311.

(*d*) Lasalocid and bacitracin zinc as in § 558.311.

(ii) Roxarsone may be used in combination with salinomycin as in § 558.550.

2. In § 558.550 by revising paragraph (c) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(c) *Conditions of use*—(1) It is used in complete broiler feeds as follows:

(i) *Amount per ton.* 40 to 60 grams.

(ii) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(iii) *Limitations.* Feed continuously as sole ration. Do not feed to layers. Not approved for use with pellet binders. May be fatal if fed to adult turkeys or horses.

(2) *Permitted combinations*—(i) [Reserved].

(ii) Roxarsone provided by No. 011801 or 017210 in § 510.600(c) of this chapter for use in broilers:

(*a*) *Amount.* Salinomycin 40 to 60 grams per ton and roxarsone 45 grams per ton.

(*b*) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* including some field strains of *E. tenella,* which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone.

(*c*) *Limitations.* Feed continuously as sole ration and as sole source of organic arsenic. Not approved for use with pellet binders. Do not feed to layers. May be fatal if fed to adult turkeys or horses. Withdraw 5 days before slaughter.

Effective date. October 11, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: October 4, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83–27502 Filed 10–7–83; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

Correction

In FR Doc. 83–25959 appearing on page 43302 in the issue of Friday, September 23, 1983, make the following correction: In column two, **SUPPLEMENTARY INFORMATION,** line five, "Flanco Products Co." should read "Elanco Products Co.".

BILLING CODE 15015–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of several supplemental new animal drug applications providing for use of 40-gram-per-pound tylosin premixes for making finished swine, beef cattle, and chicken feeds. The supplements were submitted by Flanco Products Co. for Carl S. Akey, Inc.; Feed Service Co., Inc.; J&R Specialty Supply Co.; Mac-Page, Inc.; Nutra-Blend Corp.; and Southern Micro-Blenders, Inc.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: The following six firms have had supplemental NADA's submitted for them to use tylosin premixes in making finished animal feeds:

Carl S. Akey, Inc., P.O. Box 128, Lewisburg, OH 45338, NADA 103–089

Feed Service Co., Inc., Box 698, Mankato, MN 56001, NADA 111–637

J&R Specialty Supply Co., P.O. Box 506, Waseca, MN 56093, NADA 096–780

Mac-Page, Inc., 1600 South Wilson Ave., Dunn, NC 28334, NADA 131-957
Nutra-Blend Corp., Route 7, Box 192A, Neosho, MO 64850 NADA 122-158
Southern Micro-Blenders, Inc., 3801 North Hawthorne St., Chattanooga, TN 37406, NADA 133-833

Elanco has submitted a supplement to each of the NADA's above providing for use of 40-gram-per-pound tylosin premixes for making finished swine, beef cattle, chicken, and layer, broiler, and replacement chicken feed for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplements are approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary referred to below.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b) (16), (48), (54), (71), (79), and (80) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625. Tylosin.

* * * * *

(b) * * *

(16) To 049768: 5 and 10 grams per pound, paragraph (f) (l) (vi) (*a*) of this section; 40 grams per pound, paragraph (f)(l) (i) through (vi) of this section.

* * * * *

(48) To 017790: 10 grams per pounds, paragraph (f)(l) (i), (iii), (iv), and (vi) of this section; 40 grams per pound, paragraph (f)(l) (i) through (vi) of this section.

* * * * *

(54) To 030841: 10 and 40 grams per pound, paragraph (f)(l) (i) through (vi) of this section.

* * * * *

(71) To 050568: 4 and 10 grams per pound, paragraph (f) (l) (vi) (*a*) of this section; 10 and 40 grams per pound, paragraph (f)(l) (i) through (vi) of this section.

* * * * *

(79) To 047427; 10 and 40 grams per pound, paragraph (f)(l) (i) through (vi) of this section.

(80) To 049685: 10 and 40 grams per pound, paragraph (f)(l) (i) through (vi) of this section.

* * * * *

Effective date. October 11, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))).

Dated: October 3, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 83-27513 Filed 10-7-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

Geological and Geophysical Exploration of the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking amends the regulations that required a holder of a permit for geological or geophysical exploration activities for minerals or scientific research on the offshore to notify the Director, Minerals Management Service, immediately in writing, of the acquisition, analysis, or interpretation of geological information or data or the acquisition, processing, reprocessing, or interpretation of geophysical information or data collected under the permit. The newly revised regulations require notice in writing within 30 days of the acquisition, initial analysis, and initial interpretation of geological information or data and acquisition, initial processing, and initial interpretation of geophysical information or data. The permittee will be required to submit notice of the availability of any subsequent analysis, processing, and interpretation within 30 days of a request for such notice of availability by the Director. The amended regulations will eliminate the requirements for repeated immediate notice. In response to the Notice of Proposed Rulemaking published in the **Federal Register** on July 1, 1982 (47 FR 28706), representatives of industry and trade associations submitted comments on the proposed changes that were evaluated and analyzed in connection with this final rule.

EFFECTIVE DATE: November 10, 1983.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; Department of the Interior; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephine (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION:

Background

The regulations implement section 26 of the Outer Continental Shelf Lands Act that requires a permittee conducting exploration offshore to ". . . provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe." In order to provide the Secretary access, it is necessary for the Secretary to know what data and information is available. The regulations prior to this amendment required immediate notice in writing of the acquisition, analysis, or interpretation of geological information or data and the acquisition, processing, reprocessing, or interpretation of geophysical information or data (30 CFR 251.11 and 251.12). It is recognized that geological data is often repeatedly analyzed, and geophysical data is reprocessed and reinterpreted many times after intial acquisition, analysis, processing, and interpretation, often on a daily basis. Requiring immediate notification of every reanalysis, reprocessing, and reinterpretation imposes a time-consuming and excessive paperwork burden with little, if any, practical benefit to the U.S. Government. The amended regulations will eliminate the requirement for repeated immediate notice. Notice will be required within 30 days of the initial acquisition, analysis, processing, and interpretation. Notification of any further work performed on the data or information will only be required upon request by the Director.

Comments

A total of 11 comments were received in response to the Notice of Proposed Rulemaking. All 11 commenters agreed that the immediate notice requirements were excessive and burdensome and should be eliminated. Some commenters had questions and suggestions which are delineated below.

Difference Between Proposed Rule and Final Rule: The final rule clarifies the requirement that the permittee provide notice of the availability of subsequent analysis, processing, and interpretation data and information upon the Director's request and not data or information itself.

Discussion of Comments: All of the commenters agreed with the Department's proposal to eliminate the immediate notice requirement. Several commenters recommended that the two sections should read alike as to the notification of subsequent analysis, processing, or interpretation and that the requirement be for notice of the availability of reanalyzed, reprocessed, or reinterpreted data and information and not for the data or information itself. We agree and the final rule reflects this recommendation.

Another commenter suggested that the proposed wording concerning reprocessing and reinterpretation of geological data and information could be misread to require further reprocessing or reinterpretation at the Director's request even if the permittee did not plan to reprocess or reinterpret. We believe that the language of the final rule alleviates any possible confusion and that the Director's request concerns notice of existing reprocessing or reinterpretation only.

This clarification as to the requirement for notice only also responds to another comment that the amended sentences concerning the 30-day time requirement were inconsistent with other unamended sentences that set out a 30-day requirement but allow the Director to authorize a longer period. The commenter felt that the provision for a longer period should be added to this final rule. We disagree and point out that the authorization for a longer period refers to the time period allowed for the actual submission of data and information and does not concern the time period for notice of availability.

Two commenters suggested that the initial notice requirement cover only acquisition and that notice of initial analysis, processing, or interpretation was unnecessary because, according to one commenter, a company would normally analyze, process, or interpret acquired material. However, as another commenter pointed out, initial analysis, processing, or interpretation could occur immediately or years later. While it necessitates that the permittee keep records of the timing of initial analysis, processing, or interpretation if the Director is not notified of the initial analysis, processing, or interpretation, he would have to repeatedly request notification. Such unnecessary repetition would be burdensome to both the Government and to the permittee who would have to respond, albeit negatively, to every request. Therefore, the final rule continues to require notice of initial analysis, processing, and interpretation.

Environmental Impact, Regulatory Analysis, and Small Entity Flexibility Analysis.

The Department has determined that the amendments to 30 CFR 251.11 and 251.12 do not constitute a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required.

The Department has determined that promulgation of these rules is not a major action requiring preparation of a regulatory impact analysis under Executive Order 12291. The cost impact of these rules affects approximately 400 permittees who spend an average of 52 hours each per year at an average of $15 per hour for a total cost of $312,000.

The Department has also determined that the amendments will not have a significant effect on a substantial number of small entities. Because of the complexity and capital investment requirements, small entities are generally not involved in offshore activities.

Information Collection

The information collection requirements contained in 30 CFR 251.11 and 251.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010–0034.

List of Subjects in 30 CFR Part 251

Continental shelf, Freedom of information, Public lands—mineral resources, Reporting and recordkeeping requirements, Science and technology.

Dated: September 9, 1983.

W. L. Dare,

Acting Deputy Assistant Secretary of the Interior.

PART 251—[AMENDED]

For the reasons set forth above, 30 CFR Part 251 is amended as shown:

1. Section 251.0, is amended by adding paragraph (d) as follows:

§ 251.0 Authority for information collection.

* * * * *

(d) The information collection requirements contained in 30 CFR 251.11 and 251.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010–0034. The information is being collected for regulatory compliance. This information will be used to inspect and select geological and geophysical data and information collected under a Federal permit offshore. The obligation to respond is mandatory under section 26 of the Outer Continental Shelf Lands Act (43 U.S.C. 1352).

2. Section 251.11 is amended by revising paragraph (a) as follows:

§ 251.11 Inspection, selection, and submission of geological information and data.

(a) Each holder of a permit for geological exploration activities for mineral resources or scientific research shall notify the Director in writing within 30 days of the acquisition, initial analysis, and initial interpretation of any geological information and data collected under the permit. Within 30 days following the receipt of the Director's request for notice of any subsequent analysis and interpretation of that geological information or data, the permittee shall submit notice of the availability of that information in writing.

* * * * *

3. Section 251.12 is amended by revising paragraph (a) as follows:

§ 251.12 Inspection, selection, and submission of geophysical information and data.

(a) Each holder of a permit for geophysical exploration activities for mineral resources or scientific research shall notify the Director in writing within 30 days of the acquisition, initial processing, and initial interpretation of any geophysical information and data collected under the permit. Within 30 days following the receipt of the Director's request for notice of any reprocessing or subsequent interpretation of that geophysical information or data, the permittee shall submit notice of the availability of that information in writing.

* * * * *

(43 U.S.C. 1334)

[FR Doc. 83-27429 Filed 10-7-83; 8:45 am]
BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Extension of Deadline for Satisfaction of Conditions of Approval of the Ohio Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing the Secretary of the Interior's decision to extend certain conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions concern bond reductions, designs and certifications by experts, revegetation period of responsibility, and procedures governing formal hearings.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION: The Ohio program was conditionally approved effective August 16, 1982. The notice of conditional approval was published August 10, 1982 (47 FR 34688). In that document, the Secretary published a schedule for the State to correct each of the 28 deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)–(f)(10), (g), (h)(1)–(h)(3), (i)(1)–(i)(3), (j) and (k)(1)–(k)(5). In accepting the Secretary's conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1) and (k)(1) by August 8, 1983, deficiency (e) by September 16, 1982, and the remaining deficiencies by February 8, 1983.

On January 6, 1983, Ohio submitted materials to OSM intended to satisfy conditions (a), (b), (c), (d), (f), (g), (h), (i), (j), (k)(1) and (k)(2). On January 21, 1983, OSM published notice in the **Federal Register** announcing receipt of these provisions and inviting public comment.

On February 1, 1983, Ohio requested an extension of the deadline for the State to meet conditions (k)(3), (k)(4), and (k)(5). On February 28, 1983, OSM published notice that it was considering modifying the deadline for Ohio to meet those parts of condition (k), and requested public comment.

On May 24, 1983, OSM published a final rule in the **Federal Register** announcing removal of conditions (b), (d), (f)(1)–(f)(6), (f)(8)–(f)(10), (g), (h)(2), (h)(3), (i), (j), (k)(1), and (k)(2); establishment of an August 8, 1983 deadline for Ohio to satisfy conditions (a), (c), (f)(7), (h)(1), (k)(3), (k)(4), and (k)(5); and imposition of two new conditions (l) and (m) which also carried a deadline of August 8, 1983.

On July 26, 1983, the Chief of the Ohio Division of Reclamation wrote to OSM requesting that Ohio be granted an extension of time to meet conditions (c), (f)(7), (h)(1), (k)(3), (k)(4), (k)(5), and (m) of 30 CFR 935.11. The Division has requested a one-year extension to meet conditions (c) and (m). These conditions relate to the design and certification of maps and structures by professional engineers or surveyors and public participation in bond reduction. Both of these conditions will require changes to the Ohio statute. The Ohio General Assembly is in recess and will probably reconvene for only one week in late September 1983. The General Assembly will not reconvene for a full legislative session until January 1984.

The Division requested a six-month extension to meet conditions (f)(7), (k)(3), (k)(4), and (k)(5). These conditions relate to the revegetation period of responsibility and procedures governing formal hearings and each requires a rule change. The Division also requested a six-month extension to meet condition (h)(1), which requires the State to revise its bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited. The State noted in its request that it had made numerous changes and instituted timetables for the reclamation of forfeited areas and would be forwarding a detailed narrative of these changes to OSM for review. The extension was requested to provide sufficient time for OSM to review the narrative and for Ohio to provide whatever additional information is necessary.

On August 12, 1983, OSM published a notice in the **Federal Register** (48 FR 36627) proposing an extension of the deadlines for the State to meet these conditions. Comment was solicited for 30 days ending September 12, 1983.

Public Comment

No comments were received on the proposed extension of the deadlines.

Secretary's Determination

The Secretary has determined that an extension of the deadline for Ohio to satisfy conditions (c), (f)(7), (h)(1), (k)(3), (k)(4), (k)(5), and (m) is warranted. Ohio has agreed as a matter of policy to satisfy the terms of the conditions by complying with the Federal standards until such time as the necessary program amendments can be made and the conditions are removed.

Procedural Matters

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

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.

List of Subjects in 30 CFR Part 935

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

Accordingly, Part 935 of Title 30 is amended as set forth herein.

Dated: October 4, 1983.

William P. Pendley,

Deputy Assistant Secretary for Energy and Minerals.

PART 935—OHIO

§ 935.11 [Amended]

1. Section 935.11 is amended in paragraphs (c) and (m) by substituting "August 8, 1984" for "August 8, 1983" each time it appears.

2. Section 935.11 is amended in paragraphs (f)(7), (h)(1), (k)(3), (k)(4) and (k)(5) by substituting "February 8, 1984" for "August 8, 1983" each time it appears.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[FR Doc. 83-27581 Filed 10-7-83; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 946

Permanent State Regulatory Program of Virginia; Preemption of Certain Provisions of State Law and Regulations; Removal of Condition of State Program Approval

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 946 to (1) preempt and supersede specific provisions of Virginia's law and regulations concerning the two-acre exemption from regulation of surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and (2) remove condition (r) pertaining to coal haul roads of the Secretary of the Interior's approval of the Virginia permanent regulatory program under SMCRA.

The first action is being taken because the Secretary has determined that the provisions are inconsistent with SMCRA, the federal regulations, and the Virginia program.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Cox, Big Stone Gap Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219; Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION: On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program subject to the correction of nineteen minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1981 **Federal Register** (46 FR 61088–61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register.**

Background

For the reader's information concerning the following, Chapter 19 of the Code of Virginia refers to the Virginia permanent regulatory program approved by the Secretary on December 15, 1981. Chapter 23 of the Code of Virginia refers to the State's provisions reinstating reclamation controls on surface mining operations of less than two acres.

One of the minor conditions of the approval imposed by the Secretary was as follows:

> Condition (r) requires Virginia to submit a copy of a revised policy statement or otherwise amend its program to make its coal haul roads policy consistent with the Federal requirements.

Pursuant to the Secretary's decision, the condition was due to be satisfied by February 15, 1982. On January 28, 1982, the State requested an extension of the condition deadline until April 1, 1982, primarily because a bill, which would reinstate reclamation controls on surface mining operations of less than two acres, was pending before the Virginia General Assembly (Administrative Record No. VA 376). On February 3, 1982, OSM published a proposed rule to extend the condition deadline until April 1, 1982 (47 FR 5013). On February 24, 1982, the Assistant Secretary of the Interior for Energy and Minerals, published a final rule extending the condition date to April 1, 1982 (47 FR 8008). Following receipt of a copy of the bill (Virginia House Bill 123), the Director, OSM, on February 19, 1982, provided the State with comments and recommendations concerning specific provisions of the draft legislation (Administrative Record No. VA 380).

On March 31, 1982, Virginia submitted a letter describing the actions which had been undertaken and would be taken by the Commonwealth to resolve condition (r) (Administrative Record No. VA 383). First, Virginia stated that the General Assembly had enacted a bill that would repeal a section of the Code of Virginia allowing deeding of haul roads to counties. Second, Virginia pointed to draft regulations for coal haul road performance standards it proposed to adopt as State regulations. Finally, Virginia stated that the Virginia General Assembly had enacted H.B. 123 which, upon signature by the Governor, would become effective July 1, 1982. On April 26, 1982, OSM published a notice of receipt of the proposed amendments, a public comment period and opportunity for public hearing (47 FR 17827).

On July 9, 1982, the State submitted the enacted provisions cited in its March 31, 1982, letter (Administrative Record No. VA 400). On July 23, 1982, OSM reopened the public comment period for these amendments (47 FR 31897). On August 19, 1982, at 47 FR 36127, the Director, OSM, published a notice approving the State program amendments concerning the State's regulations for coal haul road performance standards and the legislative change to end the deeding of haul roads to counties. However, the Director postponed action on two proposed program modifications consisting of enacted legislation (Chapter 23, Title 45.1 of the Virginia Code, formerly H.B. 123) and proposed draft regulations to implement Chapter 23 until Federal regulations relating to the two-acre exemption were effective. Therefore, the Director stated no decision was being made on either of the above proposed amendments or on the overall adequacy of all the modifications submitted by Virginia on March 31, 1982, to satisfy condition (r).

On September 29, 1982, following a preliminary review of Virginia's Chapter 23, OSM sent a letter to Virginia providing its tentative review of Chapter 23 (Administrative Record No. VA 430). The Director provided this letter because he believed the revised Federal two-acre exemption rule published August 2, 1982 (47 FR 33424), in conjunction with other provisions, provided a sufficient standard by which to review Chapter 23. Also, if legislative changes were necessary to Chapter 23, the Director wanted to provide Virginia with timely comment so that the Virginia Legislature in its early 1983 session could address possible changes to Chapter 23. On October 14, 1982, OSM published a notice reopening the public comment period to allow the public an opportunity to comment on the Director's letter of September 29, 1982 (47 FR 45886). On November 1, 1982, Virginia responded to the points raised in the Director's letter of September 29, 1982 (Administrative Record No. VA 435).

On April 22, 1983, OSM published a final rule in the **Federal Register** disapproving Sections 45.1–364.A.1, 45.1–364.A.3 and 45.1–364.A.4 of Chapter 23 of the Code of Virginia; and Sections 3.01(a)(1), 3.01(a)(5) and 3.01(a)(4) of the Virginia Coal Surface Mining Reclamation Regulations for Operations Disturbing Two Surface Acres or Less (48 FR 17558). Also, on April 22, OSM published a notice of proposed rulemaking in the **Federal Register** concerning: 1) the proposed action to supersede and to preempt the above sections of Chapter 23 and its implementing regulations and 2) the removal of condition (r) of the Secretary's approval of the Virginia program (48 FR 17562). The public was invited to comment on the proposed

actions for 30 days. The public comment period ended May 23, 1983.

Findings

1. Federal Preemption

Pursuant to Section 505(b) of SMCRA and 30 CFR 730.11(a), the Secretary is preempting and superseding the following provisions of Chapter 23 of the Code of Virginia and implementing regulations thereunder. This action is being taken because the Secretary has determined that these provisions are inconsistent with SMCRA, the Federal regulations at 30 CFR 700.11 and 701.5, and the permanent regulatory program administered by Virginia under Chapter 19 of the Code of Virginia.

Section 45.1–364.A.1, Code of Virginia; Section 3.01(a)(1), Virginia Regulations

This section prescribes when operations are deemed under common ownership or control and treated as a single operation, for the purpose of determining the affected area of a coal surface mining operation.

The complete text of Section 45.1–364.A.1 is as follows:

§ 45.1–364. Applicability.—A. Coal mining operations which affect two surface acres or less shall be regulated under the provisions of this chapter. In determining the affected area for the purpose of this chapter and Chapter 19 (§ 45.1–226 *et seq.*) of this title, the following criteria shall apply:

1. Two or more contiguous coal mining operations, the total combined surface area of which exceeds two acres and which are owned or controlled by the same operator, shall be deemed a single operation affecting more than two surface acres and subject to the applicable provisions of Chapter 19 of this title. The fact that a haul road connects two or more operations shall not make them contiguous.

The complete text of Section 3.01(a)(1) of the Virginia Coal Surface Mining Reclamation Regulations for Operations Disturbing Two Surface Acres or Less is as follows:

3.01 Permit Acreage Computation. (a) The criteria listed below shall be used to determine the coal surface mining activities qualifying for the "two acre" exemption and those subject to Chapter 19, Title 45.1 of the Code of Virginia.

(1) Two or more contiguous operations, the total area of which exceeds two acres and which are owned or controlled by the same operator, shall be deemed a single operation subject to applicable provisions of Chapter 19, Title 45.1 of the Code of Virginia.

The Secretary finds these sections to be inconsistent with the Federal regulations because of Virginia's phrase "owned or controlled by the same operator." The revised Federal regulations at 30 CFR 700.11(b)(2)(ii) provide one of the three tests for physical relatedness. Section 700.11(b)(2)(ii) states that operations are deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of (1) the same person; (2) two or more persons, one of whom controls, is under control with, or is controlled by the other; or (3) members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them. The revised regulations go on to define what "control" means. The Secretary has determined that Virginia's phrase "owned or controlled by the same operator," is not consistent with the categories of persons contained in the Federal provisions cited above.

Section 45.1–364.A.3, Code of Virginia; Section 3.01(a)(5), Virginia Regulations

This section prescribes when a road should be included in the affected area of an operation.

The complete text of Section 45.1–364.A.3 of Chapter 23 is as follows:

3. Roads permitted to another operator will not be included in acreage calculation.

The complete text of Section 3.01(a)(5) of the Virginia two surface acres or less regulations is as follows:

(5) Haul roads not exempted by Section 2.02(p) of these regulations shall be included in the acreage calculations, provided they are not permitted to another operator.

Section 45.1–364.A.3 of Chapter 23 states that roads permitted to another operator will not be included in acreage calculation. The revised Federal regulations at 30 CFR 700.11(b)(1) provide that, where a segment of a road is used for access or coal haulage by more than one surface coal mining operation, the entire segment shall be included in the affected area of each of those operations, provided that two or more operations which are deemed related shall be considered as one operation.

In issuing its revised Federal rule, OSM rejected the idea of allocating the road to the first operator with the right to permit the road because it could lead to abuse of the exemption. Such a concept would allow one operator to include the road in its affected area; then a whole series of different operations along the road which in fact "affect" the road would be able to exclude the road for purposes of calculating the two-acre exemption. Therefore, the Secretary finds that the criterion set forth by Virginia is inconsistent with the Federal provision.

It should be noted that the alternative selected by OSM will not require double bonding or double permitting of any segment of a road. The attribution to more than one operation of a segment of a road is done solely for purposes of determining the size of the affected area. Only one operation at a time is required to actually permit or bond any segment of such a road.

Section 45.1–364.A.4

This section prescribes when surface areas above underground mine workings will be included in the affected area.

The complete text of § 45.1–364.A.4 of Chapter 23 is as follows:

4. Surface areas above underground coal mine workings shall not be included in the affected area, provided that such surface area is not likely to be substantially adversely impacted by subsidence or disturbed by other mining related activities.

The complete text of § 3.01(a)(4) of the Virginia two surface acres or less regulations is as follows:

(4) Surface area above underground coal mine workings shall not be used in calculating acreage under this Section, provided that the surface area is not likely to be substantially adversely impacted by subsidence or disturbed by other mining related activities.

This section of Chapter 23 states that the surface area above underground workings shall not be used to calculate the affected area unless the surface area is likely to be "substantially adversely" impacted by subsidence or disturbed by other mining related activities. The use of the term "substantially adversely" implies that some surface impact could occur and that the impacted area nevertheless would not be included in the affected area. The Secretary finds that this section of Chapter 23 is inconsistent with 30 CFR 701.5 and that it conflicts with the definition of 'affected area' contained in the Virginia permanent program regulations pursuant to Chapters 19, which has been approved by the Secretary of the Interior. The Virginia definition of "affected area" at V701.5 of Virginia's regulations states: "With respect to underground mining operations, "affected area" means: (i) any water or surface land upon or in which those activities are conducted or located; and (ii) land or water area, which is located above underground mine workings."

The Secretary finds that Chapter 19 and 23 must be consistent since a single determination of eligibility for the two acre exemption must be made. In this section, Virginia's approach seems to be that the eligibility determination is made under Chapter 23; its Chapter 23 purports to amend the Chapter 19 definition of "affected area". This is an improper attempt to unilaterally amend

Chapter 19; the approved Chapter 19 provisions must be used to determine whether any operation could qualify for exemption from regulation under Chapter 19.

Effect of Secretary's Decision

It is generally not necessary to use section 505 of SMCRA or 30 CFR 730.11(a) with regard to proposed amendments to approved State regulatory programs because 30 CFR 732.17(g) provides that "No such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment." Without Secretarial approval, therefore, the Virginia statutory and regulatory changes have not become effective, and section 505 thus would not apply.

In this instance, however, the Commonwealth of Virginia has actually implemented unapproved statutory and regulatory changes and has raised section 505 in court pleadings. The Commonwealth appears to contend that its changes have become effective and that section 505 is applicable. The Commonwealth has placed certain operators in an untenable position because the provisions disapproved in the April 22, 1983 **Federal Register** notice (48 FR 17558) are ineffective as a matter of Federal law and, according to the Commonwealth, effective as a matter of State law. This situation also is unusual in that Virginia's Chapter 23 contains provisions which conflict with Federal law as well as provisions which go beyond and do not conflict with Federal law.

Therefore, to avoid any doubt whatsoever concerning the Secretary's intentions in this unusual and significant matter, and because the Secretary has determined that the following State laws and regulations are inconsistent with SMCRA and its implementing regulations, the Secretary, pursuant to section 505 of SMCRA and 30 CFR 730.11(a), preempts and supersedes Sections 45.1–364.A.1, 45.1–364.A.3 and 45.1–364.A.4 of Chapter 23 of the Code of Virginia and Sections 3.01(a)(1), 3.01(a)(5), and 3.01(a)(4) of the Virginia Coal Surface Mining Reclamation Regulations for Operations Disturbing Two Surface Acres or Less.

2. Removal of Condition (r)

Inasmuch as the Director, OSM, disapproved, and now, the Secretary has preempted the above-cited provisions of Chapter 23 of the Code of Virginia and their implementing regulations and inasmuch as two previous State program amendments consisting of Virginia regulations for coal haul road performance standards and of a statutory change to end the deeding of haul roads to counties have been approved (August 19, 1982 at 47 FR 36127), the Secretary finds that condition (r) of the approval of the Virginia permanent program has been satisfied.

The Secretary finds that those provisions of Chapter 23 and its implementing regulations not determined to be inconsistent with SMCRA and the Federal regulations, taken together with the two amendments previously approved, satisfy the haul roads policy required by the Secretary in his December 15, 1981, approval of the Virginia program. Specifically, Virginia has adopted in its regulations for two surface acres of less the following definition of "public road" at Section 2.02(p):

(p) Public Road—For the purpose of this chapter, a road will be considered a public road and exempt from permit acreage computations under Section 3.01 of these regulations when:

(1) The road has been duly established as a public road according to the laws of the jurisdiction in which it is located;

(2) There is a substantial (more than incidental) public use of the road;

(3) The road is actually maintained with public funds in a manner similar to other public roads in the vicinity; and

(4) The county within which the road is located has performance standards at least as stringent as the applicable minimum standards as stated in the Coal Surface Mining Reclamation Regulations adopted pursuant to Chapter 19, Title 45.1 of the Code of Virginia.

The Secretary finds this definition of "public road" to be almost verbatim to the revised policy statement which the Secretary required Virginia to adopt in his December 15, 1980, approval. See 46 FR 61100, December 15, 1981.

Public Comment

The Virginia Department of Conservation and Economic Development (DCED), the State regulatory authority, commented that it does not have any record of having proposed Chapter 23 as a formal amendment to the Virginia permanent regulatory program.

The Secretary disagrees that Virginia did not submit Chapter 23 as a State program amendment. On January 28, 1982, in its request to extend the deadline for satisfying condition (r), Virginia stated that one of the reasons for the extension pertained to a bill pending before the Virginia General Assembly, known as H.B. 123, which proposed to reinstitute reclamation controls on surface mining operations of less than two acres (Administrative Record No. VA 378). On March 23, 1982, Virginia submitted a letter to OSM which stated that since the Virginia General Assembly had adjourned, "we are in a position to propose what we believe to be a satisfactory solution to the problems which gave rise to 'Condition r'. Accordingly, I enclose for your review the following: 1. House Bill 123 * * *" (Administrative Record No. VA 381). In addition, on March 31, 1982, Virginia submitted a letter to OSM which again referred to three important pieces of documentation including H.B. 123, which the Commonwealth believed upon their becoming effective would satisfy "Condition r" (Administrative Record No. VA 383).

The Virginia DCED recommended that administrative actions on this matter be deferred until current litigation between OSM and Virginia relative to the issues is decided in a court of law. The Secretary has elected to take final action on this matter at this time without awaiting the results of current litigation. The Secretary believes that he is within his authority pursuant to SMCRA and that it is his responsibility to expeditiously and to finally resolve the ambiguities that have lasted too long relative to the two-acre exemption problem in Virginia. Furthermore, the action will itself resolve many issues in the litigation, and thus simplify adjudication of the matter.

The DCED commented that Virginia's Chapter 23 program does not fall under the Secretary's authority under section 503 of SMCRA since two acre or less operations are exempt from SMCRA's requirements and thus the Secretary's jurisdiction. The Secretary acknowledges that the Chapter 23 program to the extent that it does not conflict with the Federal provisions, is not subject to his authority under SMCRA to the extent that it regulates truly exempt operations. However, the Secretary has the authority and the responsibility to determine the scope of the exemption and to judge the adequacy of State program provisions to ascertain if they are consistent with his standards for determining which operations shall be exempt under section 528 of SMCRA.

The Virginia DCED commented that Chapter 23, Title 45.1 of the Code of Virginia and the regulations promulgated thereunder are proper, within the scope of State authority under section 505(b) of SMCRA, and have, in fact, initiated controls on a problem which OSM has been unable (due to lack of jurisdiction) to control. As to the first two points made by the commenter pertaining to Chapter 23 and its implementing regulations being proper and within the scope of State

authority under section 505(b) of SMCRA, the Secretary refers the commenter to the discussion above listed as "Effect of Secretary's Decision." As to the third point concerning Virginia's having initiated controls on a problem which OSM has been unable to control, the Secretary commends the Commonwealth for taking action to protect the environment. The Secretary believes that the Chapter 23 program, less the provisions disapproved and set aside, in conjunction with the State's coal haul road performance standards and with the end of the practice of deeding coal haul roads to counties, will finally establish the programmatic requirements that coal operators in Virginia must meet.

This final rule is being made effective immediately so that operators in Virginia are freed from apparently conflicting State and Federal requirements as expeditiously as possible.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

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.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relation, Surface mining, Underground mining.

Accordingly, Part 946 of Title 30 is amended as set forth herein.

Dated: September 29, 1983.

W. P. Pendley,

Deputy Assistant secretary for Energy and Minerals.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 946—VIRGINIA

1. 30 CFR 946.11 is amended to remove and reserve paragraph (r) to read as follows:

§ 946.11 Conditions of State regulatory program approval.

* * * * *

(r) [Reserved]

* * * * *

2. Part 946 is amended by adding a new § 946.13 as set forth below.

§ 946.13 State program provisions set aside.

Section 45.1-363.A.1, 45.1-364.A3 and 45.1-364.A.4 of Chapter 23 of the Code of Virginia; and 3.01(a)(1), 3.01(a)(5) and 3.01(a)(4) of the Virginia Coal Surface Mining and Reclamation Regulations for Operations Disturbing Two Surface Acres or Less are inconsistent with Federal provisions for two-acre exemption and are set aside under the provisions of section 505(b) of the Surface Mining Control and Reclamation Act of 1977.

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[FR Doc. 83-27446 Filed 10-7-83; 8:45 am]
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POSTAL SERVICE

39 CFR Part 111

Bundling and Palletizing Second, Third-and Fourth-Class Bulk Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule modifies regulations governing use of bundles and pallets when preparing second, third, and fourth-class bulk mailings. The following changes are made:

1. The former regulations governing placement of packages of second and third-class bulk mail on pallets are deleted, and specific provisions are added governing the placement of bundles, packages, and sacks on pallets. These new regulations prescribe new presort destinations for pallets and include provisions for mailers to take greater advantage of presort level rate discounts. They also do not permit placement of State Distribution Center (SDC), State and Mixed States packages or bundles on pallets.

2. The provisions for preparing bedloaded bundles of second and third-class mail are modified to delete references to bundles placed on pallets and to modify bundle label requirements, bundle securing methods, and the machinability requirements for bundles.

3. Regulations concerning physical characteristics of pallets, pallet labels and methods of securing pallets are added to fourth-class bulk bound printed matter regulations.

4. Application procedures for all bundling and palletizing requests are modified to require the mailer to submit applications directly to the Regional Postmaster General of the region in which the mailer is located. Furthermore, authorizations will be granted for a specific period of time, not to exceed two years.

5. A package is defined as a group of pieces that are secured together as one unit.

6. A bundle is a group of two or more packages that are prepared as one unit.

EFFECTIVE DATE: November 10, 1983.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, 202/245-4749.

SUPPLEMENTARY INFORMATION: On March 24, 1983, the Postal Service published for comment in the **Federal Register** proposed changes to Parts 467, 667 and 767 of the Domestic Mail Manual (DMM) concerning the matters as described above, 48 FR 12401-12408. Interested persons were invited to submit written comments concerning the proposed changes by April 23, 1983.

Written comments were received from 52 individuals and organizations. Forty-five of the comments were from individual commercial mailers (including mail preparation companies), and seven were from associations representing second or third-class mailers.

The majority of the comments concerned the new regulations for placing bundles on pallets. A summary of these comments follows.

Twenty-four commenters expressed support for these regulations. Two commenters particularly appreciated the provision that bundles were charged presort level rates independent of the destination of the pallet on which they are placed. Two commenters expressed approval of the changes in the application procedures. One commenter was glad to see the addition of requirements for labeling pallets containing fourth-class bulk bound printed matter.

Twenty-two commenters objected to the requirement to consolidate packages into bundles. They indicated this would require adding a manual operation to their automated bindery lines. Four of these commenters suggested this requirement be made an option rather than a requirement. Five of these commenters believed the number of small bundles on pallets can be kept to a minimum by enforcement of certain criteria in the regulations dealing with the number of bundles in relation to the number of sacks that would have been prepared. The final rule makes consolidation of packages into bundles on the same basis as sacks an option. However, mailers will be required to prepare packages for like destinations (i.e., carrier packages for the same carrier route, 5-digit packages for the same 5-digit ZIP Code, 3-digit packages for the same 3-digit ZIP Code, etc.) into single packages weighing up to 20 pounds wherever possible.

Thirteen commenters said the 25 pound requirement for bundles should be reduced because 25 pound bundles would be too cumbersome to handle and to securely tie. The final rule reduces the maximum weight for palletized packages or bundles to 20 pounds.

Three commenters wanted the 25 pound limit in the proposed rule increased to 40 pounds, since a 25 pound limit would force them to prepare more bundles. Mailers who bedload bundles may continue to prepare bundles weighing up to 40 pounds. Palletized packages or bundles may not exceed 20 pounds.

Five commenters requested the Postal Service to eliminate or modify the requirement to shrink wrap bundles on Bulk Mail Center (BMC) pallets and to eliminate the requirement for heavy gauge shrink wrap because mailers' equipment costs will be greater and there are other means of ensuring the integrity of a bundle, such as top and bottom protective covers, grocery sacks, and strong lighter wrapping material. Packages or bundles on BMC pallets must be machinable in order to be processed on parcel sorters. The Postal Service believes shrink wrap is necessary to make packages or bundles machinable. In addition, it recommends that each package or bundle be banded once around the length and once around the girth. As new products are produced, the Postal Service may consider allowing mailers to use them to secure bundles if tests show the products will secure bundles during transit within the Postal Service.

Three commenters thought the final rule should allow machinable firm bundles on pallets and should allow cardboard boxes because the mailer currently mails copies of a second-class publication in cardboard cartons. The final rule allows mailers to put firm packages or bundles and cardboard cartons on pallets. Cardboard cartons and firm packages or bundles on BMC pallets must be machinable.

One commenter said the 10 piece minimum for heavy third-class publications should be reduced as long as the bundle is machinable. The final rule specifies that when there are 15 or more pounds of mail for a destination 15 pound packages or bundles must be prepared, and no package or bundle may weigh more than 20 pounds. When there are 15 pounds or less of mail for a destination, the pieces must be secured together in a single package. Since third-class mail must weigh less than one pound, mailers should not experience difficulties preparing 15 pound bundles, when volume dictates.

Thirty-two commenters said the Postal Service should eliminate the facing slip labeling requirements for bundles because it would require a manual operation and because facing slips could cause confusion for the BMC keying operation. To be classified as a bundle, two or more packages must be inside it. The final rule requires a facing slip on all bundles, regardless of the types of pallets they are on. In addition, all packages other than carrier route and 5-digit packages must have a facing slip if they are on BMC pallets. Facing slips are important because the destination of the package or bundle can be determined faster during sortation within the Postal Service.

Five commenters requested that the Postal Service allow mailers to use the optional endorsement line as a bundle label, presumably to reduce manual operations; change the location of the optional endorsement line to the line above the city, state, and ZIP Code; and show the destination and ZIP Code as in sack labels rather than "5-digit," "Mixed City," "3-digit," etc. These comments go beyond the scope of the proposed rule and are not considered at this time.

Two commenters want the option of using the red label D for 5-digit packages. A 5-digit package may be labeled with the optional endorsement line, or the red label D, regardless of the type of pallet it is placed on.

Two commenters said the Postal Service should eliminate the requirement to add zeros to the 3-digit ZIP Code prefix destination for bundles placed on BMC pallets. They said the zeros are just "make work" and cause confusion and internal problems for mailers and the Postal Service. Facing slips on 3-digit packages placed on BMC pallets, and on all 3-digit bundles containing packages for levels of sortation finer than the bundle's destination, regardless of the type of pallet it is placed on, must have two zeros after the 3-digit ZIP Code prefix because the zeros facilitate processing on BMC parcel sorters.

One commenter wanted to put extraneous information, such as requested delivery dates, on facing slips presumably to convey information or instructions. The Postal Service believes no extraneous information should be put on facing slips. Such information could cause confusion or obscure the destination of the package or bundle.

One commenter requested the Postal Service to distribute carrier route pressure-sensitive package labels as an aid for recognizing carrier route packages within a bundle. The Postal Service believes a carrier route pressure-sensitive package lable is not necessary at this time, since the package lable on the top piece in the package is sufficient to direct the bundle to its proper destination.

Six commenters requested that the authorization procedures be changed. The suggestions included having Management Sectional Center Managers and the Postal Service Headquarters approve the applications because it would eliminate "red tape" when the bulk of the mailing destinates within the local area. The commenters asked that the final rule specify whether the publisher or the mailer is to apply, and whether the request is for a specific publication or a job. The final rule specifies that the Regional Postmaster General will approve or deny the applications. This will help ensure that all mailers are treated the same. The approving Regional Postmaster General will notify the other regions of the approval. The final rule also specifies that the mailer is to submit applications for the client.

Ten commenters requested that the final rule permit third-class 5-digit mailings and third-class carrier route mailings on the same pallet to reduce the number of pallets required for mailings. A 5-digit third-class mailing and a carrier route third-class mailing may not be put on the same pallet, since the mail preparation (including endorsement) and qualification requirements are not the same for these two categories of mail. The qualifying third-class 5-digit portion of a mailing and its residual (basic rate) portion of that mailing may be on the same pallet. The qualifying carrier route third-class portion of a mailing and the residual

(basic rate) portion of that mailing may be on the same pallet.

Five commenters thought the Postal Service should allow the combining of more than one second-class publication on the same pallet presumably so that more mailings can qualify for the palletization program. The Postal Service will allow the combining of more than one second-class publication on a pallet.

Five commenters wanted the requirements for bundle to sack ratios changed to allow a greater number of bundles in proportion to the number of sacks. The Postal Service believes the package/bundle to sack ratio requirement in the final rule is reasonable because it gives mailers some flexibility in preparing their mailings without inundating the Postal Service with small bundles and packages, which would not be cost effective for the Postal Service.

Five commenters saw no reason to put physical barrier sheets between packages and bundles when different presort level rate pieces are put on a pallet because it would increase mailers' costs and create more waste materials for the Postal Service. For 5-digit pallets only, the Postal Service has determined that the physical barrier sheet is necessary to facilitate distributing packages and bundles at the pallet's destination.

Two other commenters wanted the Postal Service to eliminate the requirement to place 5-digit level rate bundles next to each other on a pallet. They said all 5-digit bundles are not of equal size, and, therefore, being required to put them next to each other could result in a wobbly, uneven pallet. The Postal Service eliminated this requirement. However, the final rule requires mailers to put a physical barrier sheet between different presort level rate packages and bundles on a 5-digit pallet.

Two commenters requested that the final rule permit SDC, state, and mixed states bundles on pallets. The Postal Service does not believe it would be cost effective to allow SDC, state, and mixed states bundles on pallets.

One commenter thought the final rule should require mailers to put bundles on pallets in a uniform "around the pallet" pattern in ZIP Code sequence so that unloading could take place in relatively proper ZIP Code sequence. The Postal Service believes such a requirement would be an unnecessary burden for mailers.

Several commenters believed 5-digit and 3-digit pallets should be optional because it may not be economically feasible to prepare 5-digit pallets in every instance where there are 650 pounds of mail for the same 5-digit destination particularly if several editions are produced on different lines at different times. The Postal Service believes mailers should be required to prepare 5-digit and 3-digit pallets if there are at least 650 pounds of mail for a 5-digit or a 3-digit ZIP Code destination, because it eliminates many package and bundle handlings.

One commenter said the final rule should include the preparation of origin BMC pallets to encourage smaller mailers to participate in the pallet and bundling program. Origin BMC pallets may not be prepared because processing would be required at both origin and destination BMC's.

Another commenter said the final rule should permit mailers to put second-class mail receiving newspaper treatment on BMC pallets. Since second-class mail receiving newspaper treatment is not processed in the BMC system, it would delay delivery and increase processing costs to route them through BMC's. Accordingly, the final rule does not allow mailers to put second-class newspapers on BMC pallets.

Four commenters requested that the 650 pound minimum for preparing pallets be reduced since mailings of lightweight materials may not qualify for palletization. The Postal Service believes the 650 pound minimum is cost effective for the Postal Service and most mailers. However, the final rule allows for up to 10 percent of the pallets in a mailing to weigh less than 650 pounds if the mailer provides the pallets.

Two commenters urged the Postal Service to eliminate the requirement for sorting bundles and sacks to 3-digit destinations when there is a minimum of 650 pounds for the destination, and put the mail on a Sectional Center Facility (SCF) pallet in order to reduce the number of pallets required for the mailing. The Postal Service declines to do so in view of the increased processing costs this would entail for the Postal Service.

Several commenters requested that the final rule permit them to put an edition code on a pallet label to identify the edition. Mailers will be permitted to put an edition code on a pallet label provided it is below the city and state of mailing.

Three commenters wanted to use red or pink pallet labels when second-class publications that are authorized newspaper treatment are palletized. Currently, some publishers of publications authorized newspaper treatment use pink sack labels. The Postal Service believes the endorsement "NEWS" on the second line of the pallet label is sufficient. Mailers may also put a placard on the top of a pallet to indicate the contents are authorized to be handled as newspapers. The Postal Service does not plan to prevent publishers from using pink or red pallet labels for publications authorized newspaper treatment provided the printed information on the label is legible.

One commenter thought the final rule should require mailers to put three pallet labels on each pallet, presumably to make it easier to determine a pallet's destination. The final rule requires two pallet labels on adjacent sides of the pallet. As long as all pallet labels on a pallet bear the same information a mailer may put more than two labels on a pallet.

Three commenters said they should not have to provide pallets if the volume of mail on the pallet weights less than 650 pounds for ease of administration. Since mailers will be permitted to prepare 5-digit, optional multi-coded city, 3-digit, SCF and BMC pallets (third-class and ordinary second-class), the Postal Service believes there will be very few instances where mailers will be required to prepare pallets containing less than 650 pounds of mail.

Three commenters requested an explanation of how the pallet supply system works, plus assurances that sufficient pallets will be available. The workings of the pallet supply system is outside the scope of this rule. As to the second point, the Postal Service believes the bundle/sack ratio requirement for palletizing bundles will help to ensure that sufficient pallets will be available.

Three commenters requested a modification of the requirement for palletized sacks to have top caps because it would be too costly, and copies on the bottom pallet could be mutilated if pallets of mail were stacked. The Postal Service believes the top cap is essential, because it will help stabilize the sacks during transit and while pallets are being transferred from one vehicle to another, and will allow mailers to put more sacks on a pallet.

One commenter thought the Postal Service should increase the use of nestable pallets because they enhance the utilization of space. The Postal Service will be purchasing nestable pallets. The final rule does not require mailers to use nestable pallets, although they may purchase them and use them.

One commenter requested that the Postal Service should eliminate the requirement to shrink wrap pallets. The final rule requires mailers to stretch wrap pallets. Stretch wrapping helps to

stabilize packages, bundles and sacks during transit and while pallets are being transferred from one vehicle to another.

One commenter urged an increase in the maximum weight for a pallet from 2,000 to 2,300 pounds for optimum loading efficiency. The Postal Service's material handling equipment is designed to safely handle loads up to 2,000 pounds. Accordingly, we cannot exceed that limit.

One commenter asked the Postal Service to define the specifications for top caps and to define what is meant by "prepared to maintain integrity." "Prepared to maintain integrity" means the top cap must be designed and secured in a manner to keep the pallet's contents on the pallet during transit and handling at postal facilities. Top caps must be made of wood and are required to be the same size as the pallet, 48 inches by 40 inches.

One commenter thought the postal service should increase the size of pallets to reflect capacities of wider vans presumably to afford better utilization of vans. The final rule specifies that pallets must measure 48 inches by 40 inches. The Postal service wants to handle one size pallet and believes the 48 by 40 inch pallet is used most by mailers.

One commenter said the final rule should include a prescribed height from floor measurement in the physical characteristics of pallets to maximize safe hauling. The Postal Service believes it is sufficient to specify that pallets must be designed to accept loads up to 65 cubic feet.

One commenter requested that the language of the rule be simplified. The commenter also suggested that there should be an exhibit showing package/bundle/pallet make-up requirements. Considering the technical nature of the subject matter, we believe the language in the final rule is easy to understand for most mailers that use pallets. We are taking the exhibit suggestion under advisement.

Two commenters were confused about the minimum and maximum sizes for bundles. It appears they confused the requirements for bedloaded bundles with those for palletized bundles. The requirements are different. Palletized bundles and packages may not weigh more than 20 pounds. Bedloaded bundles must weigh at least 20 pounds or equal 1,000 cubic inches in volume and must not weigh more than 40 pounds.

One commenter requested a clarification of the requirements for preparing a 3-digit sack/bundle label. The final rule prescribes how 3-digit sacks and packages or bundles must be labeled.

Six commenters requested that the meaning of bundle and package be clarified. A package is a group of pieces that are secured together as one unit. A bundle is a group of two or more packages that are prepared as one unit.

Two commenters requested a discount for bundling and palletizing mailings to offset mailers' costs. This is a rate comment that goes beyond the scope of the proposed rule. Mailers should determine which method of mail preparation is most effective and prepare their mailings accordingly.

One commenter wanted the Postal Service to arrange plant loads so that the same van could pick up more than one mailer's mail to generate full van loads. While this comment is outside the scope of the proposed rule, the Postal Service will consider it.

One commenter believed the Postal Service should eliminate the use of sacks for second- and third-class magazines because of various cost considerations and because sacks provide a place for losing mail. Although this comment goes beyond the scope of the proposed rule, the Postal Service believes mailers should have the option of using sacks.

One commenter said the Postal Service should develop a national definition for a machinable parcel. Section 128.4, Domestic Mail Manual, already defines machinable parcels.

One commenter said the Postal Service should allow mailers to claim a lower per piece rate for as few as six copies of a second-class publication if the copies are packaged and bedloaded since mailers may sack only six copies of a second-class publication. The final rule specifies that bedloaded packages or bundles must weigh at least 20 pounds. The Postal Service believes it would not be cost effective to permit bedloaded packages or bundles containing six copies of a second-class publication.

For the above reasons, and after careful consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the **Federal Register**. See 39 CFR 111.1

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

Part 467—Presort Requirements

Amend 467.1 and 467.3 and add new 467.2 to read as follows:

467.1 Bundling Instead of Sacking (Bedloading Bundles).

.11 Regional Authorization.

.111 The Regional Postmaster General of the region where the mailer is located may authorize preparation of second-class mail in bundles outside of mail sacks if such preparaton is beneficial to the Postal Service. Generally, authorization will be granted only when the number of bundles does not exceed the number of sacks which would otherwise be used in a mailing. The mailer, on behalf of the publisher, must submit an application to the Regional Postmaster General of the region where the mailer is located for each publication. The following information must be furnished with the application:

a. Name of publication and frequency of mailing;

b. Identity of post offices to which shipments will be made; and

c. Approximate quantity of copies and number of bundles to each office.

If an authorization is granted, mailers must be prepared to submit information for future issues of the publication, such as that required in the original application, at the request of the Regional Postmaster General.

.112 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General to whom the application is submitted will issue to the mailer the authorization of denial of the request to bundle instead of sack the publication for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorizations will be granted for a specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming issue and perform a review of the publication's continued eligibility to bundle instead of sack. Authorizations to bundle instead of sack will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.12 Package Preparation.

.121 Weight and Volume. A package must contain a minimum of two copies of the publication and must not exceed 40 pounds in weight.

.122 Sortation. Mailers must presort copies and secure them into packages as required in 464.2.

.123 Labels. Packages must be labeled in accordance with 464.2.

.13 Bundle Preparation.

.131 Weight and Volume. A bundle must weigh at least 20 pounds or be of at least 1,000 cubic inches of volume. The weight of a bundle must not exceed 40 pounds.

.132 Sortation. Packages prepared in accordance with 467.12 must be consolidated into bundles on the same basis as sacks (see 464.3). A bundle must be prepared when there are 20 or more pounds or 1,000 or more cubic inches of packages for a particular level of sortation. Lesser quantities must be included in bundles for the next larger level of sortation.

.133 Labels. All bundles must be appropriately labeled on top with a non-standard facing slip to show destination, contents and origin as required with sacks (see 467.3). Exception: Carrier route and 5-digit bundles need not bear a facing slip as the package label on the top piece is sufficient to direct the bundle,to its proper destination. However, 5-digit bundles that are not labeled using the optinal endorsement line, and that contain the carrier route information in the address area in accordance with 462.24b, must bear a red label D.

.134 Physical Characteristics of Bundles.

a. Non-Local Processing and Delivery. Mailings must be machinable by Postal Service sack-sorting equipment unless they consist of publications intended only for local area delivery (see 467.134b). The mailer must satisfy the Postal Service that mailings are machinable. This can be verified by having the mailing post office test process ten or more bundles of each representative bundle size expected in the mailings on two or more passes through a bulk mail center (BMC). The potential of the bundles to cause damage to other mail must also be tested. Ordinarily, bundles require cross strapping and heavy gauge shrink or stretch wrap to insure their integrity in the mailstream.

b. Local Processing and Delivery. When second-class publications are entered for local processing and delivery (i.e., same Sectional Center Facility area), they need not meet the requirements of 467.134a. However, bundles must be securely bound to withstand handling without breakage or damage and to prevent injury to postal personnel or damage to mechanized sorting systems. Binding material must be applied at least once around the length and girth. The use of metal strapping and wire to secure bundles is prohibited.

467.2 Packages and Bundles Presented on Pallets.

.21 Regional Authorization.

.211 The Regional Postmaster General of the region where the mailer is located may authorize the preparation of second-class mail in packages and bundles placed on pallets instead of sacking if such preparation is beneficial to the Postal service. A package is a group of pieces that are secured together as one unit. A bundle is a group of two or more packages that are prepared as one unit. Generally, authorization for this type of mail preparation will be granted only when: (1) the number of packages or bundles to be prepared is not more than four times the number of sacks which would otherwise be prepared for material to be placed on 3-digit and SCF pallets, and not more than five times the number of sacks that would otherwise be prepared for material to be placed on 5-digit, optional city, and BMC pallets, and (2) when the amount of mail on each pallet is equivalent to or greater than 30 sacks which would otherwise be prepared. The mailer, on behalf of the publisher, must submit an application to the Regional Postmaster General of the region where the mailer is located for each publication. An application for palletization may be obtained from the region where the mailer is located, and at a minimum will require the following information:

a. The name of the publication, frequency of mailing and approximate mailing dates;

b. A list of the post offices of entry;

c. The approximate weight of a single copy;

d. A breakdown of mail preparation for each entry post office that shows the destination of each pallet to be prepared for the mailings submitted at the postal facility;

e. The approximate number of packages and bundles and pieces for each pallet make-up;

f. The average weight of a pallet load;

g. The approximate number of pallets in the mailing that will weigh less than 650 pounds;

h. The number of sacks that would otherwise be needed in the mailing; and

i. The number of pallets required.

If an authorization is granted, mailers must be prepared to submit information for future issues, such as that required in the original application, at the request of the Regional Postmaster General.

.212 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General to whom the application is submitted will issue to the mailer the authorization or denial of the request to present packages and bundles on pallets instead of sacking the publication for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorization will be granted for a specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming issue and perform a review of the publication's continued eligibility to present packages and bundles on pallets. Authorizations to present packages and bundles on pallets will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.22 Package Preparation.

.221 Weight and Volume. A package must contain a minimum of six copies of the publication and must not exceed 20 pounds in weight. Exception: Packages containing as few as two copies of the publication may be prepared if the packages will be consolidated with other packages into a bundle containing at least six copies of the publication in accordance with 467.23.

.222 Sortation. Mailers must presort copies and secure them into packages as required in 462.22a, 462.22b, 463.21a, 463.22b, 464.21b and 464.22c. When there are more than 15 pounds of mail for a destination, mailers must secure the pieces togeather in multiples of 15 to 20 pound packages. When there are 15 pounds or less of mail for a destination, the pieces must be secured togeather in a single package. For example, if there are 14 pounds of mail for a 5-digit ZIP Code, only one package weighing 14 pounds must be prepared. If there are 25 pounds of mail for a 5-digit ZIP Code, a 15 pound package and a 10 pound package labeled to that 5-digit destination would be acceptable as well as one 20 pound package and one 5 pound package for the same 5-digit ZIP Code destination

Note.—State Distribution Center (SDC), State, and Mixed states packages must not be included in the palletized portion of the mailing. Such packages must be sacked in

accordance with 464.32c, 464.31c and 464.31d. See also 467.25.

.223 Package Labels.

a. Packages on BMC Pallets. All packages that are placed on BMC pallets must be labeled with a facing slip containing only the destination information required for sack labels in 464.31b and 464.32b. Two zeros must be be added to the end of all 3-digit ZIP Code prefixes that may appear on the destination line of the labels. These requirements will assist processing on BMC parcel sorters. Exceptions: Firm packages bearing a blue label F need not bear a facing slip. Carrier route packages labeled with the optional endorsement line or in accordance with 462.24b, need not bear a facing slip. Five-digit packages are also exempted from facing slip requirements if labeled in accordance with 467.223b, below.

b. Other Packages. Packages must be labeled with pressure sensitive labels, or the optional endorsement line as provided in 462.22a, 462.22b, 463.21a, 463.22b, 464.21b, 464.22c and 464.242. Exception: When pressure sensative labels are used, a red label D must appear on 5-digit packages if the pieces in those packages bear the carrier route information as permitted in 462.24b.

.224 Physical Characteristics.

(a) Packages on BMC Pallets. Packages that are placed on BMC pallets must be machinable on BMC parcel sorters and must be prepared using shrink wrap. Since shrink wrap alone may not result in a machinable package, it is recommended that each package be both bonded around the length and girth and shrink wrapped. The mailer must satisfy the Postal Service that the packages are machinable. This will be verified by having the mailing post office test process 10 or more packages of each representative bundle size expected in the mailing on two or more passes through the BMC. The potential of the packages to cause damage to other mail must also be tested while being processed on BMC primary and secondary parcel sorters. Mailers may also use cardboard cartons meeting the packaging criteria in 121 and the machinability criteria in 128 to prepare firm packages.

(b) Other Packages. Packages must be securely bound to withstand handling without breakage or damage and to prevent injury to postal personnel. The use of heavy gauge shrink wrap over banding is the recommended method of securing packages. However, use of only banding material, or only shrink wrap is acceptable. Banding material, if used, must be applied at least once around the length and once around the girth of each package. The use of metal strapping and wire to secure packages is prohibited. Mailers may also use cardboard cartons meeting the packaging criteria in 121 to prepare firm packages.

.23 Optional Bundle Preparation.

.231 Weight and Volume. Bundles must contain a minimum of two or more packages. The maximum weight of an individual bundle is 20 pounds.

.232 Sortation. Mailers may, at their option, consoldiate packages into bundles in the same manner as sacks are prepared. (See 462.31, 463.31a, 463.31b and 464.32a.) Pieces for optional SCF destinations must be prepared into packages only.

Note.—Packages for SDC, State, and Mixed States destinations must not be prepared for inclusion in the palletized portion of a mailing. Packages for these destinations must be sacked in accordance with 464.32c, 464.31c, and 464.31d. See also 467.25.

.233 Bundle Labels.

a. Bundles Placed on BMC Pallets. Except for carrier route and 5-digit bundles, all bundles must be labeled with a facing slip containing only the destination information required for sack labels in 464.31b through 464.32b plus a contents line. Two zeros must be added to the end of all 3-digit ZIP Code prefixes that may appear on the destination line of bundle labels. These requirements will assist processing on BMC parcel sorters. The bundle labels must completely cover the address and package label on the top piece in the bundle to prevent confusion concerning the contents of the bundle.

Note.—5-digit bundles, not labeled with a facing slip, must bear a red label D or the 5-digit optional endorsement line if the pieces in the bundle bear the carrier route information as provided in 462.24b.

b. Other Bundles. Bundles containing packages for levels of sortation finer than the bundle destination must be labeled with a facing slip containing only the destination information required for sack labels in 464.31b through 464.32b plus a contents line. Examples of bundles requiring facing slips are: (1) A carrier routes bundle containing carrier packages for different carrier routes within the same 5-digit ZIP Code area; (2) a 3-digit bundle containing all 5-digit packages for the same 3-digit ZIP Code area; (3) a 3-digit bundle containing a 5-digit package and a 3-digit package for the same 3-digit ZIP Code area.

.234 Physical Characteristics.

a. Bundles on BMC Pallets. Bundles which are placed on BMC pallets must be machinable on BMC parcel sorters and must be prepared using shrink wrap. Since shrink wrap alone may not result in a machinable bundle, it is recommended that each bundle be both banded around the length and girth and shrink wrapped. The mailer must satisfy the Postal Service that the bundles are machinable. This will be verified by having the mailing post office test process 10 or more bundles of each representative bundle size expected in the mailings on two or more passes through the BMC. The potential of the bundles to cause damage to other mail must also be tested while being processed on BMC primary and secondary parcel sorters.

b. Other Bundles. Bundles must be securely bound to withstand handling without breakage or damage and to prevent injury to postal personnel. The use of heavy gauge shrink wrap over banding is the recommended method of securing bundles. However, use of only banding material, or only shrink wrap is acceptable. Banding material, if used, must be applied at least once around the length and once around the girth of each bundle. The use of metal strapping and wire to secure bundles is prohibited.

.24 Pallet Preparation.

.241 Weight and Volume. The minimum mail load of a pallet is 650 pounds. The maximum gross weight of a pallet (the pallet and the mail) is 2,000 pounds. Exception: Up to 10 percent of the pallets in a mailing may contain less than 650 pounds of mail, if the mailer provides the pallets for those pallets containing less than 650 pounds.

.242 Sortation. Packages and bundles must be placed on pallets as described below, beginning with pallets for the finest sortation level (5-digit pallets) through the largest authorized level (SCF for publications authorized newspaper treatment and Destination BMC for ordinary papers). If two or more second-class publications are mailed together, all packages and bundles for the same specific destination must be put on a pallet for that destination when there are at least 650 pounds of mail. Physical barrier sheets must be used to separate carrier route and 5-digit made up mail on 5-digit pallets.

Note.—When two or more second-class publications are put on a pallet, the mailer must maintain records for each mailing which will confirm the number of pieces of each publication mailed to each destination as required by 468.13c.

a. 5-Digit Pallets. Whenever there are 650 or more pounds of packages and bundles for the same 5-digit ZIP Code area they must be placed on a pallet labeled to that 5-digit destination. Pallet labels must be prepared and affixed to

the pallet in accordance with 467.243. The labels must contain the information required for 5-digit sack labels in 467.222 in the format required by that section. Pallets containing carrier route and 5-digit packages and bundles must note this on the contents line of the pallet label. A physical barrier sheet must be placed between the carrier route and 5-digit packages and bundles.

b. Optional Multi-Coded City Pallets. After making up all required 5-digit pallets mailers may, at their option, place any packages and bundles remaining that are destined for the same optional multi-coded city included in Exhibit 122.63a on a pallet labeled to that city, provided the minimum and maximum weight requirements in 467.241 are met. The pallet labels must be prepared and affixed to the pallet in accordance with 467.243. The pallets labels must contain the information required for optional multi-coded city sack labels in 464.32a, in the format required by that section.

c. 3-Digit Pallets. If, after preparing all required 5-digit pallets (and optional multi-coded city pallets if the mailer chooses to prepare them) there are 650 pounds or more of packages and bundles remaining that are destined for the same 3-digit ZIP Code prefix area, they must be placed on a pallet labeled to that 3-digit destination. The pallet labels must be prepared and affixed to the pallet in accordance with 467.243. The pallet labels must contain the information required for 3-digit sacks in 464.31b, in the format required by that section.

d. SCF Pallets. If, after preparing all required 5-digit pallets, optional multi-coded city pallets, and required 3-digit pallets, there are 650 pounds or more of packages and bundles remaining that are destined for ZIP Codes served by the same Sectional Center Facility, they must be placed on a pallet labeled to that Sectional Center Facility. The pallet labels must be prepared and affixed to the pallet in accordance with 467.243. The pallet labels must contain the information required for SCF sacks in 464.32b, in the format required by that section.

Note.—This is the largest level of sort allowed for publications authorized newspaper treatment. Mail for newspaper treatment second-class publications that cannot be placed on SCF pallets must be sacked in accordance with 464.32c, 464.31c and 464.31d. See also 467.25, 467.45.

e. Optional BMC Pallets (Ordinary Papers Only). If, after preparing all required 3-digit pallets, optional multi-coded city pallets (optional), required 5-digit pallets and required SCF pallets, there are 650 pounds or more of packages and bundles remaining that are destined for ZIP Codes served by the same BMC, they may be placed on a pallet labeled to that destination BMC. Bundles and packages placed on BMC pallets must be machinable (see 467.234a). The pallet labels must be prepared and affixed to the pallet in accordance with 467.243. The pallet labels must contain the information required for destination BMC pallets in 667.222, in the format required by that section, except that the contents line must show ORD P.

.234 Pallet Labels.

a. General. All pallets must be provided with at least two clearly visible labels. Pallet labels must be at least 8 inches by 11 inches in size, with letters at least ½ of an inch in height. Labels must be placed on at least two adjacent sides of the pallet. See 467.242a–e, concerning the information which must appear on the labels.

b. Additional information is required for pallets containing carrier route presort level rate packages or bundles.

(1) Pallets containing only carrier route packages or bundles. If any type of pallet contains only carrier route packages or carrier routes bundles, the contents line of the pallet label must show the words CARRIER ROUTES after the description of contents (NEWS or ORD P).

(2) Five-digit pallets containing carrier route and 5-digit level rate packages or bundles. If a 5-digit pallet contains both 5-digit and carrier route rated packages or bundles, the pallet label must show the words MIXED 5-DIGIT/CARRIER ROUTES after the contents description (NEWS or ORD P).

.244 Physical Characteristics. Pallets must be constructed of high quality material, designed to handle loads equal to a gross weight of 2,000 pounds with volumes up to 65 cubic feet. The demensions must be 48 inches by 40 inches. The pallets must be designed for four way entry by fork trucks and two way entry for pallet jacks. Pallet mailings must be wrapped with shrinkable or stretchable plastic and prepared to retain integrity throughout transportation and handling. Wooden top caps the same size as the pallet are required on pallets with gross weights of less than 1,000 pounds. Top caps must be affixed to the pallet with nylon strapping.

.25 Presentation of Mailings. Sacks containing packages for SDC, state or mixed states destinations, or containing packages or bundles remaining after all possible pallets have been prepared, may be presented along with the palletized mailing (i.e., on the same mailing statement), if the sacks are physically segregated from the palletized portion of the mailing.

467.3 Palletizing Sacks.

.31 Regional Authorization.

.311 The Regional Postmaster General of the region where the mailer is located may authorize the preparation of sacked second-class mail on pallets, if such preparation is beneficial to the Postal Service. The mailer, on behalf of the publisher, must submit an application for each publication to the Regional Postmaster General of the region where the mailer is located. An application for palletization may be obtained from the region where the mailer is located and at a minimum will require the following information:

a. The name of the publication, frequency of mailing and approximate mailing dates;

b. A list of the post offices of entry;

c. The approximate weight of a single copy;

d. A breakdown of mail preparation for each entry post office that shows the destination of each pallet to be prepared for the mailings submitted at that postal facility;

e. The approximate number of sacks for each pallet make-up;

f. The average weight of a pallet load;

g. The approximate number of pallets in the mailing that will weigh less than 650 pounds; and

h. The number of pallets required.

If an authorization is granted, mailers must be prepared to submit information for future issues, such as that required in the original application, at the request of the Regional Postmaster General.

.312 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General to whom the application is submitted will issue to the mailer the authorization or denial of the request to palletize sacks for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorizations will be granted for a specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming issue and perform a review of the publication's continued eligibility to palletize sacks. Authorizations to

palletize sacks will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.32 Package Preparation.

See sections 462.22a, 462.24b, 463.21a, 463.22b, 464.21b and 464.22c.

.33 Sack Preparation.

.331 Weight and Volume. No more than 70 pounds of mail may be placed in any sack.

.332 Sack Labeling. Sacks must be labeled in accordance with the requirements in 462.31, 464.31a, 464.32a, 464.31b, 464.32b, 464.31c, 464.32c and 464.31d.

.333 Sack Sortation. See section 467.2.

.34 Pallet Preparation.

.341 Weight and Volume. The minimum mail load of a pallet is 650 pounds. The maximum gross weight of a pallet (the pallet and the mail) is 2,000 pounds. Exception: Up to 10 percent of the pallets in a mailing may contain less than 650 pounds of mail, if the mailer provides the pallets for those pallets containing less than 650 pounds.

.342 Sortation. Sacks must be placed on pallets as described below, beginning with pallets for the finest sortation level (5-digit pallets) through the largest authorized level (SCF for publications authorized newspaper treatment and destination BMC for ordinary papers).

a. Five-Digit Pallets. Whenever there are 650 or more pounds of sacks for the same 5-digit ZIP Code area, they must be placed on a pallet labeled to that 5-digit destination. Pallet labels must be prepared and affixed to the pallet in accordance with 467.343. The labels must contain the information required for 5-digit sack labels in 464.31a in the format required by that section. Pallets containing carrier route and 5-digit sacks must note this on the contents line of the pallet label. A physical barrier sheet must be placed between the carrier route and 5-digit sacks.

b. Optional Multi-Coded City Pallets. After making up all required 5-digit pallets, mailers may, at their option, place any sacks remaining that are destined for the same optional multi-coded city included in Exhibit 122.63a, on a pallet labeled to that city, provided the minimum and maximum weight requirements in 467.241 are met. The pallet labels must be prepared and affixed to the pallet in accordance with 467.343. The pallet labels must contain the information required for optional multi-coded city sack labels in 464.32a, in the format required by that section.

c. Three-Digit Pallets. If, after preparing all required 5-digit pallets (and optional multi-coded city pallets if the mailer chooses to prepare them) there are 650 pounds or more of sacks remaining that are destined for the same 3-digit ZIP Code prefix area, they must be placed on a pallet labeled to that 3-digit destination. The pallet labels must be prepared and affixed to the pallet in accordance with 467.343. The pallet labels must contain the information required for 3-digit sacks in 464.31b, in the format required by that section.

d. SCF Pallets. If, after preparing all required 5-digit pallets, optional multi-coded city pallets, and required 3-digit pallets, there are 650 pounds or more of sacks remaining that are destined for ZIP Codes served by the same Sectional Center Facility, they must be placed on a pallet labeled to that Sectional Center Facility. The pallet labels must be prepared and affixed to the pallet in accordance with 467.543. The pallet labels must contain the information required for SCF sacks in 467.225, in the format required by that section. Note: This is the largest level of sort allowed for publications authorized newspaper treatment. Mail for newspaper treatment second-class publications that cannot be placed on SCF pallets must be sacked in accordance with 464.31c, 464.31d, and 464.32c. See also 467.25.

e. Optional BMC Pallets (Ordinary Papers Only). If, after preparing all required 5-digit pallets, optional multi-coded city pallets (optional), required 3-digit pallets and required SCF pallets, there are 650 pounds or more of sacks remaining that are destined for ZIP Codes served by the same BMC, they may be placed on a pallet labeled to that destination BMC. The pallet labels must be prepared and affixed to the pallet in accordance with 467.343. The pallet labels contain the information required for destination BMC pallets in 667.222, in the format required by that section, except that the contents line must show ORD P.

.343 Pallet Labels.

a. General. All pallets must be provided with at least two clearly visible labels. Labels must be at least 8 inches by 11 inches in size, with letters at least ½ of an inch in height. Labels must be placed on at least two adjacent sides of the pallet. See 462.31, 464.31a, 464.32a, 464.31b, 464.32b, 464.31c, 464.32c and 464.31d, concerning the information which must appear on the labels.

b. Additional information required for pallets containing carrier route presort level rate mail sacks.

(1) Pallets containing only carrier route sacks. If any type of pallet contains only carrier route sacks or carrier routes sacks, the contents line of the pallet label must show the words CARRIER ROUTES after the description of contents (NEWS or ORD P).

(2) Five-digit pallets containing carrier route and 5-digit level rate sacks. If a 5-digit pallet contains both 5-digit and carrier route rated sacks, the pallet label must show the words MIXED 5-DIGIT/CARRIER ROUTES after the contents description (NEWS or ORD P).

.344 Physical Characteristics. Pallets must be constructed of high quality material, designed to handle loads equal to a gross weight of 2,000 pounds with volumes up to 65 cubic feet. The dimensions must be 48 inches by 40 inches. The pallets must be designed for four way entry by fork trucks and two way entry for pallet jacks. Pallet mailings must be wrapped with shrinkable or stretchable plastic and prepared to retain integrity throughout transportation and handling. Wooden top caps the same size as the pallet are required on pallets with gross weights of less than 1,000 pounds. Top caps must be affixed to the pallet with nylon strapping.

468.12 Qualification Requirements.

c. Bundling or Packaging Instead of Sacking. Pieces presented in bundles or packages instead of sacks (see 467.1 and 467.2) are eligible for presort rates providing they meet all other requirements for the presort rates. For purpose of eligibility for presort level rates in 468.12 a and b, a bundle or package is equivalent to a sack. A bundle or package meeting the requirements in 468.12 a and b will qualify for the appropriate presort level rate regardless of the pallet it is placed upon, if prepared in accordance with 467.1 and 467.2.

Part 667—Preparation of Bulk Rate Mailings.

Renumber old 667.8 as 667.9. Add new section 667.8.

Amend sections 667.5 through 667.7 to read as follows:

667.5 Bundling Instead of Sacking (Bedloaded Bundles).

.51 Regional Authorization.

.511 The Regional Postmaster General of the region where the mailer is located may authorize preparation of third-class mail in bundles outside of mail sacks if such preparation is beneficial to the Postal Service. Generally, authorization will be granted only when the number of bundles does not exceed the number of sacks which would otherwise be used in a mailing. The mailer, on behalf of the client, must submit an application to the Regional Postmaster General of the region where the mailer is located for each publication. The following information must be furnished with the application:

a. Name of client and frequency of mailing;

b. Identity of post offices to which shipments will be made; and

c. Approximate quantity of copies and number of bundles to each office.

If an authorization is granted, mailers must be prepared to submit information for future issues of the publication, such as that required in the original application, at the request of the Regional Postmaster General.

.512 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General to whom the application is submitted will issue to the mailer the authorization or denial of the request to bundle instead of sack the publication for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorizations will be granted for a specified period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming issue and perform a review of the mailer's continued eligibility to bundle instead of sack. Authorizations to bundle instead of sack will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.52 Package Preparation.

.521 Weight and Volume. A package which is a group of pieces that are secured together as one unit must contain a minimum of two copies of the publication and must not exceed 40 pounds in weight.

.522 Sortation. Mailers must presort copies and secure them into packages as required in 667.1.

.523 Labels. Packages must be labeled in accordance with 667.1.

.53 Bundle Preparation.

.531 Weight and Volume. A bundle which is a group of two or more packages that are prepared as a unit must weigh at least 20 pounds or be of at least 1,000 cubic inches of volume. The weight of a bundle must not exceed 40 pounds.

.532 Sortation. Packages prepared in accordance with 667.52 must be consolidated into bundles on the same basis as sacks (see 667.13). A bundle must be prepared when there are 20 or more pounds or 1,000 or more cubic inches of packages for a particular level of sortation. Lesser quantities must be included in bundles for the next larger level of sortation.

.533 Labels. All bundles must be appropriately labeled on top with a non-standard facing slip to show destination, contents and origin as required with sacks (see 667.13). Exception: Carrier route and 5-digit bundles need not bear a facing slip as the package label on the top piece is sufficient to direct the bundle to its proper destination. However, 5-digit bundles that are not labeled using the optional endorsement line, and that contain the carrier route information in the address area in accordance with 667.311b, must bear a red label D. A large package is also exempted from the facing slip requirement, as the package label will be sufficient.

Note.—Five-digit presort level rate packages and bundles and third-class carrier route rate packages and bundles may not be part of the same mailing.

.534 Physical Characteristics of Bundles.

a. Non-Local Processing and Delivery. Mailings must be machinable by Postal Service sack-sorting equipment unless they consist of copies intended only for local area delivery (see 667.534b). The mailer must satisfy the Postal Service that mailings are machinable. This can be verified by having the mailing post office test process ten or more bundles of each representative bundle size expected in the mailings on two or more passes through a bulk mail center (BMC). The potential of the bundles to cause damage to other mail must also be tested. Ordinarily, bundles require cross strapping and heavy guage shrink or stretch wrap to insure their integrity in the mailstream.

b. Local Processing and Delivery. When third-class mailings are entered for local processing and delivery (i.e., same Sectional Center Facility area), they need not meet the requirements for 667.534a. However, bundles must be securely bound to withstand handling without breakage or damage and to prevent injury to postal personnel or damage to mechanized sorting systems. Binding material must be applied at least once around the length and girth. The use of metal strapping and wire to secure bundles is prohibited.

667.6 Packages and Bundles Presented on Pallets.

.61 Regional Authorization.

.611 The Regional Postmaster General of the region where the mailer is located may authorize the preparation of third class mail in packages and bundles placed on pallets instead of sacking if such preparation is beneficial to the Postal Service. A package is a group of pieces that are secured together as one unit. A bundle is a group of two or more packages that are prepared as one unit. Generally, authorization for this type of mail preparation will be granted only when: 1) the number of packages or bundles to be prepared is not more than four times the number of sacks which would otherwise be prepared for material to be placed on 3-digit and SCF pallets, and not more than five times the number of sacks that would otherwise be prepared for material to be placed on 5-digit, optional city, and BMC pallets, and 2) when the amount of mail on each pallet is equivalent to or greater than 30 sacks which would otherwise be prepared. The mailer, on behalf of the client, must submit an application to the Regional Postmaster General of the region where the mailer is located for each publisher.

An application for palletization may be obtained from the region where the mailer is located and at a minimum will require the following information:

a. The name of the client, frequency of mailing and approximate mailing dates;

b. A list of the post offices of entry;

c. The approximate weight of a single copy;

d. A breakdown of mail preparation for each entry post office that shows the destination of each pallet to be prepared for the mailings submitted at that postal facility;

e. The approximate number of bundles, packages, and pieces for each pallet make-up;

f. The average weight of a pallet load;

g. The approximate number of pallets in the mailing that will weigh less than 650 pounds;

h. The number of sacks that would otherwise be needed in the mailing; and

i. The number of pallets required.

If an authorization is granted, mailers must be prepared to submit information for future issues, such as that required in the original application, at the request of the Regional Postmaster General.

.612 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General to whom the application is submitted will issue to the mailer the authorization or denial of the request to present packages and bundles on pallets for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorizations will

be granted for a specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming mailing and perform a review of the mailer's continued eligibility to present packages and bundles on pallets. Authorizations to present packages and bundles on pallets will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.62 Package Preparation.

.621 Weight and Volume. A package must contain a minimum of ten copies and must not exceed 20 pounds in weight. Exception: Packages containing as few as two copies may be prepared if the packages will be consolidated with other packages into a bundle containing at least ten copies of the publication, in accordance with 667.63.

.622 Sortation. Mailers must presort copies and secure them into packages as required in 667.121a through 667.121e. When there are over 15 pounds of mail for a destination, mailers must secure the pieces together in multiples of 15 to 20 pound packages. When there are 15 pounds or less of mail for a destination, the pieces must be secured together in a single package. For example, if there are 14 pounds of mail for a 5-digit ZIP Code, only one package weighing 14 pounds must be prepared. If there are 25 pounds of mail for a 5-digit ZIP Code, a 15 pound package and a 10 pound package labeled to that 5-digit destination would be acceptable as well as one 20 pound package and one 5 pound package for the same 5-digit ZIP Code destination.

Note.—State Distribution Center (SDC), State, and Mixed states packages must not be included in the palletized portion of the mailing. Such packages must be sacked in accordance with 667.121f through 667.121h.

.623 Package Labels.

a. Packages on BMC Pallets. All packages that are placed on BMC pallets must be labeled with a facing slip containing only the destination information required for sack labels in 667.132c and 667.132d. Two zeros must be added to the end of all 3-digit ZIP Code prefixes that may appear on the destination line of the labels. These requirements will assist processing on BMC parcel sorters. Exceptions: Firm packages bearing a blue Label F need not bear a facing slip. Carrier route packages labeled with the optional endorsement line or in accordance with 667.311b, need not bear a facing slip. Five-digit packages are also exempted from facing slip requirements if labeled in accordance with 667.623b, below.

b. Other Packages. Packages must be labeled with pressure sensitive labels, or the optional endorsement line as provided in 468. Exception: When pressure sensitive labels are used, a red label D must appear on 5-digit packages if the pieces in those packages bear the carrier route information as permitted in 667.311b.

.624 Physical Characteristics.

a. Packages on BMC Pallets. Packages that are placed on BMC pallets must be machinable on BMC parcel sorters and must be prepared using shrink wrap. Since shrink wrap alone may not result in a machinable package, it is recommended that each package be both banded around the length and girth and shrink wrapped. The mailer must satisfy the Postal Service that the packages are machinable. This will be verified by having the mailing post office test process 10 or more packages of each representative bundle size expected in the mailings on two or more passes through the BMC. The potential of the packages to cause damage to other mail must also be tested while being processed on BMC primary and secondary parcel sorters. Mailers may also use cardboard cartons meeting the packaging criteria in 121 and the machinability criteria in 128 to prepare firm packages.

b. Other Packages. Packages must be securely bound to withstand handling without breakage or damage and to prevent injury to postal personnel. The use of heavy gauge shrink wrap over banding is the recommended method of securing packages. However, use of only banding material, or only shrink wrap is acceptable. Banding material, if used, must be applied at least once around the length and once around the girth of each package. The use of metal strapping and wire to secure packages is prohibited. Mailers may also use cardboard cartons meeting the packaging criteria in 121 to prepare firm packages.

Note.—Packages for SDC, State, and Mixed States destinations must not be prepared for inclusion in the palletized portion of a mailing. Packages for these destinations must be sacked in accordance with 667.132e through 667.132g. See also 667.45.

.63 Optional Bundle Preparation.

.631 Weight and Volume. Bundles must contain a minimum two or more packages. The maximum weight of an individual bundle is 20 pounds.

.632 Sortation. Mailers may, at their option, consolidate packages into bundles in the same manner as sacks are prepared. (See 667.132a through 667.132c and 667.32.)

.633 Bundle Labels.

a. Bundles Placed on BMC Pallets. Except for firm carrier route and 5-digit bundles, all bundles must be labeled with a facing slip containing only the destination information required for sack labels in 667.132c through 667.132d, plus a contents line. Two zeros must be added to the end of all 3-digit ZIP Code prefixes that may appear on the destination line of bundle labels. These requirements will assist processing on BMC parcel sorters. The bundle labels must completely cover the address and package label on the top piece in the bundle to prevent confusion concerning the contents of the bundle.

Note.—5-digit bundles, not labeled with a facing slip, must bear a red label D or the 5-digit optional endorsement line if the pieces in the bundle bear the carrier route information as provided in 667.311b.

b. Other Bundles. Bundles containing packages for levels of sortation finer than the bundle destination must be labeled with a facing slip containing only the destination information required for sack labels in 667.132c through 667.132d.

Examples of bundles requiring facing slips are: (1) A carrier routes bundle containing carrier packages for different carrier routes within the same 5-digit ZIP Code area; (2) a 3-digit bundle containing all 5-digit packages for the same 3-digit ZIP Code area; (3) a 3-digit bundle containing a 5-digit package and a 3-digit package for the same 3-digit ZIP Code area.

.634 Physical Characteristics.

a. Bundles on BMC Pallets. Bundles which are placed on BMC pallets must be machinable on BMC parcel sorters and must be prepared using shrink wrap. Since shrink wrap alone may not result in a machinable bundle, it is recommended that each bundle be both banded around the length and girth and shrink wrapped. The mailer must satisfy the Postal Service that the bundles are machinable. This will be verified by having the mailing post office test process 10 or more bundles of each representative bundle size expected in the mailings on two or more passes through the BMC. The potential of the bundles to cause damage to other mail must also be tested while being processed on BMC primary and secondary parcel sorters.

b. Other Bundles. Bundles must be securely bound to withstand handling without breakage or damage and to prevent injury to postal personnel. The use of heavy gauge shrink wrap over banding is the recommended method of securing bundles. However, use of only banding material, or only shrink wrap is

acceptable. Banding material, if used, must be applied once around the length and once around the girth of each bundle. The use of metal strapping and wire to secure bundles is prohibited.

.64 Pallet Preparation.

.641 Weight and Volume. The minimum mail load of a pallet is 650 pounds. The maximum gross weight of a pallet (the pallet and the mail) is 2,000 pounds. Exception: Up to 10 percent of the pallets in a mailing may contain less than 650 pounds of mail, if the mailer provides the pallets for those pallets containing less than 650 pounds.

.642 Sortation. Bundles must be placed on pallets as described below, beginning with pallets for the finest sortation level (5-digit) through the largest authorized level. Physical barrier sheets must be used to separate carrier route and 5-digit made-up mail on 5-digit pallets.

a. 5-digit Pallets. Whenever there are 650 or more pounds of packages and bundles for the same 5-digit ZIP Code area they must be placed on a pallet labeled to that 5-digit destination. Pallet labels must be prepared and affixed to the pallet in accordance with 667.643. The labels must contain the information required for 5-digit sack labels in 667.132a in the format required by that section.

b. Optional Multi-Coded City Pallets. After making up all required 5-digit pallets mailers may, at their option, place any packages and bundles remaining that are destined for the same optional multi-coded city included in 467.114, on a pallet labeled to that city, provided the minimum and maximum weight requirements of 650 to 2000 pounds are met. The pallet labels must be prepared and affixed to the pallet in accordance with 667.643. The pallet labels must contain the information required for optional multi-coded city sack labels in 667.132b, in the format required by that section.

c. 3-Digit Pallets. If, after preparing all required 5-digit pallets (and optional multi-coded city pallets if the mailer chooses to prepare them) there are 650 pounds or more of packages and bundles remaining that are destined for the same 3-digit ZIP Code prefix area, they must be placed on a pallet labeled to that 3-digit destination. The pallet labels must be prepared and affixed to the pallet in accordance with 667.643. The pallet labels must contain the information required for 3-digit sacks in 667.132c in the format required by that section.

d. SCF Pallets. If, after preparing all required 5-digit pallets, optional multi-coded city pallets, and required 3-digit pallets, there are 650 pounds or more of packages and bundles remaining that are destined for ZIP Codes served by the same Sectional Center Facility, they must be placed on a pallet labeled to that Sectional Center Facility. The pallet labels must be prepared and affixed to the pallet in accordance with 667.643. The labels must contain the information required for SCF sacks in 667.132d, in the format required by that section.

e. Optional BMC Pallets. If, after preparing all required 5-digit pallets, optional multi-coded city pallets (optional), required 3-digit pallets and required SCF pallets, there are 650 pounds or more of packages and bundles remaining that are destined for ZIP Codes served by the same BMC, they may be placed on a pallet labeled to that destination BMC. Bundles and packages placed on BMC pallets must be machinable (see 667.634a). The pallet labels must be prepared and affixed to the pallet in accordance with 667.643. The pallet labels must contain the information required for destination BMC pallets in 667.222, in the format required by that section.

.643 Pallet Labels.

a. General. All pallets must be provided with at least two clearly visible labels. Labels must be at least 8 inches by 11 inches in size, with letters at least ½ of an inch in height. Labels must be placed on at least two adjacent sides of the pallet. See 667.642a–e, concerning the information which must appear on the labels.

b. Additional information required for pallets containing carrier route presort level rate packages or bundles.

(1) Pallets containing only carrier route packages or bundles or carrier routes packages or bundles. If any type of pallet contains only carrier route packages or carrier routes bundles the contents line of the pallet label must show the words CARRIER ROUTES after the description of contents (3C Flats, 3C LTRS, etc.).

(2) Five-digit pallets containing carrier route and basic level rate packages or bundles. If a 5-digit pallet contains both basic rate and carrier route rated packages or bundles, the pallet label must show the words Mixed 5-DIGIT/CARRIER Routes after the contents description (3C FLATS, 3C LTRS, etc.).

Note.—Five-digit presort level rate packages and bundles and third-class carrier route rate packages and bundles may not be part of the same mailing and they may not be palletized on the same pallet.

.644 Physical Characteristics.

Pallets must be constructed of high quality material, designed to handle loads equal to a gross weight of 2000 pounds with volumes up to 65 cubic feet. The dimensions must be 48 inches by 40 inches. The pallets must be designed for four way entry by fork trucks and two way entry for pallet jacks. Pallet mailings must be wrapped with shrinkable or stretchable plastic and prepared to retain integrity throughout transportation and handling. Wooden top caps the same size as the pallet are required on pallets with gross weights of less than 1,000 pounds. Top caps must be affixed to the pallet with nylon strapping.

.65 Presentation of Mailings. Sacks containing packages for SDC, state or mixed states destinations, or containing packages or bundles remaining after all possible pallets have been prepared, may be presented along with the palletized mailing (i.e., on the same mailing statement), if the sacks are physically segregated from the palletized portion of the mailing.

667.7 Palletizing Sacks.

.71 Regional Authorization.

.711 The Regional Postmaster General of the region where the mailer is located may authorize the preparation of sacked third-class mail on pallets, if such preparation is beneficial to the Postal Service. The mailer, on behalf of the client, must submit an application for each publisher to the Regional Postmaster General of the region where the mailer is located. The following information must be included in the application:

a. The name of the client, frequency of mailing and approximate mailing dates;

b. A list of the post offices of entry;

c. The approximate weight of a single copy;

d. A breakdown of mail preparation for each entry post office that shows the destination of each pallet to be prepared for the mailings submitted at that postal facility;

e. The approximate number of sacks and pieces for each pallet make-up;

f. The average weight of a pallet load;

g. The approximate number of pallets in the mailing that will weigh less than 650 pounds; and

h. The number of pallets required.

If an authorization is granted, mailers must be prepared to submit information for future issues, such as that required in the original application, at the request of the Regional Postmaster General.

.712 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned.

The Regional Postmaster General to whom the application is submitted will

issue to the mailer the authorization or denial of the request to palletize sacks for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorizations will be granted for a specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming mailing and perform a review of the mailer's continued eligibility to palletize sacks.

Authorizations to palletize sacks will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.72 Package Preparation.

See sections 667.1, 667.3, and 667.4.

.73 Sack Preparation.

.731 Weight and Volume. No more than 70 pounds of mail may be placed in any sack.

.732 Sack Labeling. Sacks must be labeled in accordance with the requirement in 667.13 and 667.32.

.733 Sack Sortation. See 667.13, 667.32, and 667.42.

.74 Pallet Preparation.

.741 Weight and Volume. The minimum mail load of a pallet is 650 pounds. The maximum gross weight of a pallet (the pallet and the mail) is 2,000 pounds. Exception: Up to 10 percent of the pallets in a mailing may contain less than 650 pounds of mail, if the mailer provides the pallets for those pallets containing less than 650 pounds.

.742 Sortation. Sacks must be placed on pallets as described below, beginning with pallets for the finest sortation level (5-digit pallets) through the largest level (destination BMC).

a. Five-digit Pallets. Whenever there are 650 or more pounds of sacks for the same 5-digit ZIP code area they must be placed on a pallet labeled to that 5-digit destination. Pallet labels must be prepared and affixed to the pallet in accordance with 667.743.

The labels must contain the information required for 5-digit sack labels in 667.132a in the format required by that section. Pallets containing carrier route and 5-digit sacks must note this on the contents line of the pallet label. A physical barrier sheet must be placed between the carrier route and 5-digit sacks.

b. Optional Multi-Coded City Pallets. After making up all required 5-digit pallets, mailers may, at their option, place any packages and bundles remaining that are destined for the same optional multi-coded city included in 467.114, on a pallet labeled to that city, provided the minimum and maximum weight requirements in 667.741 are met. The pallet labels must be prepared and affixed to the pallet in accordance with 667.743. The pallet labels must contain the information required for optional multi-coded city sack labels in 667.132b, in the format required by that section.

c. Three-digit Pallets. If, after preparing all required 5-digit pallets (and optional multi-coded city pallets, if the mailer chooses to prepare them) there are 650 pounds or more of sacks remaining that are destined for the same 3-digit ZIP Code prefix area, they must be placed on a pallet labeled to that 3-digit destination. The pallet labels must be prepared and affixed to the pallet in accordance with 667.743. The pallet labels must contain the information required for 3-digit sacks in 667.132c, in the format required by that section.

d. SCF Pallets. If, after preparing all required 5-digit pallets, optional multi-coded city pallets, and required 3-digit pallets, there are 650 pounds or more of sacks remaining that are destined for ZIP Codes served by the same Sectional Center Facility, they must be placed on a pallet labeled to that Sectional Center Facility. The pallet labels must be prepared and affixed to the pallet in accordance with 667.743. The pallet labels must contain the information required for SCF sacks in 667.132d, in the format required by that section.

e. Optional BMC Pallets. If, after preparing all required 5-digit pallets, optional multi-coded city pallets (optional), required 3-digit pallets and required SCF pallets, there are 650 pounds or more of sacks remaining that are destined for ZIP Codes served by the same BMC, they may be placed on a pallet labeled to that destination BMC. The pallet labels must be prepared and affixed to the pallet in accordance with 667.743. The pallet labels must contain the information required for destination BMC pallets in 667.222, in the format required by that section.

.743 Pallet Labels.

a. General. All pallets must be provided with at least two clearly visible labels. Labels must be at least 8 inches by 11 inches in size, with letters at least ⅛ of an inch in height. Labels must be placed on at least two adjacent sides of the pallet. See 667.13, 667.32, and 667.42, concerning the information which must appear on the labels.

b. Additional information required for pallets containing carrier route presort level rate mail sacks.

(1) Pallets containing only carrier route sacks. If any type of pallet contains only carrier route sacks or carrier routes sacks, the contents line of the pallet label must show the words CARRIER ROUTES after the description of contents (3C FLATS, 3C LTRS, etc.).

Note.—Third-class carrier route rate sacks and 5-digit presort level rate sacks may not be part of the same mailing and they may not be palletized on the same pallet.

(2) Five-digit pallets containing carrier route and basic level rate sacks. If a pallet contains only 5-digit basic rate sacks and carrier route rate sacks the pallet label must show the words MIXED 5-DIGIT/CARRIER ROUTES after the contents description (3C FLATS, 3C LTRS, etc.).

.744 Physical Characteristics.

Pallets must be constructed of high quality material, designed to handle loads equal to a gross weight of 2000 pounds with volumes up to 65 cubic feet. The dimensions must be 48 inches by 40 inches. The pallets must be designed for four way entry by fork trucks and two way entry for pallet jacks. Pallet mailings must be wrapped with shrinkable or stretchable plastic and prepared to retain integrity throughout transportation and handling. Wooden top caps the same size as the pallet are required on pallets with gross weights of less than 1000 pounds. Top caps must be affixed to the pallet with nylon strapping.

667.8 Palletizing Machinable Third-Class Parcels.

.81 Regional Authorization.

.811 The Regional Postmaster General of the region where the mailer is located may authorize the preparation of third-class machinable mail on pallets instead of sacking if such preparation is beneficial to the Postal Service. Generally, authorization for this type of mail preparation will be granted only when the amount of mail on each pallet is equivalent to or greater than 30 sacks which would otherwise be prepared. The mailer must submit an application to the Regional Postmaster General of the region where the mailer is located for each client. An application for palletization may be obtained from the region where the mailer is located and at a minimum will require the following information:

a. The name of the client, frequency of mailing and approximate mailing dates;

b. A list of the post offices of entry;

c. The approximate weight of a single piece;

d. A breakdown of mail preparation for each entry post office that shows the destination of each pallet to be prepared for the mailings submitted at that postal facility;

e. The approximate number of pieces for each pallet make-up;

f. The average weight of a pallet load;

g. The approximate number of pallets in the mailing that will weigh less than 650 pounds;

h. The number of sacks that would otherwise be needed in the mailing; and

i. The number of pallets required.

If an authorization is granted, mailers must be prepared to submit information for future issues, such as that required in the original application, at the request of the Regional Postmaster General.

.812 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General, to whom the application is submitted, will issue to the mailer the authorization or denial of the request to palletize machinable parcels for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorizations will be granted for a specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming mailing and perform a review of the mailer's continued eligibility to palletize machinable parcels. Authorizations to palletize machinable parcels will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.82 Machinable Parcel Pallet Preparation.

.821 Weight and Volume. The minimum mail load of a pallet is 650 pounds. The maximum gross weight of a pallet (the pallet and the mail) is 2,000 pounds. Exception: Up to 10 percent of the pallets in a mailing may contain less than 650 pounds of mail, if the mailer provides the pallets for those pallets containing less than 650 pounds.

.822 Sortation. Pallets must be made up to the destinations described in 667.2.

a. Five-Digit Pallets. Whenever there are 650 or more pounds of mail for the same 5-digit ZIP Code area it must be placed on a pallet labeled to that 5-digit destination. Pallet labels must be prepared and affixed to the pallet in accordance with 667.823. The labels must contain the information required for 5-digit sack labels in 667.2 in the format required by that section.

b. Destination BMC Pallets. If, after preparing all required 5-digit pallets, there are 650 pounds or more of mail destined for ZIP Codes served by the same BMC, it must be placed on a pallet labeled to that destination BMC. Pieces placed on BMC pallets must be machinable (see 128). The pallet labels must be prepared and affixed to the pallet in accordance with 667.823. The labels must contain the information required for destination BMC sacks in 667.2, in the format required by that section.

c. Origin BMC Pallets. After preparing all required 5-digit pallets and destination BMC pallets, the remaining pieces must be placed on pallets labeled to the origin BMC. The pallet labels must be prepared and affixed to the pallet in accordance with 667.823. The labels must contain the information required for origin BMC sacks in 667.2, in the format required by that section.

.823 Labeling.

All pallets must be provided with two clearly visible labels. Labels must be at least 8 inches by 11 inches in size, with letters at least ½ inch in height. Labels must be placed on two adjacent sides of the pallet. See 667.2, concerning the information which must appear on the labels.

.824 Physical Characteristics. Pallets must be constructed of high quality material, designed to handle loads equal to a gross weight of 2000 pounds with volumes up to 65 cubic feet. The dimensions must be 48 inches by 40 inches. The pallets must be designed for four-way entry by fork trucks and two-way entry for pallet jacks. Pallet mailings must be wrapped with shrinkable or stretchable plastic and prepared to retain integrity throughout transportation and handling. Wooden top caps, the same size as the pallets, are required on pallets with gross weights of less than 1000 pounds. Top caps must be affixed to the pallets with nylon strapping.

.83 Presentation of Mailings. Pieces for areas served by the origin BMC may be presented along with palletized parcels as part of the same mailing (i.e., on the same mailing statement), if the sacks are physically segregated from the palletized portion of the mailing.

Palletized machinable pieces to be mailed at the third-class carrier route presort rate and the third-class 5-digit presort level rate must be mailed under the provisions of 667.5, 667.6, and 667.7.

Part 767—Preparation of Bound Printed Matter

Old section 767.6 is renumbered as 767.7.

Add new section 767.6.

Amend 767.41 through 767.5 to read as follows:

767.4 Bundling Instead of Sacking (Bedloaded Bundles)

.41 Regional Authorization

.411 The Regional Postmaster General of the region where the mailer is located may authorize preparation of bound printed matter mail in bundles outside of mail sacks if such preparation is beneficial to the Postal Service. Generally, authorization will be granted only when the number of bundles does not exceed the number of sacks which would otherwise be used in a mailing. The mailer, on behalf of the client, must submit an application to the Regional Postmaster General of the region where the mailer is located for each publication. The following information must be furnished with the application:

a. Name of client and frequency of mailing;

b. Identity of post offices to which shipments will be made; and

c. Approximate quantity of copies and number of bundles to each office.

If an authorization is granted, mailers must be prepared to submit information for future issues of the publication, such as that required in the original application, at the request of the Regional Postmaster General.

.412 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General to whom the application is submitted will issue to the mailer the authorization or denial of the request to bundle instead of sack the publication for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General.

Authorizations will be granted for a specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming issue and perform a review of the publication's continued eligibility to bundle instead of sack. Authorizations to bundle instead of sack will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.42 Package Preparation.

.421 Weight and Volume. A package must contain a minimum of two copies of the publication and must not exceed 40 pounds in weight.

.422 Sortation. Mailers must presort copies and secure them into 5-digit, 3-digit and state bundles.

.423 Labels. Five-digit, 3-digit and state bundles must be labeled in accordance with 767.2.

.43 Bundle Preparation.

.431 Weight and Volume. A bundle must weigh at least 20 pounds or be of at least 1,000 cubic inches of volume. The weight of a bundle must not exceed 40 pounds.

.432 Sortation. A bundle must be prepared when there are 20 or more pounds or 1,000 or more cubic inches of packages for a particular level of sortation. Lesser quantities must be included in bundles for the next larger level of sortation. Mail for no more than one zone may be placed in a bundle.

.433 Labels. All bundles must be appropriately labeled on top with a non-standard facing slip to show destination, contents and origin as required with sacks (see 767.2).

.434 Physical Characteristics of Bundles.

a. Non-Local Processing and Delivery. Bundles must be machinable by Postal Service sack-sorting equipment unless they consist of mail intended only for local area delivery (see 767.434b). The mailer must satisfy the Postal Service that mailings are machinable. This can be verified by having the mailing post office test process ten or more bundles of each representative bundle size expected in the mailings of two or more passes through a bulk mail center (BMC). The potential of the bundles to cause damage to other mail must also be tested. Ordinarily, bundles require cross strapping and heavy gauge shrink or stretch wrap to insure their integrity in the mailstream.

b. Local Processing and Delivery. When bound printed materials are entered for local processing and delivery (i.e., same Sectional Center Facility area), they need not meet the requirements of 767.434a. However, bundles must be securely bound to withstand handling without breakage or damage and to prevent injury to postal personnel or damage to mechanized sorting systems. Binding material must be applied at least once around the length and girth. The use of metal strapping and wire to secure bundles is prohibited.

767.5 Palletizing Instead of Sacking (Bundles Presented on Pallets).

.51 Regional Authorization.

.511 The Regional Postmaster General of the region where the mailer is located may authorize the preparation of bound printed matter mail in bundles placed on pallets instead of sacking if such preparation is beneficial to the Postal Service. Generally, authorization for this type of mail preparation will be granted only when: (1) the number of bundles to be prepared is not more than four times the number of sacks which would otherwise be prepared for material to be placed on 3-digit and SCF pallets, and not more than five times the number of sacks that would otherwise be prepared for material to be placed on 5-digit, optional city, and BMC pallets, and (2) when the amount of mail on each pallet is equivalent to or greater than 30 sacks which would otherwise be prepared. The mailer, on behalf of the client, must submit an application to the Regional Postmaster General of the region where the mailer is located for each client. An application for palletization may be obtained from the region where the mailer is located and at a minimum will require the following information:

a. The name of the client, frequency of mailing and approximate mailing dates;

b. A list of the post offices of entry;

c. The approximate weight of a single copy;

d. A breakdown of mail preparation for each entry office that shows the destination of each pallet to be prepared for the mailings submitted at that postal facility;

e. The approximate number of bundles for each pallet make-up;

f. The average weight of a pallet load;

g. The approximate number of pallets in the mailing that will weigh less than 650 pounds;

h. The number of sacks that would otherwise be needed in the mailing; and

i. The number of pallets required.

If an authorization is granted, mailers must be prepared to submit information for future issues, such as that required in the original application, at the request of the Regional Postmaster General.

.512 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General to whom the application is submitted will issue to the mailer, the authorization or denial of the request to bundle instead of sack the mailing for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorizations will be granted for a specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming mailing and perform a review of the mailer's continued eligibility to bundle instead of sack. Authorizations to bundle instead of sack will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.52 Bundle Preparation.

.521 Weight and Volume. A bundle must be prepared when there are at least 15 pounds or more of mail or at least 1,000 cubic inches of volume. The weight of the bundle must not exceed 20 pounds.

.522 Sortation. Mailers must presort copies and secure them into bundles as required in 767.221 through 767.224. When there are 15 pounds for a destination, copies must be secured into bundles weighing at least 15 pounds. For example, if there are 14 pounds of mail for a 5-digit ZIP Code, only one bundle weighing 14 pounds must be prepared. If there are 25 pounds of mail for a 5-digit ZIP Code, a 15 pound bundle and a 10 pound bundle labeled to that 5-digit destination is acceptable as well as one 20 pound bundle and one 5 pound bundle for the same 5-digit ZIP Code destination.

Note.—State Distribution Center (SDC), State, and Mixed States bundles must not be included in the palletized portion of the mailing. Such bundles must be sacked in accordance with 767.225 through 767.227.

.523 Labels.

a. Bundles On BMC Pallets. All bundles that are placed on BMC pallets must be labeled with a facing slip containing only the destination information required for sack labels in 767.221 through 767.224. Two zeros must be added to the end of all 3-digit ZIP Code prefixes that may appear on the destination line of the labels. These requirements will assist processing on BMC parcel sorters.

b. Other Bundles. Bundles must be labeled with pressure-sensitive labels, or the optional endorsement line, as provided in 468.

.524 Physical Characteristics.

Bundles must be securely tied, strapped, wrapped, or otherwise prepared to maintain their integrity.

b. Bundles on Pallets.

(1) Bundles on BMC Pallets. Bundles that are placed on BMC pallets must be machinable on BMC parcel sorters and must be prepared using shrink wrap. Since shrink wrap alone may not result in a machinable package, it is recommended that each bundle be both banded around the length and girth and shrink wrapped. The mailer must satisfy

the Postal Service that the bundles are machinable. This will be verified by having the mailing post office test process 10 or more bundles of each representative bundle size expected in the mailings on two or more passes through the BMC. The potential of the bundles to cause damage to other mail must also be tested while being processed on BMC primary and secondary parcel sorters.

(2) Other Bundles. Bundles must be securely bound to withstand handling without breakage or damage and to prevent injury to postal personnel. The use of heavy gauge shrink wrap over banding is the recommended method of securing packages. However, use of only banding material, or only shrink wrap is acceptable. Banding material, if used, must be applied at least once around the length and once around the girth of each bundle. The use of metal strapping and wire to secure bundles is prohibited.

.53 Pallet Preparation.

.531 Weight and Volume. The minimum mail load of a pallet is 650 pounds. The maximum gross weight of a pallet (the pallet and the mail) is 2,000 pounds. Exception: Up to 10 percent of the pallets in a mailing may contain less than 650 pounds of mail, if the mailer provides the pallets for those pallets containing less than 650 pounds.

.532 Sortation. Packages and bundles must be placed on pallets as described below, beginning with pallets for the finest sortation level (5-digit pallets) through the largest authorized level.

a. 5-Digit Pallets. Whenever there are 650 or more pounds of bundles for the same 5-digit ZIP Code area they must be placed on a pallet labeled to that 5-digit destination. Pallet labels must be prepared and affixed to the pallet and must contain the information required for 5-digit sack labels in 767.2 in the format required by that section.

b. Optional Multi-Coded City Pallets. After making up all required 5-digit pallets mailers may, at their option, place any bundles remaining that are destined for the same optional multi-coded city included in 467.114, on a pallet labeled to that city, provided the minimum and maximum weight requirements in 767.531 are met. The pallet labels must be prepared and affixed to the pallet and must contain the information required for optional multi-coded city sack labels in 767.222, in the format required by that section.

c. 3-Digit Pallets. If, after preparing all required 5-digit pallets (and optional multi-coded city pallets if the mailer chooses to prepare them) there are 650 pounds or more of bundles remaining that are destined for the same 3-digit ZIP Code prefix area, they must be placed on a pallet labeled to that 3-digit destination. The pallet labels must be prepared and affixed to the pallet and must contain the information required for 3-digit sacks in 767.223, format required by that section.

d. SCF Pallets. If, after preparing all required 5-digit pallets, optional multi-coded city pallets, and required 3-digit pallets, there are 650 pounds or more of bundles remaining that are destined for the same zone and ZIP Codes served by the same Sectional Center Facility, they must be placed on a pallet labeled to that Sectional Center Facility. The pallet labels must be prepared and affixed to the pallet and must contain the information required for SCF sacks in 767.224, in the format required by that section.

e. Optional BMC Pallets. If, after preparing all required 5-digit pallets, optional multi-coded city pallets (optional), required 3-digit pallets and required SCF pallets, there are 650 pounds or more of bundles remaining that are destined for the same zone and for ZIP Codes served by the same BMC, they must be placed on a pallet labeled to that destination BMC. Bundles placed on BMC pallets must be machinable (see 767.524a). The pallet labels must be prepared and affixed to the pallet and must contain the information required for destination BMC pallets in 767.322 in the format required by that section.

.534 Labeling

All pallets must be provided with at least two clearly visible labels. Labels must be at least 8 inches by 11 inches in size, with letters at least ½ of an inch in height. Labels must be placed on two adjacent sides of the pallet. See 767.221 through 767.224 and 767.322, concerning the information which must appear on the labels.

.535 Physical Characteristics. Pallets must be constructed of high quality material, designed to handle loads equal to a gross weight of 2000 pounds with volumes up to 65 cubic feet. The dimensions must be 48 inches by 40 inches. The pallets must be designed for four way entry by fork trucks and two way entry for pallet jacks. Pallet mailings must be wrapped with shrinkable or stretchable plastic and prepared to retain integrity throughout transportation and handling. Wooden top caps the same size as the pallet are required on pallets with gross weights of less than 1000 pounds. Top caps must be affixed to the pallet with nylon strapping.

.54 Presentation of Mailings. Sacks containing packages for SDC, state or mixed states destinations, or containing bundles remaining after all possible pallets have been prepared, may be presented along with palletized bundles as part of the same mailing (i.e., on the same mailing statement), if the sacks are physically segregated from the bundled and palletized portion of the mailing.

767.6 Palletizing Machinable Fourth-Class Parcels.

.61 Regional Authorization.

.611 The Regional Postmaster General of the region where the mailer is located may authorize the preparation of fourth-class machinable mail on pallets instead of sacking if such preparation is beneficial to the Postal Service. Generally, authorization for this type of mail preparation will be granted only when the amount of mail on each pallet is equivalent to or greater than 30 sacks which would otherwise be prepared. The mailer must submit an application to the Regional Postmaster General of the region where the mailer is located for each client. An application for pallatization may be obtained from the region where the mailer is located and at a minimum will require the following information:

a. The name of the client, frequency of mailing and approximate mailing dates;

b. A list of the post offices of entry;

c. The approximate weight of a single piece;

d. A breakdown of mail preparation for each entry post office that shows the destination of each pallet to be prepared for the mailings submitted at that postal facility;

e. The approximate number of pieces for each pallet make-up;

f. The average weight of a pallet load;

g. The approximate number of pallets in the mailing that will weigh less than 650 pounds;

h. The number of sacks that would otherwise be needed in the mailing; and

i. The number of pallets required.

If an authorization is granted, mailers must be prepared to submit information for future issues, such as that required in the original application, at the request of the Regional Postmaster General.

.612 The application and supporting material will be reviewed by the General Manager, Logistics Division, the General Manager, Accounting and Revenue Protection Division, and by all others concerned. The Regional Postmaster General to whom the application is submitted will issue to the mailer the authorization or denial of the request to palletize machinable parcels for all post offices of entry. Copies of the authorization will be forwarded to all affected entry post offices and Regional Postmasters General by the authorizing Regional Postmaster General. Authorizations will be granted for a

specific period of time, not to exceed two years. At least every six months, the Regional Postmaster General or authorized representative must request the mailer to submit the information required in the application for an upcoming mailing and perform a review of the mailer's continued eligibility to palletize machinable parcels. Authorizations to palletize machineable parcels will be revoked when it is determined that method of preparation is no longer beneficial to the Postal Service.

.62 Machinable Parcel Pallet Preparation

.621 Weight and Volume. The minimum mail load of a pallet is 650 pounds. The maximum gross weight of a pallet (the pallet and the mail) is 2,000 pounds. Exception: Up to 10 percent of the pallets in a mailing may contain less than 650 pounds of mail, if the mailer provides the pallets for those pallets containing less than 650 pounds.

.622 Sortation. Pallets must be made up to the destinations described in 767.321, 767,322, and 767.323.

a. 5-Digit Pallets. Whenever there are 650 or more pounds of mail for the same 5-digit ZIP Code area it must be placed on a pallet labeled to that 5-digit destination. Pallet labels must be prepared and affixed to the pallet in accordance with 767. The labels must contain the information required for 5-digit sack labels in 767.321 in the format required by that section.

b. Destination BMC Pallets. If, after preparing all required 5-digit pallets, there are 650 pounds or more of mail destined for ZIP Codes served by the same BMC, it must be placed on a pallet labeled to that destination BMC. The pallet labels must be prepared and affixed to the pallet in accordance with 767.623. The labels must contain the information required for destination BMC sacks in 767.322, in the format required by that section.

c. Origin BMC Pallets. After preparing all required 5-digit pallets and destination BMC pallets, the remaining pieces must be placed on pallets labeled to the origin BMC. The pallet labels must be prepared and affixed to the pallet in accordance with 767.623. The labels must contain the information required for origin BMC sacks in 767.323, in the format required by that section.

.623 Labeling.

All pallets must be provided with at least two clearly visible labels. Labels must be at least 8 inches by 11 inches in size, with letters at least ½ of an inch in height. Labels must be placed on two adjacent sides of the pallet. See 767.321 and 767.322, concerning, the information which must appear on the labels.

.624 Physical Characteristics.

Pallets must be constructed of high quality material, designed to handle loads equal to a gross weight of 2,000 pounds with volumes up to 65 cubic feet. The dimensions must be 48 inches by 40 inches. The pallets must be designed for four way entry by fork trucks and two way entry for pallet jacks. Pallet mailings must be wrapped with shrinkable or stretchable plastic and prepared to retain integrity throughout transportation and handling. Wooden top caps the same size as the pallet are required on pallets with gross weights of less than 1,000 pounds. Top caps must be affixed to the pallet with nylon strapping.

.63 Presentation of Mailings. Pieces for areas served by the origin BMC may be presented along with palletized parcels as part of the same mailing (i.e., on the same mailing statement), if the sacks are physically segregated from the palletized portion of the mailing.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401(2), 404(a)(2))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-27534 Filed 10-7-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2447-5]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On December 9, 1982, EPA published a notice of proposed rulemaking concerning volatile organic compounds (VOC) rules submitted by the State of California. That notice proposed to fully approve, with one exception, the VOC rules. Today's notice takes final action under the Clean Air Act to approve these rules since they reflect reasonably available control technology (RACT), with two exceptions. EPA is deferring action on the Bay Area District's architectural coatings rule and the South Coast District's cutback asphalt rule.

DATE: This action is effective November 10, 1983.

ADDRESSES: A copy of today's revision to the California State Implementation Plan is located at:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Atten: Douglas Grano, (415) 974-7641.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1982 (47 FR 55401), EPA published a notice of proposed rulemaking for certain VOC rules submitted by the State from July 1981 through August 1982. That notice should be used as a reference in reviewing today's notice. The December 9 notice provides a description of the proposed rules, compares them to the Group I and II Control Techniques Guidelines (CTG), identifies deficiencies and issues, and suggests corrections. The December 9 notice proposed to fully approve 19 rules, proposed to approve one rule with an understanding and proposed action on another rule contingent on the submittal of a RACT demonstration.

Public Comments

During the public comment period, EPA received comments from the South Coast Air Quality Management District regarding their cutback asphalt rule. However, after the public comment period, the District advised EPA that they would be amending the rule and, therefore, further action by EPA is inappropriate. No other comments were received.

EPA Actions

EPA is taking final action under Section 172 of the Clean Air Act to approve the following rules, submitted on the indicated dates, since they are consistent with the Group II CTG and represent RACT:

Bay Area Air Quality Management District (AQMD)

Regulation 8

Rule 5 Storage of Organic Liquid (3/1/82)

Rule 24 Pharmaceutical and Cosmetic Manufacturing Operations (7/30/81)

Kern County Air Pollution Control District (APCD)

Rule 410.7 Graphic Arts Industry (7/30/81)

Sacramento County APCD

Rule 4A Rotogravure and Flexographic Printing (10/23/81)
Rule 4B Pharmaceutical Manufacturing (10/23/81)
Rule 51 Perchloroethylene Dry Cleaning (10/23/81)

San Diego County APCD

Rule 67.8 Dry Cleaning Facilities Using Halogenated Organic Sovlent (10/23/81)

South Coast AQMD

Rule 1107 Manufactured Metal Parts and Products Coating (3/1/82 and 8/6/82)

Ventura County APCD

Rule 74.5 Dry Cleaning (10/23/81)

EPA is also taking final action under Section 172 to approve the following rules due to their consistency with the Group I CTG and RACT:

Kern County APCD

Rule 412 Transfer of Gasoline into Stationary Storage Containers (7/30/81)

South Coast AQMD

Rule 1108.1 Emulsified Asphalt (3/1/82)
Rule 1125 Can and Coil Coating Operations (3/1/82)
Rule 1126 Magnet Wire Coating Operations (3/1/82)

Ventura County APCD

Rule 74.6 Surface Cleaning and Degreasing (3/1/82)

In addition, EPA is taking final action under Section 110 of the Clean Air Act to approve the following rules since they will strengthen the State Implementation Plan, and are consistent with Section 110 of the Clean Air Act:

Bay Area AQMD

Regulation 8
Rule 2-112 Miscellaneous Operations (3/1/82)

Kern County APCD

Rule 414.4 Polystyrene Foam Manufacturing (7/30/81)

Sacramento County APCD

Rule 10 Petroleum Solvent Dry Cleaners (10/23/81)

South Coast AQMD

Rule 107 Determination of Volatible Organic Compounds in Coating Material (3/1/82)

EPA is approving San Diego County Rule 67.6, *Solvent Cleaning Operations*, submitted March 1, 1982, with the understanding that a revision will be submitted by the State to specify a minimum capture efficiency.

On February 3, 1983, the State submitted to EPA amended Bay Area District Rule 3, *Architectural Coatings*. This amendment supersedes the revision described in the December 9 notice. EPA will take action on this latest revision in a future proposal notice.

Regulatory Process

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

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1980.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

(Sec. 110, 129, 171-178, and 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)).

Dated: September 27, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(101) (i)(C) and (ii)(D), (103) (ii)(C), (iv)(C), and (v)(C), (121) (i)(B), (ii)(B), (iv), and (v), and (124)(iv)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(101) * * *

(i) * * *

(C) New or amended Regulation 8, Rule 24.

(ii) * * *

(D) New or amended Rules 410.7, 412, and 414.4.

* * * * *

(103) * * *

(ii) * * *

(C) New Rule 67.8.

* * * * *

(iv) * * *

(C) New Rule 74.5.

(v) * * *

(C) New Rules 4A, 4B, 10 and 51.

* * * * *

(121) * * *

(i) * * *

(B) Amended Rules 107, 1107, 1108.1, 1125 and 1126.

* * * * *

(ii) * * *

(B) Amended Rule 67.6(e).

* * * * *

(iv) Bay Area AQMD.

(A) Amended Regulation 8, Rules 2-112 and 5-313.4.

(v) Ventura County APCD.

(A) Amended Rule 74.6.

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(124) * * *

(iv) * * *

(B) Amended Rule 1107.

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[FR Doc. 83-27567 Filed 10-7-83; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL 2447-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA announces approval of a revision to the Illinois State Implementation Plan (SIP) for ozone. The SIP will provide for an alternative compliance schedule for prime coating and prime surface coating operations at the Chrysler Corporation (Chrysler) Belvidere facility located in Boone County, Illinois. This SIP revision will allow Chrysler to continue to use its existing water-borne dip and solvent-borne spray prime painting system while they research a more cost effective means to reduce VOC emissions which will provide adequate corrosion

protection. EPA's action is based upon a revision which was submitted by the State.

EFFECTIVE DATE: This action will be effective December 12, 1983 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan at (312) 353-0396 before visiting the Region V Office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

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

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On March 17, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a revision to its ozone SIP for Chrysler. The revision request contains an alternative compliance schedule which is in the form of a variance for prime coating and prime surface coating operations located at Chrysler's Belvidere facility in Boone County, Illinois.

Under the existing federally approved SIP, each prime coating and prime surface coating operation is subject to the emission control requirements contained in Illinois Pollution Control Board (IPCB) Rule 205(n)(1)(A)(ii) of Chapter 2: Air Pollution of the IPCB Rules and Regulations. Rule 205(n)(1)(A)(ii) requires compliance with emission limits of 1.2 pounds of VOC per gallon (lbs VOC/gal) for Chrysler's prime coating operation and 2.8 lbs. VOC/gal for Chrysler's prime surface coating operation. Final compliance is required by December 31, 1982.

In lieu of the compliance date contained in the existing federally approved SIP, the State is proposing an alternative schedule. The final compliance date contained in the variance is December 31, 1987, for both the prime coating and the prime surface coating operations at Chrysler's Belvidere facility.

Under the variance, Chrysler would be limited to the interim limits of 2.2 lbs VOC/gal for the prime coating operations and 3.67 lbs VOC/gal for the prime surface coating operations. These limits are consistent with the October 20, 1981, **Federal Register** (46 FR 51386) "Approval of Revision to Compliance Schedule for Control of Volatile Organic Compounds From Automobile Assembly Plant Paint Shop Operation" and is consistent with the VOC RACT program adopted by Chrysler Corporation.

The variance contains a compliance schedule which includes legally enforceable increments of progress toward compliance. To ensure reasonable progress in achieving compliance for the prime coating and prime surface coating operation, a compliance schedule was established for the calendar years 1983, 1984, and 1985. The revised compliance schedule contains the following increments of progress: (1) Install the Uniprime paint system at its Windsor assembly plant no later than December 31, 1983, for the purpose of assessing such a system; (2) no later than December 31, 1984, Chrysler will report to the IPCB its experience with the Uniprime paint system at its Windsor assembly plant, and (3) no later than December 31, 1985, Chrysler will provide the IPCB with the detailed plans on how it will comply with the requirements of Rule 205(n)(1)(A)(ii) upon the expiration of the variance.

Chrysler has determined that they cannot incorporate an E-Coat system at their Belvidere facility without modifying its corrosion program and thereby reducing the corrosion protection it could offer consumers in the future. Chrysler is committed to install a PPG Uniprime paint system for the 1984 model year at the Windsor facility to verify that the system will provide the expected benefits under mass production, but Chrysler states that it lacks the resources to commit to a PPG Uniprime paint system at their Belvidere facility at this time.

The extended compliance schedule will not interfere with the attainment or maintenance of the ozone national ambient air quality standards (NAAQS) because Chrysler's Belvidere facility is located in Boone County, Illinois which is designated attainment for the pollutant ozone and the variance assures continued emission reductions at the facility.

EPA has determined that the variance consists of enforceable emission limitations which are equivalent to RACT, and it would not be economically feasible or reasonable for Chrysler to install an E-Coat system by the compliance date contained in Rule 205 (n)(1)(A)(ii).

Because EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on December 12, 1983. However, if we receive notice by November 10, 1983 that someone wishes to submit critical comments, *then* EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

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

This notice is issued under authority of Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: September 27, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. Section 52.720 is amended by adding paragraph (c)(44) as follows:

§ 52.720 Identification of the plan.

* * * * *

(c) * * *

(44) On March 17, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a revision to its ozone SIP for Chrysler's Belvidere facility. The revision request contains an alternative compliance time schedule with interim emission limitations which is in the form of a variance for prime coating and prime surface coating operations. Final compliance is changed from December 31, 1982 to December 31, 1987.

* * * * *

[FR Doc. 83-27585 Filed 10-7-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6480

[U-51056]

Utah; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two Departmental orders insofar as they affect 40 acres of land for the Strawberry Valley Project. This action will restore the lands to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 5, 1983.

FOR FURTHER INFORMATION CONTACT: Deen Bowden, Utah State Office, 801-524-4245.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Departmental Orders of May 2, 1914, and January 6, 1923, which withdrew lands for the Strawberry Valley Project, are hereby revoked insofar as they affect the following described lands:

Salt Lake Meridian, Utah

T. 9 S., R. 1 E.,
Sec. 20, NE¼NE¼

The area described aggregates 40 acres in Utah County.

2. At 10 a.m. on November 5, 1983, the public lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 5, 1983, shall be considered as simultaneously filed. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on November 5, 1983, the public lands will be open to location and entry under the mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

All public lands described in this order have been and will remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands shall be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: September 30, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-27543 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6481

[OR-20269, OR-20278, OR-20279]

Oregon; Revocation of Secretarial Orders of April 3, 1903, August 25, 1909, and January 28, 1910

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three Secretarial orders which withdrew 15,814.29 acres of land for use by the Bureau of Reclamation for the Umatilla Reclamation Project. The surface and subsurface estates have been conveyed out of Federal ownership and will remain closed to surface entry, mining, and mineral leasing. Thus, the effect of this order is record clearing only.

EFFECTIVE DATE: November 5, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

SUPPLEMENTARY INFORMATION:

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Orders of April 3, 1903, August 25, 1909, and January 28, 1910, which withdrew the following described lands for use by the Bureau of Reclamation for the Umatilla Project, are hereby revoked:

Willamette Meridian

Umatilla Project

T. 3 N., R. 24 E.,
Secs. 12, 25, and 26;
Sec. 27, E½;
Sec. 32, E½;
Secs. 33, 34, 35, and 36.
T. 4 N., R. 24 E.,
Sec. 11, lots 1, 2, 3, and 4, and S½;
Sec. 13;
Sec. 14, SE¼SE¼;
Sec. 23;
Sec. 24, N½ and N½S½.
T. 3 N., R. 27 E.,
Sec. 1, N½SW¼ and fractional N½;
Sec. 2, N½S½, S½SW¼, SW¼SE¼, and fractional N½;
Sec. 3;
Sec. 4, fractional E½;
Sec. 9, NE¼;
Sec. 10, N½NE¼, SW¼NE¼, and NW¼.
T. 4 N., R. 27 E.,
Sec. 12, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 35, S½.
T. 4 N., R. 28 E.,
Sec. 3, lots 8 and 9;
Sec. 4, fractional W½W½;
Sec. 6, SE¼;
Sec. 7, SE¼ and fractional W½;
Sec. 8, all west of Umatilla River;
Sec. 14, S½SE¼;
Sec. 18;
Sec. 19, fractional all west of Umatilla River;
Sec. 22, SE¼;
Sec. 23, W½SW¼;
Sec. 25;
Sec. 26, NE¼ and S½;
Sec. 27, NE¼, W½NW¼, and S½;
Sec. 28, S½NW¼ and S½;
Sec. 29, N½.
T. 5 N., R. 28 E.,
Sec. 32, E½NE½ and SE¼.

The areas described aggregate approximately 15,814.29 acres in Morrow and Umatilla Counties.

2. The lands have been conveyed from Federal ownership without mineral reservations, and will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: September 30, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-27545 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6482

[OR-20272]

Oregon; Partial Revocation of Secretarial Order of August 22, 1904

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order as it affects 11,543.36 acres of public land withdrawn for the Umatilla Project. The surface and subsurface estates have been conveyed out of Federal ownership and will not be restored to surface entry, mining or mineral leasing. Thus, the effect of this order is record clearing only.

EFFECTIVE DATE: November 5, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

SUPPLEMENTARY INFORMATION:

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretary's First Form Reclamation Withdrawal Order of August 22, 1904, which withdrew public lands for use by the Bureau of Reclamation for the Umatilla Project, is hereby revoked as to the following described lands:

Willamette Meridian

T. 2 N., R. 24 E.,
Sec. 1, lots 1, 2, 3, and 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, and 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, and 4, S½N½, and S½;
Sec. 7, lots 1, 2, 3, and 4, E½W½, and E½;
Secs. 9 and 11;
Sec. 12, SE¼SE¼;
Sec. 16, N½;
Sec. 17;
Sec. 18, NE¼.
T. 3 N., R. 24 E.,
Sec. 25;
Sec. 32, E½;
Secs. 33, 34, 35, and 36.
T. 2 N., R. 25 E.,
Sec. 5, lots 1, 2, 3, and 4, S½N½, and S½;
Sec. 7, lots 1 and 2, NE¼, and E½NW¼.
T. 3 N., R. 25 E.,
Sec. 29;
Sec. 31, lots 1, 2, 3, and 4, E½, and E½W½;
Sec. 33.

The areas described aggregate 11,543.36 acres in Morrow County.

2. The lands have been conveyed from Federal ownership and will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: September 30, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-27544 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[44 CFR Part 67]

National Flood Insurance Program; Final Flood Elevation Determinations; Colorado, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communites listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Colorado	Las Animas County, (Unincorporated Areas) FEMA-6538.	Purgatoire River	Approximately 4,000 feet south of the intersection of State Highway 239 and Burlington Northern Railroad.	#2
			Approximately 300 feet southeast of the mouth of Prospect Canyon.	*6,018
	Maps are available for review at the Assessor's Office, Las Animas County Courthouse, Trinidad, Colorado.			
Colorado	Trinidad (City of) Las Animas County FEMA-6538	Purgatoire River	Approximately 500 feet east of the intersection of Rico Street and Hainlen.	*5,956
			Approximately 400 feet north of the intersection of Rico Street and Hainlen.	#2
		Prospect Canyon	Approximately 200 feet southwest of the intersection of Park Avenue and Grove.	*6,035
	Maps are available for review at City Hall, 135 North Animas, Trinidad, Colorado.			
Georgia	(C) Lafayette, Walker County (Docket No. FEMA-6522).	Chattooga Creek	Just upstream of Shattuck Industrial Drive	*767
			Just downstream of the confluence of Chattooga Creek Tributary.	*769
	Maps available for inspection at City Hall, P.O. Box 89, Lafayette, Georgia 30728.			
Illinois	(V) Arlington Heights, Cook and Lake Counties (Docket No. FEMA-6538).	Buffalo Creek	About 2000 feet downstream of Schaefer Avenue	*703
			Approximately 600 feet upstream of Wilke Road	*714
		Salt Creek	About 100 feet upstream of Euclid Avenue	*708
			Just downstream of Chicago and North Western Railway.	*713
	Maps available for inspection at 33 South Arlington Heights Road, Arlington Heights, Illinois 60005.			
Illinois	(V) Bartlett, Cook and DuPage Counties (Docket No. FEMA-6538).	County Creek	Just upstream of Stearns Road	*768
			About 1,100 feet downstream of Devon Avenue	*782
		Brewster Creek	About 0.55 mile downstream of State Route 59	*774
			Just downstream of State Route 59	*785
	Maps available for inspection at 228 South Main Street, Bartlett, Illinois.			
Illinois	(V) Bolingbrook, DuPage and Will Counties (Docket No. FEMA-6538).	East Branch DuPage River	About 1,700 feet downstream of Royce Road	*646
			About 1,400 feet downstream of Royce Road	*647
		Lily Cache Creek	Just downstream of Dam	*675
			Just upstream of Dam	*673
	Maps available for inspection at 375 West Briarcliff Road, Bolingbrook, Illinois.			
Maryland	Allegany County (FEMA Docket No. 6538)	North Branch Potomac River	Upstream Chessie System	*582
			Confluence with Evitts Creek	*602
			Upstream Ford Avenue	*609
			Upstream dam	*623
			Downstream of City of Cumberland upstream corporate limits.	*627
			Maple Street (extended)	*630
			Confluence with Warrier Run	*646
			Downstream McMullen Highway (IH 220)	*803
			Downstream of downstream corporate limits of Westernport.	*917
		Warrior Run	Confluence with North Branch Potomac River	*646
			Downstream of dam	*646
		Evitts Creek	Confluence with North Branch Potomac River	*602
			Downstream Val Highway	*602
	Maps available for inspection at the office of Planning and Zoning, Allegany County Office Building, 3 Pershing Street, Cumberland, Maryland.			
Massachusetts	Lowell, City, Middlesex County (FEMA Docket No. 6522).	Concord River	Upstream side of State Route 133 (Church Street)	*73
			Downstream side of Wamesit Power Company Dam	*101
	Maps available for inspection at the City Hall, 375 Merrimack Street, Lowell, Massachusetts.			
Michigan	(Twp) Muskegon, Muskegon County (Docket No. FEMA-6536).	Muskegon River	About 1.1 miles downstream of U.S. Highway 31	*585
			About 1.7 miles downstream of U.S. Highway 31	*585
	Maps available for inspection at 1990 Apple Avenue, Muskegon, Michigan 49442.			
Missouri	(C) Sarcoxie, Jasper County (Docket No. FEMA-6532).	Center Creek	About 2,200 feet downstream of Business Loop 44	*1083
			About 2,500 feet upstream of Business Loop 44	*1089
		Swifty Creek	About 1,050 feet downstream of Reed Avenue	*1083
			Just upstream of Cross Street	*1092
			About 550 feet upstream of the St. Louis-San Francisco Railway.	*1111
	Maps available for inspection at 111 North Sixth Street, Sarcoxie, Missouri, 64862.			
New Hampshire	Claremont, City, Sullivan County (FEMA Docket No. 6522).	Sugar River	Broad Street/Monadnock Dam (directly upstream)	*520
			Confluence with Grandy Brook	*530
			Approximately 860 feet downstream of Claremont and Concord Railroad.	*532
		Grandy Brook	Confluence with Sugar River	*530
	Maps available for inspection at the City Hall, Claremont, New Hampshire.			
New Jersey	Fairfield, Township, Essex County (FEMA Docket No. 6522).	Passaic River	Phyllis Lane extended	*173
			Farmstead Lane	*173
		Deepaval Brook	Orlando Drive	*172
			Kingsbridge Road	*172
	Maps available for inspection at the Township Building, 230 Fairfield Road, Fairfield, New Jersey.			

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. * Elevation in feet (NGVD). Modified
New Jersey	Westwood, Borough Bergen County (FEMA Docket No. 6522).	Musquapsink Brook	Approximately 200 feet upstream of Forest Avenue Extension (area previously not identified).	*54
			Approximately 400 feet upstream of Forest Avenue Extension (area previously not identified).	*54
	Maps available for inspection at the Borough Building, 51 Jefferson Avenue, Westwood, New Jersey.			
North Dakota	Burlington (Township of) Ward County FEMA-6532	Des Lacs River	Intersection of river with upstream township boundary	*1581
		Souris River	Intersection of river with downstream township boundary.	*1572
	Maps are available for review at the Town Clerk's Home, Rural Route 6, Minot, North Dakota.			
North Dakota	Ward County (Unincorporated Areas) FEMA-6532	Des Lacs River	Intersection of river and center of U.S. Highway 52	*1784
		Souris River	Intersection of river and center of Soo Line Railroad near City of Sawyer.	*1529
	Maps are available for review at the Auditor's Office, Ward County Courthouse, Minot, North Dakota.			
Ohio	(C) Mentor Lake County (Docket No. FEMA-6538)	Wasson Ditch	Just upstream of Blue Jay Lane	*619
			Just upstream of State Route 2	*624
			Just upstream of Conrail	*644
		Heisley Creek	Just downstream of Conrail	*637
			Just upstream of Conrail	*644
			Just upstream of Norfolk Southern Railway	*660
			About 700 feet upstream of Jackson Street	*665
		March Creek	Just downstream of Norfolk Southern Railway	*644
		West Branch March Creek	Just upstream of Twinbrook Road	*640
			Just downstream of Norfolk Southern Railway	*647
	Maps available for inspection at 8500 Civic Center Boulevard, Mentor, Ohio.			
Oregon	Ione (City of) Morrow County FEMA-6532	Willow Creek	250 feet west of the intersection of Willow and Main Streets.	*1071
			At easternmost corporate limit crossing	*1100
	Maps are available for review at City Hall, Ione, Oregon.			
Pennsylvania	Center, Township, Indiana County (FEMA Docket No. 6505).	Two Lick Creek	Downstream corporate limits	*984
			Approximately 3,900' above downstream corporate limits.	*987
	xl	xl	Downstream corporate limits of Homer City Borough	*1,005
			Upstream State Route 56	*1,015
			Upstream Main Street	*1,019
			Upstream CONRAIL (1st crossing)	*1,041
			Approximately 3,450' upstream of State Route 119	*1,050
		Yellow Creek	Upstream corporate limits of Homer City Borough	*1,024
			Approximately 450' upstream of Legislative Route 32134.	*1,028
	Maps available for inspection at the Center Township Offices, R.D. 2, Neal Road, Homer City, Pennsylvania.			
Pennsylvania	Salisbury, Township, Lehigh County (FEMA Docket No. 6514).	Cedar Creek	Downstream corporate limits	*262
			Upstream corporate limits	*265
		Little Lehigh Creek	Downstream corporate limits	*301
			Keystone Road	*307
	Maps available for inspection at the Salisbury Township Building, 3000 South Pike Avenue, Allentown, Pennsylvania.			
Pennsylvania	Whitehall, Township, Lehigh County (FEMA Docket No. 6522).	Jordan Creek	Downstream corporate limits	*260
			Upstream North Fifth Street Bridge	*267
			Upstream McArthur Road Bridge	*272
			Upstream Lehigh Valley Thruway Bridge	*280
	Maps available for inspection at the Township Building, 3219 McArthur Road, Whitehall, Pennsylvania.			
Texas	Abilene, City, Taylor & Jones Counties (FEMA Docket No. 6522).	Elm Creek	Approximately 1.2 miles upstream of confluence of Cedar Creek.	*1,647
			Downstream of Lake Phantom Hill Road	*1,653
		Cedar Creek	Downstream corporate limits (located approximately 2 miles upstream of confluence with Elm Creek).	*1,651
		Lytle Creek	Corporate limits (located 1.5 miles upstream of Industrial Boulevard).	*1,746
		Cat Claw Creek	Downstream of Buffalo Gap Road	*1,802
			Upstream of Buffalo Gap Road	*1,805
	Maps available for inspection at the City Hall, 555 Walnut Street, Abilene, Texas.			
Texas	Palestine, City, Anderson County (FEMA Docket No. 6522).	Wells Creek Northwest	Approximately 400 feet upstream of U.S. Route 79	*400
			Upstream of U.S. Route 155	*412
			Upstream of Old Bushy Creek Road	*412
	Maps available for inspection at the City Hall, 122 Berkely, Palestine, Texas.			
Texas	Victoria, City, Victoria County (FEMA Docket No. 6373).	Lone Tree Creek	Downstream corporate limits	*86
			Approximately 3,100' upstream of downstream corporate limits.	*87
			Southern Pacific Railroad (upstream side)	*91
			Houston Highway (upstream side)	*92
			Lenora Drive (extended)	*98
		Spring Creek	Downstream corporate limits	*77

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
			Confluence of Wispering Creek, North Outfall	*76
Maps available for inspection at the City Hall, Victoria, Texas.				
Washington	Turnwater (City of), Thurston County (FEMA-6532)	Outlet of Black Lake	100 feet upstream of centerline of Burlington Northern Railroad.	*114
		Percival Creek	At corporate limits, 1500 feet upstream from Sapp Road.	*141
		Trosper Lake	1600 feet southwest of the intersection of Trosper Road and Louise Street.	*159
Maps are available for review at the Planning Department, City Hall, 2nd & Bates, Turnwater, Washington.				
Wyoming	Buffalo (City of), Johnson County (FEMA-6538)	Clear Creek	200 feet downstream from centerline of County Road 132.	*4652
			40 feet upstream from the centerline of County Road 252.	*4582
Maps are available for review at the Planning Department, City Hall, 46 North Main Street, Buffalo, Wyoming.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: September 14, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-27489 Filed 10-7-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 6]

Lamps, Reflective Devices and Associated Equipment; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in the amendment published on September 30, 1983 (48 FR 44815) relating to lamps, reflective devices and associated equipment. The error appears in the amendment to paragraph S4.1.1.38(b)(1). The specification of watts at 12.8V for standardized replaceable bulbs was not adjusted to reflect the correct maximum power for low beam and high beam. It is, therefore, necessary to correct the error.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (200–426–2720).

SUPPLEMENTARY INFORMATION: In the final rule on replaceable bulb headlamps published on June 2, 1983 (48 FR 24690), paragraph S4.1.1.38(b)(1) provided that the "watts @ 12.8V" were 45 for low beam and 65 for high beam. This created some uncertainty as to whether these were nominal values or maximum values. To cure the ambiguity, in the response to petitions for reconsideration published on September 30, 1983 (48 FR 44815) the agency amended the words quoted above to read "Maximum power, watts at 12.8V (design voltage)". In so clarifying that nominal values were not intended, the agency inadvertently omitted to change the low and high beam figures to reflect maximum power at design voltage. The correct figures are 50 watts for low beam and 70 watts for high beam. It is necessary to correct the error.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.108 [Amended]

On page 44818, in paragraph S4.1.1.38(b)(1) of 49 CFR 571.108, the figures "45" under Low Beam and "65" under High Beam, respectively, are amended to read "50" and "70".

The lawyer and program official principally responsible for this correction are Z. Taylor Vinson and Jere Medlin, respectively.

(Secs. 103, 112, 114, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1403, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 5, 1983.

Kennerly H. Digges,

Acting Associate Administrator for Rulemaking.

[FR Doc. 83-27514 Filed 10-5-83; 1:35 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for Gila Nigrescens (Chihuahua Chub)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The service determines the Chihuahua chub (*Gila nigrescens*) to be a Threatened species throughout its range under the authority contained in the Endangered Species Act of 1973, as amended. It was first proposed as Endangered by the Service on December 15, 1980 (45 FR 82474–77). The Chihuahua chub occurs in the Guzman Basin, including the Mimbres River of New Mexico and the Rio Casas Grandes, Rio Santa Maria, and Laguna Bustillos drainages of Mexico. This action is being taken because populations of the Chihuahua chub have been significantly reduced by habitat destruction and deterioration resulting from channelization, development of

flood levees, diversion of surface water for irrigation, dam construction, pollution, deforestation, and excessive groundwater pumping. The proposed Endangered status has been changed to Threatened status because of the chub's status in Mexico and the highly successful propagation efforts in the Dexter National Fish Hatchery. The hatchery fish will be used to attempt to reestablish the species in renovated habitat as part of a recovery effort. Critical Habitat has not been included in this final rule because of the strongly unfavorable response to the Critical Habitat portion of the proposed rule by local landowners. It appeared likely that the entire species could have been lost to illegal actions if Critical Habitat had been determined. It is therefore determined to be imprudent to designate Critical Habitat at this time.

This determination of *Gila nigrescens* to be a Threatened species implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on November 10, 1983.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours by appointment at the Regional Office of the U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-2323).

FOR FURTHER INFORMATION CONTACT: Dr. James Johnson, Region 2, Endangered Species staff (see Addresses above), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Chihuahua chub was first discovered in 1851 by J. H. Clark in the Mimbres River of New Mexico and, separately, by B. C. Kennerly in the Rio Casas Grandes of Mexico. Adult chubs average about 6 inches in length and are usually found in pools (3 feet in depth) or associated with some type of cover (undercut banks, submerged trees or shrubs, etc.) in small and medium-sized streams. This species is assumed to feed primarily on aquatic invertebrates, but no data are available. Spawning occurs in the spring, possibly extending through summer, perhaps in quiet pools over beds of aquatic vegetation. Little else is known about the biology of the Chihuahua chub.

Populations of the Chihuahua chub have been reduced in the Guzman Basin because of recent modifications in the aquatic habitats. The chub's preferred pool and undercut bank habitat has been altered through a combination of factors including diversion of surface water for irrigation, channelization, construction of dams and levees, and deforestation. The excessive pumping of underground water supplies has also caused some springs and permanent aquatic habitats supporting the species to dry up. Finally, pollution is reported to be responsible for the elimination of chubs from some streams in Mexico.

In 1979, the Service contracted biologists from the University of Michigan to survey the status of the Chihuahua chub in the U.S. and Mexico. These workers found one small Chihuahua chub population (about 100 fish) in the U.S. They also documented the disappearance of chubs from 8 of 15 localities in Mexico where they were previously common or abundant.

In 1981 and 1982, the New Mexico Department of Game and Fish conducted Surveys for *Gila nigrescens* on the Mimbres River (U.S. tributary of the Guzman Basin) between the confluence of Allie and Shepard Canyons and two spring-fed tributaries. In 1981, 51 chubs of various ages were found in the mainstream, suggesting successful reproduction since flooding in 1978–1979. Eighty chubs were found in the same area in 1982. This flooding increased the number of pools with undercut streambanks containing some debris. These pools are now beginning to silt in. The main threat to the chub is the loss of habitat, especially deep holes and undercut banks, loss of water from the best habitat areas, and changes in the habitat resulting from levee and irrigation diversion construction. The distribution of the chub is limited to the few miles of permanent waters; much of the river is intermittent, most likely from use of water for irrigation.

The Service originally proposed to list the Chihuahua chub as Endangered. The New Mexico Department of Game and Fish felt that Threatened status was more appropriate. It based its recommendation on the presence of several populations in Mexico and the status of the captive population at Dexter National Fish Hatchery, and pointed out that the species was not in danger of extinction. In addition, the New Mexico Department of Game and Fish noted several other listed species that maintained most of their populations in Mexico and only peripheral populations in the United States that have been listed or proposed as Threatened (i.e., New Mexico ridge-nosed rattlesnake, beautiful shiner, Yaqui catfish). The Service agrees with this analysis and has changed the status to Threatened with special regulations.

Summary of Comments and Recommendations

In the December 15, 1980, **Federal Register** proposed rule and associated press releases, all interested parties were invited to submit factual reports or information and comments or suggestions that might contribute to the formulation of a final rule. The Service has considered all comments and recommendations received on the proposed rules. Comments and recommendations received on the proposal, together with responses, are summarized below.

A total of seven written comments were received, one each from the Governor of New Mexico, New Mexico Department of Game and Fish, New Mexico Department of Agriculture, Soil Conservation Service, New Mexico Farm and Livestock Bureau, one conservation organization and one scientific society.

The Governor of New Mexico opposed the listing of the Chihuahua chub as Endangered and the designation of Critical Habitat because he believed that the State could adequately protect the fish. The New Mexico Department of Game and Fish also opposed the listing of the chub as Endangered and the designation of Critical Habitat, but indicated that listing as Threatened without Critical Habitat would be supported. The New Mexico Department of Agriculture opposed listing and Critical Habitat designation because of the success of artificial propagation, results of recent surveys that found greater numbers of the chub, and because of local landowner concern for the effect of Critical Habitat designation on flood control and irrigation practices.

The Albuquerque Office of the U.S. Soil Conservation Service (SCS) commented that flooding could be a direct cause of habitat loss, that recent inventories that found successful reproduction should be recognized, as should the use of artificial propagation. The SCS agreed that water use of agriculture reduced the habitat, and this use would not change without a change in water rights. Most SCS activities could continue if this species was listed, but expenses could be higher.

For response, the Service believes that flooding is a principal reason for loss of chub habitat, as private landowners push up temporary dams within the streambed to divert flood waters. Artificial propagation of the Chihuahua chub at the Service's Dexter Hatchery has been successful in maintaining the species in captivity. This captive population will be used to help recover

the species when additional habitat is available, thereby supplementing the existing population. Listing of the chub could have an effect on SCS activities if such activities were detrimental to the species or its habitat. The Endangered Species Act does not consider increased project costs as a factor in the listing of species.

The New Mexico Farm and Livestock Bureau opposed listing of the Chihuahua chub for the following reasons: The proposed rule was contradictory concerning groundwater use; irrigation practices have been constant for over 100 years and would not suddenly impact the chub; counts of the fish were inaccurate; the proposed Critical Habitat area was too large; there were considerable numbers of this chub in Mexico, artificial propagation was successful, and more study was needed on predation by other fishes, the effects of exotic fishes, and the possible occurrence of the species in other States. The Bureau also felt that Critical Habitat designation would change irrigation practices at an increased cost to the private landowners.

The Service responds that excessive groundwater use has degraded the chub habitat, and depletion of the river would continue to do so. The well near San Lorenzo is far enough downstream that it is not expected to affect the chub's habitat. The Service believes that the impacts of irrigation were not "sudden," but that the species had been known to be declining since the turn of the century and that irrigation is one of several factors resulting in habitat loss and changes in the character of the Mimbres River over the last 100 years. The chub has gradually declined; in 1884, it was relatively abundant, in 1938 it was reported to be extinct, and it was found again in 1975. The fish have been counted using a variety of effective methods since 1938; even so the chub never has been found to be abundant.

The Mexican Chihuahua chub populations are larger than the Mimbres River populations, but the Mexican populations are also reduced and appear to be declining in some areas due to the loss of habitat. As for the Bureau's comments regarding predation, fish of all life stages are preyed upon by larger organisms, but a species rarely becomes extinct from predation alone. Alteration of the chub's habitat and subsequent decline of its population has also created more habitat for exotic species. The main factor limiting the chub is loss of habitat, as indicated by all available data. The Chihuahua chub is only known from the Guzman Basin of New Mexico and Mexico, and not from any other States. Privately funded irrigation practices will not be affected by this rule since Section 7 of the Endangered Species Act does not apply to any project that is not funded, authorized, or carried out by a Federal agency.

The conservation group and the scientific society supported the proposal to protect the Chihuahua chub under the provisions of the Endangered Species Act.

A public meeting was held on January 6, 1981, in Silver City, New Mexico, to answer questions and receive statements relative to the Endangered status and Critical Habitat of the Chihuahua chub. A total of 12 statements were made at the hearing and included those from the New Mexico Department of Agriculture, the Grant County Extension Service, and 10 individuals. The representative from the Department of Agriculture requested information concerning: Status of the species in the wild, the draft impact analysis, public hearing requests, due dates for comments, and Fish and Wildlife Service (FWS) land acquisitions. The County Extension Agent commented that more study on the factors affecting the species appeared necessary and perhaps flooding was the main impact to the chub. The Service agreed that more study is needed in order to assist recovery, but that sufficient data already existed to demonstrate the need to list. No research was conducted between 1938 and 1975 because the chub was believed to be extinct. Flooding has destroyed some chub habitat, but habitat is also lost to such activities as push-up dams to prevent flooding and stream dewatering.

Individual comments and questions concerned the effect of listing and Critical Habitat designation on private individuals and the Corps of Engineers. Concern was expressed about increases in costs to private landowners for reconstruction of their levees and temporary irrigation dams within the Mimbres River after the listing, the possibility that individuals would have to give up land for construction of dams or levees by the Corps of Engineers or that the Corps would be permitted to build dams or levees without the landowner's consent. The Service replied that the activities of private individuals, such as construction of push-ups dams or fruit tree spraying would not be affected if there were no Federal involvement and if the prohibitions of Section 9(a)(1) of the Endangered Species Act were not violated. The Service explained that the listing probably would not increase the landowner costs and that the other actions would proceed only with landowner agreements. The major worry of private individuals centers around Critical Habitat. Because of Threatened illegal retaliation against the fish if Critical Habitat were declared, the Service has decided to withdraw the Critical Habitat proposal.

The Corps of Engineers would be affected only if a Corps' activity would be detrimental to the chub as provided in Section 7(a)(2) of the Endangered Species Act; use of Federal funds for flood rehabilitation or levee or dam construction would require consultation with the FWS if determined that such actions may effect the species.

After a thorough review and consideration of all information available, the Service has determined that the Chihuahua chub is a Threatened species throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a)(1) (A) through (E) of the Endangered Species Act. This determination differs from the original proposal to list as Endangered, with Critical Habitat. Endangered status was changed to Threatened due to the presence of several populations of the chub in Mexico and the success of propagation efforts. Critical Habitat was removed to reduce the possibility of illegal acts that could easily result in the destruction of the chub in the Mimbres River.

The Services has determined that *Gila nigrescens* is primarily affected by factors A and E of Subsection 4(a)(1) of the Act. All five factors and their application to *Gila nigrescens* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Mimbres River of New Mexico, which in the past supported an abundant Chihuahua chub population, has been significantly modified by agricultural and flood control developments. These activities have resulted in the elimination of much of the natural pool and undercut bank habitat, restricting the present population to one small section of the Mimbres River. Further flood reclamation work, maintenance of push-up irrigation diversions, channelization, and development of flood control levees without concern for the Chihuahua chub will continue to threaten the continued existence of this species in the United States. Studies in Mexico revealed that historic Chihuahua chub habitats were destroyed because of pollution, massive diversion of surface waters for irrigation, development of hydroelectric facilities, construction of levees, and

channelization. Some streams in Mexico were found to be completely dry, probably due to excessive pumping of underground aquifers or diversion of surface waters. Manipulations of the stream habitat as described above will likely continue as the interior of Mexico and areas along the Mimbres River in New Mexico are futher developed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization of the Chihuahua chub is not a threat to its survival.

C. *Disease or predation.* Some predation of Chihuahua chubs by introduced rainbow trout and other species probably occurs, but the extent is unknown. The impact of this factor may be negligible if adequate escape cover is available.

D. *The inadequacy of existing regulatory mechanisms.* Laws concerning State listed Endangered species of New Mexico do not provide mechanisms to protect habitat. Listing the Chihuahua chub, pursuant to the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531 *et seq.*), as amended, would protect its habitat from certain Federal actions through the consultation process under Section 7.

E. *Other natural or manmade factors affecting its continued existence.* The introduction of exotic fishes has been documented to have detrimental effects on many types of native stream fish. Therefore, it has been assumed that the establishment of the rainbow trout, carp, longfin dace, black bullhead, mosquitofish, and rock bass within the range of the Chihuahua chub could be a threat to its continued existence. However, the effect of this factor on the Chihuahua chub needs to be further studied.

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Critical Habitat

Section 4(a)(3) of the Act requires the Secretary to designate Critical Habitat for a species, to the maximum extent prudent and determinable, concurrent with the determination that such species is an Endangered or Threatened species. Designation of Critical Habitat for the Chihuahua chub is considered imprudent at this time.

The original Service plan was to proceed with the designation of Critical Habitat with the listing action. However, after initial contact with landowners and public officials in the local area, the Service determined that taking and vandalism threats in these remote streams were real possibilities and were likely to result in further reductions or perhaps even extirpation of the species. Therefore, for the long term benefit of the species, the proposal of Critical Habitat is withdrawn.

Available Conservation Measures

In addition to the effects discussed above, the effects of this final rule would include, but not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32372–32381) set forth a series of general prohibitions and exceptions which apply to Threatened wildlife. These regulations are found at § 17.31 of 50 CFR and are summarized below. In addition to these standardized regulations for Threatened species, Section 4(d) of the Act authorizes the Secretary to issue special regulations for a Threatened species that are necessary and advisable for the conservation of the species.

Such a special rule for the Chihuahua chub is included in this regulation. The special rule allows take in accordance with New Mexico State laws. The State law prohibits taking of the Chihuahua chub without a collecting permit. These permits are issued by the State and allow take for scientific purposes. The State law specifically prohibits bait minnow seining in the Mimbres River where this species occurs.

With respect to the Chihuahua chub, all prohibitions of Section 9(a)(1) of the Act, as implemented by § 17.31, would apply except that the Chihuahua chub may be taken in accordance with State laws. The prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It would also be illegal to

possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and the State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving Threatened species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, for incidental take, or the enhancement of propagation or survival of the species.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This final rule requires Federal agencies to consult with the Service concerning any action that may affect the species, to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of the Chihuahua chub. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file in the Service's Regional Endangered Species Office, 500 Gold Avenue, SW., Albuquerque, New Mexico 87103, and may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

Authors

The primary authors of this rule are Dr. James Johnson and Ms. Sandra Limerick, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

2. Section 17.11(h) is amended by adding, in alphabetical order, the following to the list of fishes:

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
Common name	Scientific name						
Fishes							
•	•	•	•	•	•		•
Chub, Chihuahua	*Gila nigrescens*	U.S.A. (NM) Mexico (Chihuahua).	Entire	T		NA	17.44(g)
•	•	•	•	•	•		•

3. Title 50 CFR 17.44 is amended by adding a new paragraph (g) as follows:

§ 17.44 Special rules—fishes.

• • • • •

(g) Chihuahua chub, *Gila nigrescens*

(1) All provisions of § 17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Endangered Species Act.

• • • • •

Dated: September 15, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-27501 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 654 and 658

[Docket No. 31004–197]

Stone Crab Fishery and Shrimp Fishery of the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA) Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce (Secretary) issues emergency regulations amending the Fishery Management Plans for the Stone Crab Fishery and Shrimp Fishery of the Gulf of Mexico and their implementing regulations. This emergency rulemaking (1) closes and opens specific areas in the Gulf of Mexico to stone crab and shrimp fishing during certain time periods, (2) prohibits the intentional placement of articles in the fishery conservation zone that may interfere with fishing gear or fishing vessels, (3) provides for the disposal of stone crab traps found in the areas designated for closures, and (4) provides the Secretary with authority to implement further emergency regulations for these fisheries based on similar conflicts in other areas by publication of a notice thereof in the **Federal Register**. The intent of these regulations is to avoid serious conflicts between stone crab and shrimp fishermen that may result in bodily harm and property damage.

EFFECTIVE DATE: October 5, 1983, through January 2, 1984.

ADDRESS: Copies of an environmental assessment may be obtained from and comments on this action may be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (Stone Crab FMP) prepared by the Gulf of Mexico Fishery Management Council (Council), was approved by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) on March 19, 1979, and implemented by the Secretary on September 14, 1979 (44 FR 53519), under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP), prepared by the Council, was approved by the Assistant Administrator on November 7, 1980, and implemented by the Secretary on May 15, 1981 (46 FR 27489).

The Secretary invoked emergency regulations amending the Stone Crab and Shrimp FMPs under section 305(e)(2) of the Magnuson Act on April 6, 1983 (48 FR 14903). These emergency regulations were implemented to resolve gear conflicts between shrimp and stone crab fishermen in the fishery

conservation zone (FCZ) off the Crystal River, Florida, area during the latter part of the 1982–1983 stone crab season. Section 305(e)(2) authorizes the Secretary to promulgate emergency regulations necessary to address an emergency in a fishery. The Secretary is implementing emergency regulations again amending the FMPs for a portion of the 1983–1984 stone crab season because of gear conflicts described below which constitute such an emergency. The rulemaking (1) periodically closes areas of the FCZ to stone crab fishing, (2) periodically closes areas of the FCZ to shrimp fishing, (3) prohibits the intentional placement of any article in the FCZ that may interfere with fishing gear or fishing vessels, and (4) authorizes the removal and disposal of stone crab traps from the closed areas by authorized officers. This rulemaking also authorizes the Secretary to establish additional area closures of limited duration and geographic scope in the event similar conflicts occur in other areas.

Area Restrictions

Gear conflicts between shrimp and stone crab fishermen have occurred intermittently during the past six years in an area west of Citrus County, Florida. Recently, these conflicts have increased in number and severity, resulting in a significant disruption in the prosecution of both fisheries. The affected fishermen have attempted unsuccessfully to reduce these conflicts. The State of Florida (State) has implemented regulations to address the problem. However, these regulations have not been successful and do not apply to conflicts in the FCZ. During the 1982–1983 season, the National Marine Fisheries Service (NMFS) documented incidents where barbed wire secured to cinder blocks or stone crab traps has been placed in the conflict area. Shrimp trawling gear encountering the barbed wire was damaged or destroyed. Damage and injury have occurred to fishing gear, to vessels, and to individuals attempting to disentangle the barbed wire.

During the period from January 31, 1983 to the implementation of emergency regulations, effective March 31, 1983 (48 FR 14903, April 6, 1983) twelve complaints from shrimp fishermen concerning gear destruction and vessel damage were documented. Stone crab fishermen also complained about shrimp trawling gear being used to destroy stone crab traps.

Prior to implementation of emergency regulations during the 1982–1983 fishing year, alternative actions were considered by NMFS to end this intensifying conflict. Earlier testimony by stone crab and shrimp fishermen at public hearings and meetings conducted by the Council indicated that an acceptable solution was a minor westward extension of State-implemented area closures into the FCZ adjacent to Citrus County. Though such amendments to the FMPs were considered by the Council, the area affected by these amendments does not now include all of the locations to which the conflicts have spread. Fishermen from both groups are very concerned that the conditions which resulted in violence last season will develop and escalate at a more rapid rate this season.

After a number of unsuccessful attempts by an advisory panel of the Council to formulate a solution to this situation, the State established (by statute) a Pasco/Hernando/Citrus Counties Shrimping and Stone Crabbing Advisory Committee (Committee). The Committee consists of representatives of the shrimp and stone crab fishermen of the three-county area and is charged with developing fishing zones in the State waters to resolve conflicts in the area. The Committee developed the closures in this rulemaking and requested that the Council consider these closures for implementation in the FCZ. The Council voted unanimously that an emergency exists in the FCZ off Crystal River, Florida, and by a majority, voted in favor of the zone closures recommended by the Committee. The Committee also developed areas in State waters that complement these closures. These State zone closures have been submitted to the Florida Department of Natural Resources for approval and promulgation.

The areas in the FCZ closed to shrimp fishing consist of approximately 106 square nautical miles. The area with inseason changes of closure periods for crab and shrimp fishing consists of approximately 22 square nautical miles off Hernando County and approximately 5.5 square nautical miles off Citrus County. No areas were recommended for closure off Pasco County at the request of the Committee members from Pasco County.

The emergency regulations prohibit the placement of any article in the FCZ that would interfere with fishing or obstruct or interfere with fishing gear of fishing vessels, and further prohibit the use of fishing gear to obstruct or damage the fishing gear or fishing vessels of others. In addition, the regulations authorize the Secretary to establish further area closures by publication of a notice thereof in the **Federal Register**. Any additional closures must be in response to gear conflicts similar to those giving rise to this emergency rulemaking and be of no greater duration or geographic scope than is necessary and appropriate to resolve the gear conflict.

Classification

The Assistant Administrator finds for good cause (i.e., to avoid serious conflicts between stone crab and shrimp fishermen that may result in bodily harm and property damage) that the reasons justifying promulgation of these rules on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of § 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule is necessary to respond to an emergency and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has also determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Florida. This action is being taken in concert with an in furtherance of action taken by Florida. This determination has been submitted for review by the responsible State agency under § 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in § 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA is available from the Southeast Regional Office at the address listed above.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Parts 654 and 658

Fish, Fisheries, Fishing.

Dated: October 5, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Parts 654 and 658 are amended as follows:

1. The authority citation for Parts 654 and 658 reads as follows:

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

PART 654—STONE CRAB FISHERY

2. Section 654.23 is amended by revising paragraph (b) to read as follows:

§ 654.23 Area restrictions.

* * * * *

(b)(1)(i) No person may place stone crab traps in that part of the FCZ identified as Zone IV (Figure 3) during the period 0001 hours January 2, 1984, through 2400 hours January 2, 1984. Zone IV is bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of fishermen):

Point	Latitude	Longitude	Loran chain 7980	
			X	Y
V	28°41'39"N.	82°54'08"W.	31303.0	45183.5
E	28°41'39"N.	82°55'18"W.	31300.7	45193.1
D	28°26'01"N.	82°55'07"W.	31216.8	45066.2
O	28°28'47"N.	82°52'50"W.	31236.8	45070.0
U	28°37'44"N.	82°53'02"W.	31284.3	45143.0

Thence northerly along the State boundary to point V.

(ii) No person may place stone crab traps in that portion of the FCZ identified as Zone V (Figure 3) during the period 0001 hours October 5, 1983, through 2400 hours November 30, 1983. Zone V is bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

Point	Latitude	Longitude	Loran chain 7980	
			X	Y
W	28°49'25"N.	82°55'49"W.	31341.2	45260.0
G	28°46'55"N.	82°56'19"W.	31337.6	45260.0
F	28°41'39"N.	82°56'06"W.	31299.2	45199.1
V	28°41'39"N.	82°54'08"W.	31303.0	45183.5

Thence northerly along the State boundary to point W.

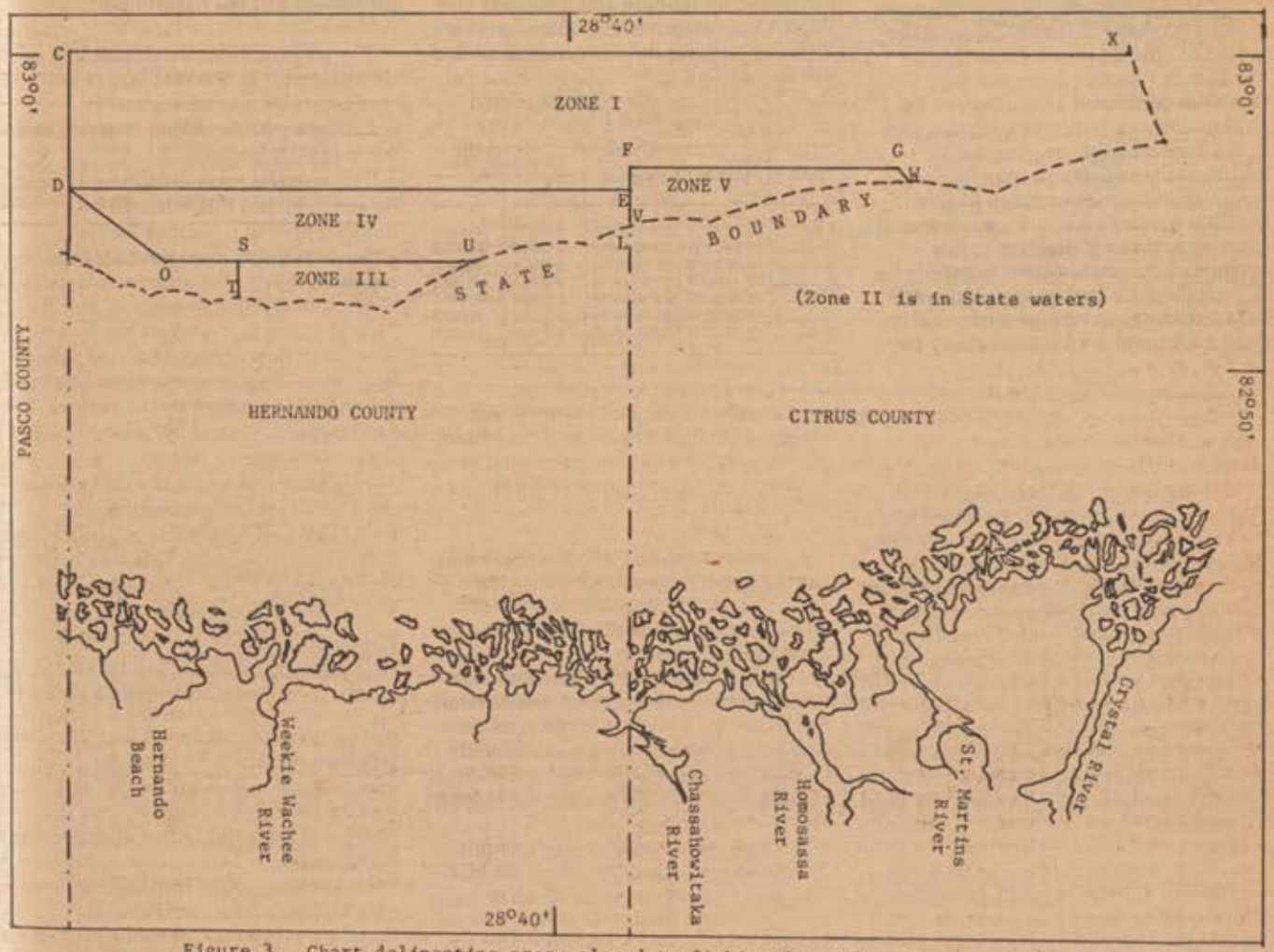

Figure 3. Chart delineating areas closed to fishing for shrimp or stone crabs (not to scale, for illustrative proposes only).

(2) To place into the management area any article, including fishing gear, with the intent to interfere with fishing or obstruct or damage fishing gear or fishing vessels of others; or to utilize willfully fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(3) Stone crab traps found in the areas described in paragraph (b)(1) of this section during their respective closed periods will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. Lines and buoys are considered part of the trap. Owners of these stone crab traps are subject to civil penalties. All stone crab traps fished in the FCZ will be presumed to be the property of the most recently documented owner.

(4) In the event that conflicts between stone crab and shrimp fishermen occur in other portions of the FCZ during the period of effectiveness of this emergency rule, the Secretary may establish additional area closures by publication of a notice of such closures in the **Federal Register**. Any such additional area closures may be established only in response to gear conflicts similar in nature and degree of severity to those giving rise to this emergency rulemaking and may only be of such duration and geographic scope as is necessary to resolve such conflict. Such additional area closures may be established only if they would otherwise be authorized under § 305(e) of the Magnuson Act and if the notice published in the **Federal Register** sets forth the reason for the additional area closures.

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

3. Section 658.23 is amended by redesignating the existing paragraph as (a) and by adding a new paragraph (b) to read as follows:

§ 658.23 Stone crab area closure.

* * * * *

(b)(1)(i) It is unlawful to fish for shrimp in those parts of the FCZ identified as Zones I and III (Figure 4) during the period 0001 hours October 5, 1983, through 2400 hours January 2, 1984. These respective zones are bounded by continuous lines connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

ZONE I

Point	Latitude	Longitude	Loran chain 7960	
			X	Y
X	28°55'20"N	83°00'06"W	31365.0	45342.8
C	28°26'01"N	82°59'44"W	31206.7	45103.6
D	28°26'01"N	82°55'07"W	31216.8	45066.2
E	28°41'39"N	82°55'18"W	31300.7	45193.1
F	28°41'39"N	82°56'06"W	31299.2	45199.1
G	28°48'55"N	82°56'19"W	31337.6	45260.0
W	28°49'25"N	82°55'49"W	31341.2	45260.0

Thence northerly along the State boundary to point X.

ZONE III

Point	Latitude	Longitude	Loran chain 7980	
			X	Y
U	28°37'44"N	82°53'02"W	31284.3	45143.0
S	28°30'51"N	82°52'54"W	31247.8	45066.5
T	28°30'51"N	82°51'30"W	31250.5	45075.5

Thence northerly along the State boundary to point U.

(ii) It is unlawful to fish for shrimp in that part of the FCZ identified as Zone IV (Figure 4) during the period 0001 hours October 5, 1983, through 2400 hours January 1, 1984. Zone IV is bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

Point	Latitude	Longitude	Loran chain 7980	
			X	Y
V	28°41'39"N	82°54'08"W	31303.0	45183.5
E	28°41'39"N	82°55'18"W	31300.7	45193.1
D	28°26'01"N	82°55'07"W	31216.8	45066.2
O	28°28'47"N	82°52'50"W	31236.8	45070.0
U	28°37'44"N	82°53'02"W	31284.3	45143.0

Thence northerly along the State boundary to point V.

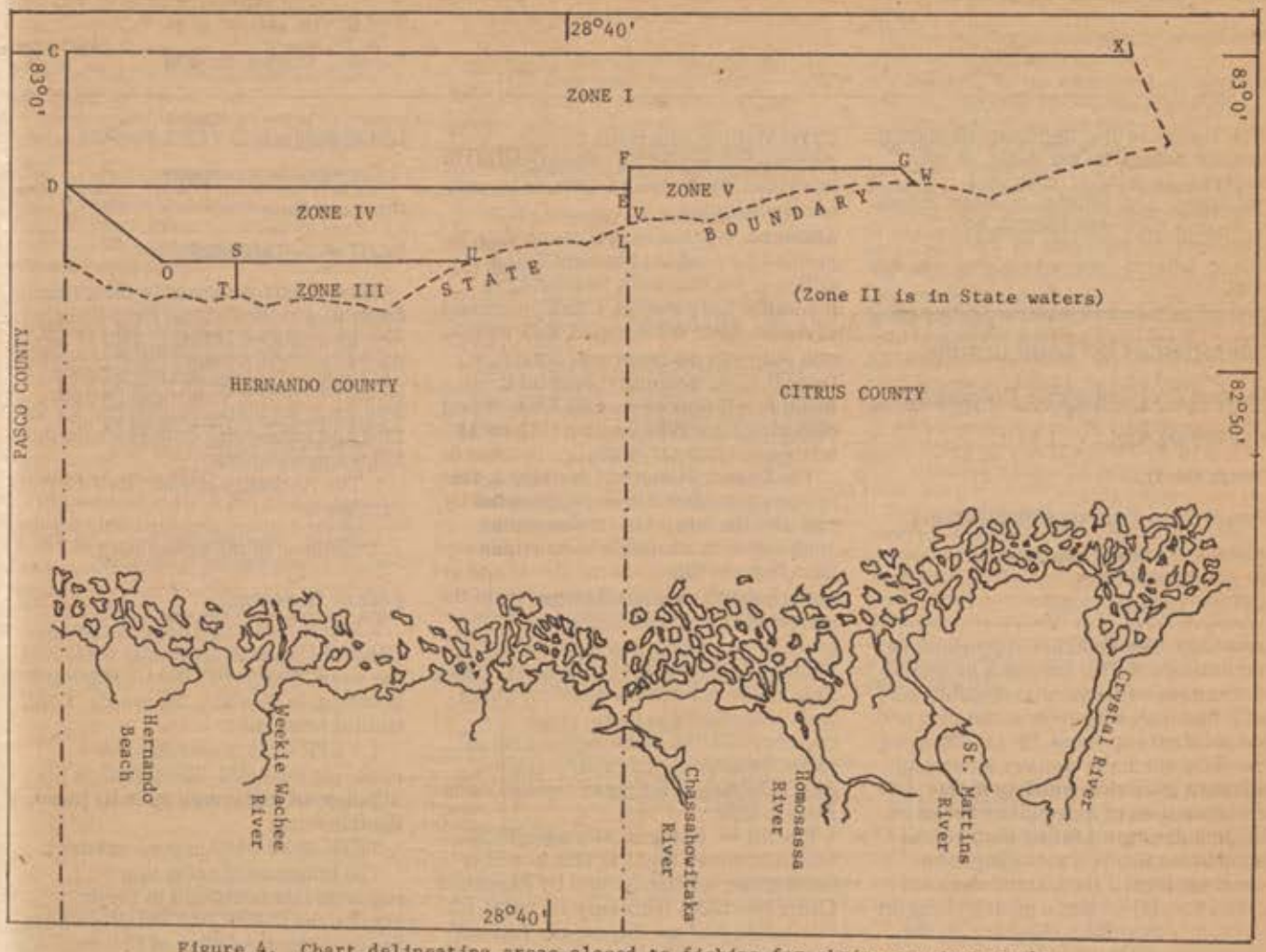

Figure 4. Chart delineating areas closed to fishing for shrimp or stone crabs (not to scale, for illustrative proposes only).

(iii) It is unlawful to fish for shrimp in that part of the FCZ identified as Zone V (Figure 4) during the period 0001 hours December 1, 1983, through 2400 hours January 2, 1984. Zone V is bounded by a continuous line connecting points expressed by latitude (LORAN notations are unofficial and are included only for the convenience of fishermen):

Point	Latitude	Longitude	Loran chain 7960	
			X	Y
W	28°49'25"N.	82°55'49"W.	31341.2	45260.0
G	28°46'55"N.	82°56'19"W.	31337.6	45260.0
F	28°41'39"N.	82°56'06"W.	31299.2	45199.1
V	28°41'39"N.	82°54'08"W.	31303.0	45183.5

Thence northerly along the State boundary to point W.

(2) Place into the FCZ any article, including fishing gear, with the intent to interfere with fishing or obstruct or damage fishing gear or fishing vessels of others; or to utilize willfully fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(3) In the event that conflicts between stone crab and shrimp fishermen occur in other portions of the FCZ during the period of effectiveness of this emergency rule, the Secretary may establish additional area closures by publication of a notice of such closures in the **Federal Register**. Any such additional area closures may be established only in response to gear conflicts similar in nature and degree of severity to those giving rise to this emergency rulemaking and may only be of such duration and geographic scope as is necessary to end such conflict. Such additional area closures may be established only if they would otherwise be authorized under section 305(e) of the Magnuson Act and if the notice published in the **Federal Register** sets forth the reason for the additional area closures.

* * * * *

[FR Doc. 83-27562 Filed 10-5-83; 4:55 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 197
Tuesday, October 11, 1983

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 402

[Amdt. No. 3]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1984 and succeeding crop years, by: (1) Changing the policy to make it easier to read, (2) adding a provision which permits determination of indemnities based on the tonnage report rather than at loss adjustment time, (3) providing for a coverage level if the insured does not select one, (4) adding a 60-day claim for indemnity provision, (5) changing the cancellation/termination dates to conform with farming practices, (6) providing that any change in the policy will be available in the service office by a certain date, (7) adding a definition for "service office," (8) providing for unit determination when the tonnage report is filed, (9) adding a section concerning "descriptive headings," and (10) amending the interest rate due on premium payment after a certain date.

In addition, FCIC proposes to issue a new subsection in the raisin crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring raisins in accordance with Secretary's Memorandum No. 1512-1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to codify OMB control numbers assigned under the Paperwork Reduction Act to information collection requirements in these regulations.

DATE: Written comments on this proposed rule must be submitted not later than December 12, 1983, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined by Executive Order No. 12291 (Febraury 17, 1981), (2) this action will not incrase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 402

Crop insurance, raisin.

Proposed Rule

PART 402—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Raisin Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 402 is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (1506, 1516).

§ 402.3 [Amended]

2. 7 CFR Part 402 is amended in the Table of Contents thereof by removing the word "Reserved" from § 402.3 and inserting, in its place, the words "OMB control numbers."

3. 7 CFR 402.3 is amended by removing the word "Reserved" in the title thereof and inserting, in its place, the following:

7 CFR 402.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 402) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

§ 402.7 [Amended]

4. 7 CFR 402.7(d) is amended by removing the Raisin Crop Insurance Policy therein and inserting the following:

Department of Agriculture—Federal Crop Insurance Corporation

Raisin Crop Insurance Policy

(This is a continuous contract. Refer to Section 16.)

Agreement to insure: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. *Causes of Loss.* a. The insurance provided is against the unavoidable loss resulting from rain occurring within the

insurance period, on the raisins while in the vineyard, on trays, or in rolls for drying unless excepted, excluded, or limited by the actuarial table.

b. We shall not insure against any loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good raisin management practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause other than rain.

2. *Tonnage and Share Insured.* a. The crop insured for each crop year shall be raisins of the grape varieties for which an amount of insurance and premium rate are provided by the actuarial table.

b. The tonnage insured for each crop year shall be the tonnage in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured raisins at the earlier of the time insurance attaches, or at the time damage becomes apparent, as determined by us.

d. We do not insure any raisins which are first placed on trays after:

(1) September 20 for raisin drying in east/west rows; or

(2) An earlier date if specified in the actuarial table for raisins drying in north/south rows.

3. *Report of Tray Count, Tonnage and Share.* You shall report on our form:

a. For the insured raisins which are not damaged, the net tons of all raisins produced in the county in which you have a share and your share as soon as delivery records are available.

b. For the insured raisins which are damaged:

(1) The name of the variety;

(2) The location(s) of vineyard(s);

(3) The number of trays upon which the raisins have been placed for drying; and

(4) Your share.

You shall report separately any tonnage that is not insurable. You shall report if you do not have a share in any insurable tonnage in the county. This report shall be submitted annually on or before March 31. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured tonnage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. *Amounts of Insurance and Coverage Levels.* a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply, if you do not elect a coverage level.

c. You may change the amount of insurance and coverage level on or before the closing date for submitting applications for the crop year established by the actuarial table.

d. If the raisins are not damaged by rain the amount of insurance shall be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share.

e. If the raisins are damaged by rain and reported by you, the number of trays upon which the raisins have been placed for drying shall be multiplied by the average tray weight, and such product or actual marketing records or both shall be the basis for determining the insured tonnage. The amount of insurance for any unit in such crop year shall be determined by multiplying such insured tonnage times the amount of insurance per ton, times your share.

5. *Annual Premium.* a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured tonnage, times your share on the date insurance attaches, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the vineyard operation; or

(3) Your contract if you stop vineyard operations in one county and start vineyard operations in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. *Deductions for Debt.* Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Departmet of Agriculture or its Agencies.

7. *Insurance Period.* Insurance attaches at the time the raisins are placed on the trays for drying and ends the earliest of:

a. October 25; or

b. the date the raisins are boxed; or

c. removed from the vineyard.

8. *Notice of Damage or Loss.* a. If you are going to claim an indemnity on any unit, we must be given immediate notice when damage from rain becomes apparent, giving the date(s) of such damage.

b. We may reject any claim for indemnity is such damage is not reported within seven days of if any of the requirements of section 9 are not complied with.

9. *Claim for Indemnity.* a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of raisins on the unit and that any loss of production was directly caused by rain during the insurance period;

(2) Authorize us in writing to examine and obtain any record pertaining to the production and/or marketing of the insured raisins under this contract from the raisin packer, raisin reconditioner and/or the Raisin Administrative Committee established under order of the United States Department of Agriculture; and

(3) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured tonnage of raisins by the amount of insurance per ton;

(2) Subtracting therefrom the total value of production to count; and

(3) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. Undamaged raisins or raisins damaged solely by uninsured causes shall be valued at the current market value or the amount of insurance, whichever is higher.

f. Raisins damaged partially by rain and partially by uninsured causes shall be valued at the highest prices obtainable, subject to an adjustment for any reduction in value due to uninsured causes.

g. Raisins damaged by rain, but which are reconditioned and can be marketed as undamaged raisins, shall be valued at the current market price or the amount of insurance, whichever is higher, except that an allowance for reconditioning shall be deducted from such value. The maximum allowance for any one reconditioning as a result of rain is contained in the actuarial table, but the total reconditioning allowance shall not exceed the value of the raisins after reconditioning.

h. We may require you to recondition a representative sample(s) of not more than 10 tons of raisins damaged by rain to determine if they may be marketed as undamaged raisins. On the basis of determinations made by us from such sample(s), we may require you to recondition all such raisins. If the reconditioned raisins of the representative sample(s) cannot be marketed as undamaged raisins, the cost of reconditioning such sample(s) shall be deducted from the total value of the raisins for the unit.

i. In determining the value of raisins produced on the unit, a minimum value of $75.00 per ton shall be counted for any raisins not removed from the vineyard. You shall be responsible to box and deliver any raisins that can be removed from the vineyard.

j. We may acquire all of the right and title to your share of any raisins damaged by rain. In such event, the raisins shall be valued at "zero" in determining the amount of loss and we shall have the right of ingress or egress to the extent necessary to take possession of, care for, and remove such raisins.

k. Raisins destroyed without inspection shall be valued at the amount of insurance.

l. You shall not abandon any tonnage to us unless by agreement under subsection j.

m. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

n. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

o. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

10. *Concealment or Fraud.* We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. *Transfer of Right to Indemnity on Insured Share.* If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. *Assignment of Indemnity.* You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. *Subrogation.* (Recovery of loss from a third party.) Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. *Records and Access to Farm.* You shall keep for two years after the time of loss, records of the insured, uninsured and planted acreage in your farming operation. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. *Other Insurance.* If in any crop year, you obtain any other insurance on any unit(s) against rain damage or loss while the raisins are on the trays for drying, this contract shall be voided for that crop year on such unit(s) if such other insurance is obtained before insurance attaches under this contract.

16. *Life of Contract: Cancellation and Termination.* a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

17. *Contract Changes.* We may change any terms and provisions of the contract from year to year. If the amount of insurance you selected is no longer offered, the actuarial table will provide the amount of insurance which you shall be deemed to have elected. All contract changes shall be available at your service office by April 30 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

18. *Meaning of Terms.* For the purposes of raisin crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, varieties, reconditioning allowances, and related information regarding raisin insurance in the county.

b. "Contiguous land" means land which is touching at any point except that land which is separated by only a public or private right-of-way shall be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the calendar year in which the raisins are placed on trays for drying.

e. "Insured" means the person who submitted the application accepted by us.

f. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

g. "Raisin tonnage report" means a form prescribed by us for annually reporting all your share of and tonnage of raisins in the county.

h. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "Tenant" means a person who rents land from another person for a share of the raisins or a share of the proceeds therefrom.

j. "Ton" means 2,000 pounds of raisins on the trays. When deemed appropriate, we may determine raisin tonnage computed on the basis of one ton of raisins insured for every four and a half tons of fresh grapes when first placed on trays for drying.

k. "Unit" means all insurable acreage of the same grape variety, located on contiguous land, on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the raisins on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. Units as herein defined will be determined when the tonnage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any tonnage and share of or reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

19. *Descriptive Headings.* The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

20. *Determinations.* All determination required by the policy shall be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

21. *Notices.* All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Dated: October 3, 1983.

Approved by the Board of Directors on May 24, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 83-27541 Filed 10-7-83; 8:45 am]

BILLING CODE 3410-08-M

Agriculture Stabilization and Conservation Service

7 CFR Part 781

Disclosure of Foreign Investment in Agricultural Land

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this proposed rule is to revise certain sections of the regulations implementing the Agricultural Foreign Investment Disclosure Act to make the regulations easier to understand and improve their administration. It contains three principal changes to the regulations: (1) The proposed rule revises the definitions of "agricultural land" and "significant interest or substantial control." (2) The proposed rule modifies the provisions regarding assessment of a penalty when a person contests a notice of apparent liability to make it clear that any final penalty imposed may not exceed the amount of the penalty stated in the notice of apparent liability. (3) The proposed rule adds several new items to the information that must be included in the reports required by the regulations and imposes a requirement that the information in the reports be kept current.

The proposed rule also substitutes the word "person" for the term "legal entity" throughout the regulations and makes other minor editorial changes in the definitions section of the regulation.

DATE: In order to assure consideration, written comments must be received by December 12, 1983.

ADDRESS: Comments should be addressed to: William A. Brown, Emergency Operations and Livestock Programs Division, ASCS, USDA, Room 4095—South Building, P.O. Box 2145, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: William A. Brown, Emergency Operations and Livestock Programs Division, ASCS, USDA, Room 4095—South Building, P.O. Box 2415, Washington, D.C. 20013, telephone (202) 447-6601. The Final Impact Statement describing the options considered in developing this proposed rule and the effect of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in accordance with Secretary's Memorandum 1512-1 and Executive Order 12291 and has been classified "non-major" since it will not have an annual effect on the economy of $100 million or more.

The proposed rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354). Pursuant to that review, Everett Rank, Administrator, Agricultural Stabilization and Conservation Service, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities because the rule merely requires reports to be filed by foreign persons owning U.S. agricultural land.

This proposed rule would revise the regulation concerning the disclosure of foreign investment in agricultural land published on February 6, 1979, as amended (44 FR 7115; 44 FR 29029; 45 FR 7775). The proposed regulation published on January 25, 1980 (45 FR 6115) is being withdrawn.

Definition of Agricultural Land

The proposed rule replaces the word "agricultural" in the definition of agricultural land with the words "farming" and "ranching" in order to define more clearly the term agricultural land.

In general, all land in excess of one acre used for the production of "agricultural, forestry, or timber products" must be reported at present. As a result, many individuals holding small amounts of land used for growing trees or agricultural products have filed reports. Since the Department feels that information about such small holdings is not of significant value, it proposes to exempt all land used for farming, ranching, forestry, and timber production which does not exceed 10 acres in the aggregate unless the farming, ranching, forestry and timber products grown on the land are sold and return more than $1,000 in annual gross sales receipts.

A new Interpretive Rule concerning the definition of "agricultural land" has been added which refers to certain agricultural activities set forth in the Standard Industrial Classification Manual issued by the Office of Management and Budget as illustrative of the types of activities which may cause the land used for the activity to be classified as agricultural land. The Manual is available at most public libraries and in State and county ASCS offices or from the ASCS office in Washington, D.C. at the address indicated herein.

Significant Interest or Substantial Control

As originally published, the Agricultural Foreign Investment Disclosure Act (AFIDA) regulation established five percent or more as the level of interest constituting "significant interest or substantial control". It is now clear that such a definition would require business entities not normally considered foreign-dominated to file reports. This results in a serious distortion of the total figures on agricultural foreign investment by including land not normally considered foreign-owned or subject to foreign control. Accordingly, the definition of "significant interest or substantial control" has been amended to require an agricultural landowning person to file an ASCS–153 reporting form with the ASCS county office where the land is located if a single foreign individual, or foreign individuals, persons or governments acting in concert, hold a ten percent or greater interest in the landowning person. An agricultural landowning person would also have to file an ASCS–153 report if foreign individuals, persons or governments, even though not acting in concert, hold in the aggregate a 50 percent or greater interest in the landowning person.

The Department believes that the use of these percentages would provide a more accurate indication of the amount of agricultural land over which foreign persons can exert influence.

Penalty Review Procedures

Section 781.5(f) would be amended to provide that if a foreign person contests the notice of apparent liability, and the Administrator of ASCS ultimately determines that the foreign person is liable, the penalty finally imposed may not be greater than the amount stated in the notice of apparent liability.

Reporting Requirements

The proposed rule would add the following items to the information that must be included in the reports of foreign ownership of agricultural land: (i) The date the land was acquired or transferred, (ii) the amount or value of the purchase price yet to be paid, and (iii) the estimated value of the land. In addition, the proposed rule contains a new requirement that the information in the reports be kept current. The proposal also requires that notice be given to ASCS if any foreign person who has submitted a report ceases to be a foreign person, or if land reported as being agricultural land ceases being used for that purpose.

List of Subjects in 7 CFR Part 781

Administrative practice and procedure, Agriculture, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements.

Proposed Rule

In consideration of the foregoing, it is proposed that the AFIDA regulation (7 CFR Part 781) be revised to read as follows:

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.

Authority: Sec. 1–10, 92 Stat. 1266 (7 U.S.C. 3501 *et seq.*).

§ 781.1 General.

The purpose of these regulations is to set forth the requirements designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The regulations require that a foreign person who acquires, disposes of or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the regulations establish a system for the collection of information by the Agricultural Stabilization and Conservation Service (ASCS) pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and the President by the Economic Research Service (ERS) concerning the effect of such holdings upon family farms and rural communities.

§ 781.2 Definitions.

In determining the meaning of the provisions of this Part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *AFIDA.* AFIDA means the Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural Land.* Agricultural land means land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, forestry, or timber production, except land not exceeding ten acres in the aggregate if the annual gross receipts from the sale of the farm, ranch, forestry, or timber products produced thereon do not exceed $1,000.

Interpretation

Farming, ranching, forestry, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1972), Division A, exclusive of industry numbers 0711–0783, 0851 and 0912–0919—animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise and wildlife management.

(c) *Any Interest.* Any interest means all interest acquired, transferred or held in agricultural lands by a foreign person, except:

(1) Leaseholds of less than 10 years;

(2) Contingent future interests;

(3) Noncontingent future interests which do not become possessory upon the termination of the present possessory estate; and

(4) Surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production.

Interpretation

An interest solely in mineral rights is not considered an interest in agricultural land and, therefore, is not required to be reported.

(d) *County.* County means a political subdivision of a State identified as a county or parish. In Alaska, the term means an area so designated by the State Agricultural Stabilization and Conservation committee.

(e) *Foreign Government.* Foreign government means any government other than the United States government, the government of a State, or a political subdivision of a State.

(f) *Foreign Individual.* Foreign individual means foreign person as defined in paragraph (g)(1) of this section.

(g) *Foreign Person.* Foreign person means:

(1) Any individual:

(i) Who is not a citizen or national of the United States; or

(ii) Who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) Who is not lawfully admitted to the United States for permanent residence or paroled into the United States under the Immigration and Nationality Act;

(2) Any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(3) Any foreign government;

(4) Any person, other than an individual or a government:

(i) Which is created or organized under the laws of any State; and

(ii) In which a significant interest or substantial control is directly or indirectly held:

(A) By any individual referred to in paragraph (g)(1) of this section; or

(B) By any person referred to in paragraph (g)(2) of this section; or

(C) By any foreign government referred to in paragraph (g)(3) of this section; or

(D) By any combination of such individuals, persons, or governments.

Interpretation

As used in § 781.2(g)(4)(ii)(D), the word "combination" refers to an aggregate figure and does not require a coalition which intends to accomplish a common objective.

In a case where one or more persons intervene between the interest-holding foreign person(s) and the person actually holding the U.S. agricultural land, then such foreign person(s) will be said to hold indirectly significant interest or substantial control pursuant to § 781.2(g)(4)(ii) in the landholding person only if each of the intervening persons hold, by themselves or in combination with other foreign persons, significant interest or substantial control in each succeeding intervening person.

(h) *Person.* Person means any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity.

(i) *Secretary.* Secretary means the Secretary of Agriculture.

(j) *Security Interest.* Security interest means a mortgage or other debt securing instrument.

(k) *Significant interest or substantial control.* Significant interest or substantial control means:

(1) An interest of 10 percent or more held by a person referred to in paragraph (g)(4), by a single individual referred to in paragraph (g)(1), by a single person referred to in paragraph (g)(2), by a single government referred to in paragraph (g)(3); or

(2) An interest of 10 percent or more held by persons referred to in paragraph (g)(4), by individuals referred to in paragraph (g)(1), by persons referred to in paragraph (g)(2), or by governments referred to in paragraph (g)(3), whenever such persons, individuals or governments are acting in concert with respect to such interest even though no single individual, person or government holds an interest of 10 percent or more; or

(3) An interest of 50 percent or more, in the aggregate, held by persons referred to in paragraph (g)(4), by individuals referred to in paragraph (g)(1), by persons referred to in paragraph (g)(2), or by governments referred to in paragraph (g)(3), even though such individuals, persons, or governments may not be acting in concert.

(l) *State.* State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

§ 781.3 Reporting requirements.

(a) All reports required to be filed pursuant to this part shall be filed with the ASCS county office in the county where the land with respect to which such report must be filed is located or where the ASCS county office administering programs carried out on such land is located.

(b) The date for a report to be submitted by a foreign person holding any interest, other than a security interest, in U.S. agricultural land is:

(1) August 1, 1979, if the interest in the agricultural land was held on the day before February 2, 1979, or

(2) Ninety days after the date of acquisition or transfer of the interest in the agricultural land, if the interest was acquired or transferred on or after February 2, 1979.

(c) Any person who holds or acquires any interest, other than a security interest, in United States agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person must submit, not later than 90 days after the date on which such person becomes a foreign person, a report containing the information required to be submitted under paragraph (e) of this section.

(d) Any foreign person who holds or acquires any interest, other than a security interest, in United States land at a time when such land is not agricultural land and such land subsequently becomes agricultural land must submit, not later than 90 days after the date on which such land becomes agricultural, a report containing the information required to be submitted under paragraph (e) of this section.

(e) Any foreign person required to submit a report under this regulation, except under paragraph (g) of this section, shall file an ASCS–153 report containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature and name of the person holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest held by a foreign person who acquired or transferred an interest in agricultural land;

(5) The legal description and acreage of such agricultural land;

(6) The purchase price paid for, or any other consideration given for, such interest; the amount of the purchase price or the value of the consideration yet to be given; the current estimated value of the land reported;

(7) In any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred; and

(i) In any case in which such transferee is an individual, the citizenship of such transferee; and

(ii) In any case which such transferee is not an individual, or a government,

the nature of the person holding the interest, the country in which such transferee is created or organized, and the principal place of business;

(8) The agricultural purposes for which such foreign person intends, on the date on which such report is submitted, to use such agricultural land;

(9) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS–153 form for the foreign person;

(10) How the tract of land was acquired or transferred, the relationship of the foreign person to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement; and

(11) The date the interest in the land was acquired or transferred.

(f)(1) Any foreign person, other than an individual or government, required to submit a report under paragraphs (b), (c), and (d) of this section, must submit, in addition to the report required under paragraph (e) of this section, a report containing the following information:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder, and

(iii) In any case in which the holder of significant interest or substantial control in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(2) In addition, any such foreign person required to submit a report under paragraph (f)(1) of this section may also be required, upon request, to submit a report containing:

(i) The legal name and the address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (f)(1) of this section, if such individual or government holds any interest in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(g) Any foreign person, other than an individual or a government, whose legal name is contained on any report submitted in satisfaction of paragraph (f) of this section may also be required, upon request, to:

(1) Submit a report containing:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which each holder is created or organized, and the principal place of business of each holder.

(2) Submit a report containing:

(i) The legal name and address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (g)(1) of this section if such individual or government holds any interest in such foreign person and, except in the case of a request which involves a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section, disclosing information relating to non-foreign interest holders;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government and, except in a situation where the information is requested from a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section disclosing information relating to non-foreign interest holders, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

Interpretation

(1) Any person which has issued fewer than 100,000 shares of common and preferred stock and instruments convertible into equivalents thereof shall be considered to have satisfactorily determined that it has no obligation to file a report pursuant to § 781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that persons with foreign mailing addresses hold significant interest or substantial control in such person.

(2) Any person which has issued 100,000 or more shares of common and preferred stock and instruments convertible into equivalents thereof shall be considered to have satisfactorily determined that it has no obligation to file a report pursuant to § 781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that the percentage of shares held in such person both by persons with foreign mailing addresses and investment institutions which manage shares does not equal or exceed significant interest or substantial control in such person.

(3) If the person in paragraph 2 above determines that the percentage of shares, which is held in it both by persons with foreign mailing addresses and investment institutions which manage shares, equals or exceeds significant interest or substantial control in such person, then such person shall be considered to have satisfactorily attempted to determine whether it has an obligation to file a report pursuant to § 781.3 if it sends questionnaires to each such investment institution holding an interest in it inquiring as to whether the persons for which they are investing are foreign persons and the percentage of shares reflected by the affirmative responses from each such investment institution plus the percentage of shares held by persons listed on the business records with foreign mailing addresses does not reveal that foreign persons hold significant interest or substantial control in such person.

(h) If any foreign person who submitted a report under paragraphs (b), (c), and (d) of this section ceases to be a foreign person or if the land which was reported to be agricultural land ceases to be agricultural, such person must submit, not later than 90 days after the date such person ceases being a foreign person or not later than 90 days after the date such land ceases being agricultural, a written notification of the change of status of the person or of the land to the ASCS office where the report form ASCS–153 was originally filed.

§ 781.4 Assessment of penalties.

(a) Violation of the reporting obligations will consist of:

(1) Failure to submit any report in accordance with § 781.3,

(2) Failure to maintain any submitted report with accurate information, or

(3) Submission of a report which the foreign person knows:

(i) Does not contain, initially or within thirty days from the date of a letter returning for completion such incomplete report, all the information required to be in such report, or

(ii) Contains misleading or false information.

(b) Any foreign person who violates the reporting obligation as described in paragraph (a) of this section shall be subject to the following penalties:

(1) *Late filed reports:* One-tenth of one percent of the fair market value, as determined by the Agricultural Stabilization and Conservation Service, of the foreign person's interest in the agricultural land, with respect to which

such violation occurred, for each week or portion thereof that such violation continues, but the total penalty imposed shall not exceed twenty-five percent of the fair market value of the foreign person's interest in such land.

(2) Submission of an incomplete report or a report containing misleading or false information, failure to submit a report or failure to maintain a submitted report with accurate information: Twenty-five percent of the fair market value, as determined by the Agricultural Stabilization and Conservation Service, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(3) Penalties prescribed above are subject to downward adjustment based on factors including:

(i) Total time the violation existed.

(ii) Method of discovery of the violation.

(iii) Extenuating circumstances concerning the violation.

(iv) Nature of the information misstated or not reported.

(c) The fair market value for the land, with respect to which such violation occurred, shall be such value on the date the penalty is assessed, or if the land is no longer agricultural, on the date it was last used as agricultural land. The price or current estimated value reported by the foreign person, as verified and/or adjusted by the county Agricultural Stabilization and Conservation Committee for the county where the land is located, will be considered to be the fair market value.

§ 781.5 Penalty review procedure.

(a) Whenever it appears that a foreign person has violated the reporting obligation as described in paragraph (a) of § 781.4, a written notice of apparent liability will be sent to the foreign person's last known address by the Agricultural Stabilization and Conservation Service. This notice will set forth the facts which indicate apparent liability, identify the type of violation listed in paragraph (a) of § 781.4 which is involved, state the amount of the penalty to be imposed, include a statement of fair market value of the foreign person's interest in the subject land, and summarize the courses of action available to the foreign person.

(b) The foreign person involved shall respond to a notice of apparent liability within 60 days after the notice is mailed. If a foreign person fails to respond to the notice of apparent liability, the proposed penalty shall become final. Any of the following actions by the foreign person shall constitute a response meeting the requirements of this paragraph.

(1) Payment of the proposed penalty in the amount specified in the notice of apparent liability and filing of a report, if required, in compliance with § 781.3. The amount shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(2) Submission of a written statement denying liability for the penalty in whole or in part. Allegations made in any such statement must be supported by detailed factual data. The statement should be mailed to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(3) Submission of a written request for a Hearing with the Administrator or with the Administrator's designee. The request should be submitted to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Submission of such a request does not preclude submission of the statement described in paragraph (b)(2) of this section; either or both may be submitted.

(c)(1) If a Hearing is requested, it will be held in Washington, D.C. at place determined by the Administrator of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture or the Administrator's designee. The Administrator or the Administrator's designee will preside at the Hearing. The appellant shall bear all personal costs connected with such a Hearing.

(2) The Hearing will be scheduled for any mutually convenient time within 30 days after the request is filed with the Administrator, or at a time designated by the Administrator or the Administrator's designee.

(3) At the Hearing, the foreign person may appear personally or be represented by a person of the foreign person's choice and will be afforded an opportunity to state a position and question the factual basis for the notice of apparent liability and the amount of the penalty to be imposed.

(4) A summary of the Hearing will be prepared by the presiding official and transmitted to the Administrator.

(5) The failure of the foreign person to appear at the time and place appointed for the Hearing shall constitute a waiver of the foreign person's right to such a Hearing.

(d) After the submission of a written statement and/or after the Hearing, as prescribed in paragraph (b) and (c) of this section, the Administrator will make a determination based on all relevant information available.

(e) Notice of the Administrator's determination, stating whether a report must be filed or amended in compliance with § 781.3, the amount of the penalty (if any), and the date by which it must be paid, will thereupon be mailed to the foreign person by the Administrator or the Administrator's designee. The foreign person shall file or amend the report as required by the Administrator. The penalty in the amount stated shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(f) If the foreign person contests the notice of apparent liability by submitting a written statement or a request for a hearing thereon, the foreign person may elect either to pay the penalty or decline to pay the penalty pending resolution of the matter by the Administrator. If the Administrator determines that the foreign person is not liable for the penalty or is liable for less than the amount paid, the payment will be wholly or proportionally refunded. If the Administrator ultimately determines that the foreign person is liable, the penalty finally imposed shall not exceed the amount imposed in the notice of apparent liability.

(g) If a foreign person fails to respond to the notice of apparent liability as required by paragraph (b) of this section, or rails to pay the penalty imposed by the Administrator under paragraph (d) of this section, the case will, without further notice, be referred by the Department to the Department of Justice for prosecution in the appropriate District Court to recover the amount of the penalty.

(b) Any amounts approved by the U.S. Department of Agriculure for disbursement to a foreign person under the programs administered by the Department may be setoff penalties assessed hereunder against such person, in accordance with the provisions of 7 CFR Part 13.

Signed at Washington, D.C. on September 22, 1983.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 83-27385 Filed 10-7-83; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-49-AD]

Airworthiness Directives; British Aerospace DH/BH-125 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking; Withdrawn and Reissued.

SUMMARY: This document does two things: (1) It sets forth a proposal to amend an existing airworthiness directive (AD) applicable to British Aerospace BH/DH-125 Airplanes, which requires certain modifications to the front pressure bulkhead and windshield posts to prevent possible failure from corrosion or fatigue. The proposed amendment provides a calendar time compliance limit, which was missing from the original AD, and is necessary due to the possibility of corrosion induced failures; (2) It withdraws an earlier proposal to amend the same AD because the earlier proposal did not address all of the models of the DH/BH-125 airplanes which may require modification.

DATES: Comments must be received no later than November 14, 1983.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041 or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530.

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 and be submitted in duplicate to the address specified below. 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 the light of 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, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 82-NM-49-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The British Aerospace Corporation has notified the FAA of a discrepancy in the compliance times for accomplishing Service Bulletin 53-46R-(2402) which is required by AD 77-13-09. The service bulletin requires modifications to the front pressure bulkhead and windshield posts, to prevent structural failure, within 25 landings after the effective date of the AD or prior to accumulating 6600 total landings, whichever occurs later. A ten-year compliance time from date of manufacture is also included. AD 77-13-09 was issued which requires compliance upon the accumulation of a 6600 total landings but did not address a ten-year compliance. Since failures could be the result of fatigue and/or corrosion, a calendar compliance time is also required. An NPRM (47 FR 24870, September 27, 1982), was issued which requested comments concerning the inclusion of a 10 year compliance time in the AD. The manufacturer concurred with the calendar time limit but also commented that the applicability statement in the original AD was no longer valid and should be revised to include all H.S. 125 aircraft series 1A up to and including series 600A.

It is estimated that 300 airplanes may be affected by this amendment, that it will take approximately 180 man-hours per airplane to accomplish the required actions, and that the average labor cost will be $30 per man-hour. Repair parts are estimated at $2,400 per airplane. Based on these figures, the total cost impact of this AD is estimated to be 2.34 million dollars if none of the airplanes have been modified. It is believed that most operators have complied with AD 77-13-09 because most airplanes will have accumulated more than 6,600 landings. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexability Act would be affected.

In view of the fact the FAA has elected to withdraw the previous NPRM and issue a new NPRM which cover all DH/BH 125 airplanes, the NPRM set forth in **Federal Register** Document No. 82-26295 (47 FR 24870; September 27, 1982) is hereby withdrawn.

List of Subjects in 14 CFR Part 39

Aviation satety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by revising AD 77-13-09, Amendment 39-2934 (42 FR 31768), to read as follows:

"*Hawker Siddeley Aviation Ltd:* Applies to Model DH/BH-125 airplanes series 1A up to and including series 600A certificated in all categories.

(a) Prior to the accumulation of 6600 total landings or upon reaching 10 years after the date of manufacture of the airplane, whichever occurs first, if not already accomplished, incorporate Hawker Siddeley modifications 25-2402 and 25-2207 in accordance with Section 2, Accomplishment Instructions of Hawker Siddeley Aviation, Ltd., Service Bulletin 53-46 (2402), Revision 2, dated February 16, 1976. Airplanes which have already exceeded 6500 landings or are over 9½ years from date of manufacture must be modified within the next 100 landings or 6 months, whichever occurs first.

(b) Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and /or modifications requried by this AD."

(Section 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85).

Note.— The FAA has determined for the reasons indicated earlier that this action which revises a proposed rule and reopens the comment period, (1) involves a proposed regulation which is not considered to be major under Executive Order 12291, (2) is not a significant rule pursuant to DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979, and (3) it is further certified under the criteria of the Regulatory Flexibility Act that this rule, if promulgated, will not have a significant economic effect on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on September 13, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-27493 Filed 10-7-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-211; Virginia—2]

High-Cost Gas Produced From Tight Formations; Virginia

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp V. 1981), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Commonwealth of Virginia, Department of Labor and Industry, Division of Mines and Quarries, that the Little Valley Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on November 21, 1983.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 20, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:
Leslie Lawner, (202) 357–8511,
or
Walter Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

In the matter of High-cost gas produced from tight formations; Docket No. RM79–76–211; Virginia-2.

Issued: October 5, 1983.

I. Background

On July 19, 1983, the Commonwealth of Virginia, Department of Labor and Industry, Division of Mines and Quarries (Virginia), submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Little Valley Formation, located in portions of Scott and Washington Counties, Virginia, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Virginia's recommendation that the Little Valley Formation be designated a tight formation should be adopted. Virginia's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Virginia recommends that the Little Valley Formation, located in portions of Scott and Washington Counties, Virginia, an area of approximately 89 square miles and encompassing all of the Mendota and Wallace quadrangles south of the Holston River, be designated as a tight formation. The formation is an argillaceous limestone sequence which disconformably overlies the Berea Sandstone and is overlain by the St. Louis Limestone. The average depth to the top of the Little Valley Formation is 3,191 feet, with an average thickness of 673 feet.

III. Discussion of Recommendation

Virginia claims in its submission that evidence gathered and presented in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Virginia further asserts that existing state law and established casing procedures assure protection of all fresh water zones.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97 [Reg. Preambles 1977–1981], FERC Stats. and Regs. ¶30,180 (1980) notice is hereby given of the proposal submitted by Virginia that the Little Valley Formation, as described and delineated in Virginia's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 21, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–211 (Virginia-2), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than October 20, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set

forth below, in the event Virginia's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(181) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(149) through (180) [RESERVED]

(181) *The Little Valley Formation in Virginia.* RM79-76 (Virginia—2).

(i) *Delineation of formation.* The Little Valley Formation is found in Scott and Washington Counties. The designated area consists of approximately 89 square miles comprising all of the Mendota and Wallace quadrangles south of the Holston River in Virginia.

(ii) *Depth.* The average depth to the top of the Little Valley Formation is 3,191 feet, with an average thickness of 673 feet.

[FR Doc. 83-27537 Filed 10-7-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

Availability of Information and Records to the Public; Fees for Providing Information and Records; Procedures and Appeals

Correction

In FR Doc. 83-25386 beginning on page 42830 in the issue of Tuesday, September 20, 1983, make the following corrections:

1. On page 42831, third column, fifth paragraph, ninth line, "Secretary Act" should have read "Security Act".

2. On page 42835, second column, § 422.441(c)(1), second line, the colon at the end of the line should have been a period.

3. Wherever "§ 422. . . ." appears in the following places, it should be changed to "§ 422. . . .".

a. Page 42831, first column (4 places).

b. Page 42831, second column (1 places).

c. Page 42835, third column (7 places).

d. Page 42836, first column (1 places).

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 24

[Docket No. R-80-831]

Debarment, Suspension and Limited Denial of Participation

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule improves and clarifies the procedural guarantees afforded under the existing regulations governing debarment, suspension and ineligibility of HUD participants and contractors. It also incorporates the provisions contained in the Office of Federal Procurement Policy's (OFPP) Policy Letter 82-1, concerning Government-wide debarment, suspension and ineligibility of contractors, and amends provisions of HUD's existing regulations to conform with provisions of the OFPP Policy Letter.

DATES: Comments must be received on or before October 11, 1983.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Phillip L. Schulman, Assistant General Counsel for Inspector General and Administrative Proceedings, Department of Housing and Urban Development, Room 10270, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5557. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: On July 8, 1980 (45 FR 46012), HUD published a proposed rule amending and clarifying the existing Part 24. On July 1, 1982, the Office of Federal Procurement Policy (OFPP) published Policy Letter 82-1 establishing criteria for suspension and debarment of Government contractors and subcontractors throughout the Executive Branch.

Based upon both the comments received on the proposed rule and the OFPP Policy Letter, HUD has completely reviewed its administrative procedures under 24 CFR Part 24, which contains the regulations governing debarment, suspension and ineligibility of HUD participants and contractors. That review has resulted in this proposed rule which provides procedural safeguards for HUD participants and contractors as well as protection for HUD and the public from persons who are found to be irresponsible. This rule incorporates provisions, contained in the OFPP Policy Letter, setting forth Government-wide policies and procedures for debarment and suspension of Government contractors and also provisions contained in the previously proposed Part 24 to the extent that they are not inconsistent with the OFPP Policy Letter. In the interest of uniformity, where the OFPP Policy Letter contained specific definitions of terms which could affect the applicability of Government-wide sanctions (e.g., "adequate evidence" and "affiliates"), we have adopted the OFPP language. The OFPP Policy Letter requires all departments and agencies to have uniform policies and procedures in this area.

One commenter on the previous proposed Part 24 stated that a hearing should be granted prior to suspension. The courts have held that appropriate pre-hearing suspensions do not violate due process. Further, pre-termination hearings would defeat the purpose of providing immediate public protection. However, the Department recognizes the severity of the suspension sanction and therefore has limited the grounds for suspension to those offenses indicating the most serious lack of business responsibility. Further, the regulations provide for a hearing to be scheduled promptly. These provisions insure the suspended person's right to have the matter expeditiously resolved while also insuring that the public interest is protected.

The commenter also suggested that the official initiating the suspension or debarment personally meet with the participant in an informal atmosphere prior to any hearing. Unfortunately, this is administratively infeasible given the broad responsibilities of these officials. It is for this reason that cases are referred to administrative judges, who are impartial officials and can provide due process in an administrative forum.

Another commenter stated that the name of a suspended or debarred person should not be included on the Consolidated List until the action has been upheld by the Hearing Officer and a final determination has been made. A debarment, in fact, is not listed until a final determination has been issued. However, suspension by its very nature requires immediate listing to assure that the person is excluded pending the appeal. This, in essence, is the

difference between a suspension and a debarment.

Several objections were raised to our inclusion of "doing business with a person on the Consolidated List . . . where it . . . should have been known that the person was on the List" as grounds for debarment. It was argued that under this provision, a participant could be excluded even if he did not have access to the List. Because of these comments, this language has now been deleted. Debarment will be authorized only where actual knowledge existed that the person was on the List.

Some commenters were critical of a section which authorized debarment for "any other cause of such serious or compelling nature as to affect responsibility." The commenters found this provision to be too vague. Unfortunately, it is impossible to cover every conceivable situation involving nonresponsibility in our regulations and so an "omnibus" provision is required to protect the public interest. However, this provision is specifically limted to violations of a "serious or compelling nature."

It was also suggested that the issuance of an indictment be eliminated as a basis for suspension. The Department has a public interest obligation to exclude a participant from its programs upon notice of probable cause (the standard used by Grand Juries for issuing indictments) that the individuel or entity committed a crime. In this regard, numerous cases and the OFPP Policy Letter have recognized that the issuance of an indictment constitutes adequate evidence to support a suspension. Accordingly, this provision has been retained.

One commenter criticized HUD for not requiring compliance with "the broader mandate of providing decent, clean, and sanitary housing to low and moderate income individuals" as a condition of participation. The proposed language woud be overly vague. The standards of the regulations, by assuring responsible participation and compliance with specific contractual requirements, will encourage decent, clean and sanitary housing.

One commenter stated that "it is very important for the Department to take into consideration the overall record of the individual who was involved." The regulations provide for this by stating that sanctions are always discretionary and are only taken in the best interest of the Government. Further, there is a right to a hearing provided before an independent Hearing Officer, who will conduct a *de novo* review of the matter, including any evidence concerning past performance in Departmental programs.

One commenter stated that affiliates should not be sanctioned unless directly involved in the impropriety. Under our regulations, the decision to sanction affiliates is made on an *ad hoc* basis. If a person who has been determined to be irresponsible can exercise control over another entity, the Department may properly act to protect the public interest by excluding the controlled entity.

The three-year time period for bringing debarment actions was critcized. Unfortunately, cases arise where HUD does not discover the cause for sanction before several months or years have elapsed since the occurrence of the event. In many instances, HUD is precluded from bringing any action pending completion of an Office of Inspector General or FBI investigation. Therefore, this provision is necessary. We note, however, that pending the imposition of a debarment or suspension, the person is not precluded from doing business with the Department.

Finally, a commenter criticized the application of the regulations to grantees and objected to issuance of these regulations in light of OMB Circular A–110 (Attachment L). We see no difference between grantees and other types of participants in HUD programs with regard to the question of responsibility. Exclusion of nonresponsible grantees from HUD programs is as important as exclusion of other types of participants. The focus of Attachment L is very different from that of our regulations. Attachment L concerns itself with performance problems arising under a particular grant. HUD regulations are concerned in addition with violations which may be outside the scope of the grant, but nonetheless affect the desirability of doing business with the grantee.

This proposed rule makes the following substantive changes:

1. The term "contractor or grantee" in the present regulations would be replaced by the terms "contractor" and "participant" in order to distinguish between procurement contractors and all others with whom the Department does business. It has been necessary to create two categories of sanctions because the OFPP Policy Letter requires the Government-wide exclusion of suspended or debarred procurement contractors but does not provide for exclusion of others with whom HUD does business. Since HUD suspends and debars those that are not procurement contractors, for example, mortgagors and builders of HUD-insured projects, the term "participant" has been used to identify all those covered by the current definition of "contractor or grantee" except procurement contractors. The term "participant" includes those who participate in HUD programs, but do not fall within the present definition, including ultimate beneficiaries such as tenants and subsidized mortgagors. However, ultimate beneficiaries may only be sanctioned for fraud or severe program abuse, for example, fraudulently obtaining subsidy payments where an individual did not qualify for assistance. Both "contractor" and "participant" include those who may reasonably be expected to take part in HUD contracts or programs.

2. Definitions have been included to specify the level of proof necessary to establish "adequate evidence" and "preponderance of the evidence." Adequate evidence is comparable to the probable cause necessary for an arrest, a search warrant or a preliminary hearing in a criminal matter, and is the standard used in suspensions while the greater burden of preponderance is applied to debarments.

3. The definition of "affiliate" has been amended to include individuals and to emphasize the control aspect of the relationship.

4. The sanctions of "Temporary Denial of Participation" and "Conditional Denial of Participation" have been combined into a single sanction entitled "Limited Denial of Participation," which includes the causes available under the prior sanctions, but which may not be reciprocally imposed.

5. Section 24.5 makes it clear that a debarment includes all divisions or organizational elements of a participant or contractor, unless the debarment is, by its terms, limited to specific divisions or elements.

6. Sections 24.5(c) and 24.16(b) provide that the debarment or suspension of a contractor is effective throughout the Executive Branch of Government unless an agency head makes a written finding of compelling reasons for doing business with the contractor. Sections 24.9 and 24.20 retain the existing provisions calling for review of existing HUD contracts with a suspended or debarred party to determine whether it is in the best interests of the Government to continue those contracts.

7. Sections 24.5(d) and 24.16(c) limit the time period within which HUD may impose a debarment or suspension.

8. Sections 24.6(g) and 24.17(a)(9) provide for Department-wide exclusion of a participant or contractor in violation of Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation

Act of 1973, and the Age Discrimination Act of 1975, in addition to Title VI of the Civil Rights Act of 1964, as currently provided.

9. Section 24.6(m) authorizes HUD to debar a participant or contractor who knowingly does business with a person named on the Consolidated List or the HUD List so that the excluded participant or contractor does business with HUD.

10. Sections 24.6(n) and 24.17(c) authorize debarment or suspension based on a similar action by another Federal agency for any reason that would be a cause for debarment or suspension under this part.

11. Sections 24.7(b), 24.18(b) and 24.26 prescribe the contents of the notice of imposition of sanction.

12. Section 24.14 establishes grounds and procedures for reinstatement of suspended or debarred participants and contractors. The decision to reinstate is made by the Suspending or Debarring Official based on the written submission of evidence and argument. The Official may submit the matter to a Hearing Officer for determination on the written record.

13. In those cases where the suspension or debarment is based on an indictment, conviction or sanction by another agency, appeal rights are limited to the written record.

14. The period of debarment has been generally reduced to a term not to exceed three years (including any period of suspension); however, for willful or egregious misconduct the debarment period may exceed three years.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address set forth above.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued February 17, 1981. Analysis of the rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a signficant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since it will have applicability only to a very small percentage of the total number of entities which have dealings with the Department.

This rule was listed as item S–2–79 under the Office of the Secretary in the Department's Semi-Annual Agenda of Regulations published on April 25, 1983 at 48 FR 18055 pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

There is no Catalog of Federal Domestic Assistance program number applicable to this rule.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure.

Accordingly, the Department proposes to revise 24 CFR Part 24 to read as follows:

PART 24—DEBARMENT, SUSPENSION AND LIMITED DENIAL OF PARTICIPATION

Subpart A—General

Sec.

Subpart B—Debarment

Subpart C—Suspension

Subpart D—Limited Denial of Participation

Subpart E—Lists of Excluded Participants and Contractors

Authority: Sec. 7(d) of the Department of HUD Act; 42 U.S.C. 3535(d).

Subpart A—General

§ 24.1 Policy.

In order that HUD may realize the goal of a decent home and a suitable living environment for every American family, it is necessary that HUD does business only with participants an contractors that can demonstrate that Government funds, assistance or programs will be properly utilized. Accordingly, participants and contractors that have been determined not to be responsible under these regulations shall be denied paticipation in Department programs, and contractors that have been determined not to be responsible under these regulations shall be excluded from HUD participation, and from receiving contracts throughout the Executive Branch of the Federal Government for whatever period is required by the public interest.

§ 24.2 Purpose.

This part sets forth rules for the exclusion of individuals, corporations, partnerships and other entities from direct or indirect participation in HUD programs and of contractors from direct or indirect participation in HUD programs or receipt of contracts or subcontracts throughout the Federal Government. The sanctions shall be used to protect the public interest and not for punitive purposes.

§ 24.3 Applicability.

(a) *General.* Any participant or contractor is subject to the sanctions set forth in this part, if cause for imposing the sanction is shown and the procedures provided in this part are followed. Sanctions may be taken against ultimate beneficiaries, presently limited to subsidized tenants and subsidized mortgagors, only upon evidence of fraud or serious program abuse. Persons may be subject to sanctions regardless of whether they were engaged in a HUD program at the time of the conduct on which the sanction is based, or whether they acted individually, on behalf of others, or in a

private or public capacity. Nothing in this Part shall impair or limit the right to impose any sanction provided for by contract, including Guaranty Agreements with the Government National Mortgage Association. Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the statute, regulation or Executive Order shall take precedence.

(b) *Exceptions.* Sanctions taken against participants under this part shall not apply to: (1) Contracts with, or grants made to, owners or occupants of real property in connection with eminent domain proceedings; (2) relocation payments made to eligible displaced parties; (3) the sale of the personal residence of an excluded individual; or (4) successful bidders at all-cash sales of HUD housing units offered without qualification at public sales.

§ 24.4 Definitions.

As used in this part, the following terms shall have the meanings set forth next to them:

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliates.* Individuals or business concerns are affiliates if, directly or indirectly, (1) either one controls or can control the other, or (2) a third individual or concern controls or can control both.

(c) *Assistance agreement.* Grants and cooperative agreements.

(d) *Benefits.* Money or any other thing of value provided by, or realized because of, the Department. "Thing of value" includes insurance or guarantees of any kind.

(e) *Consolidated List of Debarred, Suspended, and Ineligible Contractors.* A list compiled, maintained, and distributed by the General Services Administration containing the names of contractors debarred or suspended by agencies under the procedures of this Part as well as contractors declared ineligible under other statutory or regulatory authority.

(f) *Contractor.* Any individual or other entity that: (1) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government procurement contract or a subcontract under a Government procurement contract; or (2) conducts business with the Government as an agent or representative of another contractor.

(g) *Conviction.* A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction entered upon a plea of nolo contendere.

(h) *Debarment.* Exclusion from direct or indirect participation in HUD programs including programs funded, guaranteed or insured by HUD and in the case of a "contractor" from Government contracting for a reasonable, specified period of time commensurate with the seriousness of the matter that is the cause of the debarment.

(i) *Debarring Official.* Any Assistant Secretary of HUD, the General Counsel of HUD, the General Manager of the New Communities Development Corporation and the President of the Government National Mortgage Association.

(j) *Hearing Officer.* An Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary, or designee, to conduct proceedings under this part.

(k) *HUD List of Debarred, Suspended or Ineligible Participants.* A list compiled, maintained and distributed by the HUD Inspector General in accordance with § 24.29, containing the names of all participants and contractors debarred, suspended or determined to be ineligible in accordance with this Part.

(l) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(m) *Ineligible.* Excluded from participation in Departmental programs or Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or regulatory authority other than the Department's debarment, suspension or limited denial of participation procedures, such as the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive Orders, the Walsh-healey Public Contracts Act, the Buy American Act, and the Enviromental Protection Acts and Executive Orders.

(n) *Legal proceedings.* Any civil judicial proceeding to which the Government is a party, or any criminal proceeding. The term includes appeals from such proceedings.

(o) *Limited Denial of Participation.* The immediate exclusion from participation, or immediate imposition of conditions for participation, in a program of the Department within a limited geographical area for a period generally not to exceed 12 months.

(p) *Participants.* State and local governments, individuals and public and private organizations or their employees other than those defined as contractors in § 24.4(f) that directly or indirectly participate or may reasonably be expected or participate in HUD programs. (For example, a participant in housing programs of another Federal agency or state government is a participant.) However, no sanction shall be imposed against direct recipients of Community Development Block Grant funds, except as provided by 24 CFR Part 570. "Participants" include any recipient of HUD benefits, either directly or indirectly, through non-Federal sources or other recipients. Participants include, but are not limited to, borrowers, builders, HUD Contractors, principals in multifamily projects (as defined in 24 CFR Part 200 Subpart G), purchasers at sales of HUD housing units offered with conditions of sale, recipients under assistance agreements, ultimate beneficiaries of HUD programs, mortgagees, fee appraisers and inspectors, real estate agents and brokers, area management brokers, management and marketing agents, or persons in a business relationship with participants, such as accountants, consultants, investment bankers, architects, engineers, contractors with participants, and attorneys.

(q) *Person.* Includes both individuals and entities.

(r) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(s) *Suspending Offical.* Any Assistant Secretary of HUD, the General Counsel of HUD, the General Manager of the New Communities Development Corporation and the President of the Government National Mortgage Association.

(t) *Suspension.* The action taken to immediately disqualify a participant or contractor temporarily from direct or indirect participation in HUD programs, including program funded, guaranteed or insured by HUD, or Government contracting based upon adequate evidence of serious wrongdoing.

Subpart B—Debarment

§ 24.5 Debarment in general.

(a) *Officials who may initiate debarment.* Any Debarring Official may intitate debarments. No debarment may be initiated against HUD-FHA approved mortgagees, however, without approval of the Mortgagee Review Board. A Debarring Official, acting in the public

interest, may debar a participant or contractor for any cause set forth in § 24.6. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision whether to initiate debarment shall be within the discretion of the Debarring Official and in the best interest of the Government.

(b) *Effect of debarment.* In addition to exclusion from direct or indirect participation in HUD programs, or contractor's debarment from procurement shall be effective throughout the Executive Branch of the Government, unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealing between that agency and the contractor. A participant's debarment is limited to direct or indirect participation in HUD programs.

(c) *Time limitations on decision to debar.* The notice of proposed debarment shall be issued within three years of (i) a criminal conviction, (ii) completion of an investigation or audit which is a basis for the debarment action, or (iii) discovery of the cause on which the debarment action is based, whichever is later.

§ 24.6 Causes for debarment.

A participant or contractor may be debarred, based upon a preponderance of the evidence, for any of the following causes:

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility or a participant or contractor.

(b) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(1) Willful failure to perform in accordance with the terms of one or more contracts; or

(2) A history of failure to perform, or of unsatisfactory performance of one or more contracts.

(c) Any other cause of so serious or compelling a nature that it affects present responsibility.

(d) Violation of any settlement agreement made under this part.

(e) Failure to comply with Title VIII of the Civil Rights Act of 1968 or Executive Order 11063, HUD's Affirmative Fair Housing Marketing regulations or an Affirmative Fair Housing Plan.

(f) Violation of Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1973, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(g) Violation of any law, regulation, or obligation relating to conflict of interest.

(h) Violation of any nondiscrimination provisions included in any agreement or contract.

(i) Violation of any law, regulation, or obligation relating to applications for financial assistance, insurance, or guarantee, or to the performance of obligations under an assistance award or conditional or final commitment to insure or guarantee.

(j) Making or causing to be made any false statement for the purpose of influencing in any way an action of the Government.

(k) Failure to pay debts to HUD within a reasonable time after demand, pursuant to 24 CFR Part 17.

(l) Knowingly doing business with a person named on the HUD List, except where approved by the Debarring Official, so as to enable the listed person to become, directly or indirectly, a participant or contractor with respect to HUD programs.

(m) Debarment by another Federal agency for any cause specified in this section.

§ 24.7 Procedures.

(a) *Decision-making process.* The debarment decision-making process shall be as informal as practicable, consistent with principles of fundamental fairness.

(b) *Notice of proposal to debar.* Debarment shall be initiated by advising the participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being considered;

(2) Of the reasons for the proposed debarment in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.6 for proposing debarment;

(4) Of the right to request within 30 days of receipt, in writing, a hearing pursuant to § 24.11;

(5) Of the following potential effect(s) of debarment:

(i) For a participant, that the participant will be excluded from all participation, direct or indirect, in any HUD program, including any program funded, guaranteed or insured by HUD;

(ii) For a contractor, that in addition to exclusion from direct or indirect participation in HUD programs, the contractor will be excluded from receiving any Federal Government contract, and Federal agencies shall not solicit offers from, or award contracts or subcontracts, to, the contractor unless the acquiring agency's head or designee determines that there is a compelling reason for such action; and

(6) Of HUD's procedures governing debarment decisionmaking, including a statement that, if no response is made within 30 days, the decision will be made final.

(c) *Receipt of notice.* Notice shall be considered to have been received by the addressee, if sent certified mail, return receipt requested, to the addressee's last known address.

(d) *Notice of Debarring Official's final decision.* If no request for hearing is received within 30 days, the participant or contractor and any affiliates shall be given prompt notice of the final decision to debar by certified mail, return receipt requested—

(1) Referring to the notice of proposed debarment;

(2) Stating that the debarment is effective immediately; and

(3) Stating the period of debarment, including effective dates.

§ 24.8 Period of debarment.

Debarment shall be for a period commensurate with the seriousness of the cause(s), generally not to exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Where the offense is willful or egregious, a longer term of debarment may be imposed, up to an indefinite period.

§ 24.9 Scope of debarment.

(a) *Scope in general.* Debarment constitutes debarment of all divisions or other organizational elements of the participant or contractor, unless the debarment decision is limited by its terms of specific organizational elements. The Debarring Official may extend the debarment decision to include any affiliates of the participant or contractor if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond as set forth in

§ 24.7(b). An affiliate may be included in a debarment soley on the basis of its affiliation and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element of a nonresponsible entity presents no risk to Federal interests is placed on the affiliate or organizational element. Existing contracts with debarred persons shall be reviewed and terminated unless it is determined that termination is not in the best interests of the Government.

(b) *Conduct imputed to participant or contractor.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant or contractor may be imputed to the participant or contractor when the conduct occurred in connection with the individual's performance of duties for our on behalf of the participant or contractor, or with the participant's or contractor's knowledge, approval, or acquiescence.

(c) *Conduct imputed to individuals associated with participant or contractor.* The fraudulent, criminal, or other seriously improper conduct of a participant or contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant or contractor who participated in, knew of, or had reason to know of, the participant's or contractor's conduct.

(d) *Conduct of one participant or contractor imputed to other participating parties.* The fraudulent, criminal, or other seriously improper conduct of one participant or contractor participating in a joint venture or similar arrangement may be imputed to other participating parties if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants or contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§ 24.10 Appeal procedures.

Within 30 days of receipt of a notice of proposed debarment, any participant or contractor, including any affiliates, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. If no appeal is filed within the time limit, the proposed decision to debar shall be final.

§ 24.11 Hearing procedures.

(a) *General.* Hearings shall be governed by the procedures set forth at 24 CFR Part 26, except as provided herein.

(b) *Right to hearing.* A participant or contractor, including any affiliate, that has requested a hearing has the right to be heard before a Hearing Officer and to be represented by counsel as follows:

(1) Except as provided by paragraphs (b) (2) and (3) of this section, the participant or contractor may request an oral hearing before a Hearing Officer;

(2) When the Department of Justice advises, in writing, and the Suspending Official determines that (i) a suspension is based on the same facts as pending or contemplated legal proceedings and (ii) substantial interests of the Government in those proceedings would be prejudiced by a hearing, there shall be no right to a hearing;

(3) Where the action is based solely upon an indictment or conviction, or upon suspension or debarment by another Federal Government agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a Hearing Officer;

(c) *Consolidation of hearings.* Where a suspension or Limited Denial of Participation is accompanied or followed by a proposed debarment, the hearing shall be consolidated with the hearing on the proposed debarment.

§ 24.12 Determination of Hearing Officer; review of determination.

(a) *Written determination.* After the participant or contractor has been afforded an opportunity to be heard, the Hearing Officer shall make a written determination on the evidence presented, including any evidence of mitigating circumstances. The Hearing Officer may issue a determination in accordance with Part 26. It is proposed that the sanction include an affiliate; the Hearing Officer shall rule specifically whether, and to what extent, the determination applies to such affiliate. The Hearing Officer's determination shall be transmitted to all appealing parties by certified mail, return receipt requested.

(b) *Transmission of determination.* The Hearing Officer's determination shall also be transmitted promptly to the HUD official who invoked the administrative sanction, and to the General Counsel, or designee.

(c) *Finality and secretarial review.* The Hearing Officer's determination shall be final unless, pursuant to 24 CFR Part 26, the Secretary, or designee, decides as a matter of discretion to review the finding of the Hearing Officer. Any party may request such a review in writing within 15 days of receipt of the Hearing Officer's determination.

§ 24.13 Requests for reinstatement.

(a) *Grounds.* Requests for reinstatement shall be made in writing, addressed to the Suspending or Debarring Official, as follows:

(1) Immediately upon proof of:

(i) Discovery of new and material evidence not previously available;

(ii) Dismissal of the indictment or reversal of the conviction or judgment, or reversal of the suspension or debarment by another agency upon which HUD's suspension or debarment was based; or

(iii) Bona fide change in ownership or management.

(2) Not less than six months after the final determination of debarment or imposition or affirmation of the suspension or LDP, upon proof that the causes for the debarment have been eliminated and upon certification that the requirements of applicable statutes and administrative rules and regulations are understood by the participant or contractor and will be followed in the future.

(b) *Procedures.* The determination whether to reinstate shall be based on written submission of evidence, without a further hearing. However, in determining whether reinstatement is appropriate, the Suspending or Debarring Official may refer the matter to the Hearing Officer for review of the written submission. Upon referral and consideration, the Hearing Officer shall recommend to the Suspending or Debarring Official whether or not reinstatement is warranted under the standards of paragraph (a) of this section.

§ 24.14 Settlement.

A Debarring Official may settle an administrative action under this part in the interest of the Government at any time.

Subpart C—Suspension

§ 24.15 general.

(a) *Officials who may initiate suspensions.* Any Suspending Official may issue suspensions. No suspension may be issued against HUD-FHA approved mortgagees, however, without approval of the Mortgagee Review Board. A Suspending Official, acting in the public interest, may suspend a participant or contractor for cause set forth in § 24.16. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the

decision whether to suspend shall be within the discretion of the Suspending Official and in the best interest of the Government.

(b) *Effect of Suspension.* In addition to exclusion from direct or indirect participation in HUD programs, a contractor's suspension from procurement shall be effective throughout the Executive Branch of the Government, unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor. A participant's suspension is limited to direct or indirect participation in HUD programs.

(c) *Time limitations on decision to suspend.* The notice of suspension shall be issued within three years of (i) a criminal conviction, (ii) completion of an investigation or audit which is a basis for suspension, or (iii) discovery of the cause on which the suspension is based, whichever is later.

§ 24.16 Causes for suspension.

(a) *Generally.* A participant or contractor may be suspended, based upon adequate evidence, for any of the following causes:

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Feferal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a participant or contractor;

(5) Violation of any settlement agreement made under this part;

(6) Failure to comply with Title VIII of the Civil Rights Act of 1968, Executive Order 11063, the Department's Affirmative Fair Housing Marketing regulations or an Affirmative Fair Housing Plan;

(7) Violation of any non-discrimination provision included in any agreement or contract;

(8) Violation of Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(9) Commission or omission of acts of such serious and compelling nature affecting responsibility or indicating inability to perform business with the Government as may be determined by the appropriate Suspending Official to warrant suspension. Such conduct and omission include, but are not limited to: (i) Violation of any law, regulation, or obligation relating to applications for financial assistance, insurance, or guarantees, or to the performance of obligations under an assistance agreement or conditional or final commitment to insure or guarantee; (ii) substantial failure to honor contractual obligations or to proceed in accordance with contract specifications; and (iii) making or causing to be made any false statement for the purpose of influencing in any way an action of the Government.

(b) *Indictment.* Indictment or being named as an unindicted co-conspirator for any of the causes specified in paragraph (a) of this section constitutes adequate evidence for suspension.

(c) *Suspension.* Suspension by another Federal agency for cause specified in paragraph (a) of this section constitutes adequate evidence for a concurrent suspension.

§ 24.17 Procedures.

(a) *Decision-making process.* The suspension decision-making process shall be as informal as practicable, consistent with principles of fundamental fairness. Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation, administrative proceedings or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, the suspending official shall consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(b) *Notice of suspension.* Suspension shall be made effective by advising the participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That suspension is being imposed;

(2) That the suspension is based on an indictment or other adequate evidence that the participant or contractor has committed irregularities (i) of a serious nature in business dealings with the Government; or (ii) seriously reflecting on the propriety of further Government dealings with the participant or contractor; any such irregularities shall be described in terms sufficient to place the participant or contractor on notice without disclosing the Government's evidence;

(3) Of the cause(s) relied upon under § 24.16b for imposing suspension;

(4) Of the right to request a hearing pursuant to § 24.11;

(5) Of the following potential effect(s) of suspension:

(i) For a participant, that the participant is excluded from all participation, direct or indirect, in any HUD program, including any program funded, guaranteed or insured by HUD;

(ii) For a contractor, that in addition to being excluded from direct or indirect participation in HUD programs, the contractor is excluded from receiving any Federal Government contract, and Federal agencies shall not solicit offers from, or award contracts or subcontracts to, the contractor unless the contracting agency's head or designee determines that there is a compelling reason for such action; and

(6) Of HUD's procedures governing suspension decision-making, including the right to request a hearing within 30 days of receipt of the notice of suspension.

(c) *Receipt of notice.* Notice shall be considered to have been received by the addressee if sent certified mail, return receipt requested, to the addressee's last known address.

§ 24.18 Period of suspension.

All suspensions shall be for a temporary period pending the completion of an investigation, administrative proceedings or legal proceedings. A suspension shall become effective immediately upon issuance of the notice specified in § 24.17(b). In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General or a United States Attorney requests, in writing, a continuance for an additional six months. In no event shall a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. The time limitations for suspension contained in this section may be waived by the affected party.

§ 24.19 Scope of suspension.

(a) *Generally.* Suspension constitutes suspension of all divisions or other organizational elements of the participant or contractor, unless the suspension is limited by its terms to specific organizational elements. The Suspending Official may extend the

suspension to include any affiliates of the participant or contractor if they are (1) specifically named, and (2) given written notice of the suspension and an opportunity to respond as set forth in § 24.17(b). An affiliate may be included in a suspension solely on the basis of its affiliation and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element of a nonresponsible entity presents no risk to Federal interests is placed on the affiliate or organizational element. Existing contracts with suspended persons shall be reviewed and terminated unless it is determined that termination is not in the best interests of the Government.

(b) *Conduct imputed to participant or contractor.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant or contractor may be imputed to the participant or contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant or contractor, or with the participant's or contractor's knowledge, approval, or acquiescence.

(c) *Conduct imputed to individuals associated with participant or contractor.* The fraudulent, criminal, or other seriously improper conduct of a participant or contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant or contractor who participated in, knew of, or had reason to know of, the participant's or contractor's conduct.

(d) *Joint ventures.* The fraudulent, criminal, or other seriously improper conduct of one participant or contractor participating in a joint venture or similar arrangement may be imputed to other participating parties if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants or contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§ 24.20 Appeal procedures.

Within 30 days of receipt of a notice of suspension, a participant or contractor, including any affiliates, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. If a hearing is requested, it shall be held in accordance with sections 24.11 through 24.13.

§ 24.21 Settlements.

A Suspending Official may settle an administrative action under this part in the interest of the Government at any time.

Subpart D—Limited Denial of Participation

§ 24.22 Authority to order Limited Denial of Participation.

Regional Administrators or Area Managers may order a Limited Denial of Participation affecting any participant or contractor and their affiliates except HUD–FHA approved mortgagees. In each case, even if the offense or violation is of a criminal, fraudulent or serious nature, the decision to order a Limited Denial of Participation shall be discretionary and in the best interests of the Government.

§ 24.23 Causes for a Limited Denial of Participation.

A Limited Denial of Participation shall be based upon adequate evidence of the following causes:

(a) That approval of an applicant for insurance would constitute an unsatisfactory risk;

(b) Irregularities in participant's or contractor's past performance in a HUD program;

(c) Failure of a participant or contractor to maintain prerequisities of eligibility to participate in a HUD program;

(d) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(e) That requirements of an assistance agreement or contract will not be satisfied upon completion;

(f) Construction deficiencies in ongoing projects;

(g) Any cause for imposing a suspension under § 24.16.

§ 24.24 Period and scope.

(a) *Generally.* A Limited Denial of Participation is limited to the program under which the cause arose except that where it is based on an indictment, conviction or suspension or debarment by another agency it need not be based on offenses against HUD and it may apply to all programs. The sanction is effective only within the jurisdiction of the office imposing it. For the purpose of this subpart, the term "program" may include any or all of the functions within the jurisdiction of an Assistant Secretary, the General Counsel, or the General Manager of the New Communities Development Corporation.

(b) *Effectiveness.* This sanction shall be effective immediately upon being signed by the authorized official and shall remain effective up to 12 months or until the cause for the Limited Denial of Participation is resolved, whichever comes first. If the cause has not been resolved by the end of a year, the Limited Denial of Participation may be renewed for an additional period of up to one year. The person may also be suspended or debarred under this part.

(c) *Affiliates.* An affiliate may be included in a Limited Denial of Participation solely on the basis of its affiliation and regardless of its knowledge of or participation in the acts providing cause for the sanction.

§ 24.25 Notice.

(a) *Generally.* A Limited Denial of Participation shall be initiated by advising a participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That the sanction is imposed on the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.23 for imposing the sanction;

(4) Of the right to request within 30 days of receipt in writing, an informal hearing on the sanction;

(5) Of the Department's procedures governing Limited Denial of Participation; and

(6) Of the potential effect of the sanction and the impact of the participant's or contractor's participation in Departmental programs specifying the program involved and the geographical area affected by the action.

(b) *Receipt of notice.* Notice shall be considered to have been received by the addressee if sent certified mail, return receipt requested, to the addressee's last known address.

§ 24.26 Informal hearing.

Upon receipt of a request for an informal hearing, the official imposing the sanction shall promptly arrange such a hearing with the participant or contractor and may designate another official to conduct that hearing. The participant or contractor may be represented by counsel and may present all relevant materials to the official, or designee. After consideration of the materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the decision.

§ 24.27 Appeal.

Where the decision is to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. This request shall be filed within 15 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at § 24.11 through § 24.13.

Subpart E—Lists of Excluded Participants and Contractors

§ 24.28 The Consolidated List of Debarred, Suspended, or Ineligible Contractors.

(a) The Inspector General shall compile and transmit to the General Services Administration (GSA) a list of all contractors debarred, suspended or declared ineligible by the Department. The list shall indicate: (1) The names and addresses of all debarred, suspended, or ineligible contractors, in alphabetical order, with cross-references when more than one name is involved in a single action; (2) the cause for the action or other statutory or regulatory authority; (3) the scope of the action; (4) the termination date for each listing; and (5) the name and telephone number of the point of contact for the action.

(b) The Inspector General shall (1) notify GSA of the information required by paragraph (a) of this section within five (5) working days after the action becomes effective; (2) notify GSA within five (5) working days after modifying or rescinding an action; and (3) notify GSA of the names and addresses of agency organizations that are to receive the Consolidated List and the number of copies to be furnished to each.

§ 24.29 Establishment and maintenance of the HUD List of Debarred, Suspended and Ineligible Participants.

(a) *Maintenance of HUD lists.* The HUD Inspector General shall maintain and consolidate HUD lists relating to the debarment, suspension or ineligibility of participants and contractors. All lists shall be kept current. Procedures for issuance of notices of additions and deletions shall be established by the Inspector General. Each Suspending or Debarring Official under this part shall appoint a liaison officer responsible for providing the Office of Inspector General with current information. The Office of Inspector General shall, in cooperation with other offices of HUD, establish procedures for assuring the timely receipt of information relevant to updating the HUD List.

(b) *Information in the list.* The HUD List shall show as a minimum the following information:

(1) The names of those persons against whom HUD has invoked administrative sanctions (in alphabetical order) with appropriate cross-reference where more than one name is involved in a single action.

(2) The basis of authority for such action.

(3) The extent of the restrictions imposed, including their expiration date.

(4) The name of the office initiating the action, where appropriate.

(5) Designation of whether debarred as a participant or contractor.

(c) *Distribution of the HUD List.* The Inspector General shall arrange for reproduction and distribution of the HUD List. The list shall be distributed among HUD employees and others outside HUD whose duties require access to the list, as authorized by the Assistant Secretaries, Area Managers, and Regional Administrators. Distribution shall also be made upon request. Procedures for submiting requests for information contained in the HUD List and distribution of such information shall be established by the Office of Inspector General. Names of persons on the HUD List shall be available upon request to that office.

§ 24.30 Classifications for entry on the HUD List.

Persons may be listed on the HUD List in accordance with the following classifications:

(a) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healy Public Contracts Act (41 U.S.C. 35 *et seq.*), or the Service Contract Act (41 U.S.C. 351, *et seq.*) as found by the Secretary of Labor to have violated any of the agreements or representations required by those Acts.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a–2(a)), as found by the Comptroller General to have violated that Act.

(c) Those listed by Comptroller General in accordance with provisions of Executive Order 11246 as found by the Director, Office of Federal Contract Compliance, to have failed to satisfy obligations arising out of a contract incorporating Executive Order 11246, the implementing regulations, 41 CFR 60–1.1, and orders issued in connection therewith.

(d) Those listed by the Comptroller General in accordance with the provisions of 29 CFR 5.6(b) of the regulations of the Secretary of Labor issued pursuant to authority granted under Reorganization Plan No. 14 of 1950, as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or work hour provisions of any statutes including the following:

(1) Contract Work Hours and Safety Standards Act (40 U.S.C. 327, *et seq.*);

(2) Copeland Act (40 U.S.C. 276c);

(3) Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964, (41 U.S.C. 291e(a)(5));

(4) United States Housing Act of 1937, as amended (42 U.S.C. 1416);

(5) National Housing Act (12 U.S.C. 1715c, as amended);

(6) Housing Act of 1949 (42 U.S.C. 1459);

(7) Housing Act of 1961 (42 U.S.C. 1500c–3);

(8) Housing and Urban Development Act of 1965 (42 U.S.C. 3107);

(9) Federal-Aid Highway Act of 1956, as amended by the Federal-Aid Highway Act of 1968, (23 U.S.C. 113(a));

(10) Federal Water Pollution Control Act, as amended (Sec. 513, 86 Stat. 894, 33 U.S.C. 1372);

(11) Postal Reorganization Act (39 U.S.C. 410(b)(4)(c));

(12) Vocational Education Act of 1963 (20 U.S.C. 35(f));

(13) Public Works and Economic Development Act of 1965 (42 U.S.C. 3222);

(14) State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1243(a)(6));

(15) Public Health Service Act (42 U.S.C. 291e);

(16) Housing and Community Development Act of 1974 (42 U.S.C. 1437);

(17) Local Public Works Capital Development and Investment Act of 1976 (42 U.S.C. 6701, *et seq.*, as amended);

(18) Health Professions Educational Assistance Act of 1963 (Sec. 2 (a), 77 Stat. 164; 42 U.S.C. 292d(c)(4) and 42 U.S.C. 293a(c)(5), Pub. L. 88–129);

(19) Higher Educational Facilities Act of 1963 (Sec. 403, 77 Stat. 379; 20 U.S.C. 753, Pub. L. 88–204);

(20) Appalachian Regional Development Act of 1965 (Sec. 402, 79 Stat. 21; 40 U.S.C. App. 402);

(21) Urban Mass Transportation Act of 1964 (49 U.S.C. 6109).

(e) Those listed by the Director of the Office of Federal Contract Compliance

on the Contract Ineligibility List because of noncompliance with the Equal Opportunity clause.

(f) Those whom HUD has debarred or suspended in accordance with this part.

(g) Those determined by an executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under any contract containing the specific provisions required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work.

§ 24.31 Effect of sanctions.

Contractors debarred or suspended who are included on the Consolidated List are excluded from receiving contracts, and HUD shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors, unless the Secretary or designee determines in writing that there is a compelling reason for such action. Contractors listed on the Consolidated List as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors under those conditions and for that period. Participants and contractors who have been debarred, suspended, or declared ineligible under this part are excluded from direct or indirect participation in all HUD programs during the period that the sanction is in effect, unless the person who imposed the sanction determines that there is a compelling reason for HUD to permit the participant or contractor to participate in a particular transaction. Such determination shall be in writing and shall include the reasons for such finding.

§ 24.32 Retroactivity.

Limitations on participation in HUD programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of these regulations regardless of the date of the cause giving rise to the sanction.

Authority: Section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: September 20, 1983.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 83-27550 Filed 10-7-83; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL 2449-3]

Approval and Promulgation of Implementation Plans; Rhode Island; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to approve revisions to the Rhode Island State Implementation Plan (SIP) proposed by the State of Rhode Island to provide regulations for preconstruction permitting of new major sources and major modifications in attainment areas. The effect of this action is to propose approval of these revisions because they meet the requirements for the prevention of significant deterioration of air quality in accordance with Part C, subpart 1, of the Clean Air Act. This notice also proposes to approve revisions which require a permit to construct, install, or modify any source or process which emits five tons per year or more of lead, and to clarify the definition of the term "Growth Allowance." These proposed actions are being taken at the federal level concurrently with the State's process for amending its SIP.

DATE: Public comments are requested and will be considered before taking final action on these SIP revisions. EPA must receive any comments on or before November 10, 1983.

ADDRESSES: Send any comments to Harley F. Laing, Director, Air Management Division, EPA Region I, JFK Federal Bldg., Boston, MA 02203. You may inspect copies of the proposed revisions and EPA's evaluation during normal business hours at: (1) The Environmental Protection Agency Region I, JFK Federal Building, Boston, MA 02203; and (2) the Department of Environmental Management, 75 Davis Street, Cannon Bldg., Rm. 204, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink (617) 223-5131, FTS 223-5131.

SUPPLEMENTARY INFORMATION: On June 10, 1983 the Director of the Division of Air and Hazardous Materials of the Rhode Island Department of Environmental Management (DEM) submitted proposed SIP revisions to EPA for review and approval. These proposed revisions amend Air Pollution Control Regulation 9, "Approval to Construct, Install, Modify, or Operate" and its related narrative, Section VI, Part II, "Stationary Source Permitting and Enforcement" of the Rhode Island SIP. Discussion of these revisions is divided into three sections, below.

I. PSD Plan Revisions

The DEM has proposed revisions to the Rhode Island SIP to incorporate the requirements for state plans for the prevention of significant deterioration (PSD) found at 40 CFR 51.24. PSD regulations specify the requirements for preconstruction permitting of new major sources and major modifications in attainment areas in accordance with Part C, Subpart 1, of the Clean Air Act.

EPA has reviewed the proposed revisions and found that they substantially fulfill the requirements for PSD for state plans of 40 CFR 51.24. Prior to final adoption at the State level, the revisions must address the following issues:

(1) The revisions must clearly state that no relaxation to any portion of the SIP would be approved if such a relaxation would cause or contribute to a violation of an applicable PSD increment.

(2) The revisions must provide that a public notice will be placed in a newspaper of general circulation in each region where a new major source or major modification is proposing to locate. That notice must provide information which includes:

- The receipt of an application
- The DEM's preliminary decision to approve or disapprove the application
- The amount of PSD increment that would be consumed if construction were approved
- An invitation to view the application and the preliminary decision at a specified location and to offer comment.

(3) The revisions must provide that the DEM will complete action on a complete application within one year of the date of receipt.

(4) The revisions must provide that if a source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, then the requirements of Regulation 9 apply as though construction had not yet commenced on the source or modification.

(5) The revisions must clearly state that actual emission increases from any major stationary source on which construction commenced after January 6, 1975 will be treated as consuming PSD increment.

(6) The final submittal must also include information certifying:

- That Rhode Island has no high terrain areas;
- That no Indian Reservations or Indian Governing Bodies exist in Rhode Island, and
- That if an area in Rhode Island or within 100 KM of Rhode Island is redesignated to Class I, the State will adopt all definitions and provisions of 40 CFR 51.24 relating to such areas.

Proposed action: EPA proposes to approve revisions to Regulation 9 and Section VI, Part II of the associated narrative of the Rhode Island SIP as proposed by the DEM to satisfy the requirements for the prevention of significant deterioration of 40 CFR 51.24. Final approval of these revisions is contingent upon amendments to include the items identified at 1–6 in Section I of this notice.

II. Lead Attainment Plan Revisions

The DEM has also proposed revisions to the Rhode Island SIP, Regulation 9, at Section 9.3.1 (d) to require a permit to construct, install, or modify any source or process having the potential to emit five tons per year (TPY) or more of lead. In accordance with Regulation 9, Section 9.4.3 of the EPA-approved SIP, the application for a permit must demonstrate that the construction, installation or modification will not prevent the attainment or maintence of any applicable ambient air quality standard, including the National Ambient Air Quality Standards (NAAQS). EPA is proposing approval of the revision to Section 9.3.1.(d) of Regulation 9 because it conforms to the federal requirements for state plans to control lead codified at 40 CFR Part 51, Subpart E.

Proposed action: EPA proposes to approve the revision of Section 9.3.1 (d) of the Rhode Island SIP as proposed by the DEM to require a permit to construct, install, or modify any source having the potential to emit five TPY or more of lead.

III. Other Issues

On June 28, 1983 (48 FR 29690) EPA approved revisions to Regulation 9 which were submitted by the DEM to meet the requirements of 40 CFR, Part 51, § 51.18. This subsection contains the federal requirements for state plans for the preconstruction permitting of new major sources and major modifications in nonattainment areas.

EPA required that the DEM include, in its final submittal of those revisions, a letter clarifying specific sections of Regulation 9 to insure conformance with 40 CFR 51.18 requirements.

In that letter dated March 7, 1983, the DEM committed to clarify the definition of the term "Growth Allowance" at Section 9.1.24 of Regulation 9. The DEM has now proposed a revision to Section 9.1.24 which satisfies EPA's concern that the calculation of growth allowance not interfere with the attainment and maintenance of the NAAQS. Therefore, EPA is proposing to approve the revised definition of "Growth Allowance" as now proposed by the DEM.

Proposed action: EPA proposes to approve the revised definition of the term "Growth Allowance" of Section 9.1.24 as proposed by the DEM.

In the March 7, 1983 letter, The DEM also committed to amend Section 9.2.3.(b) of Regulation 9 to make it clear that the general exemptions contained in that section cannot be used to exempt major new sources or major modifications from the requirements for new source review.

Finally, the DEM committed to clarify Section 9.11.3 to insure that emission reductions required of sources to accommodate new source growth, commonly referred to as offsets, meet the following criteria:

- They must occur after August 7, 1977
- They must meet the restrictions of 40 CFR 51.18 (j)(3)(ii)(C) concerning the use of shutdowns and curtailments as offsets.

If Rhode Island adopts and submits the regulatory changes to Setions 9.2.3 (b) and 9.11.3, as discussed above, EPA will approve the changes as revisions to the SIP at the time of final rulemaking on the proposed actions of today's notice.

These revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed, in areas other than those required by this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those required by this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Rhode Island and submitted to EPA for incorporation into the SIP.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of Sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended and EPA regulations in 40 CFR Part 51.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110(a) and 301(a) of the Clean Air Act, as amended 42 U.S.C. 7410(a) and 7601(a))

Dated: August 12, 1983.

Michael R. Deland,

Regional Administrator.

[FR Doc. 83-27585 Filed 10-7-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL 2448-7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations, Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to change the nitrogen dioxide (NO_2) designation for the Cook County, Central Core nonattainment area to attainment and the carbon monoxide (CO) designation for the Peoria nonattainment area in Peoria County to attainment. This revision is based on a request from the State of Illinois to redesignate these areas and on the supporting data the State submitted. (Under the Clean Air (Act), designations can be changed if sufficient data are available to warrant such change). U.S. EPA also proposes to reject Illinois request to redesignate the ozone attainment status of Kane and DuPage Counties and the CO attainment status for Cook County along the expressway corridors.

DATE: Comments on this revision and on the proposed USEPA action must be received by November 10, 1983.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 S. Dearborn Street, Chicago, Illinois 60604
Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Act, the Administrator of U.S. EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). Upon request of the State, these area designations may be revised if the supporting data is adequate.

Section 107(d)(5) of the Clean Air Act (Act), as amended in 1977, permits a State to request U.S. EPA to rulemake on a change in the NAAQS attainment/nonattainment status of an area when the available data warrant such a change. On January 27, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a request to the U.S. EPA proposing redesignations to attainment for a number of areas for ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), and total suspended particulates (TSP). The Ozone, CO, and NO_2 redesignation requests are addressed in today's rulemaking. The State's TSP redesignation request will be the subject of a separate notice of proposed rulemaking.

Specifically, this notice of proposed rulemaking concerns the following redesignations requested by the State: (1) Redesignation of the Cook County, Central Core NO_2 nonattainment area—Wacker Drive on the North and West, Michigan Avenue on the East, and Harrison Street on the South—to attainment, (2) Redesignation of DuPage and Kane Counties from nonattainment to attainment for the pollutant ozone, (3) Redesignation to attainment from nonattainment for the pollutant CO of the area 100 feet from the edge of the pavement on either side od several expressway corridors—Edens Expressway, from the junction with I–94 to the Kennedy Expressway; Kennedy Expressway, from the junction with Northwest Tollway to the Dan Ryan Expressway; Eisenhower Expressway from the junction with East West Tollway to the Kennedy and Dan Ryan Expressway; Dan Ryan Expressway, from the junction with Eisenhower Expressway to the Calumet Expressway and I–57; Stevenson Expressway, from the junction with the Tri-State Tollway to Lake Shore Drive; and the Kennedy-Edens Core Area, the area bounded by Lawrence Avenue on the north, Kenton Street on the east, Montrose Avenue on the south, and Cicero Avenue on the west, (4) Redesignation of the Peoria CO nonattainment area, bounded by Green Street on the northeast and east, Water Street on the southeast, Liberty Street on the southwest, Franklin Street on the west, and Percy Avenue on the northwest.

The Cook County, Central core NO_2 nonattainment area is the only NO_2 nonattainment in the State of Illinois. Redesignation of DuPage and Kane Counties to attainment for the pollutant ozone would reduce the size of the Chicago Metropolitan nonattainment area. The Chicago Expressway Corridor area and the Peoria nonattainment area are two of three Illinois CO nonattainment areas. Redesignation of the third CO nonattainment area, located in Rock Island County, is the subject of a separate **Federal Register** notice.

U.S. EPA redesignation criteria are pollutant specific. Those criteria which are used as a basis for this proposed rulemaking are discussed below:

U.S. EPA Criteria for Re-designation

Carbon Monoxide and Nitrogen Dioxide

The most important factors to be considered in reviews of redesignation requests are the NAAQS for the various pollutants. The NAAQS for criteria pollutants are specified in 40 CFR Part 50. The primary NAAQS for CO is defined to be 10 milligrams per cubic meter (9 ppm), eight-hour average, not to be exceeded more than once per year or 40 milligrams per cubic meter (35 ppm), one-hour average, not to be exceeded more than once per year. The primary NAAQS for NO_2 is defined to be 100 micrograms per cubic meter (0.05 ppm), annual arithmetic mean, not to be exceeded on an annual basis.

Specific criteria for CO and NO_2 redesignation reviews are given in a June 12, 1979, memorandum from Richard G. Rhoads to the Directors of the Air and Hazardous Materials Division, Region I–X and in an April 21, 1983, policy memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards. These memoranda generally require that for a redesignation from nonattainment to attainment, the most recent eight quarters of ambient air quality data must show no violation of the NAAQS for the pollutants being considered. Addtionally, a redesignation to attainment must demonstrate that real, enforceable emission reductions for the pollutant being considered have occured commensurate with observed air quality improvements.

If relevant modeling data are available, these data must also be considered in the review of the redesignation requests. This requirement is supported by Section 171(1) of the Act, the September 11, 1978, **Federal Register** (43 FR 40412), and a January 12, 1978, briefing memorandum on Section 107 redesignations. The consideration of modeling data is particularly warranted in those areas where monitoring data are scarce.

Ozone

As defined in 40 CFR Part 50 the primary NAAQS for ozone is violated when the annual average expected number of daily exceedances of the standard (0.12 ppm, one-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 ppm (GUIDELINE FOR THE INTERPRETATION OF OZONE AIR QUALITY STANDARDS, EPA–450/4–79–003). The expected number of daily exceedances is calculated from the number of observed exceedances taking into account the potential for unobserved exceedances when monitoring data are invalid or incomplete. The number of expected exceedances equals or exceeds the number of observed exceedances.

Specific criteria for ozone redesignation reviews are given in a December 7, 1979, policy memorandum from Richard G. Rhoads to Directors of the Air and Hazardous Materials Divisions, Region I–X and in an April 21, 1983, policy memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards. These memoranda indicate that the average number of expected exceedances for each monitoring site is to be based on ozone concentrations observed during the most recent three years. Supplemental information including emissions data and evidence of an implemented control strategy should be considered to determine if the monitoring data accurately characterize the worst case air quality in the area.

U.S. EPA policy, as defined in these memoranda, does not specify the minimum extent of urban ozone nonattainment areas. The only policy on this issue is contained in a January 3, 1978, memorandum from David G. Hawkins, Assistant Administrator for Air and Waste Management, to Regional Administrators. This memorandum indicated that the designated nonattainment area should be of sufficient size to include most of the significant hydrocarbon (now identified as volatile organic compounds) sources. Although this policy was developed for selecting an area for precursor source control implementation, it is reasonable to use it for establishing the size of the ozone nonattainment area, because it includes not only the area with monitored violations, but also the source area responsible for the monitored violations. Such a designation gives the public a definition of the full extent of a problem and assures that control measures are directed toward the problem source area.

U.S. EPA Analysis of the Technical Support and Proposed Action

NO_2

To support the requested redesignation for NO_2 in the Cook County, Central Core area, the State submitted NO_2 concentration data for monitors in the nonattainment area for the October 1, 1980, through September 30, 1982, period. U.S. EPA augmented these data with data covering the January 1, 1980 through 1982 period contained in the National Aerometric Data Bank (NADB). No violations of the NO_2 NAAQS were observed in the nonattainment area during the most recent two years. This air quality improvement is attributable to the implementation of the Federal Motor Vehicle Control Program, the primary control strategy, for NO_2 emissions. U.S. EPA proposes to redesignate the Cook County, Central Core Area to attainment for the pollutant NO_2.

Ozone

To support the requested redesignation to attainment for ozone in Kane and DuPage Counties, the State referenced 1980 through 1982 ozone data submitted to USEPA's NADB. Also submitted were 1979 through 1981 annual air quality summary reports. Expected exceedances were calculated following procedures outlined in the GUIDELINE FOR THE INTERPRETATION OF OZONE AIR QUALITY STANDARDS (EPA–450/4–79–003). Violation of the ozone NAAQS only occurred at one site, McKinley school in Elgin based on 1979 data. No violation of the NAAQS occurred during the period of 1980 through 1982,although single exceedances were observed in 1980 (Wheaton) and 1981 (Larson Junior High School, Elgin). Ozone precursor emission reductions have been made in the Chicago area and upwind of the Elgin site and could account for ozone level reductions at the Elgin site since 1979. In addition, considering the regional nature of ozone, the McKinley School data should be considered along with the ozone data for Larson Junior High School. Joint consideration of these data leads to the conclusion that no violation of the ozone NAAQS has occurred in Elgin during the period of 1980 through 1982.

However, U.S. EPA has determined that the high population densities in DuPage and eastern Kane counties are associtated with relatively high densities of area and mobile source volatile organic compound emissions. Because the prevailing winds during the ozone season are from south through west, ozone precursor emissions from DuPage and Kane Counties can contribute significantly to ozone NAAQS exceedances which continue to be observed in the Chicago area. U.S. EPA, therefore, proposes to reject the Illinois proposal to redesignate Kane and DuPage Counties to attainment for ozone. These counties will continue to be designated nonattainment until sufficient data is available to warrant a change. These counties must continue to be considered as part of the Chicago urbanized ozone nonattainment area for the purpose of the 1982 SIP.

CO—Peoria

To support the requested redesignation for CO in the Peoria area, the State subbitted CO concentration data for monitors in the nonattainment area for the October 1, 1980, through September 30, 1982 period. U.S. EPA augmented these data with data contained in the NADB. These data indicated that the eight-hour standard has not been violated in the Peoria area in three years. No exceedances of the one-hour CO standard have been monitored. Additionally, the Federal Motor Vehical Control Program, which is the principle CO control strategy, has been implemented in the Peoria area. U.S. EPA, therefore, proposes to redesignate the Peoria area to attainment for the pollutant CO.

CO—Chicago Expressway Corridors

The State has requested that the CO nonattainment areas associated with the Chicago expressways be redesignated to attainment for the pollutant CO. As support for this redesignation, the State cites modeling data contained in the 1982 CO State Implementation Plan (SIP). The current nonattainment designation for the Chicago expressway is based on the use of U.S. EPA'C HIWAY line source dispersion model. Review of all available data indicated that two problems exist in the State's 1982 SIP modeling analysis. First, the assumption of an ambient temperature of 75°F is not supported by CO monitoring data from other sites in the region. Such data support the assumption of an ambient temperature of 40°F. This lower temperature will result in higher CO emissions per vehicle mile traveled. Use of the higher temperature in the modeling analysis described in the 1982 SIP would lead to understimated CO concentrations along expressways outside of downtown Chicago. Second, the choice of critical receptor sites used by the State does not result in predicted CO concentrations as high as may be expected at the roadway right-of ways which are considerably closer to the roadway edges. Since the public has access to locations approaching the right-of-ways, it must be assumed that the IEPA has not predicted the maximum CO concentrations to which the general public may be exposed because the receptors are located in areas of lower expected concentration than the roadway right of ways.

The State of Illinois has indicated that their use of a 75°F ambient temperature for modeling purposes is warranted by CO violation monitoring data collected for this area. These data indicate that other CO monitoring sites in the region are not representative of the Cook County, Central Core CO nonattainment area. Should the State provide additional data to support its use of the 75° ambient temperature, U.S. EPA will reconsider its position on the proposed rejections of the State's request to redesignate to attainment the CO nonattainment areas associated with the Chicago Expressways.

These factors taken together, indicate the State has not adequately demonstrated that the CO NAAQS was attained along the Chicago area expressways. U.S. EPA, therefore, proposes to reject redesignation of this area as attainment for the pollutant CO. This area will continue to be designated nonattainment until sufficient data is available to warrant a change.

All interested persons are invited to submit written comment on the proposed redesignations or proposed no actions. Written comments received by the date specified above will be

considered in determining whether U.S. EPA will give final approval for the redesignations. After review of all comments submitted, the Administrator of U.S. EPA will publish in the Federal Register the Agency's final action on the redesignation.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

List of Subject in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Section 107(d) of the Act, as amended (42 U.S.C. 7407).

Dated: June 30, 1983.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 83-27592 Filed 10-7-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[AL-007; A-4-FRL 2447-8]

Designation of Areas for Air Quality Planning Purposes; Alabama, Redesignation of SO_2 Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve requests by Alabama to redesignate a portion of two counties for sulfur dioxide (SO_2) from secondary nonattainment to attainment. The public is invited to submit written comments on the proposed redesignation.

DATE: Comments must be received on or before November 10, 1983 to be considered.

ADDRESSES: Written comments should be addressed to EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the material submitted by Alabama in support of the redesignation may be examined during normal business hours at the following locations:

Air Management Branch,
EPA Region IV,
345 Couirtland Street NE.,
Atlanta, Georgia 30365.
Air Program,
Alabama Department of Environmental Management,
645 South McDonough Street,
Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Archie Lee, of EPA Region IV Air Management Branch, at the above address and telephone number 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: On May 13, 1983, the Alabama Department of Environmental Management (DEM) asked EPA to change to attainment the status of the sulfur dioxide nonattainment area surrounding TVA's Colbert plant, that is, portions of Colbert and Lauderdale Counties.

Current EPA policy applicable to the redesignation of sulfur dioxide nonattainment areas provides a twofold approach, a state's request for such a change in attainment status designation must be supported by (A) the most recent eight consecutive quarters of quality-assured, representative ambient air quality data plus evidence that a control strategy approved by EPA as part of the SIP is being implemented, or (B) the most recent four quarters of quality-assured, representative ambient air quality data plus an acceptable state-of-the-art modeling analysis showing the SIP strategy is sound and that actual, enforceable emission reductions are responsible for the recent air quality improvemnt. In addition to the above, dispersion modelling of the area employing the legally enforceable SIP limits wil generally be necessary for areas dominated by point sources.

Alabama has satisfied the criteria with the submittal of eight quarters of data and certification that TVA's Colbert plant is in compliance with the SIP limits approved by EPA on November 6, 1981 (46 FR 55105). Accordingly, it is proposed to change the attainment status of these two counties from secondary nonattainment to attainment for sulfur dioxide.

Under 5 U.S.C. Section 605(b), the Administrator has certified that area redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: August 8, 1983.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 83-27595 Filed 10-7-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. 6538]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Georgia, Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Marietta, Cobb County, Georgia, previously published at 48 FR 30720 on July 5, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determination of base (100-year) flood elevations for selected locations in the City of Marietta, Cobb County, Georgia, previously published at 48 FR 30720 on July 5, 1983, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

The description of the location of the Base Flood Elevation Determination on the Rottenwood Creek which reads just downstream of Delk Road should be corrected to read just downstream of Interstate 75.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Georgia	(C) Marietta, Cobb County	Rottenwood Creek	Just upstream of Delk Road	*930	*928
			Just downstream of Interstate 75	*935	*933

Maps available for inspection at P.O. Box 609, Marietta, Georgia. Send comments to Honorable Robert Flournoy, Jr., Mayor, City of Marietta, P.O. Box 609, Marietta, Georgia 30061.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: September 15, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-27488 Filed 10-7-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Styrax texana (Texas Snowbells) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list a plant, *Styrax texana* (Texas snowbells), as an Endangered species under the authority contained in the Endangered Species Act of 1973, as amended. This plant is endemic to Edwards, Real, Kimble, and possibly Val Verde Counties, Texas. These known populations are currently very vulnerable due to low numbers and a lack of reproduction. Populations are possibly threatened by cattle and deer browsing. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Styrax texana*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from the public and State of Texas must be received by December 12, 1983. Public hearing requests must be received by November 25, 1983.

ADDRESSES: Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Russell L. Kologiski, Botanist, Region 2 Endangered Species staff (see ADDRESSES above) (505/766–3972), or John Spinks, Jr., Chief, Washington Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

Styrax texana (Family Styracaceae) was first discovered on July 4, 1940, by V.L. Cory and was decribed by him in 1943. This species grows as a shrub up to 3 meters high. The bark is smooth, the leaf blades are rounded, 4–8 centimeters long, about as broad as they are long, with entire to almost entire margins, bright green above, silvery below from dense, short, soft hairs. Flowers are in clusters of 3–5, showy and white. Flowering occurs in April and May. Reproduction has not been studied. It is of concern, however, that there are no known seedlings or saplings, indicating a lack of recent reproduction.

Styrax texana grows in crevices in limestone cliffs in juniper-oak savannas on the Edwards Plateau and in creosote bush shrub in the eastern Trans-Pecos basins. The dominant associated trees are *Quercus texana, Juniperus ashei,* and *Fraxinus texensis*. Dominant associated shrubs are *Garrya ovata, Berberis trifoliolata,* and *Bumelia lanuginosa* var. *texana* (Mahler, 1981).

Seven plants have been collected or reported from Polecat Creek, Cedar Creek, and Little Hackberry Creek in Edwards County and 14 from the East Prong of the Nueces River in Real County. Plants also are reported, but not verified, to be on the Horace Faucett Ranch in Val Verde County (Mahler, 1981). One additional plant had been reported from Edwards County, but was not located by Mahler. Eight plants have been reported from Kimble County, four of which were located recently.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the 1973 Act (Section 4(b)(3)(A) now), and of its intention thereby to review the status of the plant species included therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. *Styrax texana* was included in this proposal. Comments received in relation to this 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all listing proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796). *Styrax texana* was included thereafter in a list of plants under review for Threatened or Endangered classification published as a notice in the December 15, 1980, **Federal Register** (45 FR 82480). A 1981 status report and investigations carried out by Service botanists since December 1979 have now provided new biological data that form the basis for the present proposal. The new data includes information on

the low number of plants, the lack of reproduction in the species, its distribution, and ownership of the land on which the plants occur; they lead to the conclusion that *Styrax texana* is an Endangered species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accomodate the 1982 amendments) set forth procedures for adding species to the Federal list. The Secretary of the Interior shall determine whether any species is an Endangered or Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. Factor E is especially relevant to *Styrax texana*. All of the factors and their application to this species are as follows (Mahler, 1981):

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* Currently, *Styrax texana* is known to exist in three Texas counties: Real, Edwards, and Kimble. One historical report from Val Verde County has not been reconfirmed. In 1982, 25 plants were known to exist. Most of the sites on which the plant occur are in private ownership, but one site is a State-owned roadside park. At present, the State of Texas has no plans to change the maintenance procedures in the roadside park. Protection for the species at this site is nonexistent. Two of the private landowners are amenable to protecting the plants; however, there is no current planning for the species at any of the sites. At present, a known threat to the habitat is through natural erosion of a stream bank, which will probably soon eliminate one precariously located plant.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At present, the taking of plants for scientific study is minimal; however, dut to the small number of plants, collection should be prohibited or closely controlled. No taking prohibitions currently exist for the plants on private lands. *Styrax texana* is a shrub with attractive foliage and flowers and could be sought for horticultural purposes.

C. *Disease of predation* (including grazing). It has been suggested that the lack of seedlings and young plants may be due to browsing by cattle and/or deer. No data currently exist to confirm this suggestion, and additional studies are needed.

D. *Inadequacy of existing regulatory mechanisms.* There is currently no State or Federal protection for this plant.

E. *Other natural or manmade factors affecting its continued existence.* The lack of reproduction will affect the species' survival. The small number of plants tends to make the species more vulnerable to stress from natural or human-related factors and to intensify any adverse effects on the habitat.

Critical Habitat

The Act requires that Critical Habitat be determined at the time a species is listed to the maximum extent prudent. Critical Habitat is not being proposed for *Styrax texana* because of the potential threat to the species if its habitat were publicly identified. Publication of Critical Habitat maps in the **Federal Register** is required when Critical Habitat is designated. This publicity could lead to collection of the plants, and thus severely impact the populations due to the low number of the plants (25); it could also lead to habitat destruction during collection.

Available Conservation Measures

The effects of this proposal, if published as a final rule, would include, but would not necessarily be limited to, those mentioned below. Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as Endangered or Threatened. This rule would require Federal agencies to satisfy their statutory obligations with respect to this species. Federal agencies are required under section 7(a) (4) to confer with the Service on any action that is likely to jeopardize a species during the period the species is proposed for listing. If published as a final rule, this proposal will require Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of *Styrax texana*. Provisions for Interagency Cooperation which implement Section 7 of the Act are codified at 50 CFR Part 402. Interagency cooperative effects are expected to be minimal, as there are no known Federal activities or involvement planned for the areas in which plants are located.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** set forth a series of general trade prohibitions and exceptions that apply to all Endangered plant species. The regulations pertaining to Endangered plants are found at 50 CFR 17.61, 17.62, and 17.63 and are summarized in the following text. With respect to *Styrax texana*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. International and interstate commercial trade in *Styrax texana* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild and is not presently in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. This species is not known from Federal lands, so no effect from this prohibition is expected.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903). It is anticipated that few taking permits for the species will ever be requested.

The Service will now review this species to determine whether it should be considered for the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for placement upon its Annex, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia, and the Regional Office (see addresses section), and may be examined, by appointment, during regular business hours.

Public Comments Solicited

The Service intends that the rule finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other

concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited.

Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to *Styrax texana* (Texas snowbells);

(2) The location of any additional population of *Styrax texana* and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided by Section 4 of the Act; and

(3) Additional information concerning the range and distribution of this species.

Final promulgation of a rule on *Styrax texana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final rule that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Author

The primary author of this proposed rule is Sandra Limerick, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972). Status information, a preliminary listing package and Environmental Assessment were provided by Dr. William F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275. E. LaVerne Smith and John L. Paradiso of the Service's Washington Office of Endangered Species served as editors.

References

Cory, V. L. 1943. The genus *Styrax* in central and western Texas. Madrono 7:110–115.

Mahler, W. F. 1981. Status report: *Styrax texana*. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, NM. 9 pp.

Mahler, W. F. 1981. Environmental assessment: Determination that *Styrax texana* Cory Is Threatened. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, NM. 11 pp.

Vines, R. A. 1960. *Trees, Shrubs, and Woody Vines of the Southwest*. Univ. of Texas Press. Austin. xii + 1104 pp.

List of Subjects in 50 CFR Part 17

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

PART 172—[AMENDED]

Proposed Regulation Promulgation.

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 is as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order by family, the following to the list of Endangered and Threatened plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historical range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Styracaçeae—Storax Family:						
Styrax texana	Texas snowbells	U.S.A. (TX)	E		NA	NA

Dated: September 16, 1983.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-27593 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 48, No. 197
Tuesday, October 11, 1983

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

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth National Forest Grazing Advisory Board; Meeting

The Sawtooth National Forest Grazing Advisory Board will meet at 1:30 p.m., November 10, 1983 at the Sawtooth Forest Office, 1525 Addision Avenue East, Twin Falls, ID 83301. The purpose of this meeting is to review allotment management plans and to receive advice concerning use of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify John Faulkner, Gooding, Idaho, telephone 934–4057 or 934–4092. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Public Views will be heard at the end of the meeting.

Bert F. Webster,

Acting Forest Supervisor, Sawtooth National Forest.

September 30, 1983.

[FR Doc. 83-27568 Filed 10-7-83; 8:45 am]

BILLING CODE 3410-11-M

Animal and Plant Health Inspection Service

Gypsy Moth Suppression and Eradication Activities; Intent To Prepare An Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service and the Animal and Plant Health Inspection Service of the Department of Agriculture will prepare a programmatic environmental impact statement for gypsy moth suppression and eradication activities in the United States. This is being done because of program changes since 1981 and comments received since that time about the clarity of the current final Programmatic Environmental Impact Statement for Gypsy Moth Suppression and Regulatory Program Activities (USDA FS–FEIS 81–01). The current document will be thoroughly examined and appropriate aspects will be expanded or clarified.

Alternatives being considered for meeting Forest Service suppression and Animal and Plant Health Inspection Service eradication objectives are:

1. Chemical insecticide treatments.
2. Bilogical insecticide treatments.
3. Combinations of direct and indirect control methods in an integrated pest management approach.
4. No action.

In previous Forest Service suppression and Animal and Plant Health Inspection Service eradication programs, Federal and State agencies, industry, public organizations, and the general public identified the following major concerns or issues: possible adverse human health effects; adequacy of public education efforts regarding gypsy moth suppression and regulatory programs; and the need for more public involvement in the selection of insecticides to be used and areas to be treated; possible long-term adverse environmental effects of using insecticides; the need for discussion of alternatives to chemical insecticides; a need for continued Federal/State coordinated gypsy moth suppression and regulatory programs; the need for improved and continuous communications between project coordinators regarding pesticide application safety; and a need to update future environmental impact statements with new information on registered insecticides such as label changes, new insecticides and environmental monitoring results. These issues and concerns were considered and discussed in the Final 1981 Programmatic Environmental Impact Statement for Gypsy Moth Suppression and Regulatory Program Activities (USDA FS–FEIS 81–01).

In addition to the issues identified above and as a part of the scoping process, the USDA Forest Service and the Animal and Plant Health Inspection Service are soliciting any new relevant issues or concerns for consideration in the development of this new programmatic environmental impact statement for gypsy moth suppression and eradication activities.

Issues, concerns, or questions about Forest Service suppression programs should be addressed to Thomas N. Schenarts, Area Director, USDA Forest Service, 370 Reed Road, Broomall, Pennsylvania 19008, by October 25, 1983.

Issues, concerns, or questions, about eradication programs conducted by the Animal and Plant Health Inspection Service should be sent to R. L. Williamson, Director, National Program Planning Staff, USDA Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland 20782, by October 25, 1983.

The responsible officials are R. Max Peterson, Chief, Forest Service, and Bert W. Hawkins, Administrator, Animal and Plant Health Inspection Service.

The draft gypsy moth programmatic environmental impact statement is expected to be filed with the U.S. Environmental Protection Agency on or about November 18, 1983, and released to the public for a 45-day review period. The final statement is expect to the filed and released on or about February 10, 1984.

R. M. Housley,

Deputy Chief, Forest Service.

Dated: October 4, 1983.

James O. Lee, Jr.,

Associate Administrator, Animal and Plant Health Inspection Service.

Dated: October 5, 1983.

[FR Doc. 83-27569 Filed 10-7-83; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Order Establishing International Cargo Rate Flexibility Policy

The Board, by Policy Statement PS–109, effective February 27, 1983, adopted a policy of not suspending international cargo rate changes within a specified zone, except in extraordinary circumstances. That policy, implemented by Regulation ER–1322, effective February 27, 1983 (14 CFR Part 221), eliminates the requirement of economic justification for international cargo rates which are within Board established zones of flexibility. As stated in ER–1322, the Board has taken action to allow air carriers to respond more quickly to changing costs and competitive conditions.

In establishing the SFRL for the two-month period starting October 1, 1983 we have projected nonfuel costs based on the year ended June 30, 1983 and have determined fuel prices on the basis of experienced monthly fuel cost levels and reported weekly fuel cost trends.

By Order 83–10–7 cargo rates may be increased by the following adjustment factors over the April 1, 1982, level:

Atlantic	.9639
Western Hemisphere	1.0162
Pacific	.8867

Copies of the Board's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: John D. Coakley, (202) 673–5196.

By the Civil Aeronautics Board: October 4, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83–27556 Filed 10–7–83; 8:45 am]

BILLING CODE 6320–01–M

Order Establishing Standard Foreign Fare Level

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Board establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. The SFFL thus computed becomes the benchmark for measuring the statutory nonsuspend zone similar to the zone of reasonableness established by the Airline Deregulation Act and set forth in sec. 1002(d) of the Federal Aviation Act of 1958, as amended. Order 80–2–69 established the first interim SFFL and subsequent Order 83–8–12 established the currently effective two-month SFFL applicable through September 30, 1983.

In establishing the SFFL for the two-month period starting October 1, 1983, we have projected nonfuel costs based on the year ended June 30, 1983 and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Board.

By order 83–10–8, adopted October 4, 1983, fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	1.1451
Western Hemisphere	1.1715
Pacific	1.0603
Canada	1.1971

Copies of the Board's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: Robert I. Stein, (202) 673–5116.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83–27555 Filed 10–7–83; 8:45 am]

BILLING CODE 6320–01–M

[Docket 41520]

Airspur Helicopter, Inc. Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on October 7, 1983, at 9:30 a.m. (local time) in Room 1012, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., October 4, 1983.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 83–27557 Filed 10–7–83; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Surveys in Manufacturing Area; Determination

In conformity with Title 13, United States Code (Sections 131, 182, 224, and 225), and with due notice having been published on July 26, 1983 (48 FR 33926), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other government sources.

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys are listed under major group headings based on the Standard Industrial Classification Manual (1972 edition) promulgated by the Office of Management and Budget for use of Federal Government statistical agencies.

Major Group 20—Food and Kindred Products

Confectionery

Major Group 22—Textile Mill Products

Broadwoven fabrics finished
Narrow fabrics
Yarn production
Knit fabric production
Stocks of wool and related fibers

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Men's and boys' outerwear
Women's and children's outerwear
Underwear and nightwear
Brassieres, girdles, and allied garments
Gloves and mittens

Major Group 24—Lumber and Wood Products, Except Furniture

Hardwood plywood
Softwood plywood
Lumber production and mill stocks

Major Group 25—Furniture and Fixtures

Office furniture

Major Group 26—Paper and Allied Products

Selected office supplies and accessories
Pulp, paper, and board
Converted flexible packaging products

Major Group 27—Printing, Publishing, and Allied Industries

Business forms, binders, carbon paper, and inked ribbon

Major Group 28—Chemicals and Allied Products

Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals
Sulfuric acid
Paints, varnish, and lacquer

Major Group 29—Petroleum Refining and Related Industries

Asphalt and tar roofing and siding products

Major Group 30—Rubber and Miscellaneous Plastic Products

Rubber
Plastics products
Rubber and plastics hose and belting

Major Group 31—Leather and Leather Products

Footwear (by method of construction)

Major Group 32—Stone, Clay and Glass

Consumer, scientific, technical, and industrial glassware Fibrous glass

Major Group 33— Primary Metal Industries

Steel mill products
Insulated wire and cable
Magnesium mill products
Nonferrous castings

Major Group 34—Fabricated Metal Products, Except Machinery and transportation Equipment

Selected heating equipment

Major Group 35—Machinery, Except Electrical

Internal combustion engines
Tractors, except garden tractors
Farm machinery and lawn and garden equipment
Mining machinery and mineral processing equipment
Air-conditioning and refrigeration equipment, including warm air furnaces
Computers and office and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery
Anti-friction bearings
Fluid power products (including aerospace)
Coin-operated vending machines

Major Group 36—Electrical Machinery, Equipment, and Supplies

Radios, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Selected electronic and associated products, including telephone and telegraph apparatus
Electric housewares and fans
Electric lighting fixtures
Major household appliances
Transformers

Major Group 37—Transportation Equipment

Aircraft propellers

Major Group 38—Professional, Scientific, and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks

Selected instruments and related products Atomic energy products and services

Major Group 39—Miscellaneous Manufacturing Industries

Pen, pencils, and marking devices

The following survey represents an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Major Group 20—Food and Kindred Products

Flour milling products

Major Group 22—Textile Mill Products

Broadwoven fabric (gray)
Consumption of wool and other fibers, and production of tops and noils
Carpet and rugs

Major Group 23 Apparel and Other Finished Products Made From Fabrics and Similar Materials

Sheets, pillowcases, and towels

Major Group 30—Rubber and Miscellaneous Products

Plastics bottles

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories
Clay construction products
Flat glass

Major Group 33—Primary Metal Industries

Iron and steel castings
Inventories of steel mill shapes
Inventories of brass and copper wire mill shapes

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Plumbing fixtures
Steel shipping drums and pails
Closure for containers

Major Group 35—Machinery, Except Electrical

Construction machinery

Major Group 36—Electrical Machinery, Equipment, and Supplies

Fluorescent lamp ballasts
Electric lamps

Major Group 37—Transportation Equipment

New complete aircraft and aircraft engines, except military Aerospace industry (orders and sales)
Truck trailers

The annual survey of manufactures will collect industry statistics such as total value of shipments, employment, payroll, work hours, capital expenditures, cost of materials consumed, gross book value of assets, retirements, and depreciation of fixed assets, rental payments, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, will cover all manufacturing industries, including data on plants under construction but not yet in operation.

A survey of research and development (R&D) activities will be conducted. The major data to be obtained in this survey will include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D, and, for comparative purposes, the total net sales and receipts and the total employment of the company.

A survey of shipments to the Federal Government will be conducted to provide information on the effect of Federal procurement on selected industries and geographic areas by Federal Government agencies.

The annual survey of oil and gas will canvass the industry that provides most of the fuel produced in the United States as well as a substantial protion of the hydrocarbon raw material requirements of many industries. The survey will collect information on exploration, development, and production costs; sales volumes and values; drilling activities; and assets in the crude petroleum and natural gas industry.

The annual survey of pollution abatement expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities and quantities of pollutants abated.

The annual survey of plant capacity will obtain information such as the amount of time a plant is in operation;

operating rates as related to preferred levels and practical capacity; the value of production and other statistics for actual, preferred, and practical capacity operating levels; and the reasons for operating at less than capacity.

The report forms will be furnished to firms included in these surveys. Copies of survey forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed the annual surveys be conducted for the purpose of collecting the data as described.

Dated: October 5, 1983.

C. L. Kincannon,

Acting Director, Bureau of the Census.

[FR Doc. 83-27518 Filed 10-7-83; 8:45 am]

BILLING CODE 3510-07-M

Census Advisory Committee of the American Marketing Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, as amended by Pub. L. 94-409), notice is hereby given that the Census Advisory Committee of the American Marketing Association will convene on November 3, 1983, at 9:30 a.m. in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Marketing Association was established in 1946 to advise the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The Committee is composed of 15 members appointed by the President of the American Marketing Association.

The agenda for the meeting, which is scheduled to adjourn at 4:15 p.m., is: (1) Introductory remarks by the Acting Director, Bureau of the Census, including staff changes and major budget and program developments; (2) update on planning for the 1990 census; (3) after-tax and discretionary income; (4) use of microcomputers in the Census Bureau; (5) proposed programs in the service industries; (6) proposed expansion of County Business Patterns; (7) Committee discussion, questions, and recommendations; and (8) plans and date for the next meeting.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days before the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. Bobby Russell, Bureau of the Census, Room 2633, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763-7644.

Dated: October 5, 1983.

C. L. Kincannon,

Acting Director, Bureau of the Census.

[FR Doc. 83-27517 Filed 10-7-83; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Contervailing Duties

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of conference on novel issues.

SUMMARY: This is to advise the public that the International Trade Administration will hold a conference regarding possible subsidy practices under the countervailing duty law. Interested persons are invited to present written and oral views regarding the following issues: (1) Whether under the Tariff Act of 1930, as amended, bounties or grants may be found in a non-market economy country; and (2) whether dual exchange rates in either a market or non-market economy can confer a bounty or grant where the entire trade sector is subject to a single rate and the currency is not freely convertible.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Claire A. Rickard, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377-4412.

SUPPLEMENTARY INFORMATION: The International Trade Administration (ITA) is holding a public conference to solicit views on the following issues: (1) Whether under the Tariff Act of 1930, as amended, bounties or grants may be found in a non-market economy country; and (2) whether dual exchange rates in either a market or non-market economy can confer a bounty or grant where the entire trade sector is subject to a single rate and the currency is not freely convertible. The conference will be held at 9 a.m. on November 3 (continuing November 4 if necessary) in Room 3407 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Persons who wish to participate in the conference must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The person's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, participants must file preconference briefs in accordance with 19 CFR 355.34 and in at least 10 copies by October 27, 1983.

Oral presentations will be limited to issues raised in the briefs. Those wishing to appear will be notified of their time allocations.

Dated: October 3, 1983.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 83-27580 Filed 10-7-83; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Membership of National Oceanic and Atmospheric Adminstration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), NOAA announces the appointment of a supplemental member to the Group B, NOAA Performance Review Boards; Wayne Cassatt, Deputy Director, Center for Radiation Research, National Bureau of Standards. His period of appointment is from October 10, 1983 to August 1, 1985. Reference Notice of Membership published July 26, 1983 in **Federal Register** Volume 48, No. 144, page 33927.

DATE: The effective date of service of appointee to the NOAA Performance Review Board is October 10, 1983.

FOR FURTHER INFORMATION CONTACT: Robert P. Gajdys, Personnel Officer, NOAA, 6010 Executive Boulevard, Rockville, Maryland 20852, (301) 443-8781.

Dated: October 4, 1983.

Samuel A. Lawrence,

Director, Office of Administrative and Technical Services.

[FR Doc. 83-27549 Filed 10-7-83; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Procedures to Obtain Waivers of Certain Requirements Affecting the Importation of Vests With Attachments for Sleeves

October 5, 1983.

On August 18, 1983 a notice was published in the **Federal Register** (48 FR 37510), which changed the textile category classification for man-made fiber vests with attachments for sleeves, effective on October 1, 1983. The purpose of this notice is to announce that any importer having contracts to purchase these products, dated before August 18, 1983 and calling for delivery before December 31, 1983, who wishes to request a waiver of this requirement, may submit copies certified by the applicant as true copies of such contracts to the Chairman of the Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230. Submissions made in any request for a waiver are subject to Section 1001 of Title 18 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27474 Filed 10-7-83; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limits for Certain Cotton and Man-Made Fiber Textile Products From the People's Republic of China

October 5, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 12, 1983. For further information contact Diana Bass (202/377-4212).

Background

A CITA directive establishing import limits for specified categories of cotton, wool and man-made fiber textile products, including Categories 335, 337, 340, 363, 631, 635, 640, and 645/646, produced or manufactured in the People's Republic of China, and exported during the twelve-month period which began on January 1, 1983, was published in the **Federal Register** on August 19, 1983 (48 FR 37685). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, the Government of the People's Republic of China has notified the Government of the United States of its intention to use flexibility in the form of swing and carryforward applied to the current-year limits for these categories. The limits for Categories 337, 363, 631, and 640 are being reduced accordingly to account for the amounts of swing being applied to Categories 335, 340, 635, and 645/646. Carryforward is being applied to the limits for Categories 335 and 635. The amount of carryforward used this year will be deducted from the limits established for Categories 335 and 635 in 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 5, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of August 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China.

Effective on October 12, 1983, the directive of August 19, 1983 is hereby further amended to adjust the previously established levels of restraint for Categories 335, 337, 340, 363, 631, 635, 640, and 645/646 to the following under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983: [1]

Category	Adjusted 12-mo. level of restraint [2]
335	[3] 301,703
337	[3] 663,409
340	[3] 631,665
363	[3] 16,556,430
631	[4] 475,000
635	[4] 442,077
640	[3] 1,036,038
645/646	[3] 631,050

[1] The Agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for Categories 335 and 635 may be increased for carryforward by five and seven percent, respectively, of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The levels have not been adjusted to account for any imports exported after December 31, 1983.

[3] Dozen.

[4] Numbers.

[5] Dozen pairs.

The Committee for the Implementation of Textile Agrements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27577 Filed 10-7-83; 8:45 am]

BILLING CODE 3510-DR-M

Changes in Officials of the Government of India Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products From the Dominican Republic; Correction

October 5, 1983.

On September 22, 1983 a notice was published in the **Federal Register** (48 FR 43213) which announced changes in officials authorized to issue export visas for certain cotton, wool, and man-made fiber textile products from the Dominican Republic. The title of that notice should be corrected to read as follows:

Changes in Officials of the Government of the Dominican Republic Authorized To Issue Export Visas for Certain Cotton Wool, and Man-Made Fiber Textile Products From the Dominican Republic.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27576 Filed 10-7-83; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following request for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The request contains: (1) Type of Submission ; (2) Title of

Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be ade of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information request may be obtained.

Extension

Professional Evaluation—DODDS.

Individuals; 9000 responses; 4500 burden hours.

The information provides an evaluation of the applicant's abilities and personal traits as indicators of possible success in an overseas teaching assignment with the DODDS. Forms are completed by supervisors and former supervisors of applicants.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, telephone (202) 395–4814, and Mr. John V. Wenderoth, DOD Clearance Officer, DIOR, WHS, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the request may be obtained from Mr. Robert L. Newhart, OASD MRA&L(PI), Room 3C800, Pentagon, Washington, D.C. 20301, telephone (202) 695–0643. This action is for an extension of authority, not for contract proposal solicitation.

October 4, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-27506 Filed 10-7-83; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Record of Preparation and Disposition of Remains (within CONUS), DD Form 2063

The primary purpose of using the DD Form 2063 is to ensure that federal standards are met. Additional data is gathered in order to plan budgets and manage for the proper care of remains.

Next-of-kin to deceased military personnel: 690 responses; 115 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20301, telephone (202) 695–5111.

M. S. Healy,

OSD Federal Register Liaison Officer Department of Defense.

October 4, 1983.

[FR Doc. 83-27507 Filed 10-7-83; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Payment of Funeral and/or Interment Expenses, DD Forms 1375 and 2065.

The DD Form 1375 is used by next-of-kin to request payment of funeral or interment expenses. The DD Form 2065 is used overseas to determine desired disposition of dependent's remains.

Surviving sponsor or next-of-kin: 1925 responses; 294 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from David O. Cochran DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–5111.

Dated: October 4, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 83-27508 Filed 10-7-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows:

Wednesday & Thursday, 2–3 November 1983, Plaza West, Rosslyn, VA. The entire meeting, commencing at 0900 hours each day is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on chemical and biological warfare.

Dated: October, 1983.

M. S. Healy,

OSD Federal Register Liason Officer Department of Defense.

[FR Doc. 83-27505 Filed 10-7-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation; Advisory Committee Meeting

The Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will meet in open session on October 31, 1983–November 5, 1983 in Tokyo, Japan.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as

they affect the perceived needs of the Department of Defense.

At its meeting on October 31, 1983–November 5, 1983, the Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will continue its review of the Defense Department's policies, plans and procedures which impede or might impede international arms cooperation and thereby have the potential for adversely impacting the collective security of the United States, its friends and Allies. In this context, the Task Force will also analyze the effect of current international cooperation policies have on the ability of the US, its friends and Allies to achieve in good order and sustain mobilization capacities. Meeting space is limited. Persons interested in attending should contact Major Marvin B. Winkelmann, USAF, Task Force Executive Secretary, 202–695–4817. Space will be awarded on a first come, first serve basis.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

October 5, 1983.

[FR Doc. 83-27510 Filed 10-7-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Supercomputer Applications; Advisory Committee Meeting

The Defense Science Board Task Force on Supercomputer Applications will meet in open session of November 22, 1983, at MIT, Cambridge, Massachusetts and on closed session on November 23, 1983, at the MITRE Corporation, Bedford, Massachusetts.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meetings on November 22 & 23, 1983, the Defense Science Board Task Force on Supercomputer Applications will attempt to identify areas where the expected many orders of magnitude improvement in computing power can be of aid to the defense establishment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting on November 23, 1983, concerns matters listed in 5 U.S.C. 552b(c) (1) (1976), and that accordingly this meeting will be closed to the public.

Persons interested in attending the open session on November 22 1983 should contact Commander R. B. Ohlander, Task Force Executive Secretary, Telephone: (202) 699–5051. Space will be awarded on a first come first served basis.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

October 5, 1983.

[FR Doc. 83-27509 Filed 10-7-83; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 120. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 120 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: October 1, 1983.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 120

To the Heads of the Executive Departments and Establishments

Subject: Table of Maximum per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Menorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this committee is directed to exercise the authority of the President (5 U.S.C. 5702(a) (2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 119 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or Establishment subject to these rates shall take appropriate action disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$ 12.60
Fairbanks	97.00
Anaktuvuk	140.00
Ft. Richardson	92.00
Anchorage	92.00
Ft. Wainwright	97.00
Barrow	153.00
Juneau	106.00
Bethel	131.00
Ketchikan	104.00
Coldfoot	122.00
Kodiak	110.00
College	97.00
Kotzebue	109.00
Cordova	113.00
Murphy Dome	97.00
Deadhorse	131.00
Noatak	109.00
Dillingham	103.00
Nome	112.00
*Dutch Harbor *	92.00
Noorvik	109.00
Eielson AFB	97.00
Elmendorf	92.00
Petersburg	104.00
Point Hope	100.00
Prudhoe Bay	131.00
Fajardo (Including Luquillo):	
Shemya AFB [1]	
12-16-5-15	12.75
Shugnak	124.00
5-16-12-15	109.00
Sitka-Mt. Edgecombe	99.00
Ft. Buchanan (Incl BSA Service center, Guaynabo:	104.00
Spruce Cape	
12-16--5-15	110.00
Panana	124.00
15-16--12-15	112.00
Valdez	99.00
Ponce (Incl.Ft. Allen NCS)	101.00
Wainwright	72.00
Wrangell	164.00
Roosevelt Roads:	104.00

Locality	Maximum rate
All Other Localities	83.00
12-16—5-15	124.00
American Samoa	75.00
5-16—12-15	99.0
Guam M. I.	74.00
Sabana Seca Seca:	
Hallax:	
12-16—5-15	124.00
Oanu	94.00
5-16—12-15	99.00
All Other Localities	67.00
San Juan (including San Jun Coast Guard Units:	
Johnston Atoll [2]	21.25
Midway Island [1]	12.60
12-16—5-15	124.00
Puerto Rico:	
5-16—12-15	99.00
Bayamon:	
All Other Localities	99.00
5-16—12-15	99.00
*12-1-430	120.00
Carolina:	
5-1—11-30	88.00
12-16—5-15	124.00
5-16—12-15	99.00
*Wake Isand [2]	
All Other Localities	20.00

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarterse by and quarters are obtained at the Simone Constructin, Inc. camp, adily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owed and contractor operated quarters and mess are available at this locality. This pwo diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

Dated: October 3, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer
Washington Headquarters Services
Department of Defense.

[FR Doc. 83-27559 Filed 10-7-83; 8:45am]

BILLING CODE 3810 01M

DEPARTMENT OF ENERGY

Conservation and Renewable Energy Office

Automotive Propulsion Research and Development; Automotive Technology Development Contractors' Coordination Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Department of Energy will hold the 21st Automotive Technology Development Contractors' Coordination Meeting on automotive propulsion systems and members of the public are hereby invited to attend as observers. Papers will be presented on the current state of research and development on automotive propulsion systems and on alternative fuels.

EFFECTIVE DATE: November 14–17, 1983.

ADDRESS: Hyatt Regency Dearborn Hotel, Dearborn, Michigan.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Marie Zerega, U.S. Department of Energy, Mail Station CE-131, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: (202) 252–8053.

SUPPLEMENTARY INFORMATION: Today's notice follows through on a statement in the notice or proposed regulations (43 FR 31929, 21932, (July 24, 1978) under Section 304(f) of the Department of Energy Act of 1978—Civilian Applications (Act), 15 U.S.C. 2703(f) (1970), in which the Department of Energy (DOE) announced its intention to open meetings to public attendance. Section 304(f) requires the DOE to issue administrative regulations prescribing procedures, standards, and criteria for review and certification of automotive propulsion research and development to be funded by new grants, cooperative agreements, contracts, or new projects under the Act. The purpose of the review and certification process is to insure that research and development newly funded under the Act will supplement rather than supplant, duplicate, displace, or lessen the same activities in the private sector.

The final regulations (43 FR 55228, November 24, 1978) provide for notice to the public of proposed research and development and an opportunity to file written objections. To enable the public to avail itself of the opportunity to participate in the review and certification process, the DOE stated in the notice of the proposed regulations that it would give notice of meetings, such as the one announced today, since relevant information is to be presented.

Attached is a preliminary agenda.

Registrants at the meeting pay a $75 registration fee which includes admission to all technical sessions, refreshments, and subsequently a copy of the report of the proceedings. Members of the public may register and pay the fee if they wish to avail themselves to these services and materials. However, if they do not, they are free to attend meeting sessions and listen to the proceedings. Members of the public intending to respond to this notice are requested to so advise the information contact named above in advance so that appropirate seating arrangements can be made.

Issued in Washington, D.C., September 19, 1983.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

Program Agenda

Sunday, November 13, 1983

6:00 p.m.–8:30 p.m.
Registration

Monday, November 14, 1983

8:00 a.m.–3:00 a.m.
Registration
9:00 a.m.–10:00 p.m.
Welcoming Address, Program Review
10:00 a.m.–12:00 p.m.
Stirling Systems
1:30 p.m.—5:00 p.m.
Stirling Technology

Tuesday, November 15, 1983

8:00 a.m.—3:00 p.m.
Registration
9:00 a.m.–12:00 p.m.
Heavy Duty Transport Technology
1:30 p.m.–4:30 p.m.
Ceramic Technology, Session I

Wednesday, November 16, 1983

8:00 a.m.–3:00 p.m.
Registration
9:00 a.m.–12:00 p.m.
Gas Turbine Technology
1:30 p.m.–3:00 p.m.
Ceramic Technology, Session II
3:30 p.m.–5:00 p.m.
Industry Perspectives
6:00 p.m.–8:30 p.m.
Henry Ford Museum Reception

Thursday, November 17, 1983

8:00 a.m.–1:30 p.m.
Registration
9:00 a.m.–12:00 p.m.
Alternative Fuels I
- Synthetic Fuels
- Gaseous Fuels

1:30 p.m.–5:00 p.m.
Alternative Fuels II
- Alcohol Fuels
- Panel Discussions: Alcohol in CI & SI Engines

[FR Doc. 83-27581 Filed 10-7-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER82-481-005]

Arizona Public Service Co.; Refund Report

October 4, 1983.

Take notice that on September 16, 1983, Arizona Public Service Company ("APS") submitted a Refund Report pursuant to a Commission Letter Order dated July 20, 1983.

APS states that it refunded an amount of $51,269.42 to Arizona Power Authority.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, on or before October 14, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27476 Filed 10-7-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-496-000 and CP83-496-001]

Columbia Gulf Transmission Co. Application

October 4, 1983.

Take notice that on September 2, 1983, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP83-496-000 an application, as amended on September 27, 1983, in Docket No. CP83-496-001, pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application of file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27477 Filed 10-7-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES83-71-00]

El Paso Electric Co.; Application

October 4, 1983.

Take notice that on September 27, 1983, El Paso Electric Company, filed an aplication with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to assume liability for payment of up to $50,000,000 principal amount of City of Farmington, New Mexico, Annual Tender Pollution Control Revenue Bonds, 1983 Series A (El Paso Electric Company Four Corners Project), proposed to be issued in early to mid November 1983, for the pupose of refunding the City's Pollution Control Revenue Bonds, 1981 Series A (El Paso Electric Company Four Corners Project), outstanding in the aggregate principal amount of $35,440,000, issued to defray a portion of the cost to the Applicant of certain pollution control facilities at Units 4 and 5 of the Four Corners Generating Station in San Juan County, New Mexico.

Any persons desiring to be heard or to make any protest with reference to the said application should, on or before October 20, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27478 Filed 10-7-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF83-4051-000]

Southwestern Power Administration; Approval

October 4, 1983.

Take notice that on September 15, 1983, Southwestern Power Administration ("SWPA") submitted for filing a letter written by the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy which confirmed and approved, on an interim basis effective October 1, 1983, an extension of Transmission Rate Schedule TDC-2 for a period extending to March 31, 1984. Additionally, SWPA submitted the July 31, 1981 Commission Order which confirmed and approved Transmission Rate Schedule TDC-2 through September 30, 1983. (Docket No. EF81-4051 000)

The Assistant Secretary states that SWPA has developed a new transmission rate and is preparing the new rate for submission to FERC through the Department of Energy.

Therefore, confirmation and approval of the existing rates for a period ending March 31,1984 is requested.

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, N.E., Washington, D.C. 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 October 17, 1983. 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.

Kenneth F. Plumb

Secretary.

[FR Doc. 83-27479 Filed 10-7-83; 8:45am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SA-FRL 2447-3]

Management Advisory Group to the Construction Grants Program; Open Meeting October 26-27, 1983

Under Public Law 92-463, notice is hereby given that a meeting of the Management Advisory Group to the

Construction Grants Program (MAG) will be held at the Environmental Protection Agency, 4th and M Streets, SW., Washington, D.C. 20460, in Room S–353 on October 26–27, 1983, beginning at 9 a.m. on October 26, 1983, and ending at about 3 p.m. on October 27, 1983.

The agenda includes discussions on the current status and future of equipment and architect/engineer services for the construction grants program, as well as a presentation by representatives of the Water Pollution Control Federation and the Association of Metropolitan Sewerage Agencies on the construction grants program. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any members of the public wishing to make comments are invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. To facilitate entrance into the EPA building, any members of the public wishing to attend should contact Georgette Brown, (202) 382–5859, so that their names may be included on an entrance list. Additional information on the meeting may also be obtained from Ms. Brown at the Environmental Protection Agency, WH–547, 401 M Street, SW., Washington, D.C., or at the number listed above.

Dated: September 30, 1983.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water (WH–556).

[FR Doc. 83–27516 Filed 10–7–83; 8:45 am]

BILLING CODE 6560–50–M

[OPRM–FRL–2448–1]

Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of comment period; corrections.

SUMMARY: On August 31, 1983 EPA (48 FR 38590) requested additional public comment on certain emissions trading issues. This document extends the period for comment on the issues raised in the August 31 notice from September 30, 1983 to October 31, 1983. This document also corrects certain typographical errors in the August 31 notice.

EPA has received a number of formal requests from both industry and environmental groups for extension of the comment period set in the August 31 FR notice. Parties have generally requested extensions of from one to two months. Development of clear, environmentally-sound emissions trading policy will be furthered by giving the public more time to comment on the issues presented in the August 31st notice.

EPA's ability to extend the comment period is limited, however, by its need to resolve the issues raised by this notice for inclusion in an upcoming Guidance Document for Correction of Part D State Implementation Plans (SIPs) for Nonattainment Areas. States are awaiting this Guidance to prepare second-effort plans to bring into attainment those areas that failed to develop or implement approvable Plans or to meet the December 1982 attainment deadlines despite approved Plans. Accordingly, to balance opportunity for fuller public comment on the August 31 notice with the need for prompt guidance for correction of Part D SIPs, EPA is extending the period for comment on the August 31 notice by 31 days, until close-of-business Monday, October 31, 1983.

DATES: The deadline for submitting written comments to the August 31, 1983 notice (48 FR 39580) is October 31, 1983.

ADDRESSES: Comments should be sent in triplicate if possible to: Central Docket Section (A–130), U.S. Environmental Protection Agency, Washington, D.C. 20460, Attn: Doc. No. G–81–2.

FOR FURTHER INFORMATION CONTACT:

Ivan Tether, Regulatory Reform Staff (PM–223), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 382–2727, or

Brock Nicholson, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, N.C. 27711, (919) 541–5516.

The following corrections are made in FR Doc. PRM–FRL–2361–3 appearing on 39580–86, August 31, 1983:

1. On page 39583, at the bottom of column 1, in the last sentence of text, the word "approximately" is replaced by the word "appropriately."

2. On page 39586, at the bottom of column 3, in the next to the last sentence of text, the word "insignificant" is replaced by "significant," to read "* * * in which a state or source has invested significant resources * * *."

* * * * *

Dated: October 4, 1983.

John M. Campbell, Jr.,

Acting Associate Administrator for Policy and Resource Management.

[FR Doc. 83–27515 Filed 10–7–83; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No.: FEMA–REP–5MI–1]

The Michigan Emergency Preparedness Plan Site-Specific for the D.C. Cook Nuclear Power Plant; Certification of Findings and Determination

AGENCY: Federal Emergency Management-Agency.

ACTION: Certification of FEMA findings and determination.

SUMMARY: In accordance with Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of Michigan submitted its plans relating to the D.C. Cook Nuclear Power Plant to the Director of FEMA Region V on March 16, 1981, for FEMA review and approval. On September 29, 1982, the Regional Director forwarded his evaluation to the Deputy Associate Director for State and Local Programs and Support in accordance with Section 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the D.C. Cook facility, and evaluations of the joint exercises conducted on October 9, 1980, and March 30, 1982, in accordance with § 350.9 of the FEMA rule, and a report of the public meeting held on December 11, 1980, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule. In addition, the Regional Director submitted an addendum dated August 31, 1983, that considered the revision in plans and preparedness since September 29, 1982, and the final report on the October 21, 1982, exercise. This last evaluation reported that the remaining outstanding deficiencies have been resolved.

Based on the evaluation by the Regional Dirrector and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the D.C. Cook Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the Plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in appendix 3 of

the Nuclear Regulatory Commission (NRC)/ FEMA Criteria of NUREG–0654/ FEMA–REP–1, Revision 1.

FEMA will continue to review the status of offsite plans and preparedness associated with the D.C. Cook Nuclear Power Plant in accordance with section 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–5MI–1 maintained by the Regional Director, FEMA Region V, Federal Center, Battle Creek, Michigan 49016.

DATED: September 28, 1983.

For the Federal Emergency Management Agency.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-27487 Filed 10-7-83; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 83-47]

Order of Investigation and Hearing; Agreement No. 10467: Latin American Charter Agreement; Agreement No. 10468: Latin American Discussion Agreement

Agreement No. 10467 is a space-available, as-needed, space charter arrangement, and Agreement No. 10468 is a discussion agreement for the purpose of developing, exchanging, and discussing trade data/information. Each applies between U.S. Atlantic/Gulf ports (and U.S. points) and ports and points in Bolivia, Chile, Peru, Ecuador and Colombia, and each involves several prominent carriers in these trades.[1] Agreement No. 10467 would expire on June 30, 1987, while the term of Agreement No. 10468 is indefinite.

Proponents claim that Agreement No. 10467 is necessary to combat overtonnaging, reduced rate levels, cargo declines and diversion to and malpractices at the Port of Miami. They also claim that it is only minimally anti-competitive and will provide benefits to the trade. Proponents view Agreement No. 10468 as a forum to discuss these problems, since the existing conference structure allegedly has been unsuccessful. Proponents also argue that this Agreement will enhance their ability to arrive at both upcoming economic decisions on moderization and fleet deployment, as well as commercial solutions to conflicting cargo promotion laws/policies.

Four parties[2] protested and requested a hearing on Agreement No. 10467, generally contesting the unstable trade conditions alleged by Proponents, claiming the agreement is unjustified, extremely anti-competitive, and a first step towards a consortium, and noting Proponents' failure to address the impact of involved cargo reservation laws. Two of these parties[3] also protested and sought a hearing on Agreement No. 10468, reiterating certain of the objections they raised against the space charter agreement, claiming Proponents have not demonstrated the agreement's public benefits, and contending that rate discussions have not been justified.

Proponents replied that each agreement has met applicable approval standards and that no material facts are in dispute, but request *pendente lite* approval if Agreement No. 10467 is made the subject of an investigation.

Section 15 requires the Commission to independently examine the competitive consequences of all agreements and their relationship to the *svenska* doctrine[4] prior to approval.[5] This inquiry requires an appropriate formal hearing where, as here, a protestant to the agreement raises material issues of fact regarding the effect of the proposed agreement on competitors, the trade, and United States commerce.[6] The need for a formal hearing is highlighted here by the existence of restrictive cargo reservation schemes in the trade that would appear to exacerbate the competitive consequences flowing from these Agreements, particularly with regard to the space charter arrangement.

To determine the Agreement's ultimate approvability under the standards of section 15, and to resolve disputed factual issues, the parties should address the following specific issues and any others the presiding administrative law judge may deem relevant to the inquiry at hand.[7]

1. What competitive effect will the Agreements, either individually or together, have on the trade, and what conditions in the trade [8] would justify any anticompetitive effect the Agreements may be found to have?

2. What are the terms of the South American cargo preference laws that apply to the trades within the geographic scope of the Agreements, and what effect will these laws have on the implementation of the Agreements and the trade?

3. How will Agreement Nos. 10467 and 10468 interact with each other and other approved section 15 agreements in the trade? Why should Agreement No. 10468 membership be limited to the national flag carriers of the countries involved, and why should that agreement include matters that are within the scope of other approved section 15 agreements to which Proponents are party?

Finally, the request for *pendente lite* approval of Agreement No. 10467 will be denied. Proponents have not demonstrated the existence of any emergency conditions which requires interim approval of an agreement which has never been operative. They also have failed to offer any evidence that such interim approval is required by any overriding public need. Accordingly, *pendente lite* approval of Agreement No. 10467 is unwarranted.

Therefore, it is ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916, (46 U.S.C. 814 and 821), an investigation and hearing be instituted to determine whether Agreement No. 10467 and/or Agreement No. 10468 should be approved, disapproved or modified; and

It is further ordered, That the parties listed in footnote 1 of this Order are

[1] Agreement No. 10467 is among Compania Sud Americana De Vapores (CSAV); Delta Steamship Lines, Inc.; Lykes Bros. Steamship Co., Inc. (Lykes); Transportes Navieros ecuatorianos; and Compania Peruana De Vapores. Agreement No. 10468 is among the same carriers, plus Flota Mercante Grancolombiana, S.A.X

[2] Naviera Continental, NAVICON, C.A. (Navicon); Ecuadorian Line, Inc. (Ecuadorian); Coordinated Caribbean Transport, Inc. (CCT); and the Florida Customs Brokers and Forwarders Association (FCBFA).

[3] CCT and FCBFA.

[4] The *Svenska* doctrine is the proposition affirmed in *Federal Maritime Commission v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238 (1968), whereby section 15 agreements which interfere with the policies of the antitrust laws will be disapproved as "contrary to the public interest" unless justified by evidence establishing that the agreement, if approved, will meet a serious transportation need, secure an important public benefit or further a valid regulatory purpose of the Shipping Act, 1916. The burden is on proponents of such agreements to come forward with the necessary evidence.

[5] *United States Lines v. FMC*, 584 F. 2d 519 (D.C. Cir. 1978).

[6] *United States Lines v. FMC, supra, Marine Space Enclosures v. FMC*, 420 F. 2d 577 (D.C. Cir. 1969).

[7] These issues are not intended to be all-inclusive or immutable. As the proceeding develops, the presiding officer may find it necessary not only to expand upon these issues but also to narrow, or delete altogether, those which may prove irrelevant or immaterial to the ultimate question presented. Rule 147 of the Commission's Rules of Practice and Procedure, 46 CFR 502.147, which authorizes a presiding officer to delineate the scope of a proceding by amending, modifying, clarifying or interpreting the Commission's order initiating that proceeding, provides whatever flexibility is necessary in this regard.

[8] Proponents allege, *inter alia*, that unstable conditions in the trade and malpractices at the Port of Miami are among factors supporting the approval of the Agreements. Proponents should present evidence supporitng these allegations and address precisely how the agreements would alleviate those conditions.

hereby made Proponents in this proceeding; and

It is further ordered, That the request of Proponents for *pendente lite* approval of Agreement 10467 is denied; and

It is further ordered, That the parties listed in footnote 2 of this Order are hereby made Protestants in this proceeding; and

It is further ordered, That in accordance with the Commission's Rules (46 CFR 502.42) the Bureau of Hearing Counsel is hereby made a party to this proceeding; and

It is further ordered, Tht this matter is assigned for hearing and decision to the Commission's Office of Administrative Law Judges, with a public hearing to be held at a date and place hereafter determined by the Presiding Administrative Law Judge but in no event later than the time limitation set forth in Rule 61 (46 CFR 502.61). This hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents.

It is further ordered, That persons other than those named herein having an appropriate interest in this proceeding may petition for leave to intervene pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72); and

It is further ordered, That this order be published in the **Fedral Register** and a copy served upon all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-27540 Filed 10-7-83; 8:45 am]

BILLING CODE 6730-01-M

[Amendment No. 4 to Commission Order No. 1 (Revised)]

Organization and Functions of the Federal Maritime Commission

By Executive Order 12418 of May 5, 1983 (48 FR 20691-92), the President transferred from the Commission to the Secretary of the Department in which the Coast Guard is operating the functions performed by the Bureau of Certification and Licensing relating to financial responsibility of vessels for pollution liability. By organizational change dated September 27, 1983, the Bureau of Certification and Licensing was abolished and its remaining functions relocated within the Bureau of Tariffs. Accordingly, this amendment delegates authority to the Director, Bureau of Tariffs to direct and administer the functions of the Office of Freight Forwarders and the Office of Passenger Vessel Certification.

Commission Order 1 is therefore amended to reflect this delegation and to effect corresponding administrative changes to the basic order.

I. *Table of Contents:*

A. Delete Section 10 entitled "Specific Authorities Delegated to the Director, Bureau of Certification and Licensing."

B. Renumber present Section 11 "Specific Authority Delegated to the Director, Office of Energy and Environmental Impact," Section 12 "General Authority Delegated to the Managing Director, Secretary, General Counsel, and Chief Administrative Law Judge," Section 13 "Public Requests for Information and Decisions," and Section 14 "Effect on Other Orders" as sections 10, 11, 12, and 13, respectively.

II. *Section 3—Organizational Components:* The listing of the Commission's organizational components is revised as follows:

A. Amend subsection (9) by adding subparagraph "d. Office of Freight Forwarders" and "e. Office of Passenger Vessel Certification." The amended subsection reads as follows:

(9) Bureau of Tariffs
a. Office of Foreign Tariffs
b. Officer of Domestic Tariffs
c. Officer of Financial Analysis
d. Office of Freight Forwarders
e. Officer of Passenger Vessel Certification

B. Delete present subsection (10) and renumber remaining subsections (11) through (19) as subsections (10) through (18), respectively.

III. *Section 4. Lines of Responsibility:* Delete reference to the Bureau of Certification and Licensing in subsection 4.04

IV. *Section 5. Specific Functions of the Organizational Components of the Federal Maritime Commission*

A. *Subsection 5.03:* In the first sentence describing the Managing Director's functions, change reference to "subsections 5.08 through 5.19" to read "subsection 5.08 through 5.18."

B. *Subsection 5.09:* The first paragraph of this subsection is amended to reflect the assumption of freight forwarder and passenger vessel functions by the Bureau of Tariffs, and reads as follows:

The *Bureau of Tariffs* plans, develops, administers and analyzes programs and activities in connection with the pricing by common carriers by water, conferences of such carriers and terminal operators in the foreign and domestic offshore commerce of the United States; reviews and rejects tariff filings; approves or disapproves special permission applications; and initiates recommendations, collaborating with the Bureau of Hearing Counsel and other elements of the Commission as warranted, for formal action and proceedings by the Commission. The Bureau is also responsible for the licensing of independent ocean freight forwarders under the provisions of the Shipping Act, 1916; and under Public Law 89-777 the certification of owners and operators of passenger vessels as to their financial responsibility to satisfy liability incurred by nonperformance of voyages or resulting from injury or death.

C. *Subsection 5.10:*

1. Delete reference to Subsection 5.10, paragraphs 1 and 2 describing the functions of the Bureau of Certification and Licensing, and subparagraphs a. and b. of Subsection (1) describing pollution liability functions.

2. Renumber and rename present subparagraph (1) the *Office of Vessel Certification* as subparagraph (4) The *Office of Passenger Vessel Certification,* and add it to the list of the functions of the Bureau of Tariffs described in subsection 5.09. Renumber the remaining subparagraphs c. through m. describing the functions of that office as subparagraphs a. through k, respectively.

3. Renumber present subsection (2) The *Office of Freight Forwarders* as subsection (5) The *Office of Freight Forwarders* and add it to the list of the functions of the Bureau of Tariffs described in subsection 5.09

4. Renumber subsections 5.11 through 5.19 describing the functions of other offices of the Commission as subsections 5.10 through 5.18, respectively. (NOTE: These subsections will be amended to reflect current Commission organization in a subsequent revision to the basic order.)

V. *Section 6. Delegation of Authorities:* In subsection 6.01, change reference to "sections 7, 8, 9, 10, 11, 12 and 13 of this Order" to read "sections 7, 8, 9, 10, 11, and 12 of this Order."

VI. *Section 10. Specific Authorities Delegated to the Director, Bureau of Certification and Licensing:* Delete the title to this section and delete present subsections 10.02 through 10.04. Renumber remaining subsections 10.01,

10.05, and 10.06 as subsections 9.09, 9.10, and 9.11, respectively and add them to the list of specific authorities delegated to the Director, Bureau of Tariffs described in Section 9.

VII. Renumber present Section 11 "Specific Authority Delegated to the Director, Office of Energy and Environmental Impact" and Section 12 "General Authority Delegated to the Managing Director, Secretary, General Counsel, and Chief Administrative Law Judge" as sections 10 and 11, respectively.

VIII. *Section 13. Public Requests for Information* Renumber section 13 as *Section 12. Public Requests for Information.*

Delete reference to Bureau of Certification and Licensing in renumbered subsection 12.05, subparagraph (4). Renumber remaining subparagraphs (5) through (12) as subparagraphs (4) through (11), respectively.

Dated: October 3, 1983.

Alan Green, Jr.,
Chairman.

[FR Doc. 83-27539 Filed 10-7-83; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 83-46]

Southeastern Maritime Company v. Georgia Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Southeastern Maritime Company against Georgia Ports Authority was served September 29, 1983. Complainant alleges that respondent has violated section 17 of the Shipping Act, 1916, in connection with establishment of rules concerning responsibility for loss and damage to persons and property.

This proceeding has been assigned to Administrative Law Judge Seymour Glanzer. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examation in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the bases of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,
Secretary.

[FR Doc. 83-27538 Filed 10-7-83; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; Bank of Boston Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to acquire more than 50 percent of the voting shares or assets of The Martha's Vineyard National Bank, Vineyard Haven, Massachusetts. Comments on this application must be received not later than November 1, 1983.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Intermountain Banccorporation,* Columbia Falls, Montana; to acquire 91.25 percent of the voting shares of Treasure State Bank of Glasgow, Glasgow, Montana. Comments on this application must be received not later than November 3, 1983.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, MIssouri 64198:

1. *American Bank Corporation,* Denver, Colorado; to acquire 100 percent of the voting shares or assets of American Bank of Eastridge, N.A., Casper, Wyoming. Comments on this application must be received not later than November 3, 1983.

Board of Governors of the Federal Reserve System, October 4, 1983.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 83-27480 Filed 10-7-83; 8:45 am]
BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities; Citicorp, et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Citicorp,* New York, New York (finance company and credit-related insurance activities; Arizona, California and Nevada): To establish a *de novo* office of its subsidiary, Citicorp Acceptance Company, Inc. located in Los Angeles, California. The activities in which the *de novo* office proposes to engage are: the making or acquiring of loans and other extensions of credit,

secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health insurance by licensed agents or brokers, as required, the making of loans to individuals and businesses secured by a lien on mobil homes, modular units or related manufactured housing, together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loans; and the servicing, for any person, of loans and other extensions of credit. The proposed service area for the *de novo* office will comprise the entire states of Arizona, California and Nevada. Comments on this application must be received not later than November 2, 1983.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *First Security Corporation*, Salt Lake City, Utah (mortgage banking activities; Nevada): To engage through its existing subsidiary, First security Realty Services Corporation (formerly known as Utah Mortgage Loan Corporation), in making or acquiring loans and other extensions of credit such as would be made by a mortgage banking company, including making both residential and commercial mortgage loans for its own portfolio and for sale to others, and the servicing of such loans for others. These activities would be conducted from an office in Las Vegas, Nevada. The office will replace an office of the affiliated First Security Mortgage Co. This office will serve Las Vegas and all of Clark County, and will also serve those portions of the following continguous counties which are closest to Las Vegas, Nye and Lincoln Counties. Comments on this application must be received not later than November 3, 1983.

2. *Security Pacific Corporation*, Los Angeles, California (mortgage and servicing activities; Wyoming): To engage through its subsidiary, Security Pacific Mortgage Corporation in the origination and acquisition of mortgage loans, including development and construction loans on multi-family and commercial properties for Security Pacific Mortgage Corporation's own account or for sale to others; and the servicing of such loans for others. These activities would be conducted from an office of Security Pacific Mortgage Corporation in Casper, Wyoming, serving the State of Wyoming. Comments on this application must be received not later than November 3, 1983.

Board of Governors of the Federal Reserve System, October 4, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27482 Filed 10-7-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Trans-Pacific Bancorp, and Community Bank System, Inc.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Trans-Pacific Bancorp*, San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Trans Pacific National Bank, San Francisco, California. Comments on this application must be received not later than November 3, 1983.

B. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 2551:

1. *Community Bank System, Inc.*, Canton, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The St. Lawrence National Bank, Canton, New York and The First National Bank of Ovid, Ovid, New York. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York. Comments on this application must be received not later than November 3, 1983.

Board of Governors of the Federal Reserve System, October 4, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27481 Filed 10-7-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse and Mental Health Administration

October; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I),announcement is made of the following national advisory body scheduled to assemble during the Month of October 1983.

Board of Scientific Counselors, NIMH

October 20–22; 9:00 a.m.
National Institutes of Health, Building 36, Conference Room 1B–07, Bethesda, Maryland 20205
Open—October 20–22; 9:00–9:15 a.m.
Closed—Otherwise
Contact: Dr. Frederick K. Goodwin, National Institutes of Health Buiding 10, Room 4N–224, Bethesda, Maryland 20205

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIMH, on mental health intramural research programs through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: From 9:00–9:15 a.m., October 21–22, the meetings will be open for discussion of administrative announcements and program developments. Otherwise, the sessions will be devoted to a review of the intramural research projects from the Laboratory of Socio-Environmental Studies and the Clinical Neuropharmacology Branch, and the evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact person listed above. Summaries of the meeting and a roster of Committee members may be obtained as follows: NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17 C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

This **Federal Register** notice is late due to the delay in setting up agenda items.

Dated: October 4, 1983.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 83-27520 Filed 10-7-83; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Advisory Committee Meeting; Filing of Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that under the Federal Advisory Committee Act annual reports of the various committees must be filed with the Library of Congress. These have been filed, and a list appears below.

ADDRESS: Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the annual reports required by the act for the following FDA advisory committees that held closed meetings during the period July 1, 1982, through June 30, 1983, have been filed with the Library of Congress:

National Center for Drugs and Biologics, Blood Products Advisory Committee, Panel on Review of Allergenic Extracts, Vaccines and Related Biological Products Advisory Committee, Cardiovascular and Renal Drugs Advisory Committee, Fertility and Maternal Health Drugs Advisory Committee, Pulmonary-Allergy Drugs Advisory Committee.

National Center for Devices and Radiological Health, Circulatory System Devices Panel, Clinical Chemistry and Hematology Devices Panel, Clinical Chemistry Device Section, General Medical Devices Panel, Gastroenterology-Urology Device Section, Immunology and Microbiology Devices Panel, Immunology Device Section, Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, Ophthalmic Device Section, Respiratory and Nervous System Devices Panel, Neurological Device Section, Surgical and Rehabilitation Devices Panel, Orthopedic and Rehabilitation Device Section.

Annual reports are available for public inspection at (1) the Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 1026, Thomas Jefferson Bldg., 2d and Independence Ave. SE., Washington, DC, (2) the Department of Health and Human Services Library, Rm. 1436, 330 Independence Ave. SW., Washington, DC, on weekdays between 9 a.m. and 4:30 p.m., (3) the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 4, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-27503 Filed 10-7-83; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. November 3 and 4, 9 a.m., auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, Novlember 3, 9 a.m. to 10 a.m.; open committee discussion, November 3, 10 a.m. to 5 p.m.; November 4, 9 a.m. to 5 p.m., Joan Standaert, National Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cardiovascular and renal disorders.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss dose response relationships for the antihypertensive, diuretic and adverse effects of hydrochlorothiazide (NDA 11-971, Oretic, Abbott Laboratories; NDA 11-835, Hydroduiril, Merck Sharp & Dohme; NDA 11-879, Esidrix, Ciba-Geigy Corporation), Mexitil (Mexiletine HC1, 11-873, Boehringer Ingelheim Ltd.) for use as an anti-arrhythmic agent and Indocin i.v. (indomethicine, NDA 18-878, MercK Sharp & Dohme) for use in patent ductus.

Orthopedic and Rehabilitation Device Section of the Surgical and Rehabilitation Devices Panel

Date, time, and place. November 8, 8 a.m., Room 703-727A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 5 p.m.; Robert E. Mansell, National Center for Devices and Radiological Health (HFK-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 2, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the development of artificial ligaments and the need to establish well-defined guidelines for their various orthopedic uses.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting

involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: October 4, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–27504 Filed 10–7–83; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Toxicology Program Board of Scientific Counselors Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Toxicology Program Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on October 27, 1983.

The meeting will be open to the public from 10:00 a.m. until adjournment for the purpose of providing peer review of the data from the chronic carcinogenesis bioassay of FD&C Red No. 3 in Charles River CD–1 rats of both sexes. The bioassay was sponsored by the Certified Color Manufacturers Association, conducted by International Research and Development Corporation (IRDC), and submitted to the Food and Drug Administration (FDA) in support of permanent listing of FD&C Red No. 3. The review will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* panel of experts.

The meeting will commence with a brief overview of the study. This will be followed with presentations by scientific staff from the Bureau of Foods, FDA, concerning the pathology findings. Sufficient time will be allowed for public comment.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971, FTS 629–3971, will furnish program information prior to the meeting and summary minutes subsequent to the meeting.

Dated: October 4, 1983.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 83–27374 Filed 10–7–83; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Presidential Commission on Indian Reservation Economies; Meeting

October 6, 1983.

The Presidential Commission on Indian Reservation Economies, established pursuant to Executive Order 12401, as amended by Executive Order 12442, will hold its first meetings on October 19, 1983, from 10 a.m. until 5 p.m., and on October 20, 1983, from 9 a.m. until 5 p.m., in the GSA Auditorium at 18th and F Sts., NW., Washington, D.C.

The purpose of the meeting is to initiate the work of the Commission consistent with the Executive Orders and the Commission's charter, and to lay out workplans and a public hearing schedule, along with administrative and housekeeping chores.

The agenda of the meetings is summarized as follows:

The first meeting will open with the swearing in of the Commission and the delivery of opening remarks. There will then be an open discussion of the Commission's workplan for its first two months, and public hearings may be scheduled for that period. Subsequently, the Executive Director of the Commission will provide the Commissioners with an orientation on current issues in Indian affairs. The second day of the meetings will be devoted to items of business which members of the Commission wish to discuss, with the goal of dividing the work of the Commission among the Commissioners and staff.

This notice is being published slightly less than 15 days prior to the scheduled dates of the meetings due to delay in securing a suitable site for such a public meeting. Because of the busy schedules of the persons appointed to the Commission and the need for commencement of the business of the Commission, the 15-day notice requirement is hereby waived.

For further information, please contact Mr. Roy Sampsel at 202/343–3107.

William H. Coldiron,

Solicitor.

[FR Doc. 83–27689 Filed 10–7–83; 8:45 am]

BILLING CODE 4310–02–M

Geological Survey

Revision of Terminology for Geologic Hazard Warnings

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: This notice describes proposed changes in the terms and criteria used by the U.S. Geological Survey for issuing statements concerning geologic-related hazards to public officials and the public.

For the purpose of this statement, a geologic hazard is a geologic condition, process, or potential event, such as an earthquake, volcanic eruption, or landslide, that poses a threat to the health, safety, or welfare of the public or to the functions or economy of a community or larger governmental entity. In this context a Geologic Hazard Warning is a formal statement by the Director of the U.S. Geologic Survey that discusses a specific geologic condition, process, or potential event that poses a significant threat to the public, and for which some timely response would be expected. Directives or advisories to the

public to take action, based on a Geologic Hazard Warning, may be issued by officials of State and local governments, and other Federal agencies, with authority and responsibility to issue such statements.

The term Hazard Warning is reserved for those situations posing a risk greater than normal and warranting considerations of a timely response in order to provide for public safety. Information regarding hazardous conditions that do not meet the criteria for a Hazard Warning may, however, also be sent to public officials as it becomes available. Transmittal of such information would not constitute a Hazard Warning.

1. The criteria for a Geologic Hazard Warning are:

a. a degree of risk greater than normal for the area; or a hazardous condition that has recently developed or has only been recently recognized; and

b. a threat that warrants consideration of a near-term public response.

2. A Geologic Hazard Warning consists of:

a. a description of the geologic or other pertinent conditions that cause the concern;

b. factors that indicate that such conditions constitute a potential hazard;

c. location or area that may be affected;

c. estimated severity and time or occurrence, if such estimates are justified by available information;

e. if possible, a quantitatively based probabilistic statement on the likelihood of a given event or events within a specified time period; and

f. a description of continued Geological Survey involvement and estimate of what and when additional information might be available.

If a life or property-threatening event is thought to be imminent, and immediate response is warranted by the public and public officials, the emergency nature of the Hazard Warning will be stated clearly either in the heading or the first sentence of the text of the warning statement. If the immediate crisis passes, either with or without the anticipated event, a revised statement will be issued to reflect the change conditions and a re-evaluation of the geologic hazard.

DATES: Comments on the revisions are welcomed and will be considered in the adoption of final hazard warning procedures. Comments are due within 30 days from the date of this notice.

ADDRESS: Send comments to: Office of the Assistant Director for Engineering Geology, U.S. Geological Survey, 106 National Center, Reston, Virginia, 22092.

SUPPLEMENTARY INFORMATION: The **Federal Register** of April 12, 1977, Vol. 42, No. 70, pages 19292 to 19296 describes the current terminology as well as the U.S. Geological Survey's authority to issue warnings of geologic-related hazards, capabilities to predict hazardous events, and provisional procedures to report hazardous conditions.

The change from the present three-level system to that proposed here is based on past experience and is expected to result in a more effective warning procedure. These changes are only to the present hazard terminology and their criteria. They do not entail or imply any changes to the procedures the U.S. Geological Survey uses to notify State and local governments, other Federal agencies, the public, or the news agencies and services.

Dated: September 30, 1983.

James F. Devine,

Assistant Director, Engineering Geology.

[FR Doc. 83-27542 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[N-1005, N-1005A]

Nevada; Classification Vacated

September 28, 1983.

1. Pursuant to the authority delegated by Bureau Order 701 and amendments thereto, the following Bureau of Land Management multiple use classifications were published in the **Federal Register:**

N-1005, date published: June 29, 1967 (FR Doc 67-7343

N-1005A, date published: December 22, 1970 (FR Doc 70-17012

Pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411-18) and the 43 CFR 2460 regulations, these actions classified approximately 4,334,000 acres of public land in White Pine County, Nevada, for multiple use management. The land was segregated as follows:

Classification	Acres	Segregated from
N-1005	4,334,000	Agricultural land laws.
N-1005A	21,060	13,940 acres from all forms of appropriation including mining but not Recreation and Public Purposes, mineral leasing and material sales.
		7,120 acres from all forms of appropriation except Recreation and Public Purposes, mining, mineral leasing or material sales.

2. Pursuant to 43 CFR 2461.5(c)(2), the classifications are hereby vacated with the exceptions listed below:

a. The following described land will remain segregated from all appropriation including the mining laws, but not the Recreation and Public Purposes Act nor the mineral leasing and material sale laws:

Mount Diablo Meridian, Nevada

Goshute Cave Geologic Area

T. 25 N., R. 63 E.,
Sec. 1, E½NE¼.
T. 25 N., R. 64 E.,
Sec. 6, Lots 5, 12.

Goshute Canyon Natural Area

T. 25 N., R. 63 E., Unsurveyed,
Sec. 1, SW¼SW¼;
Sec. 2, S½, S½N½, NW¼NW¼;
Sec. 3, All;
Sec. 4, All;
Sec. 5, All;
Sec. 8, NE¼, SE¼NW¼, N½NW¼, N½ SE¼;
Sec. 9, N½, SW¼, W¼SE¼, NW¼SE¼;
Sec. 10, N½;
Sec. 11, N½, N½SE¼, NE¼SW¼;
Sec. 12, N½SW¼, S½NW¼, NW¼NW¼, SW¼NE¼, NW¼SE¼, E½SE¼.
T. 26 N., R. 63 E.,
Sec. 26, SW¼, SW¼NW¼, SW¼SE¼;
Sec. 27, SE¼, SE¼NE¼, S½SW¼;
Sec. 33, SE¼, E½SW¼, S½NE¼;
Sec. 34, N½, SW¼, E½SE¼;
Sec. 35, W½, W½E½, E½SE¼.
T. 25 N., R. 64 E.,
Sec. 7, SW¼, SW¼SE¼;
Sec. 17, SW¼NW¼;
Sec. 18, NE¼NW¼, NE¼.

Blue Mass Canyon Scenic Area

T. 21 N., R. 68 E.,
Sec. 1, Lots 1 and 2, S½NE¼.
T. 21 N., R. 69 E.,
Sec. 6, Lots 3, 4, and 5, SE¼NW¼.
T. 22 N., R. 68 E.,
Sec. 36, E½.
T. 22 N., R. 69 E.,
Sec. 31, Lots 2, 3, and 4, E½SW¼, E½ SW¼, SE¼NW¼, W½NE¼.

Bat Cave and Guano Mine Historic Area

T. 15 N., R. 67 E.,
Sec. 25, SE¼SE¼.

North Creek Scenic Area

T. 10 N., R. 65 E.,
Sec. 20, S½S½.

Snake Creek Indian Burial Cave Archaeological Site

T. 12 N., R. 70 E.,
Sec. 13, SE¼NW¼.

Rock Animal Corral Archaeological Site

T. 15 N., R. 70 E.,
Sec. 23, SE¼.

Baker Creek Archaeological Site

T. 13 N., R. 70 E.,
Sec. 7, Lots 1 and 2.

Garrison Archaeological Site

T. 12 N., R. 70 E.,
Sec. 1, Lots 1, 10, 11.

The area described above comprises approximately 8,728 acres in White Pine County, Nevada.

b. The following described land will remain classified for multiple-use management and special designation but will not be segregated:

Garnet Fields Rockhound Area

T. 16 N., R. 62 E.,
Sec. 1, All;
Sec. 2, E½, SE¼NW¼, NE¼SW¼ (Less patented lands);
Sec. 12, N½N½, S½NE¼ (Less patented lands).

North Creek Scenic Area

T. 10 N., R. 65 E.,
Sec. 19, S½;
Sec. 20, N½S½;
Sec. 30, N½.

Mount Grafton Scenic Area

T. 10 N., R. 64 E.,
Sec. 23, S½, S½N½, N½NE¼, NE¼NW¼;
Sec. 24, S½, S½N½;
Sec. 25, All;
Sec. 26, E½, E½W½, NW¼NW¼;
Sec. 35, E½, E½W½;
Sec. 36, All.
T. 10 N., R. 65 E.,
Sec. 30, S½;
Sec. 31, All;
Sec. 32, W½SW¼.

Swamp Cedar Natural Area

T. 15 N., R. 67 E.,
Sec. 21, All;
Sec. 22, All;
Sec. 23, NW¼, N½SW¼;
Sec. 27, N½, NW¼SE¼, N½SW¼, SW¼SW¼;
Sec. 28, All;
Sec. 33, NE¼NE¼, W½E½, W½;
Sec. 34, NW¼NW¼.

The area described above comprises approximately 9,680 acres in White Pine County, Nevada.

These areas have high public use values for recreation use and scientific study and will remain classified for a period of 5 years from the date of this publication at which time the classification will again be reviewed.

3. At 9 a.m. on November 10, 1983, all the land except that described in paragraph 2 above is hereby open to the operation of all the public land laws, subject to valid existing rights. All valid applications received prior to or at 9:00 a.m. on November 10, 1983 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

4. At 9:00 a.m. on November 10, 1983, the following described land will also be open to the operation of the mining laws:

Mount Diablo Meridian, Nevada

T 12 N., R. 67 E.,
Sec. 2, All.
Sec. 11, W½, S½NE¼, SW¼SE¼.
T. 13 N., R. 67 E.,
sec. 35, S½S½.
T. 13 N., R. 70 E.,
Sec. 19, SW¼NE¼.
T. 14 N., R. 70 E.,
Sec. 33, S½SE¼.

This area comprises approximately 1,360 acres in White Pine County, Nevada.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. All the land described in the classifications remain open to the mineral leasing and material sale laws.

Inquiries concerning this land should be addressed to the Deputy State Director, Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 83-27548 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-84-M

[M-58098]

Montana; Conveyance

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance.

SUMMARY: Pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)), the surface estate only in the following described land has been conveyed to Mildred H. Wallin, Lovell, Wyoming:

Principal Meridian

T. 9 S., R. 24 E.
Sec. 25, W½W½NW¼, NW¼NW¼SW¼ and NW¼SW¼NW¼SW¼.

Containing 52.50 acres.

In exchange for the above land, the United States acquired the surface estate only in the following described land in Carbon County, Montana:

Principal Meridian

T. 9 S., R. 27 E.
Sec. 25, SW¼SE¼.

Containing 40 acres

The lands acquired in this exchange are within the Pryor Mountain Wild Horse Range and will be administered for the protection and management of wild horses, wildlife, watershed, recreation, archeological and scenic values.

Dated: September 30, 1983.

Edgar D. Stark,

Chief, Land Adjudication Section.

[FR Doc. 83-27547 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-84-M

[M-58024 (ND)]

North Dakota; Conveyance of Public Land

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of conveyance of public land in Mountrail County, North Dakota.

SUMMARY: Notice is hereby given that pursuant to Section 203 of the Act of October 21, 1976 (43 U.S.C. 1713 (1976)), the following described land was conveyed to Murrey Eliason or Bonnie Eliason:

Fifth Principal Meridian

T. 157 N., R. 91 W.,
Sec. 13, SE¼NW¼.

The area described contains 40 acres.

The purpose of this notice is to inform State and local governmental officials and other interested parties of the conveyance of the land to the Eliasons.

Dated: October 3, 1983.

Edgar D. Stark,

Chief, Lands Adjudication Section.

[FR Doc. 83-27546 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Texas Petroleum

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Union Texas Petroleum has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3561, Block 43, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service

is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m. 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 30, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-27587 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Land Management

[M-58098]

Partial Termination of Classification for Multiple Use Management

September 30, 1983.

AGENCY: Bureau of Land Management, Interior.

ACTION: Partial termination of classification.

SUMMARY: This notice terminates the Classification for Multiple Use on approximately 80 acres of public land in the Pryor Mountain Wild Horse Range. This land has been transferred into private ownership.

DATE: Effective October 11, 1983.

SUPPLEMENTARY INFORMATION: Multiple Use Classification Notice M-7991 was published in the **Federal Register**, Vol. 33, No. 130, dated July 4, 1968, Pages 9714–9715 and amended in **Federal Register**, Vol. 35, No. 248, dated December 23, 1970, Pages 19527–19528. By virtue of the authority contained in Sec. 202(d) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1712, and the regulations in 2461.5(c)(2), the following lands are relieved of the effect of the C&MU Classification:

Principal Meridian

T. 9 S., R. 27 E.
Sec. 25, W½W½W½.
Containing 80 acres.

At 9 a.m. on October 11, 1983, the mineral estate in the above lands will be opened to location under the United States mining laws. The lands have been, and continue to be, opened under the mineral leasing laws.

Michael J. Penfold,

State Director.

[FR Doc. 83-27566 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Upper Delaware Nation Scenic and Recreational River

AGENCY: Upper Delaware Citizens Advisory Council, National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: October 28, 1983, 7 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159 (717) 729–7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to ecnourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include discussion of Draft Management Plan.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: September 27, 1983.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 83-27519 Filed 10-7-83; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 161)]

Burlington Northern Railroad Co.; Abandonment, Stearns and Wright Counties, MN; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 8.14-mile line of railroad between milepost 58.00 near St. Cloud and milepost 49.86 at the end of the line near Clearwater, in Stearns and Wright Counties, MN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower lefthand corner of the envelope containing the offer "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27564 Filed 10-7-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment on Consent Pursuant to Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 23, 1983 a proposed Stipulation and Consent Decree in *United States* v. *Glen Villa Trailer Park*, Civil Action No. CV 82–6362–E was lodged with the United States District Court for the District of Oregon. The proposed Stipulation and Consent Decree enforces the Safe Drinking Water Act and national interim primary drinking water regulations by, *intr alia*, requiring defendant to comply with sampling, reporting, and public notice provisions of the regulations in the operations of its public water system.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation and Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v.*Glen Villa Trailer Park*, D.J. Ref. 90–5–2–1–1869.

The proposed Stipulation and Consent Decree may be examined at the office of the United States Attorney, District of Oregon, 312 United States Courthouse, 620 SW., Main Street, Portland, Oregon, 97205 and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the Stipulation and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Final Judgment on Consent may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 83-27586 Filed 10-7-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

New Directions Training and Education Grants

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

ACTION: Notice of grant program.

SUMMARY: The Occupational Safety and Health Administration is entering the sixth year of its national grant program for the development of institutional competence in nonprofit organizations for providing job safety and health training and education to employees and employers. This notice describes the scope and objectives of the grant program, and provides information on how to obtain a grant application. Applications should not be submitted without first obtaining the detailed grant application mentioned later in this notice.

Authority for providing for job safety and health training programs and related assistance for employees and employers may be found in section 21(b) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) and in Executive Order 12196 "Occupational Safety and Health Programs for Federal Employes."

DATE: Application packages must be received by December 6, 1983.

ADDRESSES: Grant applications must be submitted to the OSHA Regional Office for the state in which the applicant is located. A complete listing of Regional Offices can be found in the addendum at the end of the supplementary information section of this notice.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background and Objectives

From 1971 to 1978 OSHA conducted numerous projects to improve the ability of employees and employers to recognize, avoid, and control safety and health hazards. Special training programs were conducted for small and medium sized businesses, high hazard industries, leaders of organized labor, supervisors, apprentices, and others. The OSHA experience with these programs indicates that one of the most practical means of assuring that employers and employees acquire the ability to recognize, avoid, and control hazards is to build the competence of key organizations to provide occupational safety and health services to those in the workplace.

As a result, in 1978 OSHA announced a program to increase the number of labor, business, educational, and other nonprofit organizations having the internal capability of providing, on a continuing and self-sufficient basis, comprehensive and effective occupational safety and health training, education, and services to employees and employers. Over 160 grants have been awarded to such organizations for planning and developing their occupational safety and health programs. Grant recipients use these funds to identify serious occupational safety and health problems and design strategies to resolve them, with emphasis on training and education as a means of achieving abatement of safety and health hazards in the workplace.

The objectives of this institutional competency building grant program, commonly referred to as "New Directions," are as follows.

1. *Institutional Competency.* The development of a recipient organization's internal capability to provide a range of training, education, and related services necessary to address the occupational safety and health problems of the recipient's target population.

2. *Self-sufficiency.* The ability of a recipient organization to continue providing a range of workplace safety and health activities and services once its developmental plan, and, therefore, OSHA funding, is completed.

3. *Abatement of Hazards.* The promotion of organizational and operational changes in the workplace, through training and educational activities, which achieve improved safety and health conditions.

Activities To Be Supported

A range of activities related to occupational safety and health training and education will be supported under the grant program. Activities may include, but need not be limited to, the following:

1. Identifying serious occpational safety and/or health problems encountered by the recipient's target audience and designing strategies to resolve them;

2. Training in hazard identification or recognition and control in general or in specific workplaces;

3. Developing training materials and educational publications regarding safety and health issues;

4. Conducting activities which result in the improved effectiveness of labor-management safety and health committees;

5. Conducting programs designed specifically to reduce accidents among new workers (this includes those new to the work force as well as to those new to a particular type of work);

6. Fostering cooperative arrangements between OSHA consultation programs funded under section 7(c)(1) and 23(g) of the Act, States operating plans under section 18(b) of the Act, and other grant recipients;

7. Conducting educational and other activities which assist employers and employees, if applicable, in the development and initial implementation of comprehensive workplace safety and health programs under one of the OSHA Voluntary Protection Programs, or an equivalent State plan program;

8. Assisting employees and employers in hazard recognition and control in specific workplaces;

9. Designing and implementing programs to assist employers and employees in recognizing and abating hazards in specific workplaces;

10. Resolving unique or unusually difficult job safety and health problems.

Nonsupportable Activities

While all efforts to eliminate deaths, injuries, and illnesses in the workplace are encouraged, statutory and regulatory limitations, as well as the objectives of the grant program, prevent reimbursement for certain activities under these grants. These limitations include:

1. Development of academic curricula for the education of occupational safety and health professionals or support personnel.

2. Activities which support degree programs, safety and health certificate programs, or extended academic programs designed to provide professional level credentials. This does not preclude the award of certificates to individuals completing a class.

3. Research activities in the physical, engineering, or health sciences, except for studies ancillary to other program activities and which constitute only a supplement to the sponsored activities. An example of an allowable ancillary study is the obtaining of information necessary to evaluate hazards and hazard control for a particular industry or occupation for which classes are planned under the grant.

4. Training and other educational activities that do not address the recognition, avoidance, and prevention of unsafe or unhealthful working conditions. Examples include activities concerning workers' compensation, first aid, abused substances, and publication of materials prejudicial to labor or management.

5. Activities for the benefit of State, county, or municipal employees except those who may be considered to have occupational safety and health responsibilities. Examples of safety and health responsibilities include: occupational safety and health training; safety and health program management; membership on an employer, union, or joint safety and health committee; and recognizing, reporting, or abating unsafe and unhealthful workplace conditions.

6. Consultation programs that duplicate services provided by State designated agencies or contractors under sections 7(c)(1) or 23(g) of the Act. This does not preclude grant recipients from providing technical services to employees and employers when such services are part of its overall educational program and have been described in its approved grant.

7. Activities involving workplaces that are largely precluded from enforcement actions by the Occupational Safety and Health Administration under section 4(b)(1) of the Act.

8. Lobbying activities or devices intended or designed to influence in any manner a Member of Congress regarding any congressional legislation or appropriation. These activities and devices include, but are not limited to, personal service, telegrams, or other printed or written matter.

9. Activities incurring cost before or after the grant period.

10. The purchase of land, or any interest therein; or the acquisition or construction of buildings.

11. Activities directly or indirectly intended to generate membership in the grant recipient's organization.

12. Medical screening or any other research or experimentation involving human subjects as part of the grant program unless provisions have been made for full, regular, and ongoing consideration of the rights and welfare of subjects and for the protection of subjects from undue risk of physical, psychological, or social injury. These provisions and plans for conducting the project must be approved by the OSHA Regional Administrator prior to beginning the project.

13. Activities which directly duplicate services offered by OSHA, a State under a State plan, or other grantees.

14. Publication of newsletters.

15. Activities which provide assistance to emloyees in arbitration cases or other actions against employers, or which provide assistance to employees and/or employers in the prosecution of claims against Federal, State or local governments.

16. Production, publication, or reproduction of training and educational materials, including programs of instruction, which have not been approved by OSHA.

17. Any other activities inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

Eligible Applicants

Nonprofit organizations which are labor organizations or employer associations, and are working in the field of occupational safety and health, are eligible to apply for grants.

Category I. Labor organizations listed in accordance with the requirements of the Labor-Management Disclosure Act of 1959, as amended, or Chapter 71 of the United States Code, as amended by the Civil Service Reform Act of 1978. Field components of these organizations are eligible with the concurrence of their national organization. Although all components of labor organizations are eligible to apply, limited resources available for the program make it unlikely that a grant will be awarded to a field component of a labor organization if the national component of the same labor organization has been awarded a grant.

Category II. Employer associations. Priority will be given to those associations serving small business.

Consortia. Organizations may apply jointly and share grant resources in the interest of serving broader populations or broader occupational safety and health problems than each organization could serve alone. A consortium must have a labor organization or an employer association as a member, and must be designed to contribute to the development of a center of competence in the field of occupational safety and health. Consortia formed primarily for coordination or communication purposes, rather than for building centers of competence, are discouraged. A labor organization or employer association member of the consortium must assume responsibility for submitting the overall proposal and administering the grant. The director of the proposed consortium project must be on the staff of the administering institution. Agreements to participate in the consortium by organizations other than the administering institution shall be documented in the application. In addition to explaining the advantages of the proposed consortium, the proposal shall describe explicitly the role of each participating organization and its

portion of the proposed program, and demonstrate how each organization's participation will improve the probability of success of the total program.

Labor management consortia are encouraged to apply.

Types of Awards

Two types of grant awards may be made under the institutional competency building program: (1) Planning grants and (2) developmental grants.

Planning grants. Planning grants are intended to assist organizations which are able to demonstrate potential for meeting the objectives of this program, but which need to assess capabilities, needs, and priorities, and formulate objectives before moving ahead with full-scale program development and implementation. Planning grant recipients will be funded for not more than one year. Upon successful completion of its one year planning activities, a recipient may apply for a developmental grant. Although most recipients of planning grants will initiate limited program operations during the planning period, these operations should be small-scale or pilot projects, complementing the recipient's planning activities.

Developmental grants. Where an organization through its past activities has established a capability to provide occcupational health or safety training and education, but where continuing developmental activities are appropriate, the organization may propose a developmental program. Although grant recipients generally will be capable of immediate implementation of some educational activities, the grants are not intended to merely fund existing program operations, but rather to assist the organizations in developing centers of occupational safety and health expertise. To be awarded a grant, an organization must prepare a plan which sets forth the steps necessary for developing institutional competency and achieving self-sufficiency within a realistic and reasonable time frame, generally five years or less. Grants will be awarded for a twelve month period, with annual renewal during the developmental period subject to the availability of funds, a determination that the project is achieving its approved objectives on a timely basis, and recipient submission of all training and educational materials developed under the grant to OSHA.

Evaluation Process and Criteria

Applications for grants solicited in this announcement will be evaluated on a competitive basis by the Assistant Secretary with assistance and advice from OSHA experts.

The following factors, not ranked in order of importance, will be considered in evaluating grant applications.

1. Program Impact

a. The potential contribution of the project toward the resolution of significant occupational safety and health problems, as indicated by the numbers of employees and employers to be served in target high risk populations identified by OSHA including:

i. New and/or inexperienced workers;

ii. Industries and workplaces in which employees are exposed to one or more substances constituting serious health hazards;

iii. Industries with injury and illness incidence and severity rate above the national average;

iv. Industries and workplaces which pose multiple safety and health hazards to employees;

v. Small businesses employing 100 or fewer employees; and

vi. Unorganized employees.

Applicants may propose alternative populations, and include valid statistical justification or other documentation supporting their selection of such populations.

b. The responsiveness of the project to target populations, as indicated by:

i. An identification and analysis of the needs and problems of the organization's target population.

ii. Involvement by representatives of the target population in the planning, implementation, and evaluation of the program.

c. The need for services in the area proposed, the lack of availability of comparable services from other sources, and the relevance of proposed services to identified needs.

d. The potential for serving a larger universe, as indicated by plans for:

i. Serving employees and employers who then will have the capability to serve other employees and employers.

ii. Assisting other organizations in developing occupational safety and health training and related services through such means as providing training materials, technical assistance, demonstration educational programs, and instructor training. Examples include national labor unions assisting district and local unions and employer associations assisting individual employers.

2. Program Design

a. The extent to which services will be provided directly by the grant recipient through its own staff and resources. Contrctual arrangements for the provision of services must be shown to be consistent with the objective of self-sufficiency.

b. For developmental grant applications:

i. The extent to which the educational training design and content will be appropriate for the target population and will include written objectives for the skills and knowledge to be gained by those trained, written programs of instruction, and an appropriate proportion of lecture, demonstration, discussion, laboratory, and field experience.

ii. The availability of facilities, including appropriate occupational settings, in which to conduct training, whether at the recipient's location or elsewhere.

iii. The range of educational programs, technical services, and resources available in the recipient organization which may be expected to assist in implementing the program. These might include staff from other departments, such as industrial hygiene, safety, legal, medical, labor relations, policy research, collective bargaining, and special research in such areas as medical surveillance and counseling.

c. For planning grant applications:

i. The appropriateness of indentified safety and health issues to be surveyed.

ii. The soundness of the approach to be used in developing and implementing an assessment methodology.

iii. The plans for the design and development of one or more pilot training or educational projects to test the results of the assessment.

3. Program Experience

a. Evidence of the organization's performance and effectiveness in planning, implementing, and operating training and education in the proposed or related areas. Experience in conducting employee or employer occupational safety and health education programs, experience in providing technical assistance, or involvement in related occupational safety and health activities will be considered relevant. In the absence of such experience, information will be considered about other activities designed specifically for employees or employers that may indicate potential effectiveness in providing the services proposed.

b. The technical and professional expertise and training of present or proposed project staff in relation to services to be provided. Expertise of an organization's present or proposed staff in the delivery of occupational safety

and health training and education to target populations will be measured by résumés, minimum qualifications for hiring, and position descriptions.

4. Administrative Capability

a. The managerial expertise of the organization, as evidenced by the variety and complexity of current and/or recent programs it has administered.

b. The financial management capability of the organization, as evidenced by a recent audit report from an independent audit firm or a recent report from another independent organization qualified to render judgement concerning the soundness of the organization's financial practices. In the absence of such reports, the organization may provided information which demonstrates that it is capable of meeting the financial management standards set forth in 41 CFR 29–70, section 207–2.

c. The reasonableness of the budget in relation to the proposed program activities.

d. The feasibility and soundness of the proposed work plan in achieving the program objectives effectively.

e. The strength of the organization's evaluation plan and the methodology for measuring achievement of program objectives.

5. Matching Share

The amount of an organization's contribution relative to the total budget and the degree to which an organization will assume an increasing share of funding for the proposed program.

a. Programs may be funded up to 100 percent of costs under a planning grant.

b. Developmental grants require recipients to provide a matching share.

During the developmental period it is expected that organizations will become increasingly independent of Federal funding. One element of a developmental grant is an annual increase in the recipient's matching share, with a corresponding reduction in Federal funding, with the result that the program is independent of Federal funding by the time self-sufficiency is achieved. Another element is the recipient's assumption of full funding of the salaries of one or more key project staff by the end of the second grant year.

In addition to the preceding factors, the Assistant Secretary will consider other factors such as the overall geographical distribution and coverage of populations at risk that will be achieved by the proposals approved for funding.

Notification of Selection

The Assistant Secretary will notify in writing those organizations selected as potential grant recipients. An applicant whose proposal is not selected also will be notified in writing to that effect. Notice of selection as a potential grant recipient will not constitute approval of the total funding request or of the funding level sought. Prior to the actual award of a grant, representatives of the potential grant recipient and representatives of the Assistant Secretary will enter into negotiation. Items subject to negotiation will include: Program components; funding levels; program performance levels and standards; and administrative systems. If the negotiations do not result in an acceptable negotiated grant, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Availability of Funds

This announcement does not constitute an obligation to support this program in any fiscal year. Subject to congressional appropriation, $6.8 million will be available in fiscal year 1984 for this institutional competency building program. It will be used for funding current grants, as well as for the award of new grants described in this announcement.

The maximum funding level for a one year planning grant will be $50,000. There is no set maximum for developmental grants, but organizations applying for developmental funding should consider reasonableness and the limited availability of funds when preparing their budget requests. An organization is eligible for only one grant under the program.

Application and Award

Those organizations that meet the eligibility requirements described above and that are interested in conducting project activities as described, may request a grant application package and directions for application from the OSHA Regional Administrator responsible for the State in which the organization is located. A list of the names, addresses, and geographic areas of responsibility of the Regional Administrators is in the addendum to this notice.

This grant program will be administered in compliance with 41 CFR 29–70 and OMB Circulars A–110 and A–122, as they relate to functions such as: the use of funds; the operation of programs; the maintenance of records, books, accounts, and other documents; and financial and program reporting to OSHA.

All applications must be received no later than 5 p.m., December 6, 1983.

Signed at Washington, D.C., this 5th day of October 1983

Thorne G. Auchter,

Assistant Secretary of Labor.

Addendum

Region I

Donald E. MacKenzie, Regional Administrator, US Department of Labor—OSHA, 16–18 North Street, 1 Dock Square Building—4th Floor, Boston, Massachusetts 02109
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II

Gerald P. Reidy, Regional Administrator, US Department of Labor—OSHA, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036
New Jersey, New York, Puerto Rico, Virgin Islands

Region III

Linda R. Anku, Regional Administrator, US Department of Labor—OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104
Delaware, District of Columbia, Maryland, Pennsylvania, Virgina, West Virginia

Region IV

Alan C. McMillan, Regional Administrator, US Department of Labor—OSHA, 1375 Peachtree Street, NE, Suite 587, Atlanta, Georgia 30367
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V

Frank L. Strasheim, Regional Administrator, US Department of Labor—OSHA, 230 South Dearborn Street, Room 3244, Chicago, Illinois 60604
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI

Gilbert J. Saulter, Regional Administrator, US Department of Labor—OSHA, 555 Griffin Square Building, Room 603, Dallas, Texas 75202
Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII

Roger A. Clark, Regional Administrator, US Department of Labor—OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106
Iowa, Kansas, Missouri, Nebraska

Region VIII

Byron R. Chadwick, Regional Administrator, US Department of Labor—OSHA, Federal Building, Room 1554, 1961 Stout Street, Denver, Colorado 80294
Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX

Russell B. Swanson, Regional Administrator, US Department of Labor—OSHA, 450 Golden Gate Avenue, Room 11349, Post Office Box 36017, San Francisco, California 94102
Arizona, California, Guam, Hawaii, Nevada

Region X

James W. Lake, Regional Administrator, US Department of Labor—OSHA, Federal Office Building, Room 6048, 909 First Avenue, Seattle, Washington 98174
Alaska, Idaho, Oregon, Washington

[FR Doc. 83-27554 Filed 10-7-83; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for PCM; Subpanel on Genetic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel on Genetic Biology of the Advisory Panel for Physiology, Cellular and Molecular Biology.
Date and Time: October 24–26, 1983: 9:00 AM–5:30 PM
Place: Room 643, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550
Type of meeting: Closed
Contact person: Dr. Philip D. Harriman, Program Director, Genetic Biology Program, Room 329, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–9687.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in genetic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Reason for Late Notice: Administrative Oversight.

M. Rebecca Winkler,

Committee Management Coordinator.

October 5, 1983.

[FR Doc. 83-27471 Filed 10-7-83; 8:45 am]

BILLING CODE 7555-01-M

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with repect to these permit applications by November 10, 1983. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the 21 July 1983 **Federal Register**, page 33372.

The applications received are as follows:

1. *Applicant:* Clyde Jones, Texas Tech Museum, P.O. Box 4499, Lubbock, Texas 79424.

Activity for Which Permit Requested: Import into U.S.A.

The appliant proposes to import specimens to be collected by others under separate Antarcitc Conservation Act Permits. Specimens will be put on display at the Texas Tech Museum. The specimens to be imported are:

Leopard Seal (1)
Weddell Seal (1)
Southern Giant Fulmar (2)
Southern Fulmar (2)
Cape Pigeon (2)
Antarctic Ten (2)
Snow Petrel (2)
Brown Skua (2)

Location: McMurdo Station and Palmer Station.

Dates: December 1, 1983 to April 30, 1984.

2. *Applicant:* Michael Parfit, 1330 San Rafael Street, Santa Barbara, California 93109.

Activity for Which Permit Requested: Taking. Enter Specially Protected Area, Enter Site of Special Scientific Interest.

The applicant proposes to take photographs of antarctic birds and mammals and enter Specially Protected Areas and Sites of Special Scientific Interest. The applicant does not propose any physical taking but may cause some harassment of birds and mammals by his presence for photography. The photography is at the invitation of the National Science Foundation.

Location: McMurdo Station and Antarctic Peninsula Areas.

Dates: November 10, 1983 to April 30, 1984.

3. *Applicant:* A. W. Erickson, School of Fisheries, University of Washington, Seattle, Washington 98195.

Activity for Which Permit Requested: Taking; Import into U.S.A; ente Specially Protected Areas.

The applicant proposes to take by harassment an unspecified number of seals by aerial and shipboard census; to take by salvage parts of naturally dead mammals and birds; to take by sacrifice the following:

Crabeater Seals (50)
Weddell Seals (50)
Leopard Seals (25)
Ross Seals (20)
Elephant Seals (10)
Antarctic Fur Seals (10)

The applicant also proposes to enter Litchfield Island, Specially Protected Area, to census seals.

Location: Weddell Sea, Antarctic Peninsula Area.

Dates: November 1, 1983 to June 30, 1984.

4. *Applicant:* David F. Parmelee, 349 Bell Museum, University of Minnesota, Minneapolis, Minnesota 55455.

Activity for Which Permit Requested: Taking, import into U.S.A., enter Specially Protected Area.

The applicant proposes to take bird specimens to be used in studies relating to weights, plumage, molt and food contents. The applicant will be taking

primarily previously banded birds of known age. The applicant also proposes to enter Litchfield Island, Specially Protected Area. Specimens to be taken are:

Southern Fulmar (6)
Cape Pigeon (6)
Snow Petrel (8)
Wilson's Storm Petrel (12)
Black bellied Storm Petrel (8)
Blue-eyed Shag (4)
American Sheathbill (12)
South Polar Skua (8)
Brown Skua (8)
Southern Black-backed Gull (8)
Arctic Tern (4)
Antarctic Tern (12)
Penguin (Sp.) (2)
Duck (Sp.) (2)

Location: Antarctic Peninsula area, South Shetland Islands, Litchfield Island Specially Protected Area.

Dates: December 1, 1983 to March 31, 1984.

Authority to publish this notice has been delegated by the Director, NSF to the Director, Division of Polar Programs.

Edward P. Todd,

Division Director, Division of Polar Programs.

[FR Doc. 83-27589 Filed 10-7-83; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Recommendation Responses

Recommendation Responses from:

Highway—*Federal Highway Administration: Sep. 8: H-80-64:* The use of full-scale crash testing for performance verification in the design of all highway safety appurtenances in both widely accepted and widely used. Although not specifically mandated by Federal regulation, in actual practice crash testing is presently the primary means of determining the safety acceptability of all highway safety hardware, with the exception of bridge railings. Substantial research and development work continues on modifications and/or new designs that will extend the size and weight range of vehicles that can be successfully accommodated. Railing designs that have been successfully crash tested are considered acceptable even though they may not meet the geometric and loading requirements of the Bridge Design Specifications of the American Association of State Highway and Transportation Officials (AASHTO). Although performance testing is not a requirement, an ever-increasing number of railing designs in use have been tested in this manner. Actual performance of traffic barriers in a crash situation is dependent on a combination of many factors. Thus, performance criteria based on crash tests, like design or strength criteria, can help predict but cannot guarantee safe traffic barrier performance. All must rely on in-service evaluation for verification of a barrier's suitability and/or modification of the predicitive criteria based on actual performance. FHWA expects that the new Roadside Safety Design Guide to be published by AASHTO in 1986 will include performance criteria for all highway barriers. *H-80-65:* FHWA or AASHTO will publish designs of traffic barrier systems found acceptable by performance criteria. FHWA has publicized and will continue to publicize new traffic barrier designs that meet performance criteria. To meet the need for additional bridge railing designs that have been evaluated by performance criteria, FHWA will publish acceptable railing designs as soon as they are available from a recently started study, "Bridge Rail Designs and Performance Standards." A minimum of six bridge railings will be tested, which should be enough to address most of the various State requirements in regard to climatic and other physical conditions that affect the operation and maintenance of a roadway system. *H-80-66:* National Cooperative Highway Research Program (NCHRP) has contracted for a study titled "Nationally Tested Approved Highway Safety Barriers" for two guardrail designs, two bridge rail designs, and two median barrier designs. All of these barriers are to be tested and qualified under the procedures in NCHRP Report 230, "Recommended Procedures for the Safety Performance Evaluation of Highway Appurtenances." As the results of testing become available, States have been and will continue to be kept informed through research reports, films, design guides, training programs and demonstration projects. *Dep. 21: H-81-72 and -73:* Following evaluation of a pilot advisory group in Virginia that is reviewing accident reports and available data on accidents involving trucks carrying hazardous materials at rail-highway crossings and is taking other related action, FHWA will determine action to be taken nationwide. *Sep. 19: H-83-25:* Has an ongoing research study involving the integrity of MC-307/312 cargo tanks, including research in the area of corrosion and the use of ultrasonic testing to determine corrosion effects on tank sheet material with emphasis on areas of difficult accessibility. An On Guard Bulletin is being developed to alert shippers and carriers of the findings in this matter and to recommend that cargo tanks that are used to transport corrosive material be ultrasonically, or equivalently, inspected. Will issue a directive to FHWA field staff that ultrasonic measurements of cargo tanks, with emphasis on areas of reinforcement and appurtenance attachment, should be taken during audit and roadside inspections. *H-83-26:* Research and Special Programs Administration published a notice in the **Federal Register** (48 FR 15127) on Apr. 7, 1983, emphasizing to operators of cargo tanks requirements of 49 CFR 177.824(h)(i) and confirming the Department of Transportation's position regarding continued use of cargo tanks that no longer meet the specification under which they were manufactured. *H-83-27:* FHWA and the Research and Special Programs Administration are reviewing and rewriting the regulations concerning the manufacture, maintenance, repairs, and retest of cargo tanks for the MC-306, -307, and -312 specifications. *H-83-28:* Is developing an On Guard bulletin to alert motor carriers operating hazardous material cargo tanks of the Mar. 4, 1983, cargo tank incident near Beaumont, Texas, and the Safety Board's recommendation for an ultrasonic or equivalent sampling program.

Commonwealth of Virginia: Aug. 25: H-81-53: Acknowledged Safety Board letter of Aug. 23 regarding revising methods for selecting and locating traffic barriers on State highways to include a consideration of the severity of accidents.

Marine—U.S. Coast Guard: Sep. 23: M-83-38: Will initiate a regulatory project to proppose requirements for closing ullage and hatch covers in 46 CFR 35.30-10. *M-83-39:* The next edition of "A Manual For the Safe Handling of Flammable and Combustible Liquids and Other Hazardous Products" (CG-174) will be amended to include a reference to pollution regulations at 33 CFR 155.815 and to state that hatch covers and ullage hole covers on tank vessels must be closed and dogged at all times unless they are required to be open for cargo transfer operations, inspections, tank cleaning, or other essential operations, or unless the vessel is gas free. *M-83-40:* An article concerning the explosion of the POLING BROS. NO. 9 in New York Harbor on Feb. 26, 1982, will be published in the next "Proceedings of the Marine Safety Council." *M-83-41:* Will prepare and disseminate to all Captain of the Port offices policy guidance indicating enforcement authority and recommended procedures for alleviating hazards posed by debris falling from bridges onto vessels transiting navigable waterways.

City of New York Dept. of Transportation: Sep. 13: M-82-4: Has been informed by the Coast Guard that VHF-FM channel 12 is a continual talking channel for day-to-day business. The Bureau of Ferry and General Aviation Operations does use emergency channels 13 and 19 to contract the New York Vessel Traffic Center. *M-82-5:* Technical staff has determined that gyrocompass equipment would not be suitable to current ferry operations, and members of the Coast Guard concur with the evaluation.

National Fire Protection Association: Aug. 30: M-78-9: Revised NFPA Standard 306 in 1980 to include specific quantitative parameters with regard to flammability hazards which must be met before personnel enter and repair vessels. Expanded the section of NFPA 306 outlining the testing techniques to stipulate minimum requirements to be used when inspecting vessels to be repaired. Increased the responsibility and authority of the Marine Chemist Qualification Board, which has strengthened the certification and recertification procedures and developed a proficiency examination that includes questions on all Federal regulations that pertain to the duties and responsibilities of marine chemists.

Rio Marine, Inc.: Sep. 7: M-81-8: Company policy is to never interfere with the safe navigation of a vessel for any reason. It is not

uncommon for vessels to skip the position report or simply state they are unable to report at this time. *M–81–9:* Normally does not move barges other than its own. Many times all crewmembers are licensed tankermen certified for the cargo contained in the barge. *M–81–10:* Has never been cited for lack of a properly certified tankerman aboard its vessels.

Marine Transport Lines, Inc.: Sep. 1: M–83–53: Exposure suits are on board all company vessels except Military Sealift Command vessels.

International Ship Management & Agency Services, Inc.: Aug. 24: M–81–66 and –67: Is carefully monitoring implementation of recommendations to (1) instruct the masters of all its ships of the company policy that the master report the ship's position every 48 hours, and (2) provide the masters of all its ships with a copy of its standard operating manual and instruct them in the availability of the company's weather routing services.

Texaco, Inc.: Aug. 30: M–78–73: In future operations, will continue to be mindful of the recommendation to establish instructions requiring Texaco, Inc., employees who supervise petroleum well drilling or production operations to formulate contingency plans with the person in charge of personnel who are contracted to service the well, before commencing service operations.

Pipeline—*The American Society of Mechanical Engineers: Sep. 14: P–83–28:* The Gas Piping Technology Committee will consider the recommendation to develop guidelines for monitoring gas pipeline segments which have been taken out of service, where there is a potential for gas to leak into the segment.

Interstate Natural Gas Association of America: Sep. 14: P–83–26: Distributed to its members the recommendation to notify its member companies of the circumstances of the accident in Pine Bluff, Arkansas, on Oct. 1, 1982, and urge them to monitor continuously for the presence of gas when work is to be performed in the vicinity of pipeline sections that have been isolated from gas under high pressure solely by closed valves and by the installation of temporary end caps. *P–83–27:* Distributed to its members the recommendation to urge its member companies to provide checklists to supervisory personnel for major work projects to identify the essential actions to be performed, before starting work and while work is in progress, to ensure employee and public safety.

American Gas Association: Sep. 21: P–83–14: Distributed to its member company delegates the recommendation to notify its member companies of the circumstances of the accident in Hudson, Iowa, on November 4, 1982, and urge them to emphasize to their employees the importance of communicating fully with excavators about the extent of the proposed work. AGA added that companies should be urged to emphasize to their employees the importance of obtaining a commitment from the excavator that the pipeline company will be given timely prior notification regarding any changes to excavation plans.

Railroad—*Missouri Pacific Railroad Co.: Sep. 14: R–83–57:* Opposes the establishment of a rule requiring enginecrews to communicate fixed signal aspects to the conductor because of the congestion of radio frequencies. *R–83–58:* Operating rules require conductors, engineers, and other train crewmembers to assure physical fitness and capability of train crew employees at all crew on and off duty locations. Compliance with this responsibility is monitored by railroad officers through routine and specific execution of their similar responsibility. *R–83–59:* Its employees understand their responsibility to monitor the fitness and performance of other crew members, as well as the requirement to take action when failures are observed.

State of Connecticut: Sep. 12: R–83–44 and 45: The Metro-North Commuter Railroad Company which operates Connecticut's and the Metropolitan Transportation Authority's commuter cars and trains under contract is preparing operating procedures regarding the use of alcohol by persons operating rail passenger and commuter trains.

State of New York: Sep. 20: R–83–44 and –45: Will ask the new State Public Transportation Safety Board, to which safety plans from each of the State's transit operators will be submitted, to include provisions for commuter rail crew supervisory checks and other operating practices to mitigate the possibility of operators performing duties while under the influence of alcohol.

Burlington Northern Railroad: Sep. 14: R–83–19 and 20: Reviewed and analyzed its training program to ensure that proper and sufficient instructions are stressed so employees are prepared to react to severe climatic conditions. Is providing necessary training and review of rules and instructions.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 20 cents per page ($2 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

October 3, 1983.

[FR Doc. 83-27491 Filed 10-7-83; 8:45 am]

BILLING CODE 4910-58-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Harmonized Commodity Description and Coding System

Summary: The Trade Policy Staff Committee hereby confirms that public hearings will be held on a proposed international agreement that would result in United States adoption of the international nomenclature known as the Harmonized Commodity Description and Coding System (Harmonized System) for the classification of goods for customs tariff and statistical purposes.

Time and place: Hearings will be held at the following locations beginning each day at 10 a.m.:

November 15–16: Room 2200–2208, 26 Federal Plaza, New York, New York;

November 21–22: Amphitheater, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C.

Hearings tentatively scheduled for other cities have been cancelled.

Testimony and submission of written briefs: Parties presenting oral testimony must submit a complete written brief by October 14, 1983.

Remarks at the hearings should be limited to no more than 15 minutes to allow for possible questions from the Chairman and the interagency panel. Participants should provide twenty typed copies of their oral presentation at the time of the hearings.

Persons not wishing to participate at the hearings or who wish to contest the information provided by other interested parties masy submit a written statement in twenty copies by November 30, 1983 to Carolyn Frank, TPSC Secretary (Office of the U.S. Trade Representative, Room 500, 600 17th Street, NW., Washington, D.C. 20506).

Parties are referred to section 2003 of Title 15 of the Code of Federal Regulations for the Committee's rules concerning oral testimony, the submission of written briefs, the treatment of business confidential information, and other procedures related to TPSC public hearings.

For additional information, parties are referred to a notice appearing on August 1, 1983 in the **Federal Register**, Vol. 48, No. 148, Page 34822.

For further information contact: Sandra J. Kristoff, Director, Tariff Affairs, Office of the U.S. Trade Representative, Room 503, 600 17th Street, NW., Washington, D.C. 20506; telephone (202) 395–3063.

Frederick L. Montgomery,

Chairman Trade Policy Staff Committee.

[FR Doc. 83-27576 Filed 10-7-83; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Falcon/Sciences, Inc.; Order of Suspension of Trading

October 4, 1983.

It appearing to the Securities and Exchange Commission that Falcon/Sciences, Inc. ("Falcon") may have made inadequate and inaccurate disclosure regarding the identity and background of control persons of Falcon, the details of transactions

between Falcon and entities also controlled by Falcon control persons, and the financial condition of the company, the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Falcon.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in Falcon on a national securities exchange or otherwise is suspended, for the period from 12:15 P.M. on October 4, 1983 through midnight on October 13, 1983.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27533 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13554; 812-5555]

MBC Financial Services Corp.; Application

September 30, 1983.

Notice is hereby given that MBC Financial Services Corporation ("Applicant") 2501 Cedar Springs Road, Dallas, TX, filed an application on May 27, 1983, and an amendment thereto on September 23, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable sections.

Applicant states that it is a Delaware corporation and a wholly-owned subsidiaray of Mercantile Finance B. V. ("Holding Company") which is itself a wholly-owned subisdiary of The Mercantile Bank of Canada ("Mercantile"). According to the application, Mercantile is the largest bank in Canada as ranked by assets at October 31, 1982, and is subject to extensive regulation by Canadian banking authorities.

Applicant represents that all of its outstanding capital stock is now owned by the Holding Company and undertakes that, at all times in the future, all of its outstanding capital stock will be held by the Holding Company, Mercantile or an affiliate of the Holding Company or Mercantile. Applicant also represents that there has been, and undertakes that in the future there will be, no public offering of the Applicant's capital stock or of any other equity security of the Applicant.

Applicant further represents that, as of July 31, 1982, it had 1,000 shares of common stock outstanding representing an aggregate shareholders' equity of approximately $21,348,000.

Applicant states that it is engaged principally in the business of making or otherwise acquiring secured and unsecured loans to Untied States borrowers through offices in Dallas, Denver and Los Angeles. Applicant proposes to offer, from time to time, its dept securities for sale in the United States, in both public offerings and private placement transactions, the proceeds of which would be utilized by the Applicant in the ordinary course of its business. The debt securities which the Applicant contemplates offering may include commercial paper, as well as other debt securities with longer maturities. Applicant further proposes to offer its letters of credit or guarantees in support of debt securities issued in the Untied States by Applicant's coustomers or other issuers unaffiliated with Applicant. The types of debt securities which Applicant wishes to support with its letters of credit and guarantees include short-term commercial paper, medium-term and long-term notes, industrial development bonds and other revenue bonds and obligations issued by United States state or municipal governmental units and instumentalities.

Applicant states that its publicly offered debt securities, letters of credit and guarantees will be supported by letters of credit, guarantees or other forms of support functionally equivalent to a guarantee provided by Mercantile will or by a banking institution defined as a "bank" in Section 3(a)(2) of the Securities Act of 1933 (the "Seucrities Act"), or entitled to the status of a "bank" under that section in accordance with the "no-action" letters made public by the commission with respect thereto ("Bank"). Applicant further represents that in any instance in which Applicant's publicly offered debt securities are supported by a letter of credit, guarantee or other form of support functionally equivalent to a guarantee issued by a Bank, Mercantile agree with Applicant to provide to Applicant, if and when required, such amounts as shall be necessary to satisfy Applicant's obligations on such debt securities if Applicant is otherwise unable to satisfy those obligations. In addition, Applicant states that any letters of credit or guarantees issued by Mercantile in support of debt securities, letters of credit or guarantees issued by the Applicant will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Mercantile, except for indebtedness of Mercantile which is given a statutory preference under the Bank Act of Canada or other statute.

Applicant undertakes that it will not issue or sell any of its debt securities in the United States or issue any of its letters of credit or guarantees in support of any debt securities or other issued an sold in the United States, unless the Applicant has received an opinion of United States counsel or a "no-action" letter issued by the staff of the Commission to the effect that the proposed issuance and sale or issuance is in compliance with, or entitled to an exemption from, the registration requirements of the Securities Act, or unless the offering is made pursuant to a registration statement under the Securities Act.

Applicant represents that any offering of its debt securities and any offering of the debt securities of others supported by the Applicant's letters of credit or guarantees will be effected on the basis of disclosure documents describing the business of the Applicant and providing the most recent annual audited financial statements for the Applicant. In the event such securities or letters of credit or guarantees are supported by the letters of credit or guarantees Mercantile, Applicant states that the disclosure document will include a description of Mercantile's business and will include Mercantile's most recent annual audited financial statements accompanied by a description of the material differences between the accounting principles applied in connection with Mercantile's financial statements and those applied in the case of banks in the United States. Applicant states further that in the event such securities or letters of credit or guarantees are supported by the letter of credit, guarantee or other form of support of a Bank, the disclosure document will include a description of the business of, and the most recent annual audited financial statements of, that Bank.

Applicant undertakes to insure that each dealer used in effecting an offering of its debt securities, letters of credit or guarantees will furnish the required disclosure document to each offeree. The disclosure document utilized in connection with any offering will be updated as promptly as practicable to reflect material adverse changes in the business and financial condition of the Applicant, Mercantile or any Bank issuing letters of credit, guarantees, or some other form of support of the Applicant's securities. The disclosure memorandum will be at least as comprehensive as those customarily

used in offering similar types of debt securities in the United States.

Applicant represents that, prior to issuance, any debt securities of the Applicant will have received, either in thier own right or as a result of the support by Mercantile or a Bank, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that Applicant's counsel shall have certified that the rating has been received. In addition, the Applicant will not issue its letters of credit or guarantees in support of the debt securities of another issuer unless, prior to the issuance of the debt securities with the supporting letters of credit or guarantees, the debt securities supported by the Applicant's letters of credit or guarantees, as so supported, have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organizations and the Applicant's counsel has certified that the rating has been received. Applicants assert that no rating shall be required, however, with respect to an issue of the Applicant's debt securities or an issue of the debt securities of another issuer supported by the Applicant's letters of credit or guarantees if, in the opinion of counsel to the Applicant, such counsel having taken into account for the purposes thereof the doctrine of "integration," an exemption is available for the issue pursuant to Section 4(2) of the Securities act or Regulation D promulgated thereunder.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 25, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27524 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13562; 812-5641]

Midland American Capital Corporation; Application

October 3, 1983.

Notice is hereby given that Midland American Capital Corporation ("Applicant") c/o Peter V. Darrow, Shearman & Sterling, 53 Wall Street, New York, NY 10005, filed an application on August 29, 1983, and an amendment thereto on September 30, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act ("Act") exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below, and to the text of the Act for its relevant provisions.

Applicant states that it was incorporated on August 23, 1983, under the laws of the State of Delaware. Midland Bank plc, a United Kingdom commercial bank ("Midland"), will own all the outstanding capital stock of Applicant. Applicant states that its principal business will be the raising of funds for Midland or subsidiaries of Midland. Accordingly, substantially all of Applicant's assets will consist of amounts receivable from Midland or its subsidiaries.

Applicant states that Midland has a majority interest in Crocker National Corporation, a bank holding company, and is registered as a foreign bank holding company under the Bank Holding Company Act of 1956, as amended ("BHCA"). Under the BHCA, Midland is subject to regulation by the Board of Governors of the Federal Reserve System ("Federal Reserve Board") governing, among other things, the types of activities in the United States in which it may engage. As a foreign bank having a licensed Federal branch in New York City, Midland is also subject to examination and regulation by the Comptroller of the Currency. Under BHCA, Midland is required to file with the Federal Reserve Board an annual report containing detailed information with respect to Midland and its United States subsidiaries. In the future, that annual report by Midland would include information about Applicant. Midland and Applicant are also required to furnish the Board with any additional information which the Board may request.

Applicant represents that Midland will not need the Federal Reserve Board approval under BHCA to acquire or control the shares of Applicant and that Applicant's proposed operations described in the application will not violate any provision of the BHCA. In addition, the BHCA provides that the Federal Reserve Board has the power under certain circumstances to terminate certain United States activities of Midland or to terminate Midland's control of the Applicant.

By order dated February 16, 1982 (Investment Company Act Release No. 12229), the Commission exempted Midland from all of the provisions of the Act. The order (the "Midland Order") was granted in response to Midland's application (filed on October 20, 1981) describing Midland's intention to sell commercial paper in the United States, as well as the possibility of offering for sale other debt securities in the United States.

Applicant states that it wishes to be in a position to undertake, on behalf of Midland, the issuance and sale of debt securities ("Securities") in the United States. Payment of principal of and premium, if any, and interest on the Securities would be unconditionally guaranteed by Midland. Those guarantees may be extended on a subordinated basis in order to comply with provisions of instruments pursuant to which Midland has issued and sold long-term debt securities outside the United States, will rank *pari passu* with other debt securities of Midland having the same degree of subordination and will rank senior to Midland's common stock. Applicant would advance to, or deposit with, Midland or subsidiaries of Midland substantially all of the proceeds of sale of Securities. The terms of the advances or deposits would allow Applicant to make timely payments of principal of and premium, if any, and interest on the Securities. Securities may be long-term, intermediate-term, or short-term instruments, including commercial paper.

Applicant represents that its offering of Securities would be limited to offerings of debt securities. Those would be either public offerings registered under the Securities Act of 1933, as amended (the "1933 Act") or sales of Securities by means of transaction exempt from the registration requirements of that Act. Securities will

rank *pari passu* with other debt securities of applicant having the same degree of subordination and will rank senior to the stock of Applicant.

Applicant represents that it and Midland would, prior to a public offering of any Securities in the United States, file a registration statement under the 1933 Act with the Commission and would not sell any Securities until the registration statement was declared effective by the Commission and the related indenture was qualified under the Trust Indenture Act of 1939, as amended. Applicant and Midland would also comply with the prospectus delivery and other disclosure requirements of the 1933 Act and the rules and regulations thereunder in connection with the offering and sale of Securities. Applicant further represents that, in the case of an offering of Securities in the United States not requiring registration under the 1933 Act (including sales of commercial paper), Applicant and Midland would undertake to provide to any offeree in the United States (before that offeree purchases any Securities) a memorandum at least as comprehensive as memoranda customarily used in such offerings of debt securities in the United States and that that memorandum would be updated periodically to reflect material changes in the respective financial positions of Applicant and Midland. Similarly, any disclosure documents under the 1933 Act would be updated as required by law to reflect material changes in the respective financial positions of Applicant and Midland. The memorandum would also include a description of material differences between United States and United Kingdom generally accepted accounting principles, a description of the respective businesses of Applicant and Midland, and any other information regarding Midland that would be required in such a memorandum by the Midland Order. Applicant and Midland will not issue and sell such Securities until they have obtained an opinion of United States counsel concerning the applicability of the 1933 Act or any exemption therefrom. Applicant consents to having any order granting the relief requested expressly conditioned upon its compliance with the undertakings regarding disclosure memoranda.

Applicant also undertakes that, in connection with any issuance of Securities, Applicant and Midland would appoint an agent to accept service of process in any action based on the Securities or the guarantees thereof and instituted in any state or Federal court by any holder thereof, and Applicant and Midland would accept the jurisdiction of any state or Federal court in the Borough of Manhattan in the City and State of New York in any such action. Applicant and Midland will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Securities and the guarantees thereof or otherwise. That appointment of an authorized agent to accept service of process and consent to jurisdiction would be irrevocable until all amounts due or to become due on the Securities or the guarantees thereof have been paid. The authorized agent will not be, or be obligated to act as, a trustee for the holders of Securities or the guarantees thereof.

Applicant further represents that prior to issuing Securities it shall have received one of the three highest investment grade ratings from at least one nationally recognized investment rating organization and that its United States counsel shall have certified that such rating has been received. No such rating shall be required to be obtained, however, if, in the opinion of United States counsel for Applicant, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act.

Applicant submits that it is merely the vehicle through which any sale of Securities would be accomplished. Applicant would advance to, or deposit with, Midland or subsidiaries of Midland substantially all of the financing proceeds on terms which would allow Applicant to make timely payments of principal of and premium, if any, and interest on Securities. In addition, the obligations of the Applicant would be guaranteed unconditionally by Midland, with the effect that the holders of any Securities would be looking to Midland as the ultimate obligor. For these reasons, Applicant submits that the purchase of its Securities would be the equivalent of purchasing obligations of Midland. Applicant asserts that the same policy considerations pursuant to which the Commission approved the Midland exemption should apply in the case of the Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washingon, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Comission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27521 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13564; 812-5629]

Nationwide Investing Foundation et al.; Application

October 4, 1983.

Notice is hereby given that Nationwide Investing Foundation ("Nationwide") registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Heritage Securities, Inc. ("Heritage"), One Nationwide Plaza, Columbus, OH 43216, Nationwide's principal underwriter, distributor and investment adviser (collectively with Nationwide, "Applicants"), filed an application on August 10, 1983, for an order pursuant to Section 6(c) of the Act, exempting certain transactions from the provisions of section 22(d) of the Act and Rule 22d-1 thereunder to the extent necessary to permit sales of classes of shares presently offered by Nationwide, and of those classes which may in the future be offered by Nationwide, at net asset value without a sales charge to former agents and sales representatives of Nationwide Mutual Insurance Company and its affiliated companies ("Nationwide Group") on terms and in the manner described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of applicable provisions.

Applicants state that Nationwide is a common law trust with several classes of shares which are continuously offered to the public pursuant to effective registration statements under the Securities Act of 1933, and consist of the following: Nationwide Fund, Nationwide Growth Fund, Government Money

Market Fund (collectively, the "Funds"). Shares of each class are distributed by Heritage at public offering prices (for initial investments) equal to net asset value per share plus a sales charge.

The application states that the entire sales force of Heritage is comprised of licensed insurance agents of the companies making up the Nationwide Group. Commissions paid to those agents from insurance premiums containing a sales charge are designed to compensate the agent for the effort that he has put forth in making the customer contact. Heritage is a wholly-owned subsidiary of Nationwide Corporation, an incorporated insurance and financial services holding company. Applicants represent that the insurance companies, affiliates, and subsidiaries comprising the Nationwide Group have striven to create a network of multi-line agents licensed and qualified to provide a wide range of insurance and related financial planning products and services to their customers.

The application states that the following companies comprise the Nationwide Group of companies: Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Life Insurance Company, Nationwide General Insurance Company, Nationwide Property and Casualty Insurance Company, Nationwide Variable Life Insurance Company, Michigan Life Insurance Company, West Coast Life Insurance Company, Gulf Atlantic Life Insurance Company, National Casualty Company, and other insurance and noninsurance companies which are subsidiaries of or otherwise affiliated with Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company. The intercorporate ownership of the Nationwide Group of companies is such that Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company are the ultimate controlling persons of the companies within the Nationwide Group.

Applicants propose to permit former agents and sales representatives (collectively, "former agents") of the Nationwide Group to purchase on their own behalf, and on behalf of a spouse or their children under the age of 21 years, shares of the Funds or of any other class of shares which may in the future be offered by Nationwide for initial and subsequent investment, at net asset value determined in accordance with Rule 22c-1 under the Act without the imposition of a sales charge as otherwise applied pursuant to the prospectuses of the Funds. Purchases on behalf of a spouse or child will be eligible for purchase at net asset value only if that purchase is directed by the former agent.

Applicants assert that any such sales will be made only upon the written assurance of the former agent that the purchase is being made for the purpose of investment and that the shares will not be resold except to Nationwide. In the event of the death of a shareholder, his legal representative, legatee or beneficiary will be permitted to continue to hold such shares subject to the same restriction that they will not be resold except to Nationwide.

Applicants submit that the sale of shares of the Funds at net asset value to former agents may conflict with the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder. Nevertheless, Applicants assert that investment by former agents in shares of the Funds at net asset value pursuant to a uniform offer described in the prospectus of the Funds would not be inconsistent with the purposes underlying Section 22(d) of the Act.

Applicants state that the proposed sale to former agents would result in substantial economies in sales efforts and sales-related expense as compared with other sales. Former agents, because of their training and experience, have a basic understanding of the nature of an investment in an investment company as well as general familiarity with, and a significant degree of loyalty to the Funds as affiliates of the Nationwide Group. Applicants submit that the affiliation of the various entities in the Nationwide Group is the basis for a unique relationship of these entities to the Funds and that substantial equities exist in favor of the classes of persons described above since the customary selling expenses would not be incurred by the Funds or the distributor in connection with these sales.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27523 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13552 and 884; 812-5581 and 803-32]

Prutech Venture Partners I, L.P., et al.; Application

September 30, 1983.

Notice is hereby given that Prutech Venture Partners, I, L.P. ("Partnership") and Prudential-Bache Venture Capital Inc. ("Managing General Partner," collectively, the "Applicants") 100 Gold Street, New York, NY 10292, filed an application on June 24, 1983, and amendments thereto on August 17 and Aulgust 30, 1983, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") declaring that the independent general partners of the Partnership are not "interested persons" of the Partnership as defined in Section 2(a)(19) of the Act solely by reason of their being general partners thereof, and pursuant to Section 57(c) of the Act exempting from the provisions of Section 57(a) of the Act the proposed acquisition of certain initial venture capital investment by the Partnership from Prudential-Bache Securities Inc. Notice is further given that Applicants filed an application on June 24, 1983, and an amendment thereto on August 17, 1983, for an order pursuant to Section 206A of the Investment Advisers Act of 1940 ("Advisers Act") exempting Applicants for Section 205(1) of the Advisers Act, to the extent necessary to permit the Managing General Partner of the Partnership to receive, under certain circumstances, and performance fee on the basis of unrealized capital gains upon the Partnership's portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and the the Act and the Advisers Act for the complete text of pertinent provisions of those Acts.

Applicants state that the Partnership is a newly formed business development company organized as a Delaware limited partnership pursuant to a Certificate and Agreement of Limited Partnership dated June 15, 1983

("Partnership Agreement"). Applicants represent that as a business development company, the Partnership is subject to Sections 55 through 65 of the Act and to those section of the Act made applicable to business development companies by Section 59 thereof. The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments. The Partnership has filed a Registration Statement under the Securities Act of 1933 with respect to a proposed public offering of up to 5,000 Units of limited partnership interests ("Units"). The Partnership hopes to raise approximately $25 million in the offering. Those proceeds will be invested in venture capital investments over a period of two to three years. Each of those investments will be liquidated once it reaches a state of maturity when disposition can be considered. The proceeds of liquidation will not be reinvested except in limited circumstances but will be distributed to the Partners. The partnership will have a duration of not more than fourteen years.

Applicants state that the Managing General Partner will be responsible for the Partnership's venture capital investments and, pursuant to a management agreement, will also perform the management and administrative services necessary for the operation of the Partnership. The Managing General Partner will be a registered investment adviser under the Advisers Act. Applicants represent that the Managing General Partner is a wholly-owned subsidiary of Bache Group Inc., which is an indirect, wholly-owned subsidiary of the Prudential Insurance Company of America ("Prudential"). Applicants further state that Prudential-Bache Securities Inc. ("Prudential-Bache"), and indirect, wholly-owned subsidiary of Prudential, will serve as the selling agent for Units of the Partnerships on a "best efforts" basis.

Appllicants state that the general partners of the Partnership consist of "Individual General Partners" and the Managing General Partners. As set forth in the Partnership's prospectus, three individuals are "Individual Limited Partners," all of whom are also Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of the Act). Applicants represent that the Partnership will be managed solely by the Individual General Partners, except that the Managing General Partner, subject to the guidance and supervison of Individual General Partners is responsible for the management of the Partnership's venture capital investments and the admission of additional or assigned Limited Partners to the Partnership. The Individual General Partners will act by majority vote. It is stated further that the Individual General Partners will perform the same functions as directors of a corporation, and the Independent General Partners will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on non-interested directors of a business development company. Applicants represent further that only individuals may serve as Individual Limited Partners. The Limited Partners have no right to control the Partnership's business,but may exercise certain rights and powers of a Limited Partner under the Partnership Agreement, Including certain voting rights, and the giving of consents and approvals provided for in the Partnership Agreement.

The Partnership Agreement provides that the Managing General Partner may be revoved either: (i) By a majority of the Independent General Partners, (ii) by failure to be re-elected by the Limited Partners (iii) with the consent of a majority in interst of the Limited Partners. Applicants undertake that the Managing General Partner will not resign or withdraw from the Partnership unless a successor Managing General Partner has been appointed and consented to by the Limited Partners in compliance with the Partnership Agreement. As set forth in the Partnership Agreement, the Managing General Partner may voluntarily resign or withdraw from the Partnership only upon compliance with certain specified procedures.

Applicants state that the Independent General Partners, are "interested persons" of the Partnership, as defined in Section 2(a)(19) of the Act, by virtue of being partners of the Partnership, which makes them "affiliated persons" of the Partnership. It is further stated that the Independent General Partners could also be construed to be "interested persons" of the Partnership by virtue of being "interested persons" of an investment adviser and principal underwriter to the Partnership. The Independent General Partners are "affiliated persons" of the Managing General Partner by virtue of being "co-partners" with the Managing General Partner, which could be construed to be an investment adviser of the Partnership. Applicants also state that the Managing General Partner is under "common control" with Prudential-Bache, the principal underwriter with respect to the sale of the Unites, which makes the Managing General Partner an affiliated person of Prudential-Bache and Prudential, which controls the Managing General Partner and Prudential-Bache.

Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of Section 2(a)(19) to the extent the Independent General Partners would otherwise be deemed to be interested persons of the Partnership, the Managing General Partner, Prudential-Bache or Prudential solely because they are general partners of the Partnership and co-partners with the Managing General Partner. Applicants state that the Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company.

In addition, Applicants expect that it will take a period of up to two to three months from the date of the last amended application before the public offering of the Units is consumated and the Partnership receives the proceeds from the sale of such Units. Applicants state that they believe that during this period prior to consummation of the proposed offering of the Units it is expected that several venture capital investment opportunities suitable for investment by the Partnership within the investment objective and policies stated in the prospectus will come to the attention of the Managing General Partner. It is further stated that Prudential-Bache currently holds certain other venture capital investments which are also suitable investments for the Partnership. Applicants asserts that the Partnership will not have the funds to make such venture capital investments until consummation of the public offering and, due to the nature of venture capital investments, such investment opportunities could be lost to the Partnership if not then acquired by Prudential-Bache.

Applicants request an order pursuant to Section 57(c) of the Act to permit the Partnership to acquire certain venture capital investments currently held, and to be acquired, by Prudential-Bache in exchange for the Units or cash on the basis of the lower of cost or fair market value of such investments. Applicants represent that for purposes of the proposed exchange the Units will be issued at their public offering price less the underwritng discount and commissions. Applicants further represent that the fair value of the

venture capital investments will be determined by the Individual Limited Partners on the same basis that the Partnership's portfolio will be valued.

Applicants assert that these venture capital investments have been or will be acquired by Prudential-Bache in arm's-length transactions and have not or will not involve any entity which is an affiliated person (within the meaning of Section 2(a)(3) of the Act) of Prudential-Bache or an affiliated person thereof. Applicants further state that the investments to be acquired by Prudential-Bache during the two to three month period from the date of the application to the time the Partnership receives the proceeds from the sale of the Units will be structured as if the Managing General Partner were negotiating for the Partnership to make the acquisitions directly. Applicants represent each such investment and the cost thereof will be disclosed in the Partnership's prospectus.

According to the application, the Partnership will not be obligated to acquire the venture capital investments if that acquisition is not approved by the Individual General Partners or if the public offering is not consummated. Applicants state that if the Partnership does not acquire these investments, Prudential-Bache will retain the investments for its own account. Applicants further state that except with respect to one venture capital investment currently held by Prudential-Bache, if the acquisition of the venture capital investments is approved by the Individual General Partners, Prudential-Bache must transfer each investment so acquired in its entirety to the Partnership following the sale of the Units to the public.

Applicants further request an order pursuant to Section 206A of the Advisers Act exempting Applicants from the provisions of Section 205(1) to permit the proposed performance fee arrangement described below. Applicants state that, in addition to an annual management fee of two percent of the Partnership's net assets, the Partnership Agreement provides that the Managing General Partner shall be allocated the Partnership's net realized capital gains or losses, as the case may be, for such year until it has received: (i) 20% of the Partnership's net capital gains calculated on a cumulative basis over the life of the Partnership through such year, if the Partnership has generated net realized capital gains on such cumulative basis through such year, or (ii) 10% of the Partnership's net capital losses calculated on a cumulative basis over the life of the Partnership through such year, if the Partnership has generated net realized capital losses on such cumulative basis through such year ("Managing General Partner's allocation"). Applicants further represent that distributions to the Managing General Partner shall not be made to the extent that the net realized gains allocated to the Managing General Partner are equal to or less than an amount equal to 20% of the cumulative net unrealized losses of the Partnership determined as of the end of the fiscal year for which such distributions are made.

The Partnership Agreement further provides that upon the involuntary removal of the Managing General Partner, all venture capital investments made by such Managing General Partner shall be deemed realized at that point for purposes of determining the Managing General Partner's final performance fees. Applicants further propose that all unrealized gains and losses on securities distributed in kind to the Partners upon termination of the Partnership, as well as during the life of the Partnership, will be deemed realized at that time.

Applicants state that the Partnership Agreement provides that in the event of the involuntary removal of the Managing General Partner and the continuation of the Partnership, the venture capital investments of the Partnership at the time of removal will be appraised by two independent appraisers, one selected by the removed Managing General Partner and one selected by the Independent General Partners. The cost of the appraisal conducted by the appraiser selected by the removed Managing General Partner will be borne by the removed Managing General Partner, and the cost of the appraisal conducted by the appraiser selected by the Independent General Partners will be borne by the Partnership. In the event the two appraisers are unable to agree on the value of the Partnership's venture capital investment portfolio, they will jointly appoint a third independent appraiser whose determination shall be final and binding. The cost of the appraisal conducted by the third appraiser, should one be selected, will be divided equally between the Partnership and the removed Managing General Partner. All unrealized capital gains and losses of the Partnership will be deemed realized at that time. Applicants further state that the removed Managing General Partner will receive a final allocation of capital gains and losses (including unrealized capital gains and losses deemed realized for this purpose) pursuant to the formula used to calculate the Managing General Partner's allocation.

In addition, Applicants represent that an independent appraisal will be made of the value of securities distributed in kind to the Partners during the life of the Partnership that are valued other than on the basis of either: (i) Available market quotations, or (ii) third party transactions involving actual transactions or actual firm offers by independent investors. The term "independent investors," as used herein, refers to investors who are not "affiliated persons," within the meaning of the Act, of the Partnership, the Managing General Partner, Prudential or its subsidiaries.

Applicants further represent that distributions in kind made upon termination of the Partnership will be such that if the securities so distributed exceed ten percent of the capital contributions to the Partnership (the total amount of money contributed to the Partnership by all the Partners), an appraisal will be made of the value of the securities so distributed which are not valued on the basis of available market quotations or on the basis of third party transactions involving actual transactions or actual firm offers by independent investors. Any appraisal required as a result of in kind distributions will be conducted in accordance with the procedures described above with respect to removal of the Managing General Partner.

Applicants represent that the proposed formula for computing the Managing General Partner's performance fee has been so structured because of the special nature of the Partnership. The venture capital investments will be made in the early years of the Partnership. According to Applicants, bad venture capital investments typically surface earlier than successful ones and the ultimate success of the Partnership may depend upon realizing substantial gains in a relatively small number of the investments. The value of these successful investments cannot be realized until relatively late in the life of the Partnership when portfolio companies can be taken public or acquired by another company.

Applicants state further that the Managing General Partner will bear 10 percent of any net realized losses. If the Managing General Partner were removed prior to the termination of the Partnership, and it were not able to receive performance compensation with respect to any unrealized gains, it would be deprived of compensation with respect to those venture capital

investments it had made for the Partnership which were still held by the Partnership. By the same token, the Managing General Partner would not bear 10 percent of any net unrealized losses with respect to such investments. Therefore, if the Managing General Partner is removed for poor performance, the Partnership could benefit under Applicant's proposal as a result of the deemed realization of losses. At the same time, the Managing General Partner would receive protection from being removed in the middle years of the Partnership in order to deprive it of the benefit of successful investments which will be most likely realized in the later years. Applicants assert further that if the capital account of the removed Managing General Partner has a positive balance after its final allocation of profits and losses, the Managing General Partner will receive a promissory note of the Partnership, payable only from available cash. On the other hand, the Managing General Partner must contribute cash to cover any negative balance in its capital account.

Applicants assert that distributions in kind during the life of the Partnership will give the Partnership's investors flexibility in the timing of gains and losses upon the distributed securities with resultign tax advantages to the investors. Applicants also state that permitting a performance fee on the basis of distributions in kind made upon termination of the Partnership will facilitate distribution of portfolio securities not yet "ripe" for realization.

Applicants represent that the appraisal procedures are designed to take into account the difficulties of determining the fair market value of venture capital investments and to provide for an analysis of the long-term potential of such investments. They argue that deeming unrealized gains and losses to be realized upon termination of the Partnership and upon distributions in kind treats such events as dispositions of the investments by the Partnership and, in the first instance, reflects the fact that the Partnership has limited duration, a factor not contemplated by Section 205(l1) of the Advisers Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 25, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary

[FR Doc. 83-27526 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13553; 812-5580]

State Farm Mutual Automobile Insurance Co. et al.; application

September 30, 1983.

Notice is hereby given that State Farm Mutual Automobile Insurance Company ("Auto Company"), State Farm Fire and Casualty ("Casualty Company"), State Farm Investment Management Corp. ("Adviser"), State Farm Growth Fund, Inc. ("Growth Fund"), State Farm Balanced Fund, Inc. ("Balanced Fund"), and Edward B. Rust, Roger Joslin and Roland F. Marston ("Trustees"), Trustees of the Trust ("Trust") for the State Farm Insurance Companies' Incentive and Thrift Plan for United States Employees ("Plan," collectively, "Applicants") One State Farm Plaza, Bloomington, IL 61701, filed an application on June 24, 1983, requesting the Commission to issue an order pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act") exempting from the provisions of Section 17(a)(2) of the Act the proposed redemption in kind of all the Trust's shares of Growth Fund and Balanced Fund. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of its relevant provisions.

Applicants state that Growth Fund and Balanced Fund ("Funds") are Maryland corporations registered under the Act as open-end, diversified, management investment companies. As of March 31, 1983, the Trustees held for the Trust 48.53% of the outstanding shares of Growth Fund and 47.35% of the outstanding shares of Balanced Fund. Applicants state that Auto Company and its wholly-owned subsidiary, Casualty Company, are Illinois insurance corporations. Adviser, a wholly-owned subsidiary of Casualty Company, is a Delaware corporation and the investment adviser and manager, underwriter and transfer agent of the Funds. The Trustees are the trustees of the Trust for the Plan, a voluntary contributory profit-sharing plan qualified under Section 401(a) of the Internal Revenue Code ("Code"). The Trustees, each of whom is a director or officer of Auto Company, Casualty Company, Advisor or Funds, are appointed pursuant to the Trust Agreement between the Trustees and Auto Company ("Trust Agreement").

According to the application, before April 1, 1983, assets in the Plan's growth equities account were invested exclusively in the Growth Fund, and assets in the Plan's balanced equities account exclusively in the Balanced Fund. Except for reinvestments of dividends and distributions on Fund shares, after March 30, 1983, contributions made to the growth equities account have been invested not in the Growth Fund, but in other growth-type securities, and contributions to the balanced equities account not in the Balanced Fund, but in bonds and equity securities.

Applicants state that the Funds believe that if past trends of concentration of the ownership of the Funds' shares continue, the Funds might become "personal holding companies" under Section 542 of the Internal Revenue Code ("Code"). Applicants, state that the consequence to either Fund of the Fund's becoming a personal holding company would be severe, because the Fund would not be taxed as a "regulated investment company" under Sections 851–55 of the Code, and as a result would incur corporate income tax.

The application states that the Trustees have decided to disassociate the Trust from the Funds to avoid the Funds' becoming personal holding companies. Applicants propose that after the board of directors of each Fund declares a dividend and a capital gains distribution payable to shareholders of record (including the Trustees) at the close of business on the day of declaration, the Trustees will present to each Fund for redemption by that Fund all of the shares of that Fund that they hold, accompanied by a request that the proceeds of the redemption be paid in kind. The Trustees will then receive their proportionate interest in each portfolio security held by each Fund (including accrued interest) and their proportionate interest in the cash and any other assets held by each Fund,

subject to adjustments to round lots and for fractional interests. It is represented that proportionate interest will be the percentage equivalent of a fraction the numerator of which will be the value of the redemption proceeds payable to the Trustees by a Fund and the denominator of which will be the value of the Fund's total net assets.

Applicants state that the actual number of shares or units of stock and other equity securities, to be transferred by each Fund to the Trustees will be rounded to the nearest round not in which each equity security is regularly traded (or to the nearest 100 units if the security is not regularly traded). The principal amount of debt securities to be transferred will be rounded to the nearest $1000 or (if larger) the nearest obtainable unit of principal amount of a debt security (including a convertible security). The amount of cash to be transferred by each Fund to the Trustees will be determined by subtracting from the total redemption proceeds payable by the Fund to the Trustees the market value of the securities (including accrued interest on the debt securities) transferred by the Fund to the Trustees.

Applicants state that if units of a particular portfolio security of a Fund have different bases for federal incame tax purposes, the Fund will transfer to the Trustees those units of the security with the lowest tax bases. They assert that the retention by each Fund of the portfolio securities with the highest tax bases will benefit most of Fund shareholders remaining ofter redemption by the Trustees (since most of the the shareholders are subject to federal income tax), because it will reduce the taxable gain (or increase the taxable loss) upon subsequent disposition of such securities by the Fund. Since the Plan is exempt from federal income tax, the bases of the securities received by the Trust will have no federal income tax consequences to Plan participants.

The Trustees request exemption from the provisions of Section 17(a)(2) of the Act so they may receive, without question under the Act, the proceeds of the redemption of Fund shares in kind i portfolio securities and any other property of the Funds. The other Applicants join in the request because of their participation in, or association with, the redemption. Applicants believe that the redemption in kind would not constitute a purchase of any security or other property by the Trustees from the Funds within the meaning of Section 17(a)(2). However, because of questions of interpretation concerning the scope of Section 17(a)(2), Applicants request an order of exemption to the extent that the redemptions in kind might be deemed purchases of securities or other property by the Trustees from the Funds.

Applicants assert that a redemption of the Plan's shares in cash would require the Funds to liquidate in the market almost half of their portfolios and would result in th realization of large capital gains from the sales of securities on which the taxpaying shareholders remaining in the Funds would be subject to federal income tax. In addition, since it is expected that the Trustees will continue to hold in the normal course nearly all of the securities received in kind, Applicants assert that redemption in cash would compel the Trustee to incur unnecessary transaction expenditures of considerable amount in reinvesting the redemption proceeds. Applicants represent that a ruling has been received from the Internal Revenue Service to the effect that under existing federal income tax law the proposed transfer of portfolico securities by the Funds to the Plan will not result in recognition of taxable gain or loss to the Funds or their shareholders. Applicants state that the proposed distribution of substantially all undistributed net income and realized capital gains to shareholders of record immediately before the time of redemption will assure that those shareholders remaining in each Fund who are subject to income taxation will not in the future receive a disproportionately large share of federal income tax liability.

Applicants assert that the proposed delivery to the Trustees of portfolio securities pro rata is an unbiased and objective method assuring that the Trustees and the remaining shareholders of each Fund will be accorded substantial equality and fairness. Applicants further assert that the Plan participants will continue to have the same investment choices although the money presently in the investment accounts will be invested in other securities, and that the appointment of Auto Company as the entity responsible for investment decisions involving Trust assets will assure the presence of a qualified entity responsible for investment decisions which previously would have been made by each Fund.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 25, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission, orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27525 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13563; 811-3594

1900 Tower Fund; Application

October 4, 1983.

Notice is hereby given that 1900 Tower Fund ("Applicant") 421 Seventh Avenue, Pittsburgh, PA, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on August 3, 1983, for an order pursuant to Section 8(f) of the Act declaring tht it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the text of the Act for its relevant provisions.

Applicant states that it was organized on October 7, 1982, under the laws of the Commonwealth of Massachusetts, and that on November 2, 1982, it registered under the Act on Form N-8A, and filed its registration statement on Form N-1 pursuant to Section 8(b) of the Act. As of the date of the filing of the application, that registration statement pursuant to the Securities Act of 1933 had not been declared effective and no initial public offering of Applicant's securities had taken place. On June 3, 1983, Applicant's sole shareholder authorized Applicant's Trustees to wind-up its affairs, request withdrawal of its registration statements under the Act and the Securities Act of 1933, and take any further steps necessary to wind-up and terminate the Trust.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific

issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27522 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20241; File No. SR-CBOE-83-34]

Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated

September 30, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 22, 1983, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change provides for increases in position and exercise limits for options on certain U.S. Treasury bonds and notes by establishing a three-tier system of limits. It provides that limits would be $100 million principal amount of underlying securities where the initial or reopened public issuance is $1 billion or greater and less than $2 billion, $200 million principal amount of underlying securities where the initial or reopened public issuance is $2 billion or greater and less than $4 billion, and $400 million principal amount where public issuance is $4 billion or greater.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Reference should be made to File No. SR-CBOE-83-34.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27531 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20251; File No. SR-OCC-83-20]

Filing of Proposed Rule Change by the Options Clearing Corp.

October 3, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on August 26, 1983, The Options Clearing Corporation)"(OCC") filed with the Securities and Exchange Commission the proposed rule change described herein. The Commission is publishing this notice to solicit comments on the proposed rule change. The proposed changes to OCC's By-laws and Rules add or amend several provisions setting forth the rights and obligations of OCC, its clearing members, and third parties under OCC's By-laws and Rules and the Uniform Commercial Code.

Proposed Article VI, Section 9(c) of OCC's By-laws would establish that, on matters not covered specifically by OCC's By-laws and Rules, applicable provisions of Articles 8 and 9 of the Uniform Commercial Code of Delaware (the "Code"), including the conflicts of law provisions, govern the rights and obligations of OCC, its clearing members and third parties. Delaware, the state where OCC is incorporated, recently amended provisions in Article 8 of the Uniform Commercial Code that concern uncertificated securities. Proposed Article VI, Section 9(c) also would designate the clearing member in whose OCC account an option is carried to be the "registered owner" of the option as that term is defined in Section 8-108 of the Code. In addition, proposed Article VI, Section 9(c) would stipulate that options can be transferred or pledged only in accordance with OCC's By-laws and Rules or with OCC's written consent. OCC would not be obliged to recognize any pledge or transfer not in accordance with its By-laws and Rules.

Article VI, Section 10 of OCC's By-laws would be amended by adding new paragraph (a) to incorporate OCC's By-laws and Rules in the terms of each option contract issued by OCC. Each contract thus would expressly include all By-law and Rule provisions relating to OCC's liens on option contracts and its liquidation rights.

OCC proposes to amend OCC Rule 614(m) to state that OCC's obligations with respect to options pledges under OCC Rule 614 ("Rule 614 Pledges") shall be governed only by OCC's By-laws and Rules. The proposed amendment also states that a Rule 614 pledge would not be a "registered pledge" within the meaning of Section 8-108 of the Code. OCC operates a pledge program that contains unique provisions respecting pledgees' rights and obligations. Those special rights and obligations may vary from state statutory rights and obligations. OCC also has revised Rule 614(m) to designate OCC as a "financial intermediary" as that term is defined in Section 8-313(4) of the Code.

OCC states in its filing that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 in that it would protect investors and the public interest by clarifying that the recent amendments of the Uniform Commercial Code apply to listed options. In addition, to the extent that the proposed rule change would override potential variations from state to state in the mechanics of creating and perfecting security interests in options, OCC believes it would remove impediments to a national system for the clearance and settlement of options transactions. In that regard, if the Commission approves the proposed rule change, OCC requests that the Commission preempt contrary provisions of state law. OCC also states that the proposed rule change would not adversely affect OCC's system of safeguards.

To assist the Commission in determining whether to approve the

proposed rule change or to institute disapproval proceedings, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W.,Washington, D.C. 20549. Reference should be made to File No. SR–OCC–83–20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other those which may be withheid from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27530 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20243; SR-MSRB-83-11]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

September 30, 1983.

The Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, N.W., Washington, D.C. 20036, submitted on August 23, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to allow customer confirmations sent through the automated confirmation facilities of a clearing agency registered with the Commission to omit the address and telephone number of the confirming broker, dealer, or municipal securities dealer. The Board believes that investors whose transactions are cleared through automated confirmation systems know how to contact persons with whom they effect transactions and therefore, confirmations need not reflect the aforementioned information.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 20128, August 29, 1983) and by publication in the **Federal Register** (48 FR 40333, September 6, 1983). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, in particular, the requirements of Secion 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27527 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20242; SR-MSRB-83-10]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

September 30, 1983.

The Municipal Securities Rulemaking Borad ("MSRB") 1150 Connecticut Avenue, NW., Washington, D.C. 20036, submitted on August 23, 1983, copies of a proposed rule change and an amendment thereto on September 23, 1983, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1834 ("Act") and Rule 19b–4 thereunder, to amend MSRB Rule G–12 (e) (vii)(c) regarding delivery of bearer securities, to allow checks delivered in lieu of the next-payable coupon to be payable not later than the interest payment date. The MSRB is also amending paragraphs (e)(xiv)(G) and (H) of Rule G–12 regarding the delivery of registered securities to allow checks for the value of the next interest payment to be received to be payable not later than the interest payment date. The amendment, dated September 23, 1983, gives the seller or its agent the right to deliver a check payable on the later of the interest payment date or the delivery date and revises the proposed rule change to allow the use of a check even though the delivery of bearer securities occurs in a transaction where the settlement date is not 30 days prior to the coupon delivery date.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 20127, August 29, 1983) and by publication in the **Federal Register** (48 FR 40334, September 6, 1983). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the porposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27528 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20244; SR-NASD-83-14]

National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

September 30, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) notice is hereby given that on August 30, 1983, the National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, NW., Washington, D.C. 20006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would revise the content of the NASD's qualification examination for Limited Principals—Direct Participation Programs. The exam is one of the qualifications examinations which the NASD gives to ensure that people seeking to become registered representatives or principals possess an adequate knowledge of their subject area and attendant regulatory requirements. All persons seeking registration as a Limited Principal—Direct Participation Programs must pass the NASD's specialized exam. The

NASD states that the revised exam will incorporate regulatory changes made by the North American Securities Administrators Association to their guidelines for real estate [1] and oil and gas programs.[2] Appendix F of the NASD's Rules of Fair Practice, Regulation D of the Securities Act of 1933 and tax issues related to investments in direct participation programs.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–NASD–83–14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the rule change. Under the proposed rule change examination questions have been revised to cover regulatory and statutory changes applicable to direct participation programs. The Commission believes it is appropriate to institute the revised examination as soon as possible to ensure that the exam reflects current law and practice in the area of direct participation programs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

[1] 1 Blue Sky Rep. (CCH) ¶ 5361.
[2] 1 Blue Sky Rep. (CCH) ¶ 5221.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 83–27529 Filed 10–7–83; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–20250; File No. SR–OCC–83–15]

Self-Regulatory Organization; Proposed Rule Change By The Options Clearing Corp.; Adoption of an On-line Data Entry System Enabling Members To Submit Data to the Corporation via On-line Computer Terminals

Pursunat to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1983, The Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow the Corporation to require or permit Clearing Members to submit specific types of data by on-line data entry. The Corporation would display the status of each item transmitted on a Monitor Screen maintained in the Clearing Member's office. The Clearing Member would then be able to correct, re-enter, or re-edit any of the data prior to a specified cut-off time. Failure by the Clearing Member to change the data before the cut-off time would constitute a waiver of the right to have the data changed. Clearing Members would not be charged for the use of the on-line system.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The prupose of the proposed rule change is to improve the accuracy and efficiency of the curent data imput and Clearing Member inquiry procedures of OCC. The new "on-line" system would allow for entry of data, exercise notices and instructions by transmission directly to OCC form the Clearing Member's office. Immediately following the Clearing Member's transmission, OCC would display on the Clearing Member's screen, current information on the status of each item transmitted. The Clearing Member would then have an opportunity to re-edit and re-enter the information from its office before final editing and entry by OCC.

As an alternative to present procedures, the on-line system would eliminate inefficient and unnecessary steps in the clearing process, benefitting Clearing Members and OCC alike. The practice under existing rules is for Clearing Members to submit information to OCC in machine-readable form, hand delivered by courier from the Clearing Member's office. This practice has several shortcomings. One problem is the volume of input errors. When data is submited in machine-readable form as either key-punched cards, diskettes, or magnetic tapes, there is a greater potential for clerical errors than when data is entered direct from key to disk, using the on-line procedure. The on-line procedure is more precise and therefore more reliable.

Another problem with machine-readable data is that it must be hand-delivered. Due to this extra step, the transaction speed for entry of Machine-readable data is slower than for on-line entry. It also adds an unnecessary securitysecutiry risk.

The on-line entry system has improved automated editing features which would reduce the amount of time necessary for OCC to edit Clearing Member input. Clearing Members would benefit from this improvement since, with decreased time requirements for the editing process itself, OCC could allow more hours per day for data entry by Clearing Members, thus maximizing their access to the system.

The introduction of the on-line system would begin with a pilot program for two Clearing Members. At first, the pilot program would limit the participating Clearing Members to two types of transactions, position adjustments and exercise notices. The program would gradually expand to include more Clearing Members and types of transactions, based on these initial observations and results. The long range objective of the pilot program would be to implement on-line service in a series of phases, eventually making it available to all Clearing Members, for a broad range of transactions.

Clearing Members would not be charged for use of the on-line system either during the pilot program or thereafter. The two initial Clearing Members will have the choice of supplying their own on-line terminals, or having OCC supply them. Additional

Clearing Members will be required to purchase or lease their own hardware.

The proposed rule change would not affect the safeguarding of securities or funds in OCC's custody or control, or for which it is responsible.

Strict confidentiality for information in OCC's control would be provided by the on-line system. Access to a particular Clearing Member's information file would be provided only to that Clearing Member. Also, the on-line system would include back-up and recovery systems in case of harware or software failure. These systems would provide records of all transactions for use by OCC should the need arise.

The proposed rule change is in accordance with Section 17A(a)(1)(c) of the Securities Exchange Act of 1934 since it provides for the introduction of new data processing and communications techniques creating the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change is not expected to have any impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments by Clearing Members have been uniformly in favor of the proposed change. Several Clearing Members voiced a desire to be part of the pilot program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organizatio consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 3, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-27532 Filed 10-7-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements for OMB Review

ACTION: Notice of Reporting Requirement Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are requrired to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments must be received on or before November 10, 1983. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible. COPIES: Copies of the proposed form, the requests for clearance (S.F. 83), supporting statement, instructions, transmittal letter, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538

OMB reviewer: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-4814

Form Submitted for Review

Title: Dredging Industry Questionnaire
Form No.: SBA 1374
Frequency: Non-recurring
Description of Respondents: Dredging firms that would elicit information on the industrial structure of the industry
Annual Responses: 125
Annual Burden Hours: 125
Type of Request: New

Dated- October 4, 1983.

Elizabeth M. Zaic,

Chief, Paperwork Management Branch, Small Business Administration.

[FR Doc. 83-27575 Filed 10-7-83; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-5468]

Everlast Capital Corp.; Application for a License to Operate as a Small Business Investment Company

An Application for a License to operate a Small Business investment company under the provisions of the small business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Everlast Capital Corporation (Everlast), 250 Fifth Avenue, Suite 2803, New York, New York 12207, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102(1958).

The Officers, directors and their shareholding of the Applicant are as follows:

Frank J. Segreto, 1430 85th Street, Brooklyn, New York 11228, Vice President and Chief Executive Officer.

Sung Kyu Kang, 8 Cypress Avenue, Great Neck, New York 11024, President, and Director, 30%.

Song Ja Kang, 8 Cypress Avenue, Great Neck, New York 12210, Secretary and Director, 15%.

Yung Duk Hahn, 995 Hart Street, Brooklyn, New York 11237, Vice President and Director, 10%.

Won H. Kim, 33785 Shackleton Leguna Niguel, California 92677, Director, 20%.

Harry Hyuk Pak, 211–40 18th Avenue, Bayside, New York 11360, Director, 15%.

Kil Han Kim, 2995 S.W. 117 Avenue, Davie, Florida 33314, Director, 10%.

The Applicant, Everlast, a New York Corporation will begin operations with $1,000,000 paid-in capital and paid-in surplus. Everlast will conduct its activities primarily in the state of New York but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, inlcuding adequate profitability and financial soundness, in accordance with the Small Buaniess Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is hereby given that any person may not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 5, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-27574 Filed 10-7-83; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0418]

Key Venture Capital Corp; Application for a License To Operate as a Small Business Investment Company

AN Application for a License to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Key Venture Capital Corp., 60 State Street, Albany, New York 12207, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102(1983).

The Applicant is a New York Corporation and will begin operations with 200 Shares of authorized stock of which 50 have been issued for an initial capital of $1,000,000.

The officers, directors and shareholders are as follows:

John M. Lang, Gettle Road, Averil Park, New York 12018, President, Director.

Mark R. Hursty, 176 Willow Street, South Hampton, New York 11968, Exrecutive Vice President, Manager, Director.

Michael P. Quinn, 140 Washington Avenue, Albany, New York 12210, Vice President.

Albert V. Legge, 10 Majorca Lane, Clifton Park, New York 12210, Treasurer, Director.

H. Douglas Barclay, 6871, Port Road, Pulaski, New York 13142, Secretary, General, Counsel, Director.

Walter V. Ferris, 3 Hand Hewn Way, Manlins, New York 13104, Assistant Secretary.

Albert J. Brown, Jr., 19 Cloverfield, Loudinvile, New York 12211, Director.

Peter A. Farrell, 5 Princess Lane, Loudonvile, New York, Director.

Wiliam H. Stevens, 3116 West Lake Road, Skaneateles, New York 13152, Director.

Key Bank Inc., 60 State Street, Albany, New York 12207, Parent, 100%.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Busines Investment Comppanies).

Dated: September 28, 1983.

Roberte G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-27573 Filed 10-7-83; 8:45 am]

BILLING CODE 8025-01-M

Yusa Capital Corp.; Application for a License to Operate as a Small Business Investment Company

[Application No. 02/02-5467]

An Application for a License to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.)* has been filed by Yusa Capital Corporaation (Yusa Capital), 450 Seventh Avenue, New York, New York 10001, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1983).

The officers, directors and their shareholding of the Applicant are as follows:

Kenneth Q. Yip, 17 Cob Drive, Westport, Connecticut 06880, President, General Manager & Director, 9.66%.[1]

Ester Y. Yip, 17 Cob Drive, Westport, Connecticut 06880, Director.

Bong Y. Yu, 33 Bowery, B 202, New York, New York 10002, Chairman of Board & Director, 9.66%.[1]

May W. Yu, 33 Bowery, B 202, New York, New York 10002, Secretary, Treasurer & Director.

Kenneth K. L. Yim, A4, Third Floor, 128 Kennedy Road, Hong Kong, Director, 9.66%.

Christopher Yeung, No. 2 Shek Ku St., 4C, Arran Court, Kowloon, Hong Kong, Vice Chairman of Board & Director, 9.66%.[2]

The Applicant, proposes to begin operations with $1,020,000 paid-in capital and paid-in surplus. Yusa Capital will conduct its activities principally in the state of New York.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is hereby given that any person may not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

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[1] Jointly held with spouse

[2] Holds an additional 28.99% as nominee for father, Wai Sing Yeung.

Dated: October 3, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-27572 Filed 10-7-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

Adjustment of Entitlement Payments to Local Governments in the State of Maine; Correction

AGENCY: Office of Revenue Sharing, Department of the Treasury.

ACTION: Correction Notice.

SUMMARY: This is to make a technical correction in the Data Notice filed by the Office of Revenue Sharing (48 FR 44967, September 30, 1983). The correction is to delete the first sentence under the third paragraph of Supplementary Information and by revising the second sentence in the third paragraph to read as follows:

The Office of Revenue Sharing will mail a notice to each unit of local government within the State of Maine that advises these governments of the specific increase or decrease of entitlement funds resulting from the change to the Entitlement 13 payments.

Dated: October 3, 1983.

Michael F. Hill,

Director, Office of Revenue Sharing.

[FR Doc. 83-27570 Filed 10-7-83; 8:46 am]

BILLING CODE 4810-28-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

The United States Advisory Commission on Public Diplomacy will meet on October 19, 1983, from 10 am to 1 pm in Room 800, 400 C Street SW., Washington, D.C. The Commission will discuss the following topics: Interagency Task Force on Public Diplomacy for Latin America and the Caribbean; USIA's Congressional relations and pending legislation; and USIA's magazine program.

Please call Elizabeth Fahl, (202) 485-2468, if you plan to attend the meeting.

Dated: October 5, 1983.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 83-27564 Filed 10-7-83; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 197
Tuesday, October 11, 1983

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).

CONTENTS

1

CIVIL AERONAUTICS BOARD

[M-392, Oct. 5, 1983]

Closed Board Meeting

TIME AND DATE: 10 a.m., October 12, 1983.

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Report on ECAC Seminar—Preparation for Negotiations. (BIA)

STATUS: Closed.

PERSON TO CONTACT FOR MORE INFORMATION: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-1430-83 Filed 10-6-83; 3:49 pm]

BILLING CODE 6320-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

TIMES AND DATES: 10 a.m., October 12, 1983.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda—778th Meeting, October 12, 1983, Regular Meeting (10 a.m.)

CAP-1. Project No. 4458-000, Middle Fork Irrigation District, et al.
CAP-2. Project No. 3449-001, City of North Little Rock, Arkansas
CAP-3. Project No. 7145-001, Hellsgate Associates
CAP-4. Project No. 2975-003, Oakdale and South San Joaquin Irrigation Districts
CAP-5. Project No. 803-007, Pacific Gas & Electric Co.
CAP-6. Project No. 7235-002, Bluestone Energy Design, Inc.
CAP-7. Project No. 6827-001 and 002, Jackson Falls Hydroelectric Power Co.
CAP-8. Project No. 5315-002, Phoenix Hydro Corp.
CAP-9. Project No. 8574-001, Lynn Mines and Mining Co.
CAP-10. Project No. 5364-002, Pabst Brewing Co.
CAP-11. Qmitted
CAP-12. Docket No. QF83-373-000, Massachusetts Refusetech, Inc.
CAP-13. Omitted
CAP-14. Docket Nos. ER81-474-001 and EL82-1-002, Metropolitan Edison Co.
CAP-15. Docket Nos. EL82-1-003 and EL82-1-004, Town of Easton, Maryland, v. Delmarva Power & Light Co. and Pennsylvania-New Jersey-Maryland Interconnection
CAP-16. Docket No. ER83-668-000, Idaho Power Co.
CAP-17. Docket No. ER83-694-000, West Texas Utilities Co.
CAP-18. Docket Nos. ER82-708-000 and ER83-77-000, West Texas Utilities Co.
CAP-19. Docket No. ER82-481-008, Arizona Public Service Co.
CAP-20. Docket No. ER82-852-000, Southwestern Public Service Co.
CAP-21. Docket No. ER83-368-000, Upper Peninsula Power Co.
CAP-22. Docket No. ER82-375-000, Gulf States Utilities Co.
CAP-23. Docket Nos. ER80-592-000, et al., Allegheny Power System, et. al.; Docket Nos. ER80-615-000, ER80-616-000, ER80-617-000, ER80-618-002 and ER80-663-000, Wisconsin Public Service Corp.; Docket No. ER81-320-005, Iowa Public Service Co.; Docket Nos. ER80-733-000 and ER81-292-000, Southern Indiana Gas & Electric Co.; Docket Nos. ER80-595-000, ER80-658-000, ER80-718-000, ER80-732-000, ER80-779-000 and ER80-782-000, Commonwealth Edison Co.; Docket No. ER80-671-000, ER80-608-001 and ER80-610-001, Public Service Co. of Oklahoma
CAP-24. Docket No. EL83-9-001, Pennsylvania Power Co.
CAP-25. Docket No. EL82-3-001, City of Oakland, California, v. Pacific Gas & Electric Co.
CAP-26. Docket No. ID-2032-000, William F. Miller
CAP-27. Project No. 7073-000, Tuck Industries, Inc.

Consent Miscellaneous Agenda

CAM-1. Docket No. RM83-77-000, Substitution of certified mail for registered mail
CAM-2. Docket No. RA82-15-000, Thriftway Co.
CAM-3. Northern Natural Gas Co.

Consent Gas Agenda

CAG-1. Docket No. TA83-2-22-002, Consolidated Gas Supply Corp.
CAG-2. Docket Nos. TA83-2-21-004, RP82-88-001 and GP82-41-001, Columbia Gas Transmission Corp.
CAG-3. Docket No. RP82-56-009, Northwest Pipeline Corp.
CAG-4. Docket Nos. RP82-33-000, et al., and TA83-2-33-004, El Paso Natural Gas Co.
CAG-5. Docket No. RP83-127-000, Natural Gas Pipeline Co. of America
CAG-6. Docket No. RP82-56-007, Northwest Pipeline Corp.
CAG-7. Docket No. TA84-1-37-000 (PGA84-1A), Northwest Pipeline Corp.
CAG-8. Docket No. RP83-130-000, Gas Gathering Corp.
CAG-9. Docket No. RP75-25-000, Columbia Gas Transmission Corp. v. Allied Chemical Corp., et al.
CAG-10. Docket No. OR82-3-000, Kerr-McGee Refining Corp. and Oklahoma Refining Co. v. Sun Pipe Line Co.
CAG-11. Docket Nos. ST81-260-002 and CP82-206-002, Mustang Fuel Corp.
CAG-12. Docket Nos. ST82-34-001 and CP81-366-000, Llano, Inc.
CAG-13. Docket Nos. ST83-395-000 and ST83-396-000, Cranberry Pipeline Corp.
CAG-14. Docket No. SA81-22-001, Superwood Corp.
CAG-15. Docket Nos. RI74-168-018 and RI75-21-013, Independent Oil & Gas Association of West Virginia
CAG-16. Docket No. RI83-10-100 (Rate Schedule No. 41), Diamond Shamrock Corp.
CAG-17. Docket No. CI77-38-002, Mobil Oil Exploration and Producing Southeast Inc.
CAG-18. Docket No. CI73-629-001, Mobil Oil Corp.
CAG-19. Docket No. CI83-300-002, Diamond Shamrock Corp.; Docket No. CI83-301-001, Mesa Petroleum Co.; Docket No. CI83-318-001, Anadarko Production Co.; Docket No. CI83-271-002, Texaco Inc.; Docket No. CI83-339-002, Southland Royalty Co.
CAG-20. Docket No. CP83-340-002, Producer-Suppliers of Transco Gas Supply Co.
CAG-21. Docket Nos. CP83-190-001 and CP83-191-001, Tennessee Gas Pipeline Co., A Division of Tenneco Inc.
CAG-22. Docket No. CP77-402-006, Transcontinental Gas Pipe Line Corp.
CAG-23. Omitted
CAG-24. Docket No. CP82-122-000, Alabana-Tennessee Natural Gas Co.

CAG–25. Docket No. CP83–413–000, Columbia Gas Transmission Corp.
CAG–26. Docket Nos. CP83–245–000 and CP83–245–001, Montana-Dakota utilities Co.
CAG–27. Docket Nos. CP75–23–014 and CP75–120–007, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
CAG–28. Omitted
CAG–29. Docket No. CP82–522–000, Montana-Dakota Utilities Co.
CAG–30. Docket No. CP83–17–000, Mountain Fuel Resources, Inc.
CAG–31. Docket Nos. RP80–102–006, RP81–86–003, RP82–116–000 and RP83–58–000, Southern Natural Gas Co.
CAG–32. Docket No. TA83–2–42–000 (PGA83–2 and IPR83–2), Transwestern Pipeline Co.
CAG–33. Docket No. TA83–1–43–000 (PGA83–1), Northwest Central Pipeline Corp. (Formerly Cities Service Gas Co.)

Power Agenda

I. Licensed Project Matters

P–1. Project No. 2729–000, Power Authority of the State of New York.

II. Electric Rate Matters

ER–1. Docket No. ER79–150–008, Southern California Edison Co.
ER–2. Docket No. ER81–179.000 (Phase II), Arizona Public Service Commission
ER–3. Docket No. ER82–67–000, Wisconsin Public Service Co.
ER–4. Docket No. EL83–11–000, Virginia Electric & Power Co.
ER–5. Docket No. ES83–62–000, Centel Corp.
ER–6. Docket No. ER82–257–000, Kansas Gas & Electric Co.

Miscellaneous Agenda

M–1. Reserved
M–2. Reserved
M–3. Docket Nos. RM81–29–001 through RM81–29–015, sales and transportation by interstate pipelines and distributors; Docket Nos. RM81–19–010 through RM81–19–022, interstate pipeline blanket certificates for routine transactions
M–4. Docket No. RM82–25–000, fees applicable to producer matters under the Natural Gas Act
M–5. Docket No. RM82–34–000, high-cost gas produced from tight formations; recompletion tight formation gas
M–6. (a) Docket No. RM81–31–001, clarification of regulations regarding new, onshore production wells; (b) Docket No. RM81–24–000, J–3 Oil Co., Inc.
M–7. Docket Nos. GP82–4–000 and 001, Dorchester Gas Producing Co.

Gas Agenda

I. Pipeline Rate Matters

RP–1. Docket No. TA80–2–21–002 (PGA80–3), Columbia Gas Transmission Corp. And Columbia LNG Corp.; Docket No. TA80–2–22–003 (PGA80–5) (IPR80–3) (LFUT80–2) and (RD&D80–2), Consolidated Gas Supply Corp. and Consolidated System LNG Co.; Docket No. RP80–136–00, Southern Natural Gas Co.; Docket No. RP80–129–00, State of Ohio, ex rel. William J. Brown, Attorney General
RP–2. Docket Nos. RP80–2–000 (Part I), RP80–2–005 (Part II) and RP83–24–004, Alabama-Tennessee Natural Gas Co.
RP–3. Docket Nos. RP82–80–010, CP82–542–006, TA81–2–48–000, TA82–1–48–000, TA82–2–48–000 and TA83–1–48–000, Michigan Wisconsin Pipe Line Co.
RP–4. Docket Nos. RP81–25–00, RP81–69–000, RP82–46–000 and Rp83–54–000, South Georgia Natural Gas Co.
RP–5. Docket No. RP81–49–011, Natural Gas Pipeline Co. of America
RP–6. Docket No. RP82–16–000 (Phase I), United Gas Pipe Line Co.

II. Producer Matters

CI–1. Omitted

III. Pipeline Certificate Matters

CP–1. Omitted
CP–2. Omitted
CP–3. Omitted
CP–4. Omitted

Kenneth F. Plumb,
Secretary.

[S–1424–83 Filed 10–6–83; 2:32 pm]
BILLING CODE 6717–01–M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, October 13, 1983.

PLACE: Board Room, Sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6970).

MATTERS TO BE CONSIDERED:

Accounting For Uncollectible Income
[No. 58, October 6, 1983]

[S–1422–83 Filed 10–6–83; 1:46 pm]
BILLING CODE 6720–01–M

4

LEGAL SERVICES CORPORATION

Meeting of the Board of Directors

PREVIOUSLY ISSUED: September 13, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 8 a.m. to 6 p.m., Tuesday, October 4, 1983.

CHANGE IN THE NOTICE: Meeting has been postponed. No new date, time, or place has been established.

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President (202) 272–4040.

Dated: October 3, 1983.

Donald P. Bogard,
President.

[S–1423–83 Filed 10–6–83; 2:30 pm]
BILLING CODE 6820–35–M

5

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9 a.m., October 24, 1983.

PLACE: On board *MV Mississippi* at Foot of Eight Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

[S–1425–83 Filed 10–6–83; 3:06 pm]
BILLING CODE 3710–GX–M

6

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9 a.m., October 25, 1983.

PLACE: On board *MV Mississippi* at City Front, Vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) View and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

[S–1426–83 Filed 10–6–83; 3:06 pm]
BILLING CODE 3710–GX–M

7

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9 a.m., October 26, 1983.

PLACE: On board *MV Mississippi* at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) View and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

[S-1427-83 Filed 10-6-83; 3:00 pm]

BILLING CODE 3710-GX-M

8

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9 a.m., October 28, 1983.

PLACE: On board MV *Mississippi* at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) View and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

[S-1428-83 Filed 10-6-83; 3:05 pm]

BILLING CODE 3710-GX-M

9

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, October 6, 1983 (Revised).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Thursday, October 6:*

9:30 a.m.
Briefing on Results of GPU and B&W Trial Material (Public Meeting) (As Announced)

10:30 a.m.
The previously announced meeting has been retitled as follows:
Report on Investigations at TMI and Report on Adjudicatory Matters at TMI:
(i) Report on Progress of Ongoing Investigations (Closed—Exemptions 5 and 7)
(ii) Status and Options Regarding Adjudicatory Matters (Closed—Exemption 10)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–410.

October 5, 1983.

Walter Magee,

Office of the Secretary.

[S-1429-83 Filed 10-6-83; 3:49 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
October 11, 1983

Part II

Department of Health and Human Services

Social Security Administration

Federal Old-Age, Survivors, and Disability Insurance Benefits; Repeal of Minimum Benefit Provision and Rounding of Benefits

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance Benefits; Repeal of Minimum Benefit Provision and Rounding of Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: In these regulations, we explain the prospective repeal of the Old-Age, Survivors and Disability Insurance (OASDI) minimum benefit provision and the revised rules for rounding benefit amounts. We also provide an extension of the December 1978 table used to compute the primary insurance amount of many individuals. This table provides for primary insurance amounts of less than the repealed $121.80 minimum (December 1978 rate). These regulations implement the provisions of sections 2201 and 2206 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) and section 2 of Pub. L. 97–123.

EFFECTIVE DATE: These regulations are effective on October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7951.

SUPPLEMENTARY INFORMATION: The 1981 amendments to the Social Security Act repealed the minimum benefit provision for newly eligible beneficiaries as one step in reducing the costs and improving the equity of the Social Security program. Under that provision, the minimum primary insurance amount (before any applicable cost-of-living adjustments) on which benefit amounts are based for beneficiaries newly eligible after 1978 was $122 ($121.80 if the primary insurance amount had been computed under the old-start method in 20 CFR 404.240–404.242 or the guaranteed-alternative method explained in 20 CFR 404.230–404.233). Thus, if a computation based on a worker's earnings resulted in a primary insurance amount less than the minimum, it was raised to the minimum. Now, for a worker to whom the repeal is applicable, we will use the primary insurance amount computed on the basis of earnings regardless of how low it is. However, some beneficiaries whose OASDI benefit amount is affected by the repeal will now be eligible for Supplemental Security Income benefits.

The repeal applies to workers who first become eligible for benefits after 1981 or who die after 1981 without having become eligible before 1982. For some members of certain religious orders, the repeal is applicable to individuals who first become eligible for benefits after 1991 or who die after 1991 without having become eligible for benefits.

In these regulations, we explain that computations of primary insurance amounts for workers reaching age 62 during the period 1982 through 1983 using the guaranteed-alternative computation method will be based on the table that was in the Social Security Act in December 1978, except that it has now been extended downward to show primary insurance amounts under $121.80. We also explain the methodology used to extend the December 1978 table. This table replaces the table now in Subpart C as published on July 15, 1982 at 47 FR 30731. Where it is necessary to initially compute benefits for months before this table became effective, we will use the relevant earlier tables, as appropriate.

The revised provisions on rounding reflect the intention of Congress to reduce program costs by rounding to the next lower dime at intermediate steps in the benefit computation and rounding final benefit amounts (the actual benefit amount payable to a beneficiary) to the next lower multiple of a dollar if not already a multiple of a dollar. Although the statutory provisions were effective for computations and adjustments of primary insurance amounts and benefit amounts beginning with September 1981, we did not implement the provisions until June 1982 due to processing limitations which made earlier implementation impractical.

Public Comments

In order to obtain the public's views and comments before proceeding with these amendments, we published a Notice of Proposed Rule Making in the Federal Register on March 14, 1983 (48 FR 10694). The public was invited to submit comments pertaining to the proposed amendment within a period of 60 days from the date of publication of the notice. The comment period closed on May 13, 1983. There were no comments received during the comment period.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under E.O. 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required. Arguably, the large program savings resulting from repeal of the minimum benefit and rounding of benefits might constitute "an annual effect on the economy of $100 million or more" (sec. 1(b)(1) of Executive order 12291) and, therefore, make these regulations major. However, the program savings result from statutory amendments, which leave the Secretary no significant regulatory discretion, and not from the regulation.

Paperwork Reduction Act—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Accordingly, this regulation is adopted without change as set forth below.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors, Disability insurance.

(Secs. 202, 205, 215, and 1102, Social Security Act; 49 Stat. 623, 53 Stat. 1368, 64 Stat. 506, 49 Stat. 647 (42 U.S.C. 402, 405, 415, and 1302))

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance, 13.803 Social Security—Retirement Insurance, 13.805 Social Security—Survivors Insurance)

Dated: July 27, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: September 21, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.212 is amended by revising paragraph (c) and by adding paragraph (e) to read as follows:

§ 404.212 Computing your primary insurance amount from your average indexed monthly earnings.

* * * * *

(c) *Computing your primary insurance amount from the benefit formula.* We compute your primary insurance amount by applying the benefit formula to your

average indexed monthly earnings and adding the results for each step of the formula. For computations using the benefit formulas in effect for 1979 through 1982, we round the total amount to the next higher multiple of $0.10 if it is not a multiple of $0.10 and for computations using the benefit formulas effective for 1983 and later years, we round to the next lower multiple of $0.10. (See paragraph (e) of this section for a discussion of the minimum primary insurance amount.)

* * * * *

(e) *Minimum primary insurance amount.* If you were eligible for benefits, or died without having been eligible, before 1982, your primary insurance amount computed under this method cannot be less than $122. This minimum benefit provision has been repealed effective with January 1982 for most workers and their families where the worker initially becomes eligible for benefits in that or a later month, or dies in January 1982 or a later month without having been eligible before January 1982. For members of a religious order who are required to take a vow of poverty, as explained in 20 CFR 404.1024, and which religious order elected Social Security coverage before December 29, 1981, the repeal is effective with January 1992 based on first eligibility or death in that month or later.

2. Section 404.222 is amended by revising paragraph (b) to read as follows:

§ 404.222 Use of benefit table in finding your primary insurance amount from your average monthly wage.

* * * * *

(b) *Finding your primary insurance amount from benefit table.* We find your average monthly wage in column III of the table. Your primary insurance amount appears on the same line in column IV (column II if you are entitled to benefits for any of the 12 months preceding the effective month in column IV). As explained in § 404.212(e), there is a minimum primary insurance amount of $122 payable for persons who became eligible or died after 1978 and before January 1982. There is also an alternative minimum of $121.80 (before the application of cost-of-living increases) for members of this group whose benefits were computed from the benefit table in effect in December 1978 on the basis of either the old-start computation method in §§ 404.240 through 404.242 or the guaranteed alternative computation method explained in §§ 404.230 through 404.233. However, as can be seen from the extended table in Appendix III, the lowest primary insurance amount under this method is now $1.70 for individuals for whom the minimum benefit has been repealed.

Example. In the example in § 404.221(d), we computed Mr. B's average monthly wage to be $502. We refer to the December 1978 benefit table in Appendix III. Then we find his average monthly wage in column III of the table. Reading across, his primary insurance amount is on the same line in column IV and is $390.50. A 9.9 percent automatic cost-of-living benefit increase was effective for June 1979, increasing Mr. B's primary insurance amount to $429.20, as explained in §§ 404.270 through 404.277. Then, we increase the $429.20 by the 14.3 percent June 1980 cost-of-living benefit increase and get $490.60, and by the 11.2 percent June 1981 increase to get $545.60.

3. Section 404.261 is amended by revising paragraph (a)(2) to read as follows:

§ 404.261 Computing your special minimum primary insurance amount.

(a) *Years of coverage.*

* * * * *

(2) You must have at least 11 years of coverage to qualify for a special minimum primary insurance amount computation. However, special minimum primary insurance amounts based on little more than 10 years of coverage are usually lower than the regular minimum benefit that was in effect before 1982 (see §§ 404.212(e) and 404.222(b) of this part). In any situation where your primary insurance amount computed under another method is higher, we use that higher amount.

* * * * *

4. Section 404.275 is amended by revising the sentence before the example to read as follows:

§ 404.275 Amount of automatic cost-of-living increase.

* * * We round the resulting amounts to the next lower multiple of $0.10 if not already a multiple of $0.10. (We round to the next higher multiple of $0.10 for increases effective before June 1982.)

* * * * *

§ 404.277 [Amended]

5. Section 404.277 is amended in paragraph (a) by adding "and before 1982," after "1978" in the second sentence.

6. Appendix III to subpart C of Part 400 is amended by revising the narrative after the first paragraph and the table to read as follows:

Appendix III—Benefit Table

* * * * *

The benefit table in effect in December 1978 had a minimum primary insurance amount of $121.80. As explained in § 404.222(b), certain workers eligible, or who without having been eligible, before 1982 had their benefit computed from this table. However, the minimum benefit provision was repealed for other workers by the 1981 amendments to the Act (the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35 as modified by Pub. L. 97–123). As a result, this benefit table includes a downward extension from the former minimum of $121.80 to the lowest primary insurance amount now possible. The extension is calculated as follows. For each single dollar of average monthly wage in the benefit table, the primary insurance amount shown for December 1978 is $121.80 multiplied by the ratio of that average monthly wage to $76. The upper limit of each primary insurance benefit range in Column I of the table is $16.20 multipled by the ratio of the average monthly wage in Column III of the table to $76. The maximum family benefit is 150 percent of the corresponding primary insurance amount.

The repeal of the minimum benefit provision is effective with January 1982 for most workers and their families where the worker initially becomes eligible for benefits after 1981 or dies after 1981 without having been eligible before January 1982. For members of a religious order who are required to take a vow of poverty, as explained in 20 CFR 404.1024, and which religious order elected Social Security coverage before December 29, 1981, the repeal is effective with January 1992 based on first eligibility or death in that month or later.

To use this table, you must first compute the primary insurance benefit (column I) or the average monthly wage (column III), then move across the same line to either column II or column IV as appropriate. To determine increases in primary insurance amounts since December 1978 you should see Appendix VI. Appendix VI tells you, by year, the precentage of the increases. In applying each cost-of-liviang increase to primary insurance amounts, we round the increased primary insurance amount to the next lower multiple of $0.10 if not already a multiple of $0.10. (For cost-of-living increases which are effective before June 1982, we round to the next higher multiple of $0.10.)

EXTENDED DECEMBER 1978 TABLE OF BENEFITS EFFECTIVE JANUARY 1982

I		II	III		IV	V
Primary insurance benefit—If an individual's primary insurance benefit (as determined under § 404.241(e)) is—		Primary insurance amount effective June 1977—Or his or her primary insurance amount is—	Average monthly wage—Or his or her average monthly wage (as determined under § 404.221) is—		Primary insurance amount effective January 1982—Then his or her primary insurance amount is—	Maximum family benefits—And the maximum amount of benefits payable on the basis of his or her wages and self-employment income is—
At least—	But not more than—		At least—	But not more than—		
				$1	$1.70	$2.60
	$0.42		$2	2	3.30	5.00
$0.43	.63		3	3	4.90	7.40
.64	.85		4	4	6.50	9.90
.86	1.06		5	5	8.10	12.20
1.07	1.27		6	6	9.70	14.80
1.28	1.49		7	7	11.30	17.00
1.50	1.70		8	8	12.90	19.40
1.71	1.91		9	9	14.50	21.80
1.92	2.13		10	10	16.10	24.20
2.14	2.34		11	11	17.70	26.60
2.35	2.55		12	12	19.30	29.00
2.56	2.77		13	13	20.90	31.40
2.78	2.98		14	14	22.50	33.80
2.99	3.19		15	15	24.10	36.20
3.20	3.41		16	16	25.70	38.60
3.42	3.62		17	17	27.30	41.00
3.63	3.83		18	18	28.90	43.40
3.84	4.05		19	19	30.50	45.80
4.06	4.26		20	20	32.10	48.20
4.27	4.47		21	21	33.70	50.60
4.48	4.68		22	22	35.30	53.00
4.69	4.90		23	23	36.90	55.40
4.91	5.11		24	24	38.50	57.80
5.12	5.32		25	25	40.10	60.20
5.33	5.54		26	26	41.70	62.60
5.55	5.75		27	27	43.30	65.00
5.76	5.96		28	28	44.90	67.40
5.97	6.18		29	29	46.50	69.80
6.19	6.39		30	30	48.10	72.20
6.40	6.60		31	31	49.70	74.60
6.61	6.82		32	32	51.30	77.00
6.83	7.03		33	33	52.90	79.40
7.04	7.24		34	34	54.50	81.80
7.25	7.46		35	35	56.10	84.20
7.47	7.67		36	36	57.70	86.60
7.68	7.88		37	37	59.30	89.00
7.89	8.10		38	38	60.90	91.40
8.11	8.31		39	39	62.60	93.90
8.32	8.52		40	40	64.20	96.30
8.53	8.73		41	41	65.80	98.70
8.74	8.95		42	42	67.40	101.10
8.96	9.16		43	43	69.00	103.50
9.17	9.37		44	44	70.60	105.90
9.38	9.59		45	45	72.20	108.30
9.60	9.80		46	46	73.80	110.70
9.81	10.01		47	47	75.40	113.10
10.02	10.23		48	48	77.00	115.50
10.24	10.44		49	49	78.60	117.90
10.45	10.65		50	50	80.20	120.30
10.66	10.87		51	51	81.80	122.70
10.88	11.08		52	52	83.40	125.10
11.09	11.29		53	53	85.00	127.50
11.30	11.51		54	54	86.60	129.90
11.52	11.72		55	55	88.20	132.30
11.73	11.93		56	56	89.80	134.70
11.94	12.15		57	57	91.40	137.10
12.16	12.36		58	58	93.00	139.50
12.37	12.57		59	59	94.60	141.90
12.58	12.78		60	60	96.20	144.30
12.79	13.00		61	61	97.80	146.70
13.01	13.21		62	62	99.40	149.10
13.22	13.42		63	63	101.00	151.50
13.43	13.64		64	64	102.60	153.90
13.65	13.85		65	65	104.20	156.30
13.86	14.06		66	66	105.80	158.70
14.07	14.28		67	67	107.40	161.10
14.29	14.49		68	68	109.00	163.50
14.50	14.70		69	69	110.60	165.90
14.71	14.92		70	70	112.20	168.30
14.93	15.13		71	71	113.80	170.70
15.14	15.34		72	72	115.40	173.10
15.35	15.56		73	73	117.00	175.50
15.57	15.77		74	74	118.60	177.90
15.78	15.98		75	75	120.20	180.30
15.99	16.20		76	76	121.80	182.70

TABLE OF BENEFITS IN EFFECT IN DECEMBER 1978

I		II	III		IV	V
Primary insurance benefit—If an individual's primary insurance benefit (as determined under § 404.241(e)) is—		Primary insurance amount effective June 1977—Or his or her primary insurance amount is—	Average monthly wage—Or his or her average monthly wage (as determined under § 404.221) is—		Primary insurance amount effective June 1978—Then his or her primary insurance amount is—	Maximum family benefits—And the maximum amount of benefits payable on the basis of his or her wages and self-employment income is—
At least—	But not more than—		At least—	But not more than—		
	$16.20	$114.30		$76	$121.80	$182.70
$16.21	16.84	116.10	$77	78	123.70	185.60
16.85	17.60	118.80	79	80	126.60	189.90
17.61	18.40	121.00	81	81	128.90	193.50
18.41	19.24	123.00	82	83	131.20	196.80
19.25	20.00	125.80	84	85	134.00	201.00
20.01	20.64	128.10	86	87	136.50	204.80
20.65	21.28	130.10	88	89	138.60	207.90
21.29	21.88	132.70	90	90	141.40	212.10
21.89	22.28	135.00	91	92	143.80	215.70
22.29	22.68	137.20	93	94	146.20	219.20
22.69	23.08	139.40	95	96	148.50	222.80
23.09	23.44	142.00	97	97	151.30	227.00
23.45	23.76	144.30	98	99	153.70	230.60
23.77	24.20	147.10	100	101	156.70	235.10
24.21	24.60	149.20	102	102	158.90	238.50
24.61	25.00	151.70	103	104	161.60	242.40
25.01	25.48	154.50	105	106	164.60	246.90
25.49	25.92	157.00	107	107	167.30	251.00
25.93	26.40	159.40	108	109	169.80	254.80
26.41	26.94	161.90	110	113	172.50	258.80
26.95	27.46	164.20	114	118	174.90	262.40
27.47	28.00	166.70	119	122	177.60	266.50
28.01	28.68	169.30	123	127	180.40	270.60
28.69	29.25	171.80	128	132	183.00	274.60
29.26	29.68	174.10	133	136	185.50	278.30
29.69	30.36	176.50	137	141	188.00	282.10
30.37	30.92	179.10	142	146	190.80	286.20
30.93	31.36	181.70	147	150	193.60	290.40
31.37	32.00	183.90	151	155	195.90	293.90
32.01	32.60	186.50	156	160	198.70	298.10
32.61	33.20	189.00	161	164	201.30	302.00
33.21	33.88	191.40	165	169	203.90	305.90
33.89	34.50	194.00	170	174	206.70	310.10
34.51	35.00	196.30	175	178	209.10	313.70
35.01	35.60	198.90	179	183	211.90	318.00
35.61	36.40	201.30	184	188	214.40	321.70
36.41	37.08	203.90	189	193	217.20	326.00
37.09	37.60	206.40	194	197	219.90	329.90
37.61	38.20	208.80	198	202	222.40	333.60
38.21	39.12	211.50	203	207	225.30	338.00
39.13	39.68	214.00	208	211	228.00	342.00
39.69	40.33	216.00	212	216	230.10	345.20
40.34	41.12	218.70	217	221	233.00	349.50
41.13	41.76	221.20	222	225	235.60	353.40
41.77	42.44	223.90	226	230	238.50	357.80
42.45	43.20	226.30	231	235	241.10	361.70
43.21	43.76	229.10	236	239	244.00	366.10
43.77	44.44	231.20	240	244	246.30	371.10
44.45	44.88	233.50	245	249	249.70	376.80
44.89	45.60	236.40	250	253	251.80	384.90
		238.70	254	258	254.30	392.50
		240.80	259	263	256.50	400.00
		243.70	264	267	259.60	406.00
		246.10	268	272	262.10	413.70
		248.70	273	277	264.90	421.20
		251.00	278	281	267.40	427.20
		253.50	282	286	270.00	434.90
		256.20	287	291	272.90	442.60
		258.30	292	295	275.10	448.50
		261.10	296	300	276.10	456.10
		263.50	301	305	280.70	463.80
		265.80	306	309	283.10	469.80
		268.50	310	314	286.00	477.40
		270.70	315	319	288.30	485.10
		273.20	320	323	291.00	491.10
		275.80	324	328	293.80	498.70
		278.10	329	333	296.20	506.20
		281.00	334	337	299.30	512.50
		283.00	338	342	301.40	519.90
		285.60	343	347	304.20	527.50
		288.30	348	351	307.10	533.60
		290.50	352	356	309.40	541.20
		293.30	357	361	312.40	548.80
		295.80	362	365	314.90	554.90
		297.90	366	370	317.30	562.50
		300.60	371	375	320.20	569.90
		303.10	376	379	322.90	576.30
		305.70	380	384	325.60	583.90
		307.90	385	389	328.00	591.30
		310.30	390	393	330.50	597.40
		313.00	394	398	333.40	605.10
		315.40	399	403	336.00	612.70

TABLE OF BENEFITS IN EFFECT IN DECEMBER 1978—Continued

I		II	III		IV	V
Primary insurance benefit—If an individual's primary insurance benefit (as determined under § 404.241(e)) is—		Primary insurance amount effective June 1977—Or his or her primary insurance amount is—	Average monthly wage—Or his or her average monthly wage (as determined under § 404.221) is—		Primary insurance amount effective June 1978—Then his or her primary insurance amount is—	Maximum family benefits—And the maximum amount of benefits payable on the basis of his or her wages and self-employment income is—
At least—	But not more than—		At least—	But not more than—		
		318.20	404	407	338.90	618.60
		320.20	408	412	341.10	626.30
		322.50	413	417	343.50	633.80
		324.80	418	421	346.00	639.90
		327.40	422	426	348.70	647.50
		329.60	427	431	351.10	655.10
		331.60	432	436	353.20	662.70
		334.40	437	440	356.20	665.70
		336.50	441	445	358.40	669.70
		338.70	446	450	360.60	673.40
		341.30	451	454	363.50	676.30
		343.50	455	459	365.90	680.10
		345.80	460	464	368.30	683.80
		347.90	465	468	370.60	687.10
		350.70	469	473	373.50	690.80
		352.60	474	478	375.60	694.60
		354.90	479	482	378.00	697.70
		357.40	483	487	380.70	701.60
		359.70	488	492	383.10	705.40
		361.90	493	496	385.50	708.40
		364.50	497	501	388.20	712.10
		366.60	502	506	390.50	715.80
		368.90	507	510	392.90	719.00
		371.10	511	515	395.30	722.80
		373.70	516	520	398.00	726.70
		375.80	521	524	400.30	729.50
		378.10	525	529	402.70	733.40
		380.80	530	534	405.60	737.10
		382.80	535	538	407.70	740.20
		385.10	539	543	410.20	744.10
		387.60	544	548	412.80	747.80
		389.90	549	553	415.30	751.60
		392.10	554	556	417.60	753.90
		393.90	557	560	419.60	756.90
		396.10	561	563	421.90	759.30
		398.20	564	567	424.10	762.30
		400.40	568	570	426.50	764.50
		402.30	571	574	428.50	767.50
		404.40	575	577	430.70	769.90
		406.20	578	581	432.70	772.80
		408.40	582	584	435.00	775.20
		410.20	585	588	436.90	778.20
		412.60	589	591	439.50	780.50
		414.80	592	595	441.80	783.50
		416.70	596	598	443.80	785.60
		418.70	599	602	446.00	788.90
		420.70	603	605	448.10	791.10
		422.80	606	609	450.30	794.00
		424.90	610	612	452.60	796.50
		426.90	613	616	454.70	799.50
		428.90	617	620	456.80	802.50
		431.00	621	623	459.10	804.80
		433.00	624	627	461.20	807.90
		435.10	628	630	463.40	810.70
		437.10	631	634	465.60	814.70
		439.20	635	637	467.80	818.50
		441.40	638	641	470.10	822.40
		443.20	642	644	472.10	826.10
		445.40	645	648	474.40	830.10
		447.40	649	652	476.50	833.70
		448.60	653	656	477.80	836.10
		449.90	657	660	479.20	838.40
		451.50	661	665	480.90	841.50
		453.10	666	670	482.60	844.50
		454.80	671	675	484.40	847.40
		456.40	676	680	486.10	850.50
		458.00	681	685	487.80	853.50
		459.80	686	690	489.70	856.40
		461.20	691	695	491.20	859.60
		462.80	696	700	492.90	862.60
		464.50	701	705	494.70	865.60
		466.10	706	710	496.40	868.60
		467.70	711	715	498.20	871.50
		469.40	716	720	500.00	874.60
		471.00	721	725	501.70	877.60
		472.60	726	730	503.40	880.70
		474.20	731	735	505.10	883.80
		475.90	736	740	506.90	886.70
		477.40	741	745	508.50	889.90
		478.90	746	750	510.10	892.70
		480.40	751	755	511.70	896.40
		481.80	756	760	513.20	897.80
		483.20	761	765	514.70	900.40

TABLE OF BENEFITS IN EFFECT IN DECEMBER 1978—Continued

I		II	III		IV	V
Primary insurance benefit—If an individual's primary insurance benefit (as determined under § 404.241(e)) is—		Primary insurance amount effective June 1977—Or his or her primary insurance amount is—	Average monthly wage—Or his or her average monthly wage (as determined under § 404.221) is—		Primary insurance amount effective June 1978—Then his or her primary insurance amount is—	Maximum family benefits—And the maximum amount of benefits payable on the basis of his or her wages and self-employment income is—
At least—	But not more than—		At least—	But not more than—		
		484.50	766	770	516.00	903.00
		485.80	771	775	517.40	905.40
		487.20	776	780	518.90	907.90
		488.60	781	785	520.40	910.40
		489.80	786	790	521.70	912.90
		491.10	791	795	523.10	915.40
		492.50	796	800	524.60	918.00
		494.00	801	805	526.20	920.50
		495.30	806	810	527.50	923.00
		496.70	811	815	529.00	925.60
		498.00	816	820	530.40	928.00
		499.40	821	825	531.90	930.60
		500.70	826	830	533.30	933.10
		502.00	831	835	534.70	935.70
		503.30	836	840	536.10	938.10
		504.70	841	845	537.60	940.80
		506.00	846	850	538.90	943.00
		507.50	851	855	540.50	945.70
		508.60	856	860	541.90	948.10
		510.20	861	865	543.40	950.70
		511.50	866	870	544.80	953.20
		512.90	871	875	546.30	955.70
		514.10	876	880	547.60	958.20
		515.50	881	885	549.10	960.80
		516.80	886	890	550.40	963.20
		518.20	891	895	551.90	966.00
		519.60	896	900	553.40	968.30
		521.00	901	905	554.90	970.90
		522.30	906	910	556.30	973.50
		523.70	911	915	557.80	976.00
		525.10	916	920	559.30	978.30
		526.30	921	925	560.60	981.00
		527.60	926	930	561.90	983.40
		529.00	931	935	563.40	985.90
		530.40	936	940	564.90	988.50
		531.70	941	945	566.30	991.00
		533.00	946	950	567.70	993.50
		534.50	951	955	569.30	996.10
		535.90	956	960	570.80	998.60
		537.30	961	965	572.30	1,001.00
		538.40	966	970	573.40	1,003.60
		539.80	971	975	574.90	1,006.20
		541.20	976	980	576.40	1,008.50
		542.60	981	985	577.90	1,011.10
		543.80	986	990	579.20	1,013.60
		545.20	991	995	580.70	1,016.20
		546.60	996	1,000	582.20	1,018.60
		547.80	1,001	1,005	583.50	1,020.70
		548.90	1,006	1,010	584.60	1,023.20
		550.20	1,011	1,015	586.00	1,025.30
		551.50	1,016	1,020	587.40	1,027.80
		552.60	1,021	1,025	588.60	1,029.90
		553.80	1,026	1,030	589.80	1,032.20
		555.10	1,031	1,035	591.20	1,034.50
		556.20	1,036	1,040	592.40	1,036.70
		557.50	1,041	1,045	593.80	1,039.10
		558.80	1,046	1,050	595.20	1,041.30
		559.80	1,051	1,055	596.20	1,043.40
		561.10	1,056	1,060	597.60	1,045.90
		562.40	1,061	1,065	599.00	1,048.00
		563.60	1,066	1,070	600.30	1,050.50
		564.80	1,071	1,075	601.60	1,052.60
		566.00	1,076	1,080	602.80	1,054.90
		567.30	1,081	1,085	604.20	1,057.10
		568.40	1,086	1,090	605.40	1,059.40
		569.70	1,091	1,095	606.80	1,061.70
		571.00	1,096	1,100	608.20	1,064.00
		572.00	1,101	1,105	609.20	1,066.10
		573.30	1,106	1,110	610.60	1,068.50
		574.60	1,111	1,115	612.00	1,070.70
		575.70	1,116	1,120	613.20	1,073.10
		577.00	1,121	1,125	614.60	1,075.30
		578.20	1,126	1,130	615.80	1,077.60
		579.40	1,131	1,135	617.10	1,079.70
		580.60	1,136	1,140	618.40	1,082.20
		581.90	1,141	1,145	619.80	1,084.40
		583.10	1,146	1,150	621.10	1,086.70
		584.20	1,151	1,155	622.20	1,088.80
		585.50	1,156	1,160	623.60	1,091.10
		586.70	1,161	1,165	624.90	1,093.40
		587.90	1,166	1,170	626.20	1,095.80
		589.20	1,171	1,175	627.50	1,098.00
		590.30	1,176	1,180	628.70	1,100.20

TABLE OF BENEFITS IN EFFECT IN DECEMBER 1978—Continued

I		II	III		IV	V
Primary insurance benefit—If an individual's primary insurance benefit (as determined under § 404.241(a)) is—		Primary insurance amount effective June 1977—Or his or her primary insurance amount is—	Average monthly wage—Or his or her average monthly wage (as determined under § 404.221) is—		Primary insurance amount effective June 1978—Then his or her primary insurance amount is—	Maximum family benefits—And the maximum amount of benefits payable on the basis of his or her wages and self-employment income is—
At least—	But not more than—		At least—	But not more than—		
		591.40	1,181	1,185	629.90	1,102.20
		592.60	1,186	1,190	631.20	1,104.30
		593.70	1,191	1,195	632.30	1,106.50
		594.80	1,196	1,200	633.50	1,108.60
		595.90	1,201	1,205	634.70	1,110.60
		597.10	1,206	1,210	636.00	1,112.90
		598.20	1,211	1,215	637.10	1,114.90
		599.30	1,216	1,220	638.30	1,117.00
		600.40	1,221	1,225	639.50	1,119.00
		601.60	1,226	1,230	640.80	1,121.20
		602.70	1,231	1,235	641.90	1,123.30
		603.80	1,236	1,240	643.10	1,125.40
		605.00	1,241	1,245	644.40	1,127.50
		606.10	1,246	1,250	645.50	1,129.60
		607.20	1,251	1,255	646.70	1,131.60
		608.30	1,256	1,260	647.90	1,133.80
		609.50	1,261	1,265	649.20	1,135.90
		610.60	1,266	1,270	650.30	1,138.00
		611.70	1,271	1,275	651.50	1,140.00
		612.80	1,276	1,280	652.70	1,142.20
		613.80	1,281	1,285	653.70	1,144.10
		614.80	1,286	1,290	654.90	1,146.10
		616.00	1,291	1,295	656.10	1,148.00
		617.00	1,296	1,300	657.20	1,150.00
		618.10	1,301	1,305	658.30	1,152.00
		619.10	1,306	1,310	659.40	1,154.00
		620.20	1,311	1,315	660.60	1,155.90
		621.30	1,316	1,320	661.70	1,157.90
		622.30	1,321	1,325	662.80	1,159.80
		623.40	1,326	1,330	664.00	1,161.90
		624.40	1,331	1,335	665.00	1,163.80
		625.50	1,336	1,340	666.20	1,165.80
		626.60	1,341	1,345	667.40	1,167.70
		627.60	1,346	1,350	668.40	1,169.70
		628.70	1,351	1,355	669.60	1,171.70
		629.70	1,356	1,360	670.70	1,173.70
		630.80	1,361	1,365	671.90	1,175.60
		631.80	1,366	1,370	672.90	1,177.70
		632.90	1,371	1,375	674.10	1,179.60
		633.90	1,376	1,380	675.20	1,181.60
		634.90	1,381	1,385	676.20	1,183.40
		635.90	1,386	1,390	677.30	1,185.30
		636.90	1,391	1,395	678.30	1,187.10
		637.90	1,396	1,400	679.40	1,189.00
		638.90	1,401	1,405	680.50	1,190.80
		639.90	1,406	1,410	681.50	1,192.70
		640.90	1,411	1,415	682.60	1,194.60
		641.90	1,416	1,420	683.70	1,196.50
		642.90	1,421	1,425	685.70	1,198.30
		643.90	1,426	1,430	684.80	1,200.20
		644.90	1,431	1,435	686.90	1,202.00
		645.90	1,436	1,440	687.90	1,203.90
		646.90	1,441	1,445	689.00	1,205.70
		647.90	1,446	1,450	690.10	1,207.70
		648.90	1,451	1,455	691.10	1,209.50
		649.90	1,456	1,460	692.20	1,211.40
		650.90	1,461	1,465	693.30	1,213.20
		651.90	1,466	1,470	694.30	1,215.10
		652.90	1,471	1,475	695.40	1,216.90

7. Section 404.304 is amended by removing and reserving paragraph (c) and by adding paragraph (f) to read as follows:

§ 404.304 General rules on benefit amounts.

* * * * *

(c) [Reserved].

* * * * *

(f) *Rounding.* After all other deductions or reductions, any monthly benefit which is not a multiple of $1 is reduced to the next lower multiple of $1.

§ 404.402 [Amended]

8. Section 404.402 is amended on paragraph (a)(2) by changing the cross-reference from § 404.409 to § 404.304(f).

§ 404.403 [Amended]

9. Section 404.403 is amended in paragraph (c) by changing "higher" to "lower" in the last sentence.

§ 404.405 [Amended]

10. Section 404.405 is amended by revising the second sentence of paragraph (p)(3) to read as follows:

* * * * *

(p) * * *

(3) * * * Any such increased amount, if it is not a multiple of $0.10, will be raised to the next higher multiple of $0.10 for months before June 1982 and reduced to the next lower multiple of $0.10 for months after May 1982.

* * * * *

§ 404.409 [Removed and Reserved]

11. Section 404.409 is removed and reserved.

12. Section 404.410 is amended in the opening paragraph by adding after the

fourth sentence the following sentence, to read as follows:

§ 404.410 Reduction in benefits for age—general.

* * * Any reduction amount under this section or §§ 404.411–404.413 which is not a multiple of $0.10 will be raised to the next higher multiple of $0.10.

* * * * *

§ 404.439 [Amended]

13. Section 404.439 is amended in the second sentence by adding "and before the application of § 404.304(f) to round to the next lower dollar" after "retirement age". This section is further amended by revising the example to read as follows:

* * * * *

Example: A is entitled to an old-age insurance benefit of $165 and his wife is entitled to $82.50 before rounding, making a total of $247.50. After A's excess earnings have been charged to the appropriate months, there remains a partial benefit of $200 payable for October, which is apportioned as follows:

	Original benefit	Fraction of original	Benefit[1]
A	$165	2/3	$133
Wife	82.50	1/3	66
Total	247.50		199

[1] After deductions for excess earnings and after rounding per § 404.304(f).

§ 404.440 [Amended]

14. Section 404.440 is amended by removing the last sentence of the introductory text and revising the example to read as follows:

* * * * *

Example: Family maximum is $150. Insured individual's excess earnings charged to the month are $25. The remaining $125 is prorated as partial payment.

	Original benefit	Fraction of original total benefit	Benefit after deductions for excess earnings but before reduction for family maximum	Benefit reduced for maximum but without deductions for excess earnings	Benefit payable after both deductions and reductions (and rounded)
Insured individual	$100	4/8	50	100.00	75
Wife	50	1/8	25	16.60	16
Child	50	1/4	25	16.60	16
Child	50	1/8	25	16.60	16

15. Section 404.441 is revised to read as follows:

§ 404.441 Partial monthly benefits; insured individual and another person entitled (or deemed entitled) on the same earnings record both have excess earnings.

Where both the insured individual and another person entitled (or deemed entitled) on the same earnings record have excess earnings (as described in § 404.430), their excess earnings are charged, and their partial monthly benefit is apportioned, as follows:

Example: M and his wife are initially entitled to combined total benefits of $264 per month based on M's old-age insurance benefit of $176. For the taxable year in question, M's excess earnings were $1,599 and his wife's excess earnings were $265. Both were under age 65. M had wages of more than $340 in all months of the year except February, while his wife had wages of more than $340 in all months of the year. After M's excess earnings have been charged to the appropriate months (all months through July except February), there remains a partial benefit payment for August of $249, which is allocated to M and his wife in the ratio that the original benefit of each bears to the sum of their original benefits: $166 and $83. His wife's excess earnings are charged against her full benefit for February ($88), her partial benefit for August ($83), her full benefit for September, and from $6 of her October benefit, leaving an $82 benefit payable to her for that month.

§ 404.501 [Amended]

16. Section 404.501 is amended in paragraph (a)(2) by inserting the words "or decrease" after the word "increase" and by removing the reference to section 202(m).

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October 11, 1983

Part III

Environmental Protection Agency

Restructuring SIP Preparation Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL 2379-2]

Restructuring SIP Preparation Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed Restructuring of Existing Rule.

SUMMARY: EPA proposes to restructure and consolidate regulations for the development of State Implementation Plans (SIP's) to attain the national ambient air quality standards. These regulations are complex, not well organized, and contain many obsolete provisions. EPA proposes to delete obsolete provisions and rewrite the regulations in a new format which is shorter and better organized. States using the new regulations to prepare SIP's will find them current and easier to follow. The proposed regulations also have a flexible structure into which future requirements can be more easily included.

DATES: Comments must be submitted by January 9, 1983.

ADDRESSES: Send comments to: Central Docket Section (LE-131), Environmental Protection Agency, Attention: Docket No. A-81-25, 401 M Street, SW., Washington, D.C. 20460.

Docket No. A-81-25, containing material relevant to this rulemaking, is located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery #1, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ted Creekmore or Joseph Sableski, Plans Guidelines Section, MD-15, Environmental Protection Agency, Research Triangle Park, N.C. 27711; Telephone: (919) 541-5697, commercial; 629-5697; FTS.

SUPPLEMENTARY INFORMATION:

Background

EPA began to develop SIP requirements in 1971 shortly after the enactment of the Clean Air Act Amendments in December 1970. EPA promulgated the Part 51 requirements on November 25, 1971.

EPA has made many substantive revisions to 40 CFR 51 since it was first promulgated, and continues to make them. We have revised requirements for transportation control strategies maintenance of the national ambient air quality standards, legal authority, air quality monitoring, new source review, data reporting, prevention of significant deterioration, and the lead air quality standard, to name some of the major topics.

The existing format was not originally designed to accommodate so many topics, and the many revisions and additions have made the whole regulation more confusing. As a result, users—mainly the State air pollution control agencies and the EPA Regional Offices—have difficulty finding and understanding applicable requirements in the regulations.

This proposal recommends revising Part 51 to:

1. *Delete obsolete provisions.* The major obsolete provisions deleted are the example region aproach, the priority classification system as it applies to control strategies, and several Appendices.

2. *Reduce reporting requirements.* Existing Part 51 sections require various reports as part of the "Annual source emissions and State action report" (§ 51.321). EPA intends to delete provisions for "Reportable revisions" (§ 51.326) and "Plan prescribed actions" (§ 51.328). This information is available through overview programs and the grant mechanism.

3. *Rewrite, condense, and reduce complicated and detailed requirements.* The best example of this is the incorporation of the control strategy sections, i.e., §§ 51.10, 12, 13, 14, into the new Subpart G—"Control Strategy." The consolidation of all SIP control strategy requirements under Subpart G simplifies the regulations and removes detailed requirements for specific pollutants which are no longer necessary. The lead (Pb) requirements (Subpart E) are also consolidated within the new Subpart G.

4. *Improve clarity.* The main technique in improving clarity is to eliminate long units (sentences, paragraphs) by reorganizing them into smaller, more easily understood units.

5. *Provide flexible structure.* EPA has developed a "Master Plan" to restructure 40 CFR 51; it is included as Table 1. It expands the Part 51 structure to include more topical headings; these will act as guideposts in locating applicable requirements. This is accomplished by having more subparts than currently appear in Part 51. For instance, where now there is only one section for prevention of air pollution episodes (§51.16), there will be a whole subpart that contains several sections, one for classification of regions for episode plans, one for levels of significant harm, one for contingency plans, and one for reevaluation of episode plans. Furthermore, the use of section subdivisions below the third order is significantly reduced.

Portions of the Master Plan have already been implemented. Section 51.17, "Air quality surveillance," was restructured in a new Subpart J (44 FR 27558) when the "Ambient Air Quality Monitoring Data, Reporting, and Surveillance Provisions" regulations were issued May 10, 1979. Section 51.21, "Intergovernmental cooperation," was also restructured in a new Subpart M (44 FR 35179) when the "Intergovernmental Consultation" regulations were issued June 18, 1979. Finally, regulations on "Protection of Visibility" were promulgated as a new Subpart P on December 2, 1980 (45 FR 80089).

6. *Remove guidance language from regulations.* Most necessary guidance in Part 51 is available from other EPA publications. For example, guidance on emission inventories, monitoring, and diffusion modeling is routinely updated by EPA through guidelines that are readily available to the public. Thus, the proposal removes most guidance language in the text of the regulations. Also, many appendices are proposed for removal because guidance they provide can be found elsewhere. EPA guidance is listed in an "Air Programs Reports and Guidelines Index," EPA-450/2-82-016, which is available to the public.

Restructuring Schedule

The Administrator has decided that restructuring and revising all of 40 CFR Part 51 at one time is too complicated, and we propose to do it in phases. Phase I, proposed in this notice, restructures existing Subparts A, C, E, and Subpart B with the exception of maintenance plan requirements (§51.12(e-i)) and the PSD requirements (§51.24). Later phases will include revising maintenance provisions, restructuring Prevention of Significant Deterioration (PSD) provisions, revising Part 52, and adding other requirements as appropriate. Thus, when the restructuring is completed, existing Subparts A-E will have been replaced by new subparts beginning with Subpart F as shown in Table 1.

Restructuring Form

This action includes two tables to help identify and explain the restructured sections as follow:

(1) *Derivation Table and Master Plan (Table 1).* This table shows the origin of each new section and gives the Master Restructuring Plan.

(2) *Distribution (Table 2).* This table indicates where each original section fits into the new restructured format.

In addition to these aids, the proposal includes further documentation of the relationship between the new and old regulations. We cite the comparable old sections in the proposed regulatory text.

Relation of Restructured Regulations to Existing SIP's and Nonattainment Requirements

EPA does not anticipate that this proposal will have any significant impact on existing SIP's. EPA is proposing very few substantive changes to Part 51. The majority of these changes remove material that was intended to serve as guidance to the States in preparing their plans. EPA does not intend to require States to "clean up" their SIP's by removing or revising outdated material such as original emission inventories. States may make such revisions as their resources permit.

EPA is proposing three new requirements to Part 51. See the discussion of existing § 51.1(o) (definition of RACT—addition of visible emission limits); existing § 51.10(d) (interstate protection—prohibition of interference with measures to prevent significant deterioration and to protect visibility); and existing § 51.16 (air pollution episodes—requirement for reevaluating emergency episode plans when EPA reevaluates national standards). EPA does not anticipate that any existing SIP's have provisions which are inconsistent with these proposed requirements. The first two changes codify existing EPA policy. Because these two changes reflect existing policy, EPA does not anticipate that any State will need to revise its SIP. Compliance with the third proposed change may require revisions in the future if a State determines that its emergency episode plan needs to be updated.

EPA also does not anticipate that this proposal will have any appreciable impact on SIP revisions submitted to meet the requirements of Part D, Title I of the Clean Air Act. Part D contains new requirements for areas which did not attain the standards within the deadlines established by the 1970 amendments. The only regulations EPA has promulgated that incorporate Part D requirements concern new source review. EPA is not proposing any changes to the new source review rules. For the remaining Part D requirements, EPA issued non-regulatory guidance. EPA is not proposing to incorporate any of this guidance into Part 51 at this time.

Description of Proposal

We outline changes to Part 51 in Tables 1 and 2, detail changes below by subpart, and discuss changes to Part 51 appendices under the heading "Appendices."

Subpart F—Procedural Requirements

This new subpart includes the existing provisions for Definitions (§ 51.1), Stipulations (§ 51.2), Public hearings (§ 51.4), Submission of plans (§ 51.5), Revisions (§ 51.6, § 51.34), Approval of plans (§ 51.8), and Public availability of emission data (§ 51.10(e)).

Section 51.1 Definitions. We propose to delete obsolete definitions and add new definitions as necessary. Section 51.1 is redesignated § 51.100.

The current Part 51 regulation includes two definitions of the term "local agency." This proposal deletes the definition in existing § 51.1(j) which defines a local agency as ". . . and air pollution control agency. . ." and retains the definition in § 51.1(g) which defines a local agency as ". . . any local government agency . . ." The latter is a better definition because many local agencies involved in air quality planning are not strictly "air pollution control agencies."

The new § 51.100(j) now defines the word "plan" because it is referenced frequently in the regulations. The definition was inadvertently revoked by EPA in an earlier action.

The proposal revises subparagraphs § 51.1(1)(l) (i) and (ii) of § 51.1(k), "Point Source." The new definition deletes the outdated reference to "1970 urban place," and substitutes "1980 urban place."

The proposal deletes subparagraph (k)(1)(iii) because it references Appendix C, "Major Pollutant Sources," which is also proposed to be deleted. (We discuss the deletion of Appendix C under the section on "Appendices.")

The proposal revises the definition of § 51.1(l), "Area source." The new definition replaces a reference to an outdated 1966 publication with a reference to the "AEROS Manual Series."

The proposal revises the definition of Reasonably Available Control Technology (RACT) as it appears in § 51.1(o) to delete obsolete references and to correspond with the definition in use since enactment of the 1977 Clean Air Act Amendments. The new definition of RACT will also include the phrase "(including a visible emissions standard)," to make it clear that EPA considers visible emissions part of RACT requirements. This change codifies existing policy. EPA has traditionally considered visible emission limits in making RACT determinations. For example, Appendix B, "Examples of Emission Limitations Attainable With Reasonably Available Technology," contains a section discussing RACT for visible emissions.

Section 51.2 Stipulations. We propose to redesignate this section as § 51.101 with no significant changes.

Section 51.3 Classification of regions. The initial promulgation of Part 51 on November 25, 1971, contained the priority classification system (PCS) for the Air Quality Control Regions (AQCR's) designated throughout the United States. The PCS was adopted to prioritize development of control strategies. Under the PCS, EPA classified each region as either Priority I, II, or III based on "measured ambient air quality, where known, or where not known, estimated air quality in the area of maximum pollutant concentration." EPA also classified some regions "Priority IA" where a single source was the predominant source of emissions in the region.

The purpose of the system was to categorize AQCR's for plan development and evaluation so that the time and resources expended in developing the plan for a region, as well as the substantive content of the plan, would be commensurate with the complexity of the air pollution problem. For example, for emergency episode plans and air quality surveillance, the control strategy requirements varied by AQCR. Plans for AQCR's classified as "Priority I" for any pollutant were required by existing § 51.16 to contain contingency plans for emergency episodes. Under § 51.17, plan requirements for previous air quality surveillance monitors corresponded to the priority classification for each air quality control region for each pollutant. At the time it was developed, the PCS was not intended to track changes in air quality, to indicate progress toward attainment of air quality standards, or to identify problems on a continuing basis. Very few changes have been made in the priority classifications established in 1971.

However, it has become increasingly clear that the PCS is not able to accommodate the variety of air quality problems confronting State officials today and is no longer adequate for prioritizing current efforts and resources. Indeed, may State officials have ignored the PCS in development of their plans, and several EPA regulatory and policy changes have minimized its significance.

For example, the 1977 Amendments to the Act ignored the PCS and "example region approach" and required each State to designate nonattainment areas and develop control strategies for each area. Thus, the example region concept is obsolete, and the PCS is no longer needed for plan development.

Another example of the reduced need for the PCS involves the "Guidelines for Analysis of Consistency Between Transportation and Air Quality Plans and Programs" prepared jointly in April 1975 by the Federal Highway Administration and EPA. Although the guidelines used the priority classifications for carbon monoxide, photochemical oxidants, and nitrogen dioxide as first criteria for establishing the level of analysis for consistency determinations, additional criteria are employed, such as the current attainment or nonattainment status of a region. EPA has since developed new guidance under Sections 176 (a) and (c) concerning transportation requirements for use in planning control strategies. This guidance supersedes the 1975 Consistency Agreement and does not use the PCS.

On May 10, 1979 (44 FR 27558), EPA promulgated new monitoring requirements for SIP's which revoked § 51.17 and consolidated air quality surveillance requirements in a new Part 58. These new regulations no longer use the PCS as a basis for determining the required number of samplers for Regions.

However, the PCS is still used in current regulations in the requirements of § 51.16, "Prevention of Air Pollution Emergency Episodes." This regulation uses the PCS to identify the areas which need episode plans and to determine how comprehensive these plans should be. At present, no other criteria are used for this purpose, so that either the PCS must be retained for purposes of § 51.16 or substitute criteria must be developed. In this action, we propose to retain a streamlined version of the PCS because EPA believes that the existing programs for prevention of air pollution emergency episodes, based on the PCS, are adequate, and because developing another mechanism might cause confusion among the States and local agencies. In order to clarify that the PCS applies to episodes plans only, we propose to include the priority classification criteria with the episode requirements in the new Subpart H. Further discussion of this issue is located under that heading.

In summary, the PCS is no longer a factor in development of SIP control strategies or transportation planning, and is no longer the criterion for air quality surveillance requirements. Accordingly, we propose to retain the PCS criteria for episode plans only and to incorporate them with the episode regulations. The impact on regulatory programs which currently refer to the PCS is expected to be minimal, since these programs already use other parameters.

Section 51.4 Public hearings. We propose to redesignate this section as § 51.102 and to make some wording changes to improve readability. We propose to delete subparagraph § 51.4(b)(6) which refers to maintenance plans, and § 51.4(f) which refers to transportation control measures, because they duplicate the general hearing requirements under § 51.(b)(1–4).

Section 51.5 Submission of plans; preliminary review of plans. The proposal redesignates this section as § 51.103. We propose to delete the "Note" after subsection (a)(1), and subsection (a)(3), because they both refer to submission deadlines which have already passed. We propose to delete § 51.5(b) because it is no longer necessary. We propose to delete Sections 51.5 (d) and (e) because separate sections for transportation plans are no longer required.

Section 51.6 Revisions. The proposal redesignates this section as § 51.104. We propose several wording changes to improve readability.

Section 51.8 Approval of plans. The proposal redesignates this section as § 51.105. We propose wording changes to improve readability.

Subpart G—Control Strategy

Table 1 lists the existing portions of Part 51 consolidated within the new Subpart G. Essentially, Subpart G would include the existing §§ 51.10, 12–14 (except maintenance provisions, § 51.12(e–1)); and Subpart E—"Control Strategy: Lead" (existing §§ 51.80 through 51.88). We propose to remove obsolete portions of the existing subparts, rewrite some provisions, and reference necessary guidance through a separately published "Air Programs Reports and Guidelines Index."

With regard to the existing Subpart D, "Maintenance of National Standards," EPA required, in 1974–1975, detailed analyses in each State to determine areas in which air quality maintenance problems might exist. These analyses were necessary because the original SIP's did not adequately address the issue of maintenance of national ambient air quality standards once they were attained. EPA designated areas as Air Quality Maintenance Areas (AQMA's) and promulgated Subpart D, which required detailed plans called Air Quality Maintenance Plans (AQMP's) for the AQMA's. Before AQMP's were submitted, however, the Clean Air Act Amendments of 1977 revised the requirements for SIP's and called for plans for nonattainment areas to be submitted by January 1979. Most of the areas where AQMP's were needed were designated as nonattainment areas, and States and local areas used data generated by the AQMA studies in the preparation of nonattainment plans.

A question remains about future policy on maintenance plans. This action proposes no change in existing maintenance policy (specified in § 51.12(e–i) and Subpart D), but asks for public comment on ways to make maintenance requirements more meaningful. Existing programs such as nonattainment area controls and PSD regulations do assist in maintaining air quality standards. Some nonattainment provisions contain growth restrictions and most provide for maintenance through regulation of large new sources. PSD regulations provide for maintenance through control of major sources in attainment and unclassified areas. PSD also provides for control of minor sources through the periodic assessments required under § 51.24(a)(4). Section 51.24(a) requires States to assess attainment and unclassified areas periodically to determine if the applicable increment is being violated. In conjunction with nonattainment and PSD requirements, EPA continues to identify best available control technology (BACT) and lowest achievable emission reduction (LAER) for major point sources. EPA is also planning an audit and oversight program which will evaluate State progress in attaining and maintaining air quality standards. Thus, EPA currently has several programs which contribute to the maintenance of air quality standards.

For the future, emphasis could be placed on simplifying maintenance provisions. For example, existing requirements for 20-year projections of the effect of growth on air quality could be reduced to five or ten years. Every five years, when EPA reviews air quality standards as required by the Act, States would evaluate their air quality and project growth for the next five or ten years. This would allow air quality planning for both attainment and maintenance to coincide with EPA's periodic reviews of air quality standards; thus, implementation of air quality standards by the States would be coordinated with their review by EPA. In addition, the requirements in

Subpart D for projections and plan revisions could be simplified and more discretion could be given the States. The revised regulations would also give the States more flexibility in determining growth factors for the projection calculations. In any event, many of the maintenance provisions would be covered under the revised regulations proposed today. For example § 51.524, "AQMA plan: Strategies," would be covered under § 51.111, "Description of control measures."

Subpart E, "Control Strategy: Lead," is integrated with Subpart G unchanged. Where lead requirements differ from general SIP requirements in Subpart G, they are included in § 51.118, "Additional provisions for lead."

The following summarizes other changes we propose to make in existing portions of 40 CFR §§ 51.10–51.23.

1. *Revise §51.10(d).* This paragraph provides that plans for each Region will have provision to ensure that pollutant emissions will not interfere with attainment and maintenance of any national standard in any portion of an interstate region or in any other region. Since EPA developed this wording in 1971, Congress has written PSD and visibility provisions into the Act. Thus, we propose to revise § 51.10(d) to explain that, in addition to attainment and maintenance of any national standards, plans must not interfere with measures required to prevent significant deterioration of air quality or to protect visibility. Also, the terms "pollutant emissions" and "interfere" in the existing § 51.10(d) have been changed to "stationary sources" and "prevent" to make them consistent with the wording in the Act.

2. *Delete §51.12(c).* This paragraph states that, "Portions of a control strategy applicable to area sources may differ from portions applicable to point sources." This provision is obvious and we propose to delete it.

3. *Delete §51.13(d).* This section currently allows States to use example regions to develop control strategies. This concept assumes that if a State can demonstrate attainment in its worst region for a particular pollutant, and the same regulations are applied statewide, the standard will be attained statewide. The example region concept was originally adopted by EPA to help States with limited data bases to develop control strategies. as explained earlier, the example region concept is obsolete and we propose to delete it.

4. *Remove §§51.13(e)(2)(i) (ii), 51.14(c)(2)(7), and portions of 51.13(e)(3)(i).* These paragraphs present modeling guidance for particulate matter, sulfur dioxide, carbon monoxide, ozone, and nitrogen dioxide. This information is now available through the "Air Programs Reports and Guidelines Index." Thus, we propose to remove this material to simplify the regulations through separation of regulatory and guidance materials.

5. *Delete §51.14(b).* This paragraph states that if the Federal Motor Vehicle Emission Standards do not lead to attainment, other measures must be implemented. The statement is obvious and we propose to delete it.

6. *Remove §51.14(c)5.* This paragraph includes special instructions on what should be included in a control strategy for transportation plans. This information is covered under the general requirements in Subpart G and is no longer needed.

7. *Remove §51.14(c)9.* This paragraph states that emission reductions necessary for attainment of the ozone standard will also be adequate for attainment of the hydrocarbon standard. EPA revoked the hydrocarbon standard on January 5, 1983 (48 FR 628), and this subsection is no longer needed.

8. *Delete §51.14(f).* This paragraph requires States to calculate emissions from gasoline-powered motor vehicles using factors presented in EPA Report No. AP–42, or to justify the use of other factors. We propose to delete this provision for two reasons. First, the emission factors contained in AP–42 are outdated and have been replaced by a computerized program known as "MOBILE 2." (Information on this program is available from EPA Regional Offices as the "User Guide to MOBILE 2," EPA–450/3–81–006, NTIS No. PB81–205619, February 1981. Also available is the "MOBILE 2 Emission Model (Tape)," NTIS No. PB81–223067.) Second, EPA is replacing several existing specific emissions data requirements with a more generalized requirement. This general requirement is proposed to be codified as § 51.115.

9. *Delete §51.14(h).* This provision states that information and requirements for State-adopted motor vehicle inspection and maintenance programs and retrofit programs can be found in Appendix N. We are proposing to delete this provision because the information and requirements contained in Appendix N have been replaced by new methods for computing emission reductions and new policy requirements developed for inspection and maintenance programs required under the 1977 amendments to the Clean Air Act. These new methods for computing emission reductions from these programs are contained in the MOBILE 2 program described in paragraph 8 above. The policy requirements are summarized in a July 17, 1978 memorandum from former Assistant Administrator David Hawkins to the Regional Administrators entitled "Inspection Maintenance Policy." Copies of this memorandum can be obtained from EPA Regional Offices. MOBILE 2 will be referenced in the "Air Programs Reports and Guideline Index."

Subpart H—Prevention of Air Pollution Episodes

This action proposes to redesignate existing episode requirements (§ 51.16) into a new Subpart H. As explained earlier, we propose to retain the criteria of the priority classification system (existing § 51.3) for episode plan requirements, and to incorporate them into the new Subpart H as § 51.150.

We propose to revise the § 51.3 format to streamline its provisions. No substantive changes are made. References which apply to control strategies such as § 51.3(b)(3) are deleted. The reference to Appendix A in § 51.3(a)(2) is replaced with a reference to the "Air Programs Reports and Guidelines Index" which contains updated information on modeling. Appendix A was orginally used to estimate air quality for particulate matter and sulfur dioxide where air quality data were not available. This Appendix is now outdated because better modeling procedures are currently available.

The new Subpart H contains one new requirement concerning the reevaluation of episode plans. EPA is proposing to require States to reevaluate priority classifications every five years (§ 51.153). States should reevaluate priority classifications more frequently if necessary. However, as a minimum, the time period for updating episode plans would parallel EPA's five year review of ambient air quality standards. Within one year after EPA publishes its findings on the new standard, the States must reevaluate priority classifications and make appropriate revisions in emergency episode plans.

We propose to leave Appendix L, "Example Regulations for Prevention of Air Pollution Emergency Episodes," in Part 51 as guidance. We propose, however, to amend Appendix L to refer, as appropriate, to the requirements in the new Subpart H, "Prevention of Air Pollution Emergency Episodes." In addition, we propose to change the alert level for ozone in Appendix L from 200 ug/m^3 to 400 ug/m^3 to make this level consistent with the air quality standard.

Subpart I—Review of New Sources and Modifications

This action proposes to (1) restructure § 51.18, "Review of New Sources and Modifications," (2) rewrite several new sections of § 51.18 in better English, (3) delete Appendix O (§ 51.18 references Appendix O as guidance for indirect source review), and (4) reduce reporting and public hearing requirements.

We propose three new section headings and rewrite several sections to make their provisions easier to understand.

Appendix O guidance on indirect source review was part of regulations promulgated on June 18, 1973 to aid in maintenance of air quality standards. Congress later acted to restrict EPA involvement with indirect source review. Section 110(a)[5] of the CAA as amended in 1977 states that "the Administrator may not require as a condition of approval" of a SIP "any indirect source review programs." Thus, there is no need to include guidance for these programs in Part 51. States that choose to adopt indirect source review programs may contact EPA for guidance.

Section 51.18(h)(4) requires States to notify EPA of all air permitting actions pertaining to new sources or modification to existing sources. EPA primarily needs permitting information from only major new sources or major modifications of existing sources in nonattainment areas. This action revises § 51.18(h)(4) to cover only those major sources in nonattainment areas defined in § 51.18(j)(1)(iv) or for lead, those sources covered under § 51.1(k)(2).

Subpart K—Source Surveillance

This action proposes toincorporate § 51.19, "Source surveillance," in the new structure with no substantive changes to the actual regulation. We propose several new section headings and rewrite paragraphs to make the regulation easier to understand.

Subpart L—Legal Authority

This action proposes to incorporate § 51.11, "Legal authority" in the new structure. We propose three new section headings and rewrite several paragraphs to clarify the provisions of this new subpart.

Subsection 51.11(b) allows States to submit schedules for obtaining legalauthority for inspection and maintenance programs, other transportation control measures, and land use measures. This subsection is an exception to the general rule in § 51.11(d)(1) that plans must show that legal authority for all measures is available to the State at the time of submission of the plan. We are proposing to delete § 51.11(b). When this subsection was promulgated in 1971, it was reasonable to provide extra time for States to obtain legal authority for transportation control and land use measures. Requirements for the development of such measures were first added to the Clean Air Act in 1970. EPA believes, however, that there is no longer any need to retain this exception. All States have now had ample notice and opportunity to provide authority for such measures. In addition, this subsection conflicts with a provision that was added to the Clean Air Act in 1977. Section 172(c) requires plans for all nonattainment areas which have received extensions of the deadline for attaining the ozone or carbon monoxide standards to contain "enforceable measures" no later than July 1, 1982. Allowing these extension areas to submit schedules for attaining legal authority would conflict with the "enforceable measures" requirement.

EPA is also proposeing to delete the reference to § 51.11(b) that is found in § 51.11(d)(1).

Subpart N—Compliance Schedules

This action proposes to incorporate § 51.15, "Compliance schedules," in the new structure with no substantive changes to the regulation. We propose several new section headings and rewrite several paragraphs to make the regulation easier to understand.

Subpart O—Miscellaneous Plan Content Requirement

The Administrator restructured a portion of Subpart O on May 10, 1979 in the "Ambient Air Quality Monitoring Data, Reporting, and Surveillance Provision" regulations (44 FR 27558). EPA incorporated §51.285, "Public Notification," as part of Subpart O at that time. This action proposes to incorporate § 51.20, "Resources," and § 51.22, "Rules and regulations," into Subpart O as §§ 51.280 and 51.281 respectively. Portions of these paragraphs are rewritten to make them easier to understand.

Subpart Q—Reports

We propose to eliminate the reporting requirements of the following two sections because EPA can obtain the information through overview programs and grant mechanisms. The other sections of Subpart Q are unchanged.

Section 51.326. This provision requires States to identify and describe in the "Annual Source Emissions and State Action Report" all substantive plan revisions not submitted as official SIP revisions.

Section 51.328. This provision requires States to report on the status and progress of several ongoing SIP processes that the States may have promised such as (1) obtaining new resources; (2) adopting new laws; and, (3) conducting pollutant control studies. This provision also allows the Administrator to identify additional matters on which the State must report.

Subpart R—Extensions

This action proposed to restructure § 51.30, "Request for 2-year extension," and § 51.31, "Request for 18-month extension," into a new Subpart R, with no substantive changes. We also propose to eliminate two other sections which are part of the existing extension provisions. These are § 51.31, "Request for one-year postponement," and § 51.33, "Hearings and appeals relating to request for one year postponement," which we propose to revoke because the provision which they implement, Section 110(f) of the Clean Air Act as amended in 1970, was revised in 1977.

Appendices

A major goal of this action is to remove guidance material from the regulations. Thus, we propose to delete Appendices A–K, M–O, and R, because, as explained below, they are obsolete, have been replaced by other guidance, or such guidance is available in other EPA publications. EPA references major guidance under the "Air Programs Reports and Guidelines Index" which is available from the appropriate EPA Regional Office, the EPA Library (MD–35), Research Triangle Park, NC 27711, and from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

We proposed to change the zone alert level in Appendix L, "Example Regulations for Prevention of Air Pollution Emergency Episodes," from 200 ug/m^3 (0.1 ppm) to 400 ug/m^3 (0.2 ppm) to align the value with changes in the ambient air quality standard. Appendices P and S are unchanged. Because of the large effort involved, we do not propose to restructure the remaining Appendices P, S and U (Appendix Q is reserved) in this action. We will include any further restructuring of Appendices in later actions. The discussion below details why we propose to delete each particular Appendix.

Appendix A—Air Quality Estimation—EPA promulgated Appendix A in 1971 as a method to estimate air quality for PM and SO_x when little or no actual air quality data were available; such data are generally

available today. Also, information on new modeling techniques which superseded Appendix A is available through the "Air Programs Reports and Guidelines Index."

Appendix B—Examples of Emission Limitations Attainable With Reasonable Available Control Technology—Appendix B, originally promulgated in 1971, provides emission limitations once considered to represent RACT for most sources in various source categories. Many of these limitations have since been changes. Thus, this Appensix is no longer needed so we proposed to delete it.

Appendix C—Major Pollutant Sources—Appendix C, originally promulgated in 1971, provided States which did not have extensive emissions data with a list of polluntant sources which might be included as part of a SIP control strategy. This Appendix is no longer needed and we propose to delete it.

Appendix D (Pollutant)—Emissions Inventory Summary—Appendix D includes a summary format for States to follow in submission of emissions data where emission limits were required, such as in example regions. Today, this type of information is readily available in EPA guidance as listed in the "Air Programs Reports and Guidelines Index." Thus, Appendix D is no longer necessary and we propose to delete it.

Appendix E—Point Source Data and Appendix F—Area Source Data—These appendices specify information about point and area sources which the States currently must make available for the Administrator upon request. EPA is proposing to retain the requirement that States must make detailed inventory data available on request (§ 51.117). However, EPA does not believe that it needs to specify the content or format of this data. The "AEROS User's Manual", EPA-450/2-76-029, may be used as a guide by the States in developing area and point source data.

Appendix G—Emissions Inventory Summary—Appendix G includes a summary format for the States to follow in submission of emissions data for Regions where emission limitations were not required. We feel that Part 51 need not specify a format for the States to follow in submission of emissions data where no emission limitations are required. It is felt that this can be left to the States. Thus, we propose to delete Appendix G.

Appendix H—Air Quality Data Summary—The original plan requirments suggested Appendix H as the format for submission of air quality data in the SIP's. Since that time, sophisticated data retrieval and recording methods have been developed, and EPA has provided extensive guidance on air quality data format. As a result, it is no longer appropriate to specify a particular format for submission of air quality data in SIP's.

Appendix K—Control Agency Functions—Appendix K includes man-year estimates of resources by function. this table was useful in 1971 but is no longer needed because EPA has adequate information on State resources through the grants mechanism and annual reports.

Appendix M—Transportation Control Supporting Data Summary—The Administrator replaced this guidance on February 24, 1978 with a memorandum entitled "Criteria for Approval of 1979 SIP Revisions," which EPA published in the **Federal Register** on May 19, 1978 (43 FR 21673). The memorandum included requirements from the Act as amended in 1977. Thus, Appendix M is no longer needed.

Appendix N—Emission Reductions Achievable Through Inspection, Maintenance and Retrofit of Light Duty Vehicles—This appendix contains guidance on computing the emission reduction benefits of inspection/maintenance and retrofit programs. This guidance has been replaced by the MOBILE 2 program described in the previous discussion of § 51.14(h) in Subpart G—"Control Strategy."

This appendix also defines terms and specifies requirements for state-adopted inspection/maintenance and retrofit programs. As explained in the discussion of § 51.14(h), EPA has replaced this material with new non-regulatory guidance. Accordingly, Appendix N is not needed for the inspection/maintenance programs required by the 1977 amendments.

EPA has incorporated references to Appendix N into regulations which it promulgated into individual State plans in Part 52 of this chapter. These provisions in Part 52 refer to the definitions section of Appendix N. However, the Part 52 provisions actually use few words defined in Appendix N, and the meaning of these words is clear. Additionally, many of these federal plan provisions have been revoked because States have adopted their own control programs. Thus, we propose to delete Appendix N.

References to Appendix N in Part 52 will be deleted in the final rulemaking action.

Appendix O (untitled)—As explained under Subpart I, guidance on indirect source review in Appendix O is no longer needed. Thus, we propose to delete Appendix O.

Appendix R—Agency Functions for Air Quality Maintenance Area Plans—Although this action proposes no change to the maintenance requirements in Subpart D of Part 51, this guidance is not necessary because we no longer want to specify the format for reporting control agency functions. Thus, we propose to delete Appendix R.

Impact on 40 CFR 52 and Other Provisions

40 CFR 52 (Part 52), "Approval and Promulgation of Implementation Plans," contains numerous references to various requirements of Part 51. Table 2, "Distribution Table," identifies the new designations of Part 51 sections. For example, Part 52 refers to the requirements of §51.13(a) several times. The distribution table indicates that §51.13(a) is now included in the restructured §51.110(a). We intend to make the actual changes in Part 52 citations in the final rulemaking action. This will give us an opportunity to consider public comments and make final Part 51 revisions before revising the more than 200 citations in Part 52.

In addition, other portions of Part 51 such as the visibility regulations (Subpart P) contain references in which we also intend to make technical corrections at promulgation to reflect changes in Subpart A, B, C, and E.

Environmental, Economic, and Energy Impact Assessments

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 this action imposes few new regulatory requirements, and these requirements are not expected to have significant impacts. The major portion of the revisions proposed today only restructures existing regulations to delete obsolete provisions and rewrites them in a more clear, concise manner. This regulation will result in no significant environmental, economic, or energy impacts. In addition, EPA certifies that the proposed regulations will have no significant impact on small entities. Thus, no analyses were perfomred under the Regulatory Flexibility Act.

The proposal has a negligible impact on reporting requirements. It eliminates some unnecessary provisions and reporting requirements as discussed under Subparts G, I, and Q. Cost reductions for these proposals are estimated as less than two work-years annually, nationwide. Although small, the proposed savings indicate an effort

by EPA to reduce the real burden of regulations to the States while still meeting the requirements of the Clean Air Act.

EPA has submitted this regulation to the Office of Management and Budget for review under Executive Order 12291. Any comments from OMB and any EPA responses to these comments are available in Docket No. A–81–25. This proposal does not include any new reporting or recordkeeping requirements; thus, OMB review under Section 3504(b) of the Paperwork Reduction Act of 1980 is unnecessary.

TABLE 1.—DERIVATION TABLE AND MASTER PLAN TO RESTRUCTURE 40 CFR 51

New designation		Old designation	
Section No.	Title	Section No.	Title
SUBPART F:	Procedural Requirements.		
51.100	Definitions	51.1	Definitions.
51.101	Stipulations	51.2	Stipulations.
51.102	Public hearings	51.4	Public hearings.
51.103	Submission of plans	51.5	Submission of plans.
51.104	Revisions	51.6	Revisions.
		51.34	Variances.
51.105	Approval of plans	51.8	Approval of plans.
SUBPART G:	Control Strategy.		
51.110	Attainment & Maintenance of National Standards	51.10	General requirements (portion).
		51.12	Control strategy: General (portion).
		51.13	Control strategy: SO_x & PM (portion).
		51.14	Control strategy: CO, HC, O_x & NO_x (portion).
		51.80	Demonstration of attainment: Pb (portion).
51.111	Description of control measures	51.14	Control strategy: CO, HC, O_x & NO_x (portion).
		51.87	Measures: Pb.
51.112	Demonstration of adequacy	51.13	Control strategy: SO_x & PM (portion).
		51.14	Control strategy: CO, HC, O_x & NO_x (portion).
		51.80	Demonstration of attainment: Pb (portion).
		51.82	Air quality data (portion).
51.113	Procedures for demonstration of adequacy	51.14	Control strategy: CO, HC, O_x & NO_x (portion).
		51.81	Emissions data: Pb (portion).
		51.86	Data bases: Pb (portion).
51.114	Time period for demonstration of adequacy	51.10	General requirements (portion).
		51.81	Emissions data: Pb (portion).
51.115	Emissions data and projections	51.13	Control strategy: SO_x & PM (portion).
		51.14	Control strategy: CO, HC, O_x & NO_x (portion).
		51.81	Emissions data: Pb (portion).
51.116	Air quality data and projections	51.13	Control strategy: SO_x & PM (portion).
		51.14	Control strategy: CO, HC, O_x & NO_x (portion).
		51.82	Air quality data: Pb (portion).
51.117	Data availability	51.10	General requirements (portion).
		51.86	Data availability: Pb.
51.118	Additional provisions for lead	51.80	Demonstration of attainment: Pb (portion).
		51.81	Emissions data: Pb (portion).
		51.82	Air quality data: Pb (portion).
		51.83	Certain urbanized areas: Pb.
		51.84	Areas around significant point source: Pb.
		51.85	Other areas: Pb.
		51.86	Data bases: Pb (portion).
51.119	Stack height provisions	51.12	Control strategy: General (portion).
51.120–51.135	Reserved for new requirements as set forth in the Act.		
51.136–51.140	Reserved for maintenance of PSD increment provisions.		
SUBPART H	Prevention of Air Pollution Emergency Episodes (§§ 51.150 to 51.159)	51.3	Classification of regions.
		51.16	Prevention of air pollution emergency episodes.
SUBPART I	Review of New Sources and Modifications (§§ 51.160 to 51.189)	51.18	Review of new sources and modifications.
		51.24	Prevention of significant deterioration.
SUBPART J	Air Quality Surveillance (§§ 51.190 to 51.209) (Promulgated 5/10/79)	51.17	Air quality surveillance.
SUBPART K	Source Surveillance (§§ 51.210 to 51.229)	51.19	Source surveillance.
SUBPART L	Legal Authority (§§ 51.230 to 51.239)	51.11	Legal authority.
SUBPART M	Intergovernmental consultation (§§ 51.240 to 51.259) (Promulgated 6/18/79).	51.21	Intergovernmental cooperation.
SUBPART N	Compliance Schedules (§§ 51.260 to 51.279)	51.15	Compliance schedules.
SUBPART O:	Miscellaneous Plan Content Requirements.		
51.280	Resources	51.20	Resources.
51.281	Copies of rules & regulations	51.22	Rules & regulations.
51.282	Reserved.		
51.283	Reserved		
51.284	Public notification (Promulgated 5/10/79)	NA	
SUBPART P	Visibility protection (§§ 51.300–51.319) (Promulgated 12/2/80)	NA	
SUBPART Q	Reports (§§ 51.320–51.339)	51.7	Reports.
SUBPART R	Extensions (§§ 51.340–51.369)	51.30	Request for 2-year extension.
		51.31	Request for 18-month extension.
	REVOKED	51.1	Definitions (obsolete portions).
		51.3	Classification of regions (as applicable to control strategies).
		51.4	Public hearings (obsolete portions).
		51.5	Submission of plans; preliminary review of plans (obsolete portions)
		51.23	Exceptions.
		51.32	Request for 1-year postponement.
		51.33	Headings and appeals relating to request for one year postponement.
		51.326	Reportable revisions.
		51.328	Plan prescribed actions.
		Appendix A	Air quality estimation.
		Appendix B	Examples of emission limitations attainable with reasonably available control technology.
		Appendix C	Major pollutant source.
		Appendix D	Pollutant emissions inventory summary.
		Appendix E	Point source data.
		Appendix F	Area source data.
		Appendix G	Emission inventory summary.

TABLE 1.—DERIVATION TABLE AND MASTER PLAN TO RESTRUCTURE 40 CFR 51—Continued

New designation		Old designation	
Section No.	Title	Section No.	Title
		Appendix H	Air quality data summary.
		Appendix K	Control agency functions.
		Appendix M	Transportation Control Supporting Data Summary.
		Appendix N	Emmisions Reductions Achievable Through Inspection, Maintenance and Retrofit of Light Duty Vehicles.
		Appendix O	[Untitled].
		Appendix R	Agency functions for air quality maintenance area plans.
	Air Programs Reports and Guidelines Index	51.12	Control strategy: General.
		51.13	Control strategy: SO_x & PM.
		51.14	Control strategy: CO, HC, O_3 & NO_x.
		51.84	Areas around significant point sources.

NA—Not applicable

TABLE 2—DISTRIBUTION TABLE

Old section [1]	New section
51.1(a–mm) All paragraph designations are the same and have the same paragraph designation *except* those which are listed below.	151.100(a–mm).
51.1(a)	51.100(a) New citation added.
51.1(j)	51.100(j) Definition of local agency deleted. 51.1 includes two definitions of "local agencies." EPA considers 51.100(g) a better definition. A new 51.100(j) is proposed which defines the term "plan."
51.1(k)(1)	51.100(k)(1) The term "Volatile Organic Compound" (VOC) replaces the term "Hydrocarbons."
51.1(k)(1)(i, ii)	Point source definition updated.
51.1(k)(1)(iii)	Unnecessary. Appendix C is deleted in this action.
51.1(l)	Reference to Appendix D removed; reference to inventory techniques updated.
51.1(m)	51.100(m) revised.
51.1(o)	51.100(o) revised.
51.2	51.101.
51.3	51.150, streamlined.
51.4 All paragraphs are the same and are restructured with the same paragraph numbers except as noted below.	51.102.
51.4(a), (e)	51.102(a), (e) rewritten.
51.4(b)(4)	51.102(b)(4) rewritten.
51.4(b)(5)	Unnecessary, redundant.
51.4(f)	Deleted, obsolete.
51.5 All paragraphs are the same and restructured with the same paragraph numbers except as noted below.	51.103.
51.5(a)	Rewritten; "Note" deleted.
51.5(d), (e)	Deleted, redundant.
51.6	51.104.
51.6(b–f)	51.104(b–f) rewritten.
51.8	51.105.
51.10(a)	51.110(g) rewritten.
51.10(b)	51.110(b), (d).
51.10(c)	51.110(c)(1), (d).
51.10(d)	51.110(e), revised.
51.10(e)	51.117(c).
51.11(a)	51.230.
51.11a(1–6)	51.230(a–f).
51.11(b)	Unnecessary provisions for transportation plans, obsolete.
51.11(c)	51.231(a).
51.11(d)(1)	51.231(b).
51.11(d)(2)	51.231(c).
51.11(e)	51.232(a).
51.11(f)	51.232(b).
51.12(a)	51.110(a).
51.12(b)	51.110(a), (c).
51.12(c)	Deleted, redundant.

TABLE 2—DISTRIBUTION TABLE—Continued

Old section [1]	New section
51.12(d)	51.110(f).
51.12(j)	51.119(a).
51.12(k)	51.119(b).
51.12(l)	51.119(c).
51.13(a)	51.110(b).
51.13(b)	51.110(c).
51.13(c)	51.116(c).
51.13(d)	Deleted, example region approach.
51.13(e)(1) phrase "in the example regions to which it applies.".	Deleted, example region approach.
Rest of 51.13(e)(1)	51.112(a).
51.13(e)(2)(i, ii)	Air Programs Reports and Guidelines Index.
51.13(e)(2)(iii)	51.112(a, b).
51.13.(e)(3)(i)	51.112(b)(4), Air Programs Reports and Guidelines Index.
51.13(e)(3)(ii)	51.115(a).
51.13(e)(3)(iii)	51.112(b)(3), rewritten.
51.13(f, g)	51.115(a), 51.116(a) Portions related to example region approach deleted.
51.14(a)(1)	51.110(a), Rewritten, reference to priority of regions deleted.
51.14(a)(2)	51.111.
51.14(b)	Unnecessary.
51.14(c)(1)	51.112(a), 51.113(a).
51.14(c)(2–7)	Air Programs Reports and Guidelines Index.
51.14(c)(5)	51.112(a).
51.14(c)(6)	51.112(b)(4).
51.14(c)(8)	51.116(d).
51.14(c)(9)	Reference to hydrocarbon standard which has been revoked, deleted.
51.14(d)	51.115(a).
51.14(e)	51.116.
51.14(f)	Air Programs Reports and Guidelines Index.
51.14(g)	Obsolete.
51.14(h)	Air Program Reports and Guidelines Index.
51.15(a)(1)	51.260(a), (b).
51.15(b)(1)	261(a).
51.15(b)(2)	51.261(b).
51.15(c)	51.262(a).
51.16(a)	51.151.
51.16(b)	51.152(a).
51.16(d)	Deleted, obvious.
51.16(e)	51.152(b).
51.16(f)	Obsolete.
51.16(g)	51.152(c).
51.16(h)	51.152(d).
51.18(a)	51.160(a).
51.18(b)	51.160(b).
51.18(c)	51.160(c).
51.18(d)	51.160(d).
51.18(e)	51.162.
51.18(f)	51.160(e).
51.18(g)	51.163.
51.18(h)	51.161.
51.18(i)	Obsolete, refers to Appendix O, guidance on indirect source review.
51.18(j)	51.165(a).
51.18(k)	51.165(b).
51.18(l)	51.164.
51.19 (Introduction)	51.210.
51.19(a)	51.211.
51.19(b), (c)	51.212.

TABLE 2—DISTRIBUTION TABLE—Continued

Old section [1]	New section
51.19(d)	51.213.
51.19(e)	51.241(a).
51.19(e)(1)	51.214(b).
51.19(e)(2)	51.214(c).
51.19(e)(3)	51.214(d).
51.19(e)(4)	51.214(e).
51.19(e)(5)	51.214(f).
51.19(e)(6)	Obsolete, deleted.
51.20	51.280.
51.22	51.281.
51.23	Unnecessary.
51.30	51.340.
51.31	51.341.
51.32	Deleted, no longer in Clean Air Act (CAA).
51.33	Deleted, no longer in CAA.
51.34	51.104(g).
51.80(a)	51.110(b), 51.119(a).
51.80(b)	51.112(a).
51.80(c)	51.112(b).
51.81(a)	51.118(e).
51.81(b)	51.114(a).
51.81(c)	51.113(a)
51.81(d)	51.115(a).
51.82(a)	51.116(b), a51.116(d)(1).
51.82(b)	51.118(d)(3).
51.82(c)	51.112(b)(3).
51.83	51.118(c)(1).
51.84	51.118(a), (c)(2).
51.85	51.116(c)(3).
51.86(a)	51.113(b).
51.86(b)	51.118(e)(2).
51.86(c)	51.118(d)(1, 2).
51.87	51.111.
51.88	51.117(a), (b).
51.326, 51.328	Deleted, report requirement no longer needed.

[1] Section 51.24 will be restructured later.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbon, Carbon monoxide.

Dated: September 9, 1983.

William D. Ruckelshaus,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

EPA proposes to amend Title 40, Chapter I, Part 51, of the Code of Federal Regulations as follows:

1. The authority citation for Part 51 reads as follows:

Authority: Sec. 110, 301(a) of the Clean Air Act as amended. 42 U.S.C. 7410, 7601(a).

2. Whenever the term "hydrocarbon" appears in Part 51 it is changed to read "VOC".

3. Subparts A (§§ 51.1–51.8), C (§ 51.30–51.34), and E (§§ 51.80–51.88) are revoked and reserved.

4. In Subpart B, §§ 51.10, 51.11, 51.12 (a) through (d), 51.13–51.16, 51.18–51.23 are revoked and reserved.

5. Subparts F–I are added as follows:

Subpart F—Procedural Requirements

Sec.
51.100 Definitions.
51.101 Stipulations.
51.102 Public hearings.
51.103 Submission of plans; preliminary review of plans.
51.104 Revisions.
51.105 Approval of plans.

Subpart G—Control Strategy

51.110 Attainment and maintenance of national standards.
51.111 Description of control measures.
51.112 Demonstration of adequacy.
51.113 Procedures for demonstration of adequacy.
51.114 Time period for demonstration of adequacy.
51.115 Emissions data and projections.
51.116 Air quality data and projections.
51.117 Data availability.
51.118 Additional provisions for lead.
51.119 Stack height provisions.

Subpart H—Prevention of Air Pollution Emergency Episodes

51.150 Classification of regions for episode plans.
51.151 Significant harm levels.
51.152 Contingency plans.
51.153 Reevaluation of episode plans.

Subpart I—Review of New Sources and Modifications

51.160 Legally enforceable procedures.
51.161 Public availability of information.
51.162 Identification of responsible agency.
51.163 Administrative procedures.
51.164 Stack height provisions.
51.165 Permit requirements.
* * * * *

Subpart F—Procedural Requirements

§ 51.100 Definitions.

As used in this part, all terms not defined herein will have the meaning given them in the Act:

(a) "Act" means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 91–604, 84 Stat. 1676 Pub. L. 95–95, 91 Stat., 685 and Pub. L. 95–190, 91 Stat., 1399.)

(b) "Administrator" means the Administrator of the Environmental Protect Agency (EPA) or an authorized representative.

(c) "Primary standard" means a national primary ambient air quality standard promulgated pursuant to section 109 of the Act.

(d) "Secondary standard" means a national secondary ambient air quality standard promulgated pursuant to section 109 of the Act.

(e) "National standard" means either a primary or a secondary standard.

(f) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, building, structure, or installation which directly or indirectly result or may result in emissions of any air pollutant for which a national standard is in effect.

(g) "Local agency" means any local government ageny other the State agency, which is charged with responsibility for carring out a portion of a plan.

(h) "Regional Office" means one of the ten (10) EPA Regional Offices.

(i) "State agency" means the air pollution control agency primarily responsible for development and implementation of a plan under the Act.

(j) "Plan" means an implementation plan approved or promulgated under section 110 of 172 of the Act.

(k) "Point source" means the following:

(1) For particulate matter, sulfur oxides, carbon monoxide, volatile organic compounds (VOC) and nitrogen dioxide—

(i) Any stationary source the actual emissions of which are in excess of 90.7 metric tons (100 tons) per year of the pollutant in a region containing an area whose 1980 "urban place" population, as defined by the U.S. bureau of the Census, was equal to or greater that 1 million.

(ii) Any stationary source the actual emissions of which are in excess of 22.7 metric tons (25 tons) per year of the pollutant in a region containing an area whose 1980 "urban place" population, as defined by the U.S. Bureau of the Census was less then 1 million; or

(2) For lead or lead compounds measured as elemental lead, any stationary source that actually emits a total of 4.5 metric tons (5 tons) per year or more.

(l) "Area source" means any small residential, governmental, institutional, commercial, or industrial fuel combustion operations; onsite solid waste disposal facility; motor vehicles, aircraft vessels, or other transportation facilities or other miscellaneous sources identified through inventory techniques similar to those described in the "AEROS Manual series, Vol. II AEROS User's Manual," EPA–450/2–76–029 December 1976.

(m) "Region" means an area designated as an air quality control region (AQCR) under section 107(c) of the Act.

(n) "Control strategy" means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standard including, but not limited to, measures such as:

(1) Emission limitions.

(2) Federal or State emission charges or taxes or other economic incentives or disincentives.

(3) Closing or relocation of residential, commerical, or industrial facilities.

(4) Changes in schedules or methods of operation of commercial or industrial facilities or transportation systems, including, but not limited to, short-term changes made in accordance with standby plans.

(5) periodic inspection and testing of motor vehicle emission control systems, at such time as the Administrator determines that such programs are feasible and practicable.

(6) Emission control measures applicable to in-use motor vehicles, including, but not limited to, measures such as mandatory maintenance, installation of emission control devices, and conversion to gaseous fuels.

(7) Measures to reduce motor vehicle traffic, including, but not limitd to, measures such as commuter taxes, gasoline rationing, parking restrictions, or staggered working hours.

(8) Expansion or promotion of the use of mass transportation facilities through measures such as increases in the frequency, convenience, and passenger-carrying capacity of mass transportation systems or providing for special bus lanes on major streets and highways.

(9) Any land use or transportation control measures not specifically delineated herein.

(10) Any variation of, or alternative to any measure delineated herein.

(11) Control or prohibition of a fuel or fuel additive used in motor vehicles, if such control or prohibition is necessary to achieve a national primary or secondary air quality standard and is approved by the Administrator under § 211(c)(4)(C) of the Act.

(o) "Reasonably available control technology" (RACT) means the lowest emission limit (including a visible emission standard) (1) that a particular source is capable of meeting by the application of control technology that is technically and economically feasible, and (2) which takes into account the necessity of imposing controls in order

to attain and maintain national standards.

(p) "Compliance schedule" means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in an implementation plan and with any increments of progress toward such compliance.

(q) "Increments of progress" means steps toward compliance which will be taken by a specific source, including:

(1) Date of submittal of the source's final control plan to the appropriate air pollution control agency;

(2) Date by which contracts for emission control systems or process modifications will be awarded; or date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(3) Date of initiation of on-site construction or installation of emission control equipment or process change;

(4) Date by which on-site construction or installation of emission control equipment or process modification is to be completed; and

(5) Date by which final compliance is to be achieved.

(r) "Transportation control measure" means any measure, such as reducing vehicle use, changing traffic flow patterns, decreasing emissions from individual motor vehicles, or altering existing modal split patterns that is directed toward reducing emissions of air pollutants from transportation sources.

(s) "Vehicle trip" means any movement of a motor vehicle from one location to another that results in the emission of air pollutants by the motor vehicle.

(t) "Trip type" means any class of vehicle trips possessing one or more characteristics (e.g., work, nonwork; peak, off-peak; freeway, nonfreeway) that distinguish vehicle trips in the class from vehicle trips not in the class.

(u) "Vehicle type" means any class of motor vehicles (e.g., precontrolled, heavy duty vehicles, gasoline powered trucks) whose emissions characteristics are significantly different from the emissions characteristics of motor vehicles not in the class.

(v) "Traffic flow measure" means any measure, such as signal light synchronization, freeway metering and curbside parking restrictions, that is taken for the purpose of improving the flow of traffic and thereby reducing emissions of air pollutants from motor vehicles.

(w) "Roadway type" means any class of roadway facility that can be broadly categorized as to function and assigned average speed and capacity values, e.g., expressway, arterial, collector, and local.

(x) "Time period" means any period of time designated by hour, month, season, calendar year, averaging time, or other suitable characteristics, for which ambient air quality is estimated.

(y) "Variance" means the temporary deferral of a final compliance date for an individual source subject to an approved regulation, or a temporary change to an approved regulation as it applies to an individual source.

(z) "Emission limitation" and "emission standard" means a requirement established by a State, local govjernment, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(aa) "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.

(bb) "Excess emissions" means emissions of an air pollutant in excess of an emission standard.

(cc) "Nitric acid plant" means any facility producing nitric acid 30 to 70 percent in strength by either the pressure or atmospheric pressure process.

(dd) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acide sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(ee) "Fossil fuel-fired steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(ff) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(gg) "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

(hh) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height, varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant, or by addition of a fan or reheater to obtain a less stringent emission limitation. The preceding sentence does not include: (1) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream; (2) the use of smoke management in agricultural or silvicultural programs; or (3) combining the exhaust gases from several stacks into one stack.

(ii) "Good engineering practice (GEP) stack height" means the greater of:

(1) 65 meters;

(2)(i) For stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable preconstruction permits or approvals required under this Parts 51 and 52 of this Title 40, $H_g = 2.5H$

(ii) for all other stacks,

$H_g = 1.5L$, where

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension (height or projected width) of nearby structure(s);

(3) The height demonstrated by a fluid model or a field study approved by the reviewing agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, structures, or terrain obstacles.

(jj) "Nearby" as used in § 51.100(ii)(2) is that distance up to five times the lesser of the height or the width dimension of a structure but not greater than 0.8 km (one-half mile). The height of the structure is measured from the ground-level elevation at the base of the stack.

(kk) "Excessive concentrations" for the purpose of determining good engineering practice stack height in a fluid model or field study means a maximum concentration due to downwash wakes, or eddy effects produced by structures or terrain features which is at lease 40 percent in

excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(ll) "Plume impaction" means concentrations measured or predicted to occur when the plume interacts with elevated terrain.

(mm) "Elevated terrain" means terrain which exceeds the elevation of the good engineering practice stack as calculated under paragraph (ii) of this section.

§ 51.101 Stipulations

Nothing in this part will be construed in any manner:

(a) To encourage a State to prepare, adopt, or submit a plan which does not provide for the protection and enhancement of air quality so as to promote the public health and welfare and productive capacity.

(b) To encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies.

(c) To preclude a State from employing techniques other than those specified in this part for purposes of estimating air quality or demonstrating the adequacy of a control strategy, provided that such other techniques are shown to be adequate and appropriate for such purposes.

(d) To encourage a State to prepare, adopt, or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan, including, but not limited to, impact on availability of fuels, energy, transportation, and employment.

(e) To preclude a State from preparing, adopting, or submitting a plan which provides for attainment and maintenance of a national standard through the application of a control strategy not specifically identified or described in this part.

(f) To preclude a State or political subdivision thereof from adopting or enforcing any emission limitations or other measures or combinations thereof to attain and maintain air quality better than that required by a national standard.

(g) To encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.

§ 51.102 Public hearings.

(a) Except as otherwise provided in paragraph (c) of this section, States must conduct one or more public hearings on the following prior to adoption and submission to EPA of:

(1) Any plan or revision of it required by § 51.104(a).

(2) Any individual compliance schedule under (§ 51.260).

(3) Any revision under 51.104(d).

(b) Separate hearings may be held for plans to implement primary and secondary standards.

(c) No hearing will be required for any change to an increment of progress in an approved individual compliance schedule unless such change is likely to cause the source to be unable to comply with the final compliance date in the schedule. The requirements of § 51.104 and § 51.105 will be applicable to such schedules, however.

(d) Any hearing required by paragraph (a) of this section will be held only after reasonable notice, which will be considered to include, at least 30 days prior to the date of such hearing(s):

(1) Notice given to the public by prominent advertisement in the area affected announcing the date(s), time(s), and place(s) of such hearing(s);

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located;

(3) Notification to the Administrator (through the appropriate Regional Office);

(4) Notification to each local air pollution control agency which will be significantly impacted by such plan, schedule or revision;

(5) In the case of an interstate region, notification to any other States included, in whole or in part, in the regions which are significantly impacted by such plan or schedule or revision.

(e) The State must prepare and retain, for inspection by the Administrator upon request, a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

(f) The State must submit with the plan, revision, or schedule a certification that the hearing required by paragraph (a) of this section was held in accordance with the notice required by paragraph (d) of this section.

(g) Upon written application by a State agency (through the appropriate Regional Office), the Administrator may approve State procedures for public hearings. The following criteria apply:

(1) Procedures approved under this section shall be deemed to satisfy the requirement of this part regarding public hearings.

(2) Procedures different from this part may be approved if they—

(i) Ensure public participation in matters for which hearings are required; and

(ii) Provide adequate public notification of the opportunity to participate.

(3) The Administrator may impose any conditions on approval he or she deems necessary.

§ 51.103 Submission of plans; preliminary review of plans.

(a) The State makes an official submission to the Administrator when it delivers five copies of the plan to the appropriate Regional Office and a letter to the Administrator giving notice of such action. The State must adopt the plan and the Governmor or his designee, must submit it to the Administrator as follows:

(1) For any primary standard, or revision thereof, within 9 months after promulgation of such standard.

(2) For any secondary standard, or revision thereof, within 9 months after promulgation of such secondary standard or by such later date prescribed by the Administrator under Subpart R of this part.

(b) Upon request of a State, the Administrator will provide preliminary review of a plan or portion thereof submitted in advance of the date such plan is due. Such requests must be made in writing to the appropriate Regional Office and must be accompanied by five copies of the materials to be reviewed. Requests for preliminary review do not relieve a State of the responsibility of adopting and submitting plans in accordance with prescribed due dates.

§ 51.104 Revisions.

(a) The plan shall be revised from time to time, as may be necessary, to take account of:

(1) Revisions of national standards,

(2) The availability of improved or more expeditious methods of attaining such standards, such as improved technology or emission charges or taxes, or

(3) A finding by the Administrator that the plan is substantially inadequate to attain or maintain the national standard which it implements.

(b) The State must review the plan within 60 days following notification by the Administrator under paragraph (a)(3) of this section, or by such later date prescribed by the Administrator after consultation with the State.

(c) States may revise the plan from time to time consistent with the

requirements applicable to implementation plans under this part.

(d) The States must submit any revision of any regulation or any compliance schedule under paragraph (c) of this section to the Administrator no later than 60 days after its adoption.

(e) The State must identify and describe revisions other than those covered by paragraphs (a) and (d) of this section in the next annual report required by § 51.321.

(f) EPA will approve revisions only after applicable hearing requirements of § 51.102 have been satisfied.

(g) In order for a variance to be considered for approval as a revision to the State implementation plan, the State must submit it in accordance with the requirements of this section. [51.34]

§ 51.105 Approval of plans.

The Administrator will approve any plan, or portion thereof, or any revision of such plan, or portion thereof, if he or she determines that it meets the requirements of the Act. Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.

Subpart G—Control Strategy

§ 51.110 Attainment and maintenance of national standards.

(a) Each plan must set forth a control strategy that provides emission reductions necessary for attainment and maintenance of the national air quality standards. The emission reductions must be sufficient to offset increases in air quality concentrations that result from emission increases due to projected growth of population, industrial activity, motor vehicle traffic, or other factors. [§§ 51.12(a,b) 51.14(a)]

(b) Each plan providing for the attainment of a primary standard or revision of it must do so as expeditiously as practicable. The attainment period must not be longer than three years after the date of the Administrator's approval of the plan, unless the State obtains an extension under Subpart R of this part. Each plan must also provide for the maintenance of the standard after it has been attained. [§§ 51.10(b), 51.13(a), 51.14(a), 51.80(a).]

(c)(1) Each plan must provide for the attainment of a secondary standard within a reasonable time after the date of the Administrator's approval of the plan, and must provide for the maintenance of the standard after it has been attained. [§ 51.10(c), 12(b)]

(2) "Reasonable time" is defined in two ways as follows:

(i) "Reasonable time" for attainment of a secondary standard must not be more than three years from plan submissioin unless the State shows that good cause exists for postponing application of the control technology. This definition applies only in a region where the degree of emission reduction necessary for attainment of the secondary standard can be achieved through the application of reasonably available control technology.

(ii) "Reasonable time" will depend on the degree of emission reduction needed for attainment of the secondary standard and on the social, economic, and techological problems involved in carrying out a control strategy adequate for attainment of the secondary standard. This definition applies only in a region where application of reasonable available control technology will not be sufficient for attainment of the secondary standard in three years. [§ 51.13(b)]

(d) Each plan providing for the attainment of a primary or secondary standard must specify the pojected attainment date. [§ 51.10(b), (c)]

(e) The plan for each Region must have adequate provisions to ensure that stationary sources from within that Region will not:

(1) prevent attainment and maintenace of any national standard in any portion of an interstate Region or any other Region. [§ 51.10(d)]

(2) interfere with measures required to be included in the applicable implementation plan for any such Region to prevent significant deterioration of air quality or to protect visibility. [Clean Air Act, Section 110(a)(2)(E)(i)(II), 1977]

(f) For purposes of developing a control strategy, data derived form measurements of existing ambient levels of a pollutant may be adjusted to reflect the extent to which occasional natural or accidental phenomena, e.g., dust storms, forest fires, industrial accidents, demonstrably affected such ambient levels during the measurement period. [§ 51.12(d)]

(g) During developing of the plan, EPA encourages States to identify alternative control strategies, as well as the costs and benefits of each such alternatives, for attainment or maintenace of the national standard. [§ 51.10(a)]

[§ 51.111 Description of control measures. [§§ 51.14(a)(2), and 51.87]

Each plan must set forth a control strategy which includes the following:

(a) A description of each control measure that is incorporated into the plan, and a schedule for its implementation.

(b) Copies of the enforceable laws and regulations to implement the measures adopted in the plan.

(c) A description of the administrative procedures to be used in implementing each control measure.

(d) A description of enforcement methods including, but not limited to:

(1) Procedures for monitoring compliance with each of the selected control measures.

(2) Procedures for handling violations, and

(3) A designation of agency responsibility for enforcement or implementation.

§ 51.112 Demonstarion of adequacy.

(a) Each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements. The adequacy of a control strategy shall be demonstrated by means of a proportional model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes. [§§ 51.13(e)(1), 51.14(c)(1, 5), 51.80(b)]

(b) The demonstration must include the following:

(1) A summary of the computations, assumptions, and judgments used to determine the degree of reduction of emissions (or reductions in the growth of emissions) that will result from the implementation of the control strategy.

(2) A presentation of emission levels expected to result from implementation of each measure of the control strategy.

(3) A presentation of the air quality levels expected to result form implementation of the overall control strategy presented either in tabular form or as an isopleth map showing expected maximum pollutant concentrations.

(4) A description of the dispersion models used to project air quality and to evaluate control strategies. [§§ 51.13(e)(3)(iii), 51.14(c)(3), 51.80(c), 51.82(c)]

§ 51.113 Procedures for demonstration of adequacy.

(a) Each plan must identify the specific techniques used in the demonstration of the adequacy of the control strategy required under § 51.112. [§§ 51.14(c)(1), 51.81(c)]

(b) For interstate regions, the analysis from each constituent State must, where practicable, be based upon the same regional emission inventory and air quality baseline. [§ 51.86(a)]

§ 51.114 Time period for demonstration of adequacy.

(a) The demonstration of the adequacy of the control strategy to attain a primary standard required under § 51.113 must cover the following periods:

(1) At least three years from the date by which the Administrator must approve or disapprove the plan, if no extension under Subpart R is granted, or [§ 51.81(b)(1)]

(2) At least five years from the date by which the Administrator must approve or disapprove the plan, if an extension under Subpart R is granted. [§ 51.81(b)(2)]

(b) The demonstration of adequacy to attain a secondary standard required under § 51.113 must cover the period of time determined to be reasonable under § 51.110(c) for attainment of such secondary standard. [§ 51.10(c)]

§ 51.115 Emissions data and projections.

(a) Except for lead, each plan must contain a detailed inventory of emissions from point and area sources. Lead requirements are specified in § 51.118. The inventory must be based upon measured emissions or, where measured emissions are not available, documented emission factors. [§§ 51.13(e,f), 51.14(d), 51.81(a)]

(b) Each plan must contain a summary of emission levels projected to result from application of the new control strategy.

(c) Each plan must identify the sources of the data used in the projection of emissions. [§§ 51.81(d)]

§ 51.116 Air quality data and projections. [§§ 51.13(g), 51.14(e), 51.82(a)]

(a) Each plan must contain a summary of data showing existing air quality. [§§ 51.13(g), 51.14(e)]

(b) Each plan must:

(1) Contain a summary of air quality concentrations expected to result from application of the control strategy, and

(2) Identify and describe the dispersion model, other air quality model, or receptor model used. [§§ 51.82(a), 51.13(e)(2)(i)]

(c) Actual measurements of air quality must be used where available if made by methods specified in Appendix C to Part 58 of this chapter. Estimated air quality using appropriate modeling techniques may be used to supplement measurements. [§ 51.13(g)]

(d) For purposes of developing a control strategy, background concentration shall be taken into consideration with respect to particulate matter. As used in this subpart, background concentration is that portion of the measured ambient levels that cannot be reduced by controlling emissions from man-made sources. [§ 51.13(c)]

(e) In developing an ozone control strategy for a particular area, background ozone concentrations and ozone transported into an area must be considered. States may assume that the ozone standard will be attained in upwind areas. [§ 51.13(c)(8)]

§ 51.117 Data availability.

(a) The State must retain all detailed data and calculations used in the preparation of each plan or each plan revision, and make them available for public inspection and submit them to the Administrator at his request. [§ 51.88(a)]

(b) The detailed data and calculations used in the preparation of plan revisions are not considered a part of the plan. [§§ 51.62, 51.88(b)]

(c) Each plan must provide for public availability of emission data reported by source owners or operators or otherwise obtained by a State or local agency. Such emission data must be correlated with applicable emission limitations or other measures. As used in this paragraph, "correlated" means presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under the applicable emission limitations or other measures. [§ 51.10(e)]

§ 51.118 Additional provisions for lead.

In addition to other requirements in §§ 51.100–117 the following requirements apply to lead. To the extent they conflict, these requirements are controlling over those of the proceeding sections.

(a) *Control strategy demonstration.* Each plan must contain a demonstration showing that the plan will attain and maintain the standard in the following areas:

(1) Areas in the vicinity of the following point sources of lead: Primary lead smelters, Secondary lead smelters, Primary copper smelters, Lead gasoline additive plants, Lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day, Any other stationary source that actually emits 25 or more tons per year of lead or lead compounds measured as elemental lead. [§§ 51.80(a)(1), 51.84]

(2) Any other area that has lead air concentrations in excess of the national ambient air quality standard concentration for lead, measure since January 1, 1974. [§§ 51.80(a)(2)]

(b) *Time period for demonstration of adequacy.* The demonstration of adequacy of the control strategy required under § 51.113 may cover a longer period if allowed by the appropriate EPA Regional Administrator. [§ 51.80(a)(3)]

(c) *Special modeling provisions.* (1) For urbanized areas with measured lead concentrations in excess of 4.0 ug/m³, quarterly mean measured since January 1, 1974, the plan must employ the modified rollback model for the demonstration of attainment as a minimum, but may use an atmospheric dispersion model if desired. If a proportional model is used, the air quality data should be the same year as the emissions inventory required under paragraph e. [§§ 51.82(a), 51.83]

(2) For each point source listed in § 51.118(a), the plan must employ an atmospheric dispersion model for demonstration of attainment. [§ 51.84(b)]

(3) For each area in the vicinity of an air quality monitor that has recorded lead concentrations in excess of the lead national standard concentration, the plan must empoly the modified rollback model as a minimum, but may use an atmospheric dispersion model if desired for the demonstration of attainment. [§ 51.85]

(d) Air quality data and projections. (1) Each State must submit to the appropriate EPA Regional Office with the plan, but not part of the plan, all lead air quality data measured since January 1, 1974. This requirement does not apply if the data has already been submitted. [§ 51.86(c)(1), § 51.82(a)]

(2) The data must be submitted in accordance with the procedures and data forms specified in chapter 3.4.0 of the "AEROS User's Manual" concerning storage and retrieval of aerometric data (SAROAD) except where the Regional Administrator waives this requirement. [§ 51.86(c)(2)]

(3) If additional lead air quality data are desired to determine lead air concentrations in areas suspected of exceeding the lead national ambient air quality standard, the plan may include data from any previously collected filters from particulate matter high volume samplers. In determining the lead content of the filters for control strategy demonstration purposes, a State may use, in addition to the reference method, X-ray fluorescence or any other method approved by the Regional Administrator. [§ 51.82(b)]

(e) *Emissions data.* (1) The point source inventory on which the summary of the baseline lead emissions inventory is based must contain all sources that emit five or more tons of lead per year. [§ 51.81(a)]

(2) Each State must submit lead emissions data to the appropriate EPA

Regional Office with the original plan. The submission must be made with the plan, but not as part of the plan, and must include emissions data and information related to point and area source emissions. EPA identifies these requirements on the Hazardous and Trace Emissions System (HATREMS) point source coding forms for all point sources and the area source coding forms for all sources that are not point sources. [§ 51.86(b)]

§ 51.119 Stack height provisions.

(a) The plan must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.119(b) and (c). The plan must provide that before a State submits to EPA a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for a public hearing on it. This Section does not require the plan to restrict, in any manner, the actual stack height of any source. [§ 51.12(j)]

(b) The provisions of §§ 51.119(a) and 51.164 shall not apply to (1) stack heights in existence, or dispersion techniques implemented prior to December 31, 1970, or (2) coal-fired steam electric generating units, subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974. [§ 51.12(k)]

(c) The good engineering practice (GEP) stack height can be adjusted for any source seeking credit because of plume impaction which results in concentrations that violate the NAAQS or applicable PSD regulations. This can be done by determining the stack height necessary to predict the same maximum air pollutant concentration on any elevated terrain feature as the maximum concentration associated with the emission limit which results from modeling the source using the GEP stack height as determined in § 51.100(ii) and assuming the elevated terrain features to be equal in elevation to the GEP stack height. If this adjusted GEP stack height is greater than the stack height the source proposes to use, the source's emission limitation and air quality impact will be determined using the proposed stack height and the actual terran heights. [§ 51.12(1)]

Subpart H—Prevention of Air Pollution Emergency Episodes (51.3) (51.16)

§ 51.150 Classification of regions for episode plans. [§ 51.3]

(a) "Priority I Regions" means any area with greater ambient concentrations than the following:

(1) Sulfur dioxide—100 ug/m³ (0.04 ppm) annual arithmetic mean; 455 ug/m³ (0.17 ppm) 24-hour maximum.

(2) Particulate matter—95 ug/m³ annual geometric mean; 325 ug/m³ 24-hour maximum.

(3) Carbon monoxide—55 mg/m³ (48 ppm) 1-hour maximum; 14 mg/m³ (12 ppm) 8-hour maximum.

(4) Nitrogen dioxide—110 ug/m³ (0.06 ppm) annual arithmetic mean.

(5) Ozone—195 ug/m³ (0.10 ppm) 1-hour maximum.

(b) "Priority IA Region" means any area which is Priority I primarily because of emissions from a single point source.

(c) "Priority II Region" means any area which is not a Priority I region and has ambient concentrations between the following:

(1) Sulfur dioxides—60–100 ug/m³ (0.02–.04 ppm) annual arithmetic mean; 260–455 ug/m³ (0.10–0.17 ppm) 24-hour maximum; any concentration above 1,300 ug/m³ (0.50 ppm) three-hour average.

(2) Particulate matter—60–95 ug/m³ annual geometric mean; 150–325 ug/m³ 24-hour maximum.

(d) In the absence of adequate monitoring data, appropriate models must be used to classify an area under paragraph (a). Information on these models may be found through the "Air Programs Reports and Guidelines Index," EPA–450/2–82–016. With respect to carbon monoxide, ozone, and nitrogen dioxide, any area whose urban population as defined in the most recent U.S. Bureau of the Census, exceeds 200,000 will be classified Priority I.

(e) Areas which do not meet the above criteria are classified Priority III.

§ 51.151 Significant harm levels. [§ 51.16(a)]

Each plan for a Priority I region must include a contingency plan which must, as a mimimum, provide for taking action necessary to prevent ambient pollutant concentrations at any location in such region from reaching the following levels:

Sulfur dioxide—2,620 ug/m³ (1.0 ppm) 24-hour average.

Particulate matter—1,000 ug/m³ (24-hour average.

Sulfur dioxide and particulate matter combined—product of sulfur dioxide in ug/m³ 24-hour average, and particulate matter in ug/m³ 24-hour average, equal to 490×10^3.

Carbon monoxide—57.5 mg/m³ (50 ppm) 8-hour average; 86.3 mg/m³ (75 ppm) 4-hour average; 144 mg/m³ (125 ppm) 1-hour average.

Ozone—1,200 ug/m³ (0.6 ppm) 2-hour average.

Nitrogen dioxide—3,750 ug/m³ (2.0 ppm) 1-hour average; 938 ug/m³ (0.5 ppm) 24-hour average.

§ 51.152 Contingency plans. [§ 51.16(b)]

(a) Each contingency plan must—

(1) Specify two or more stages of episode criteria such as those set forth in Appendix L to this part, or their equivalent;

(2) Provide for public announcement whenever any episode stage has been determined to exist; and

(3) Specify adequate emission control actions to be taken at each episode stage. (Examples of emission control actions are set forth in Appendix L.)

(b) Each contingency plan for a Priority I region must provide for the following: [§ 51.16(e)]

(1) Prompt acquisition of forecasts of atmospheric stagnation conditions and of updates of such forecasts as frequently as they are issued by the National Weather Service.

(2) Inspection of sources to ascertain compliance with applicable emission control action requirements.

(3) Communications procedures for transmitting status reports and orders as to emission control actions to be taken during an episode stage, including procedures for contact with public officials, major emission sources, public health, safety, and emergency agencies and news media.

(c) Each plan for a Priority IA and II region must include a contingency plan that meets, as a minimum, the requirements of paragraphs (b)(1) and (b)(2) of this section. Areas classified Priority III do not need to develop episode plans. [§ 51.16(g)]

(d) Notwithstanding the requirements of paragraphs (b) and (c), the Administrator may, at his discretion— [§ 51.16(h)]

(1) Exempt from the requirements of this section those portions of Priority I, IA, or II regions which have been designated as attainment or unclassifiable for national primary and secondary standards under Section 107 of the Act; or

(2) Limit the requirements pertaining to emission control actions in Priority I regions to—

(i) Urbanized areas as identified in the most recent United States Census, and

(ii) Major emitting facilities, as defined by Section 169(1) of the Act, outside the urbanized areas.

§ 51.153 Reevaluation of episode plans [New requirement].

(a) States should periodicially reevaluate priority classifications of all Regions or portion of Regions within their borders. The reevaluation must consider the three most recent years of air quality data.

(b) As a minimum, States must perform the evaluation in (a) of this subpart every five years when EPA announces its review of an ambient air quality standard, or promulgates a revised standard. If the evaluation indicates a change in priority classification, appropriate changes in the emergency episode plan(s) must be made within one year after the final result of EPA ambient standard review is published in the Federal Register.

Subpart I—Review of New Sources and Modifications

§ 51.160 Legally enforceable producedures.

(a) Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—

(1) A violation of applicable portions of the control strategy; or

(2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State. [§ 51.18(a)]

(b) Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if—

(1) It will result in a violation of applicable portions of the control strategy; or

(2) It will interfere with the attainment or maintenance or a national standard. [§ 51.18(b)]

(c) The procedures must provide for the submission, by the owner or operator of the building, facility, structure, or installation to be constructed or modified, of such information on—

(1) The nature and amounts of emissions to be emitted by it or emitted by associated mobile sources;

(2) The location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section. [§ 51.18(c)]

(d) The procedures must provide that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy. [§ 51.18(d)]

(e) The procedures must identify types and sizes of facilities, buildings, structures, or installations which will be subject to review under this section. The plan must discuss the basis for determining which facilities will be subject to review [§ 51.18(f)]

(f) The procedures must discuss the air quality data and the dispersion or other air quality modeling used to meet the requirements of this subpart.

§ 51.161 Public availability of information.

(a) The legally enforceable procedures in § 51.160 must also require the State or local agency to provide opportunity for public comment on information submitted by owners and operators. The public information must include the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval. [§ 51.18(h)(1)]

(b) For purposes of paragraph (a) of this section, opportunity for public comment shall include, as a minimum—

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality;

(2) A 30-day period for submittal of public comment; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in paragraph (b)(1) of section 51.161. [§51.18(h)(2)]

(c) Where the 30-day comment period required in paragraph (b) of this section would conflict with existing requirements for acting on requests for permission to construct or modify, the State may submit for approval a comment period which is consistent with such existing requirements. [§ 51.18(h)(3)]

(d) A copy of the notice required by paragraph (b) of this section for major sources in nonattainment areas, as defined under §51.165(a)(1)(iv), must also be sent to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under this Subpart. For pollutants where no designations are established, such as for lead, a copy of the notice is required for all major sources. The definition of a major source for lead is given in § 51.100(k)(2). [§ 51.18(h)(4)]

§ 51.162 Identification of responsible agency.

Each plan must identify the State or local agency which will be responsible for meeting the requirements of this Subpart in each area of the State. Where such responsibility rests with an agency other than an air pollution control agency, such agency will consult with the appropriate State or local air pollution control agency in carrying out the provisions of this Subpart. [§51.18(e)]

§ 51.163 Administrative procedures. [§51.18(g)]

The plan must include the administrative procedures, which will be followed in making the determination specified in paragraph (a) of §51.160. [§ 51.18(g)]

§ 51.164 Stack height procedures. [§ 51.18(l)]

Such procedures must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.119(b) and (c). Such procedures must provide that before a State issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. This section does not require such procedures to restrict, in any manner the actual stack height of any source.

§ 51.165 Permit requirements (§ 51.18(j, k))

(a) State Implementation Plan provisions satisfying sections 172(b)(6) and 173 of the Act shall meet the following conditions:

(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

(i) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(ii) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

(iii) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(iv) (A) "Major stationary source" means:

(*1*) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act; or

(*2*) Any physical change that would occur at a stationary source not qualifying under paragraph (j)(1)(v)(*a*)(*1*) as a major stationary source, if the change would constitute a major stationary source by itself.

(*B*) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(*v*) (*A*) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(*B*) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(*C*) A physical change or change in the method of operation shall not include:

(*1*) Routine maintenance, repair and replacement;

(*2*) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*3*) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(*4*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*5*) Use of an alternative fuel or raw material by a stationary source which:

(*i*) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(*ii*) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(*6*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51 Subpart I or 40 CFR 51.24.

(*7*) Any change in ownership at a stationary source.

(*vi*) (A) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(*1*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(*2*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(*B*) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(*C*) An increase or decrease in actual emissions is creditable only if:

(*1*) It occurs within a reasonable period to be specified by the reviewing authority; and

(*2*) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs.

(*D*) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(*E*) A decrease in actual emissions is creditable only to the extent that:

(*1*) The old level of actual emissions or the old level of allowable emissions, whichever, is lower, exceeds the new level of actual emissions;

(*2*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(3) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress.

(*4*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(vii) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(viii) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary soure or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(ix) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(x) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

(xi) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) The applicable standards set forth in 40 CFR Part 60 or 61;

(B) Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(xii) (A) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions until as determined in accordance with paragraphs (a)(1)(xii) (B)–(D) of this section.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the units's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The reviewing authority may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit which has not begun normal operations on the particular date, acutal emissions shall equal the potential to emit of the unit on that date.

(xiii) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(*A*) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(*B*) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(xiv) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to this section, 40 CFR 51 Subpart I, or 51.24.

(xv) "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(xvi) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(*A*) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(*B*) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(xvii) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(xviii) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(2) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(3)(i) Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection the baseline for determining credit for emissions reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(*A*) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(*B*) The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

(ii) The plan shall further provide that:

(*A*) Where the emissions limit under the applicable State Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(*B*) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to required the use of a specified alternative control

measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel swithes;

(C) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment credit for such shutdown or curtailment may be applied to offset emissions from the new source;

(D) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds." (42 FR 35314, July 8, 1977);

(E) All emission reductions claimed as offset credit shall be federally enforceable;

(F) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S, section IV.D.

(G) Credit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51 Subpart I or the state has not relied on it in demonstration attainment or reasonable further progress.

(4) Each plan may provide that the provisions of this subsection do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(*i*) Coal cleaning plants (with thermal dryers);

(*ii*) Kraft pulp mills;

(*iii*) Portland cement plants;

(*iv*) Primary zinc smelters;

(*v*) Iron and steel mills;

(*vi*) Primary aluminum ore reduction plants;

(*vii*) Primary copper smelters;

(*viii*) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(*ix*) Hydrofluoric, sulfuric, or nitric acid plans;

(*x*) Petroleum refineries;

(*xi*) Lime plants;

(*xii*) Phosphate rock processing plants;

(*xiii*) Coke oven batteries;

(*xiv*) Sulfur recovery plants;

(*xv*) Carbon black plants (furnace process);

(*xvi*) Primary lead smelters;

(*xvii*) Fuel conversion plants;

(*xviii*) Sintering plants;

(*xix*) Secondary metal production plants;

(*xx*) Chemical process plants;

(*xxi*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat imput;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(5) Each plan shall include enforceable procedures to provide that:

(i) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state or federal law.

(ii) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(b) Each plan shall adopt a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the act for any area designated as attainment or unclassifiable for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program or its equivalent shall apply to any new major stationary source or major modification that would locate in a designated attainment or the unclassifiable area and would exceed the significant increments specified in section III.A. of the Emission Offset Interpretive Ruling, Appendix S to this part.

(6) Subparts K, L, and N are added as follows:

Subpart K—Source Surveillance

Sec.

51.210 General.
51.211 Emission reports and recordkeeping.
51.212 Testing, inspection, enforcement, and complaints.
51.213 Transportation control measures.
51.214 Continuous emission monitoring.

Subpart L—Legal Authority

51.230 Requirements for all plans.
51.231 Identification of legal authority.
51.232 Assignment of legal authority to local agencies.

* * * * *

Subpart N—Compliance Schedules

51.260 Legally enforceable compliance schedules.
51.261 Final compliance shedules.
51.262 Extension beyond one-year.

Subpart K—Source Surveillance

§ 51.210 General.

Each plan must provide for monitoring the status of compliance with any rules and regulations that set forth any portion of the control strategy. Specifically, the plan must meet the requirements of this subpart. (§ 51.19—Introductory paragraph)

§ 51.211 Emission reports and recordkeeping.

The plan must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the State—

(a) Information on the nature and amount of emissions from the stationary sources; and

(b) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control strategy. [§ 51.19(a)]

§ 51.212 Testing, inspection, enforcement, and complaints.

The plan must provide for—

(a) Periodic testing and inspection of stationary sources; and

(b) Establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints. [§ 51.19 (b), (c)]

§ 51.213 Transportation control measures.

(a) The plan must contain procedures for obtaining and maintaining data on actual emissions reductions achieved as a result of implementing transportation control measures.

(b) In the case of measures involving inspection, maintenance, or retrofit, these data must include the results of an emission surveillance program designed to determine actual average per vehicle emissions reductions attributable to inspection, maintenance, and/or retrofit.

(c) In the case of measures based on traffic flow changes or reductions in vehicle use, the data must include observed changes in vehicle miles traveled and average speeds.

(d) The data must be maintained in such a way as to facilitate comparison of the planned and actual efficacy of the transportation control measures. [§ 51.19(d)]

§ 51.214 Continuous emission monitoring.

(a) The plan must contain legally enforceable procedures to—

(1) Require stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions; and

(2) Provide other information as specified in Appendix P of this part. [§51.19(e)]

(b) The procedures must—

(1) Identify the types of sources, by source category and capacity, that must install the equipment; and

(2) Identify for each source category the pollutants which must be monitored. [§ 51.19(e)(1)]

(c) The procedures must, as a minimum, require the types of sources set forth in Appendix P of this part to meet the applicable requirements set forth therein. [§ 51.19(e)(2)]

(d)(1) The procedures must contain provisions that require the owner or operator of each source subject to continuous emission monitoring and recording requirements to maintain a file of all pertinent information for at least two years following the date of collection of that information.

(2) The information must include emission measurements, continuous monitoring system performance testing measurements, performance evaluations, calibration checks, and adjustments and maintenance performed on such monitoring systems and other reports and records required by Appendix P of this part. [§ 51.19(e)(3)]

(e) The procedures must require the source owner or operator to submit information relating to emissions and operation of the emission monitors to the State to the extent described in Appendix P at least as frequently as described therein. [§ 51.19(e)(4)]

(f)(1) The procedures must provide that sources subject to the requirements of paragraph (c) of this section must have installed all necessary equipment and shall have begun monitoring and recording within 18 months after either—

(i) The approval of a State plan requiring monitoring for that source; or

(ii) Promulgation by the Agency of monitoring requirements for that source.

(2) The State may grant reasonable extensions of this period to sources that—

(i) Have made good faith efforts to purchase, install, and begin the monitoring and recording of emission data; and

(ii) Have been unable to complete the installation within the period. [§ 51.19(e)(5)]

Subpart L—Legal Authority

§ 51.230 Requirements for all plans. [§ 51.11(a)]

Each plan must show that the State has legal authority to carry out the plan, including authority to:

(a) Adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards. [§ 51.11(a)(1)]

(b) Enforce applicable laws, regulations, and standards, and seek injunctive relief. [§ 51.11(a)(2)]

(c) Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons, i.e., authority comparable to that available to the Administrator under section 303 of the Act. [§ 51.11(a)(3)]

(d) Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard. [§ 51.11(a)(4)]

(e) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources. [§ 51.11(a)(5)]

(f) Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any applicable emission standards or limitations. [§ 51.11(a)(6)]

§ 51.231 Identification of legal authority.

(a) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations be submitted with the plan. [§ 51.11(c)]

(b) The plan must show that the legal authorities specified in this subpart are available to the State at the time of submission of the plan. [§ 51.11(d)(1)]

(c) Legal authority adequate to fulfill the requirements of § 51.230 (e) and (f) of this subpart may be delegated to the State under section 114 of the Act. [§ 51.11(d)(2)]

§ 51.232 Assignment of legal authority to local agencies.

(a) A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out the portion of plan. [§ 51.11(e)]

(b) The State may authorize a local agency to carry out a plan, or portion thereof, within such local agency's jurisdiction if—

(1) The plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion of it; and

(2) This authorization does not relieve the State of responsibility under the Act for carrying out such plan, or portion thereof. [§ 51.11(f)]

Subpart N—Compliance Schedules

§ 51.260 Legally enforceable compliance schedules.

(a) Each plan must contain legally enforceable compliance schedules which set forth the dates the following sources must be in compliance—

(1) Stationary sources;

(2) Mobile sources; or

(3) Categories of other sources. [§ 51.15(a)(1)]

(b) The compliance schedules must contain increments of progress required

by § 51.262 of this Subpart. [§ 51.15(a)(1)]

§ 51.261 Final compliance schedules.

(a) Unless EPA grants an extension under Subpart R, compliance schedules designed to provide for attainment of a primary standard must—

(1) Provide for compliance with the applicable plan requirements as soon as practicable; or

(2) Provide for compliance no later than the date specified for attainment of the primary standard under § 51.110(b). [§ 51.15(b)(1)]

(b) Unless EPA grants an extension under Subpart R, compliance schedules designed to provide for attainment of a secondary standard must—

(1) Provide for compliance with the applicable plan requirements in a reasonable time; or

(2) Provide for compliance no later than the date specified for the attainment of the secondary standard under § 51.110(c). [§ 51.15(b)(2)]

§ 51.262 Extension beyond one-year.

(a) Any compliance schedule or revision of it extending over a period of more than one year from the date of its adoption by the State agency must provide for legally enforceable increments of progress toward compliance by each affected source or category of sources. The increments of progress must include—

(1) Each increment of progress specified in § 51.100(q); and

(2) Additional increments of progress as may be necessary to permit close and effective supervision of progress toward timely compliance. [§ 51.15(c)]

(b) [Reserved]

7. The following Sections are added to Subpart O:

Subpart O—Miscellaneous Plan Content Requirements

§ 51.280 Resources.

Each plan must include a description of the resources available to the State and local agencies at the date of submission of the plan and of any additional resources needed to carry out the plan during the 5-year period following its submission. The description must include projections of the extent to which resources will be acquired at 1-, 3-, and 5-year intervals. [§ 51.20]

§ 51.281 Copies of rules and regulations.

Emission limitations and other measures necessary for attainment and maintenance of any national standard, including any measures necessary to implement the requirements of Subpart L must be adopted as rules and regulations enforceable by the State agency. Copies of all such rules and regulations must be submitted with the plan. Submittal of a plan setting forth proposed rules and regulations will not satisfy the requirements of this section nor will it be considered a timely submittal. [§ 51.22]

8. Subpart R is added as follows:

Subpart R—Extensions

Sec.
51.340 Request for 2-year extension.
51.341 Request for 18-month extension.
* * * * *

Subpart R—Extensions

§ 51.340 Request for 2-year extension.

(a) The Governor of a State may, at the time of submission of a plan to implement a primary standard request the Administrator to extend, for a period not exceeding 2 years, the 3-year period prescribed by the Act for attainment of the primary standard in such region.

(b) Any such request regarding an interstate region must be submitted jointly with the requests of Governors of all States in the region, or shall show that the Governor of each State in the region has been notified of such a request.

(c) Any such request regarding attainment of a primary standard must be submitted together with a plan which shall:

(1) Set forth a control strategy adequate for attainment of such primary standard.

(2) Show that the necessary technology or alternatives will not be available soon enough to permit full implementation of such control strategy within such 3-year period, i.e., one or more emission sources or classes of sources will be unable to comply with applicable portions of the control strategy.

(3) Provide for attainment of such primary standard as expeditiously as practicable, but in no case later than 5 years after the date of the Administrator's approval of such plan.

(d) Any showing pursuant to paragraph (c) of this section must include the following:

(1) A clear identification of stationary emission sources or classes of moving sources which will be unable to comply with the applicable portions of such control strategy within a 3-year period because the necessary technology or alternatives will not be available soon enough to permit such compliance.

(2) A clear identification and justification of any assumptions made with the respect to the time at which the necessary technology or alternatives will be available.

(3) A clear identification of any alternative means of attainment of such primary standard which were considered and rejected.

(4) A showing that stationary emission sources or classes of moving sources other than those identified pursuant to paragraph (d)(1) of this section will be required to comply, within such 3-year period, with any applicable portions of such control strategy.

(5) A showing that reasonable interim control measures are provided for in such plan with respect to emissions from the source(s) identified pursuant to paragraph (d)(1) of this section.

§ 51.341 Request for 18-month extension.

(a) Upon request of the State made in accordance with this section, the Administrator may, whenever he determines necessary, extend, for a period not to exceed 18 months, the deadline for submitting that portion of a plan that implements a secondary standard.

(b) Any such request must show that attainment of the secondary standards will require emission reductions exceeding those which can be achieved through the application of reasonably available control technology.

(c) Any such request for extension of the deadline with respect to any State's portion of an interstate region must be submitted jointly with requests for such extensions from all other States within the region or must show that all such States have been notified of such request.

(d) Any such request must be submitted sufficiently early to permit development of a plan prior to the deadline in the event that such request is denied.

§ 51.321 [Amended]

9. Section 51.321 is amended by changing the phrase "as specified in §§ 51.323 through 51.326," to "as specified in §§ 51.323 and 51.325."

§51.326 [Removed]

10. Section 51.326 is removed and reserved.

§ 51.327 [Amended]

11. Section 51.327 is amended by changing the term "§ 51.6" to "§ 51.104."

§ 51.328 [Removed]

12. Section 51.328 is removed and reserved.

Appendices A–H, K, M–O, and R [Removed]

13. Appendices A–H, K, M–O, and R are removed and reserved.

Appendix L [Amended]

14. The first paragraph of Appendix L is revised to read as follows:

Appendix L—Example Regulations for Prevention of Air Pollution Emergency Episodes

The example regulations presented herein reflect generally recognized ways of preventing air pollution from reaching levels that would cause imminent and substantial endangerment to the health of persons. States are required under Subpart H to have emergency episodes plans but they are not required to adopt the regulations presented herein.

* * * * *

15. In Appendix L, Section 1.1(b) is amended by changing the term "Ozone (O_3) = 200 ug/m³ (0.1 ppm) 1-hour average" to "Ozone (O_3) = 400 ug/m³ (0.2 ppm)-hour average."

[FR Doc. 83–25108 Filed 10–7–83; 8:45 am]
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federal register

Tuesday
October 11, 1983

Part IV

Federal Maritime Commission

Financial Responsibility for Water Pollution; Financial Responsibility for Oil Pollution—Alaska Pipeline and Outer Continental Shelf; Final Rule

FEDERAL MARITIME COMMISSION

46 CFR 542, 543, and 544

[General Orders 37, 40 and 41]

Financial Responsibility for Water Pollution; Financial Responsibility for Oil Pollution—Alaska Pipeline, and Outer Continental Shelf

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This amendment revokes Parts 542, 543 and 544 from Title 46, Code of Federal Regulations. This action results from the recent transfer of the vessel financial responsibility certification functions from the Commission to the U.S. Coast Guard. The effect of this amendment is removal of the vessel financial responsibility regulations presently codified in Chapter IV of 46 CFR.

EFFECTIVE DATE: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: James K. Cooper, Managing Director, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: By Executive Order 12418 of May 5, 1983 (48 FR 20891–92), the President transferred from the Commission to the Secretary of the Department in which the Coast Guard is operating, the functions relating to financial responsibility of vessels for pollution liability. The Secretary of Transportation, in turn, has delegated the responsibility for these transferred functions to the Commandant, U.S. Coast Guard.

The regulations at 46 CFR, Parts 542, 543 and 544, governing vessel financial responsibility are republished in a separate part of this issue of the **Federal Register** as Title 33, CFR, Parts 130, 131 and 132 respectively. This **Federal Register** publication of the Coast Guard's final rule states in its preamble that the regulations are republished without extensive change and that the Coast Guard administration of the recently transferred vessel certification programs will continue essentially as previously performed by the Commission until explicity amended, modified or revoked by any future rulemaking by the Coast Guard.

Since the vessel financial responsibility regulations are now established in 33 CFR, Parts 130, 131 and 132, the Commission is hereby deleting 46 CFR, Parts 542, 543 and 544 and reserving those parts for future Commission use. The material will be removed from Title 46 at its next codification (October 1983) and will not appear in Title 33 until its next codification (July 1984). To assist users of the CFR, the Coast Guard has arranged, with the Office of the Federal Register, for the placement of an editorial note in Title 33 and Title 46 calling attention to this change.

Administration of the vessel financial responsibility programs is now being conducted by the Chief, Financial Responsibility Division (G–WFR/21), Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C., 20593, (202) 426–8806.

List of Subjects in 46 CFR Parts 542, 543, and 544

Maritime carriers.

PARTS 542, 543, AND 544 [REMOVED AND RESERVED]

Accordingly, Chapter IV of Title 46, Code of Federal Regulations, is hereby amended by removing parts 542, 543 and 544 and reserving them for future use.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83–27434 Filed 10–7–83; 8:45 am]

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federal register

Tuesday
October 11, 1983

Part V

Department of Transportation

Coast Guard

Vessel Financial Responsibility for Pollution Liability; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 130, 131, and 132

[CGD 83-039]

Vessel Financial Responsibility for Pollution Liability

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment redesignates current Federal Maritime Commission (FMC) regulations governing vessel financial responsibility for pollution liability (46 CFR, Parts 542, 543 and 544) as new Parts 130, 131, and 132 in Title 33, Code of Federal Regulations. This action results from the recent transfer of the vessel financial responsibility certification program from the FMC to the Coast Guard. The intended effect of this action is to locate the program governing regulations in the appropriate Coast Guard Chapter of the Code of Federal Regulations.

EFFECTIVE DATE: This final rule is effective October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Robert M. Skall or Frank A. Martin, Jr., (202) 472-5053.

SUPPLEMENTARY INFORMATION: This amendment concerns organizational and administrative changes brought about because of the shift of a federal program from one agency to another. It does not substantively revise current governing regulations. Therefore, it is excepted from the usual notice and public procedure requirements and is effective immediately.

OMB Control Numbers: 2115-0528; 2115-0536; and 2115-0535.

Background

On May 5, 1983, the President, in Executive Order 12418 (48 FR 20891, May 10, 1983) transferred, from the FMC to the Secretary of the Department in which the Coast Guard is operating, functions relating to vessel financial responsibility for marine pollution liability. These functions involve the authority, vested by various pollution statutes in the President, to make sure the owners or operators of vessels can meet statutory liability for water pollution resulting from the discharge of oil or hazardous substances. The Secretary of Transportation has subsequently delegated to the Commandant of the Coast Guard responsibility for administering the newly acquired vessel financial responsibility program authorities.

The various statutory authorities governing the transferred vessel financial responsibility functions are:

a. Section 311(p) of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1321(p)].

b. Section 204(c) of the Trans-Alaska Pipeline Authorization Act of 1973 [43 U.S.C. 1653(c)].

c. Sections 305(a)(1) and 312(a)(2) of Title III, Outer Continental Shelf Lands Act Amendments of 1978 [43 U.S.C. 1815(a)(1), 1822(a)(2)].

d. Sections 108(a)(1) and 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9608(a)(1), 9609].

Discussion

This Amendment is a redesignation action. We are taking the current vessel financial responsibility regulations appearing at 46 CFR, Parts 542, 543 and 544, and redesignating and republishing them at 33 CFR, Parts 130, 131 and 132, respectively. Substantive revision is avoided at this time since there is a need to have the program in place in the Coast Guard by September 1983. Further, we are also trying to minimize disruption to the international marine industry of the vessel financial responsibility cerification services formerly provided by the FMC.

Included in this project are revisions of the FMC authority citations and Office of Management and Budget (OMB) approval numbers, formerly associated with 46 CFR, Parts 542, 543 and 544, and the related information collection requirements used in establishing vessel financial responsibility. We also made nomenclature changes in the redesignated Parts 130, 131 and 132, to substitute appropriate Coast Guard agency officials, organizational element addresses, new telephone numbers, and new form numbers, where applicable, for those of the FMC. Some nonsubstantive editorial, style, and format changes are made throughout the regulations. In additon, all references to the Panama Canal Zone are deleted, since the Federal Water Pollution Control Act does not apply to any part of the former Canal Zone. Further editorial changes, if any, may be the subject of future rulemaking.

Administrative Information

The transferred FMC functions are similar to Coast Guard Pollution Fund Management related duties involving financial responsibility determinations associated with Outer Continental Shelf (OCS) offshore facilities and Deepwater Port vessels. The financial responsibility regulations for OCS and Deepwater Port activities are contained in Subchapter M of 33 CFR, Parts 135 and 137, respectively. The new Parts 130, 131 and 132 are incorporated into an expanded Subchapter M, which is renamed "Marine Pollution Financial Responsibility and Compensation". Part 133 is reserved in the expanded Subchapter M, for future implementation of the vessel hazardous substances financial responsibility program under section 108(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Parts 134, 138 and 139 in Subchapter M are reserved for future recodification and expansion of Coast Guard regulations addressing marine pollution liability, certification, and compensation matters.

Since publication of the redesignated rules in this document occurs after the July 1983 revision date of the codification of Title 33, and since Parts 542, 543 and 544 will be removed from Title 46 at its next codification (October, 1983, the Office of the Federal Register, to assist users of the CFR, is placing an editorial note in both titles calling attention to this change. Parts 542, 543 and 544 of Title 46 is being revoked and reserved for future FMC use in a separate document in this issue of the **Federal Register.**

Program management of the transferred FMC Vessel Financial Responsibility Certification programs will be performed at Coast Guard Headquarters, Office of Marine Environment and Systems, in a newly established Financial Responsibility Division (G-WFR). Inquiries concerning the transferred FMC functions may be directed to the Chief, Financial Responsibility Division, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters (G-WFR/21), 2100 Second Street, SW, Washington, DC 20593, telephone (202) 426-6806. Current Coast Guard Offshore Oil Pollution Compensation and Deepwater Port Liability Funds Management programs, including related offshore facility and vessel financial responsibility activities are now functions of the new division.

Vessel Financial Responsibility Forms

All of the former FMC application and supporting vessel financial responsibility certification forms cited in 46 CFR, Parts 542, 543 and 544 are being reprinted as Coast Guard forms. These forms are listed in redesignation Table 1, which shows the old 46 CFR Part number, the old FMC form number, name of the form, the new 33 CFR Part number, and the newly assigned Coast

Guard form numbers. Vessel owners and operators, their agents, guarantors, and all other persons who file these forms should keep the following table handy as a reference during the transition of the financial responsibility programs from the FMC to the Coast Guard.

TABLE 1—VESSEL FINANCIAL RESPONSIBILITY FORMS

Old 46 CFR Part	Old FMC Form No.	Name of Form	New 33 CFR Part	New CG Form No.
542	321	Application for Certificate of Financial Responsibility (Water Pollution)	130	5358-8
542	322	Insurance Form (FWPCA Water Pollution)	130	5358-9
542	323	Master Insurance Form (FWPCA Water Pollution)	130	5358-9A
542	324	Surety Bond Form (FWPCA Water Pollution)	130	5358-9B
542	325	Guaranty Form (FWPCA Water Pollution)	130	5358-9C
542	326	Master Guaranty Form (FWPCA Water Pollution)	130	5358-9D
543	224P	Application for Certificate of Financial Responsibility (Alaska Pipeline)	131	5358-3
543	225P	Insurance Form (Alaska Pipeline)	131	5358-4
543	226P	Surety Bond Form (Alaska Pipeline)	131	5358-4A
543	227P	Guaranty Form (Alaska Pipeline)	131	5358-4B
544	192	Application for Certificate of Financial Responsibility (Outer Continental Shelf).	132	5358-1
544	193	Insurance Form (OCS)	132	5358-2
544	194	Surety Bond Form (OCS)	132	5358-2A
544	195	Guaranty Form (OCS)	132	5358-2B

Every effort is being made to have the reprinted Coast Guard forms ready for use by September 1983. However, during the transition, continued use of the FMC forms is permitted, until the new forms are sufficiently stocked in the Coast Guard forms supply system and made readily available to those persons who must use them to obtain Certificates of Financial Responsibility. The new forms eventually will be available from the Financial Responsibility Division (G-WFR/21) at Coast Guard Headquarters in Washington, D.C., or from any of the 12 Coast Guard District Offices around the country. All executed forms (e.g., application and insurance forms FMC-321 and 322) now being transferred from the FMC to the Coast Guard remain valid and do not have to be refiled on the new Coast Guard replacement forms. Previous designations and concurrences of agents for service of process also remain valid.

All vessel Certificates of Financial Responsibility are issued for a specific period of two or three years, depending on the regulations under which issued. They have stated expiration dates on them. Therefore, currently valid FMC certificates will remain valid until expiration, or renewal by the Coast Guard. All outstanding vessel Certificates issued on FMC certificate forms will be replaced by certificates issued on Coast Guard forms by the end of 1986, or early 1987.

As with the former FMC regulations at 46 CFR, Parts 542, 543 and 544, we are publishing the reprinted Coast Guard application and supporting forms as appendices to the new 33 CFR, Parts 130, 131 and 132.

Cross-References

In several sections of 46 CFR Parts 542, 543 and 544 there are cross-references outside of the transferred parts containing vessel financial responsibility subject matter to other FMC regulatory requirements in Title 46. Noteworthy are the cross-references, in §§ 542.12(d), 543.8(b) and 544.11(d), to 46 CFR Part 502. These cross-references refer to the FMC's Rules of Practice and Procedure, which, in the context of Parts 542, 543 and 544 of Title 46 were the agency proceedings for handling certificate denial or revocation hearings. We have changed the 46 CFR Part 502 cross-reference in the redesignated rules at 33 CFR 130.12(d), 131.8(b) and 132.11(d), to substitute appropriate reference to Coast Guard proceedings for the handling of certificate denial or revocation hearings. The substituted hearing procedures for denial or revocation of certificates are those the Coast Guard uses in its similar financial responsibility for offshore facilities requirements (33 CFR 135.223).

Policy Issues

Coast Guard adoption and redesignation of the former FMC rules governing vessel financial responsibility includes adoption of preamble explanations, interpretations of applicable laws, and other implementing program management decisions taken by the FMC when originally establishing or revising the regulatory material previously codified at 46 CFR Parts 542, 543 and 544. The new Parts 130, 131 and 132 of Title 33, the basis upon which originally established, and other related FMC decisions remain in effect within the Coast Guard administration of the recently transferred vessel financial responsibility functions, until explicitly amended, modified or revoked by the Coast Guard in any future rulemaking on this subject.

Paperwork Reduction Act

Information collection requirements contained in this final rule (Parts 130, 131, and 132) have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35) and have been assigned OMB control numbers: 2115-0528, 2115-0536, and 2115-0535.

List of Subjects

33 CFR Part 130

Water pollution liability, Financial responsibility, Vessel certification.

33 CFR Part 131

Pollution liability, Financial responsibility, Vessel certification Alaska pipeline oil.

33 CFR Part 132

Pollution financial responsibility, Outer continental shelf oil, Vessel certification.

In consideration of the foregoing, Chapter I, Subchapter M, of Title 33, Code of Federal Regulations, is amended as follows:

1. In the Table of Contents, by revising the heading for Subchapter M to read:

* * * * *

Subchapter M—Marine Pollution Financial Responsibility and Compensation

* * * * *

2. In 33 CFR, Subchapter M, by adding new Parts 130, 131 and 132 to read as follows:

PART 130—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION

Sec.

Authority: 33 U.S.C. 1321(p); E.O. 11735, as amended by sec. 1 of E.O. 12418 (48 FR 20891); 49 CFR 1.46.

(Approved by the Office of Management and Budget Under Control Number 2115-0528.)

§ 130.1 Scope.

(a) This part implements section 311(p)(1) of the Federal Water Pollution Control Act, as amended, and applies to all vessels using any port or place in the United States or the navigable waters of the United States except—

(1) Vessels which are 300 gross tons or less;

(2) Non-self-propelled barges which do not carry oil or hazardous substances as cargo or fuel; and

(3) Public vessels.

(b) This part sets forth the procedures for operators to demonstrate that they are financially able to meet their liability to the United States resulting from the discharge of oil or hazardous substances—

(1) Into or upon the navigable waters of the United States, adjoining shorelines or waters of the contiguous zone; or

(2) In connection with activities under the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974; or

(3) Which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery conservation and Management Act of 1976).

(c) Upon the satisfactory demonstration of financial responsibility, the Commandant, U.S. Coast Guard issues Certificates of Financial Responsibility (Water Pollution) which are to be carried aboard the vessels covered by such Certificates.

§ 130.2 Definitions.

As used in this part—

(a) "Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321).

(b) "Applicant" means any vessel "operator," as defined in paragraph (q) of this section, who has applied for a Certificate or for the renewal of a Certificate.

(c) "Application" means Application for Certificate of Financial Responsibility (Water Pollution), Form CG-5358-8.

(d) "Cargo" means goods or materials on board a vessel for purposes of transportation, in any quantity, whether in bulk or by lot, and regardless of whether transported under proprietary or nonproprietary shipping documents. Oil carried solely as operating fuel for equipment carrying barges, while on board such barges, is not within this definition.

(e) "Certificant" means any operator, as defined in paragraph (q) of this section, who has been issued a Certificate.

(f) "Certificate" means a Certificate of Financial Responsibility (Water Pollution), Form CG-5358-10 issued by the U.S. Coast Guard under this part.

(g) "Commandant" means the Commandant, U.S. Coast Guard.

(h) "Financial responsibility" means proof of financial ability to reimburse the United States under the requirements of section 311(p)(1) of the Act.

(i) "Fuel" means any oil or hazardous substance used or capable of being used to produce heat or power by burning.

(j) "Hazardous substances" means any substance or substances designated as such by the Administrator of the Environmental Protection Agency under section 311(b) of the Act. Generally, hazardous substances are those elements and compounds, other than oil, which, when discharged, may present an imminent and substantial danger to the public health or welfare including, but not limited to, fish, shellfish, wildlife, shorelines and beaches.

(k) "Inland oil barge" means a non-self-propelled vessel over 300 gross tons capable of carrying oil in bulk as cargo and which is certificated by the U.S. Coast Guard to operate only in the inland waters of the United States, while operating in such waters. Regardless of the actual routes traveled by a barge, it is not an "Inland oil barge" unless it possesses Coast Guard certification to that effect.

(l) "Inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway.

(m) "Insurer" means one or more acceptable insurance companies, corporations, or associations of underwriters, shipowners protection and indemnity associations, or other persons acceptable to the Coast Guard.

(n) "Master Certificate" means a Certificate issued to builders, repairers, scrappers, and sellers of vessels under § 130.11.

(o) "Navigable waters of the United States" means the waters of the United States, including the territorial sea.

(p) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(q) "Operator" or "Vessel operator" means any person, including, but not limited to, an owner, a demise charterer or other contractor who conducts or who is responsible for the operation of a vessel. Persons who are responsible for vessels in the capacity of a builder, repairer, scrapper, or seller are included in this definition of operator.

(r) "Owner" or Vessel "owner" means any person holding legal or equitable title to a vessel. In a case where a Certificate of Registry or equivalent document has been issued, the owner is the person or persons whose name or names appear thereon as owner: *Provided, however,* That where a Certificate of Registry has been issued in the name of the president or secretary of an incorporated company under 46 U.S.C. 15, such incorporated company is the owner.

(s) "Person" includes, but is not limited to, an individual, a government, a firm, a corporation, an association, a partnership, a joint-stock company, a business trust, or an unincorporated organization.

(t) "Public vessel" means a vessel, not engaged in commerce, the operator of which is the Government of the United States or a State or political subdivision thereof, or the government of a foreign nation.

(u) "Remove," "removing," or "removal" means—

(1) The removal of oil or hazardous substances from the water and shorelines;

(2) The taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife, and public or private property, shorelines and beaches), resulting from a discharge or substantial threat of a discharge of oil or a hazardous substance; and

(3) The restoration or replacement of natural resources damaged or destroyed as the result of a discharge of oil or a hazardous substance in violation of section 311(b) of the Act.

(v) "Underwriter" means an insurer, a surety company, a guarantor, or any other person, other than the operator, which undertakes to pay the liability of the operator.

(w) "United States" means any place under the jurisdiction of the United States, including, but not limited to the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Trust Territory of the Pacific Islands.

(x) "Vessel" means every description of watercraft or other artificial contrivance which is used, or capable of being used, as a means of transportation on water, and which is over 300 gross

tons. Drilling rigs are included within this definition, except when at a drilling site and in a drilling mode. Public vessels are not included in this definition.

§ 130.3 General.

(a) No vessel shall use any port or place in, or the navigable waters of, the United States, unless that vessel has a Certificate covering that vessel and its operator.

(b) The gross tonnage of a vessel is the tonnage indicated in the vessel's Certificate of Registry or, in the absence thereof, other marine documents acceptable to the Coast Guard.

(c) If a vessel has more than one gross tonnage, the higher tonnage applies unless the vessel operator states in writing that the vessel never operates in any United States waters under such higher tonnage.

§ 130.4 Where to apply and obtain forms.

(a) Any operator who wishes to be issued a Certificate (including a Master Certificate) shall file or cause to be filed with the Coast Guard an application, fees and evidence of financial responsibility at the following address:

Commandant (G–WFR/21), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593.

(b) Application procedures are set forth in the remaining paragraphs of this section and in §§ 130.5 and 130.6. Regulations concerning fees are set forth in § 130.13, and regulations concerning evidence of financial responsibility are set forth in § 130.8. Regulations concerning Master Certificates (i.e., special Certificates applicable only in connection with vessels held solely for building, repair, scrapping, or sale) are set forth in § 130.11.

(c) Application forms may be obtained from the address set forth in paragraph (a) of this section and from the 12 Coast Guard District Offices at New York, NY; Miami, FL; New Orleans, LA; San Francisco, CA; Seattle, WA; Cleveland, OH; St. Louis, MO; Juneau, AK; Long Beach, CA; Honolulu, HI; Boston, MA; or Portsmouth, VA.

(d) All requests for assistance, including telephone inquiries, in completing applications should be directed to the Commandant's staff in Washington, DC (202) 426–8806.

§ 130.5 Time to apply.

(a) A vessel operator who wishes to obtain a Certificate must file a completed application, fees, and evidence of financial responsibility at least 21 days before the date the Certificate is required.

(b) Applications are processed in the order in which they are filed.

§ 130.6 Applications, general instructions.

(a) All applications and supporting documents shall be in English. All monetary terms shall be in U.S. currency.

(b) The spaces on the application shall be filled in with the information requested or the phrase "Not applicable." Applicants for a Master Certificate should refer to § 130.11.

(c) The application shall—

(1) Be signed by an authorized official of the applicant, whose title shall be shown in the space provided on the application; and

(2) Be accompanied by a written statement providing authority to sign, where the signer is not disclosed as an individual (sole proprietor) applicant, a partner in a partnership applicant, or an authorized officer of a corporate applicant.

(d) If, before the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the applicant shall, within five days of becoming aware of the change, notify the Commandant (G–WFR), in writing, of the change.

§ 130.7 Renewal of Certificates.

(a) Written applications for renewal Certificates shall be made to the Commandant (G–WFR) at least 21 days, but not earlier than 90 days, before the expiration dates of existing Certificates.

(b) Each renewal application shall be accompanied by appropriate recertification fees, identify any changes since the original application was filed, and set forth the correct information in full.

§ 130.8 Financial responsibility, how established.

(a) *General.* In addition to filing an application, each applicant shall demonstrate the ability to pay the amount necessary to meet the removal cost liability under section 311 of the Act by establishing evidence of financial responsibility. The required amount of evidence of financial responsibility is separate from and in addition to the amount, if any, required of the applicant under Part 131 (Financial Responsibility for Oil Pollution-Alaska Pipeline) of this subchapter.

(b) *Methods.* An applicant shall establish evidence of financial responsibility by any one of, or by an acceptable combination of, the following methods:

(1) *Insurance.* Insurance may be established by filing with the Commandant (G–WFR) an insurance form CG–5358–9 (master insurance form CG–5358–9A when applying for a Master Certificate) executed by an insurer acceptable to the Coast Guard.

(2) *Surety Bond.* An applicant may file with the Commandant (G–WFR), a surety bond form CG–5358–9B, executed by a surety company acceptable to the Coast Guard. To be acceptable, surety companies must, at a minimum, be certified by the U.S. Department of the Treasury with respect to the issuance of Federal bonds in the penal sum of the bonds to be issued under this part.

(3) *Self-insurance.* An applicant may establish financial responsibility as a self-insurer by maintaining, in the United States, working capital and net worth, each in the amount of $150 per gross ton of the largest vessel to be self-insured or $250,000, whichever is greater. As used in this subparagraph, "working capital" means the amount of current assets located in the United States, less all current liabilities; and "net worth" means the amount of all assets located in the United States less all liabilities. Maintenance of the required working capital and net worth shall be demonstrated by submitting with the initial application the items specified in paragraph (b)(3)(i) of this section for the applicant's last fiscal year preceding the date of application. Thereafter, for each of the applicant's fiscal years the applicant shall submit the items specified in paragraphs (b)(3)(i) and (ii) of this section and shall be subject to the provisions of paragraphs (b)(3) (iii), (iv), (v), and (vi) of this section:

(i) *Initial and annual submissions.* An applicant/certificant shall submit an annual, current nonconsolidated balance sheet and an annual, current nonconsolidated statement of income and surplus, certified by an independent Certified Public Accountant. Those financial statements shall be accompanied by an additional statement from the applicant's/certificant's Treasurer (or equivalent official), certifying to both the amount of current assets and the amount of total assets included in the accompanying balance sheet, which are located in the United States and acceptable for purposes of this part, i.e., not pledged for purposes of Part 131 of this subchapter. If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by an additional statement prepared by the involved Certified

Public Accountant, certifying to the amount by which the applicant's/certificant's—

(A) Assets, located in the United States and acceptable under this part, exceed total (i.e., worldwide) liabilities; and

(B) Current assets, located in the United States and acceptable under this part, exceed its current liabilities. Each additional statement must specifically name the applicant/certificant, indicate that the amounts so certified relate only to the applicant/certificant, apart from any other entity, and identify the consolidated financial statement to which it applies.

(ii) *Semiannual submissions.* When the applicant's/certificant's self-insurance covers a vessel that carries oil or hazardous substances in bulk as cargo and its demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the applicant's/certificant's corporate Treasurer (or equivalent official for a nonocorporate entity) covering the first six months of the applicant's/certificant's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have, during the first six months, fallen below the required amounts.

(iii) *Additional submissions.* Additional financial information shall be submitted upon request of the Coast Guard. All applicants/certificants who choose self-insurance shall notify the Commandant (G-WFR) within five days of the date such persons know, or have reason to believe, theat the amounts of working capital or net worth have fallen below the amounts required.

(iv) *Time for submissions.* All required annual financial statements shall be received by the Coast Guard within three calendar months after the close of the applicant's/certificant's fiscal year, and all six month affidavits within one calendar month after close of the applicable six month period. Upon written request, the Commandant (G-WFR) grants a reasonable extension of the time limits for filing financial statements/affidavits; *Provided,* That the request sets forth sufficient reason to justify the requested extension and is received 15 days before the statements/affidavits are due. The Commandant does not consider a request for an extension of more than 45 days.

(v) *Failure to submit.* Failure to timely file any statement, data, or affidavit required by paragraph (b)(3) of this section shall cause the revocation of the Certificate.

(vi) *Waivers of submissions.* For good cause shown in writing by the applicant/certificant, the Commandant (G-WFR) waives the working capital requirement if the applicant/certificant is—

(A) An economically regulated public utility;

(B) A municipal or higher level governmental entity; or

(C) An entity operating solely as a charitable, nonprofitmaking organization.

The Coast Guard considers good cause to have been shown when the applicant/certificant demonstrates in writing that the grant of such waiver would benefit at least a local public interest without resulting in undue risk to the environment and without resulting in undue risk that the applicant's/certificant's removal cost liability could not be met. In addition, for good cause shown in writing by the applicant/certificant, the Commandant (G-WFR) waives the working capital requirement where it can be demonstrated that working capital is not a significant factor in the applicant's/certificant's financial condition. An applicant's/certificant's net worth in relation to the amount of its exposure under the Act, and a history of stable operations are major elements in such demonstration.

(4) *Guaranty.* An applicant/certificant may file with the Commandant (G-WFR), a guaranty form CG-5358-9C (master guaranty form CG-5358-9D when applying for a Master Certificate) executed by a guarantor acceptable to the Coast Guard. A guarantor shall comply with all of the self-insurance provisions of paragraph (b)(3) of this section. In addition, the amounts of working capital and net worth required to be demonstrated by an acceptable guarantor shall be no less than the aggregate amounts underwritten as a guarantor and self-insurer under this part, and Part 131 of this subchapter.

(5) *Other methods.* An applicant may choose any other method specially justified and acceptable to the Coast Guard.

(c) *Forms—general.* Application form CG-5358-8, insurance form CG-5358-9, master insurance form CG-5358-9A, surety bond form CG-5358-9B, guaranty form CG-5358-9C, and master guaranty form CG-5358-9D, as appended to this part, are hereby incorporated into this part. If more than one insurer, guarantor, or surety joins in executing an insurance, guaranty, or surety bond form, such action constitutes joint and several liability for such joint underwriters. Each form submitted to the Coast Guard under this part shall set forth in full the correct legal name of vessel operator to whom Certificates are to be issued.

(d) *Direct action.* Forms CG-5358-9 through CG-5358-9D and any other undertaking accepted under this part, shall permit the commencement of an action in court for removal cost claims arising under the provisions of section 311 of the Act by the claimant (including a claimant by right of subrogation) directly against the underwriter. Such forms and other undertakings shall also provide that in the event such action is brought directly against the underwriter, such underwriter shall be entitled to invoke only those rights and defenses permitted by section 311(p)(3) of the Act.

(e) *Public access to data.* Financial data filed by applicants, certificants, and underwriters shall be public information to the extent required by the Freedom of Information Act and permitted by the Privacy Act.

§ 130.9 Individual Certificates.

(a) An individual Certificate for each vessel listed on a completed application is issued by the Coast Guard when acceptable evidence of financial responsibility has been provided and appropriate fees have been paid except, where Master Certificates are issued under § 130.11. Certificates are issued only to vessel operators and are effective for three years from the date of issue.

(b) The original Certificate shall be carried on the vessel named on the Certificate. However, a legible copy (certified as accurate by a notary public or other person authorized to take oaths) may be carried in lieu of the original Certificate if the vessel is an unmanned barge and does not have a facility which the vessel operator believes would offer suitable protection for the original Certificate. If a copy is carried aboard a barge, the original shall be retained at a location in the United States and shall by readily accessible for inspection by U.S. Government officials.

(c) Erasures or other alterations on a Certificate or copy are prohibited (even if made by Government authorities) and automatically void a Certificate or copy.

(d) If at any time after a Certificate has been issued a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificant shall notify the Commandant (G-WFR), in writing, within 10 days of becoming aware of the change.

(e) If for any reason, including a vessel's demise or transfer to a new operator, a certificant ceases to be the operator of a vessel, the certificant shall, within 10 days, complete the reverse side of the original Certificate for the involved vessel and return it to the

Commandant (G–WFR). Such Certificate and any copy thereof is automatically void (whether or not returned to the Coast Guard), and its use is prohibited. Where such voided Certificate cannot be returned because it has been lost or destroyed, the certificant shall, as soon as possible, submit the following written information to the Commandant (G–WFR):

(1) The number of the Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date the certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was sold or transferred.

(f) In the event of the temporary transfer of a vessel certificated under this part, where the certificant transferring the vessel continues to be responsible for liabilities to which such vessel could be subjected under section 311 of the Act, and continues to maintain on file adequate evidence of financial responsibility with respect to such vessel, the existing Certificate will remain in effect and the new operator shall not be required to obtain an additional Certificate.

§ 130.10 Operator's responsibility for identification.

(a) Except in the case of unmanned barges, operators who are not also the owners of certificated vessels shall carry on board such vessels the original or legible copy of the demise charter-party or any other written document which demonstrates that such operators are, in fact, the operators designated on the certificates.

(b) The documents required by paragraph (a) of this section shall be presented for examination to U.S. Government officials upon request.

§ 130.11 Master certificates.

(a) A contractor or other person who is responsible for vessels in the capacity of a builder, repairer, scrapper, or seller may choose to apply for a Master Certificate in lieu of applying for an individual Certificate for each vessel. A Master Certificate is designed to cover all of such applicant's vessels, provided each of such vessels is held by the applicant solely for purposes of construction, repair, scrapping or sale. A vessel which is being operated commercially in any business venture, including the business of building, repairing, scrapping, or selling other vessels (e.g., a slop barge used by a shipyard), is not eligible to be covered by a Master Certificate. Any vessel that requires a Certificate but is not eligible for a Master Certificate shall be covered by a separate Certificate under § 130.9.

(b) The application procedure for a Master certificate is the same as for other Certificates. Acceptable evidence of financial responsibility may be established by any of the methods in § 130.8(b), except insurance form CG–5358–9 and guaranty form CG–5358–9C. Applications shall be completed in full, except for Item 5. The applicant shall make the following statement in Item 5: "This is an application for a Master Certificate. The largest vessel to be covered by this application is ———— gross tons." The gross tonnage indicated by the applicant in such statement may not exceed the applicant's dollar amount of financial responsibility divided by $150.

(c) Each Master Certificate shall indicate—

(1) The name of the operator (the applicant builder, repairer, scrapper, or seller);

(2) The dates of issuance and termination, encompassing a period of not more than three years; and

(3) The gross tonnage of the largest vessel eligible for coverage by that Master Certificate. The gross tonnage indicated on a particular Master Certificate shall be determined by the amount of financial responsibility established by the applicant under the optional methods set forth in § 130.8(b) (a master insurance form, a surety bond, self-insurance, or a master guaranty form). Master Certificates will not name the vessels covered by such Certificates.

(d) Additional vessels (none of which exceed the tonnage indicated on the Master Certificate, all of which are eligible for coverage by a Master Certificate, and all of which are held solely for the purpose of construction, repair, scrapping or sale) shall be automatically covered by that Master Certificate. However, before acquiring a vessel (by any means, including conversion of an existing vessel) of a larger gross tonnage than the tonnage indicated on the existing Master Certificate, the certificant shall submit:

(1) Evidence of increased financial responsibility to cover the larger vessel.

(2) A new certification fee.

(3) Either a new application form or a letter amending the existing application form to reflect the new gross tonnage which is to be indicated on a new Master Certificate.

(e) A person to whom a Master Certificate has been issued shall submit to the Commandant (G–WFR), every six months beginning with the month in which the Master Certificate is issued, a report indicating the name, previous name, or other identifying information and gross tonnage of each vessel covered by the Master Certificate during the six-month reporting period.

(f) A copy of the Master Certificate shall be carried aboard each vessel covered by the Master Certificate. The original Certificate shall be retained at a U.S. location and be kept readily accessible for inspection by U.S. Government officials.

(g) Upon revocation or other invalidation of the Master Certificate, the original Certificate shall be returned within 10 days to the Commandant (G–WFR) and all copies shall be destroyed by the person in whose name the Certificate was issued. The use of an invalid Master Certificate or any copy thereof is prohibited.

§ 130.12 Certificates, denial or revocation.

(a) A Certificate is denied or revoked for any of the following reasons:

(1) Making any willfully false statement to the Coast Guard in connection with an application for an initial Certificate or a request for a renewal Certificate or the retention of an existing Certificate.

(2) Failure to establish or maintain acceptable evidence of financial responsibility.

(3) Failure to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to activities subject to this part.

(4) Failure to timely file the statements or affidavits required by § 130.9(b)(3) (i), (ii), or (iii).

(5) Cancellation or termination of any insurance form, surety bond, guaranty or other undertaking under this part unless acceptable substitute evidence of financial responsibility has been submitted.

(b) Denial or revocation of a Certificate is immediate and without prior notice where the applicant or certificant—

(1) Is no longer the responsible operator of the vessel in question;

(2) Fails to furnish acceptable evidence of financial responsibility in support of an application; or

(3) Permits the cancellation or termination of the insurance form, surety bond, guaranty or other undertaking upon which the continued validity of the Certificate was based. In any other case, before the denial or revocation of a Certificate, the Commandant (G–WFR) advises the applicant or certificant, in writing, of the intention to deny or revoke the Certificate, and states the reason therefor.

(c) If the reason for an intended revocation is failure to file the required financial statements or affidavits, the revocation is effective 10 days after the date of the notice of intention to revoke, unless the certificant shall, before revocation, demonstrate that the required statements were timely filed.

(d) If the intended denial or revocation is based upon one of the reasons in paragraphs (a) (1) or (3) of the section, the applicant or certificant may request, in writing, a hearing to show that the applicant or certificant is in compliance with this part, and, if the request is received within 30 days after the date of the notification of intention to deny or revoke, the Coast Guard schedules a hearing. Hearings are conducted in accordance with § 135.223 of this subchapter.

§ 130.13 Fees.

(a) This section establishes the application fee imposed by the Coast Guard for processing applications, and also establishes the certification fee imposed for the issuance or renewal of Certificates.

(b) No Certificate is issued unless the fees set forth in paragraphs (d) and (e) of this section have been paid.

(c) Fees shall be paid in United States currency, by check, draft or postal money order made payable to the U.S. Coast Guard.

(d) Each applicant who submits an application for the first time shall pay an initial, nonrefundable application fee of $75. Only one application fee is necessary where an applicant submits an application for individual Certificates and a separate application for a Master Certificate. Applications for additional Certificates, or to amend or renew existing Certificates, do not require new application fees. However, once an application is withdrawn or denied for any reason, and the same applicant, holding no valid Certificates, wishes to reapply for a Certificate (covering the same or new vessel), a new application and application fee of $75 shall be filed.

(e) In addition to a $75 application fee, applicants shall pay a $40 fee for each Certificate issued, whether an individual Certificate or Master Certificate. Applicants shall submit such certification fee for each vessel listed in, or later added to, an application for individual Certificates. The $40 certification fee is required to renew or to reissue a Certificate for any reason, including, but not limited to, a name change or a lost Certificate.

(f) Certification fees are refunded, upon receipt of a written request, if the application is withdrawn or denied before issuance of the Certificates. Overpayments of application and certification fees are refunded on request only if the refund is $20 or more. However, any overpayments not refunded are credited, for a period of two years from the date of receipt of the monies by the Coast Guard, for the applicant's possible future use under this part.

§ 130.14 Enforcement.

(a) Any vessel operator who fails to comply with this part is subject to a fine of not more than $10,000 for each failure.

(b) The Secretary of the Treasury may refuse to grant the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), to any vessel subject to section 311(p) of the Act which does not have a Certificate issued under this part.

(c) The Coast Guard denies entry to any port or place in the United States or the navigable waters of the United States and detains, at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to section 311(p) of the Act, which, upon request, does not produce a valid Certificate.

§ 130.15 Service of process.

(a) When executing the forms required by this part, each applicant and underwriter shall designate thereon a person in the United States as its agent for service of process for the purpose of section 311 of the Act of this part.

(b) Each designation shall be acknowledged in writing by the designee unless that party has already furnished the Coast Guard with a "master" concurrence showing it has agreed in advance to act as the United States agent for service of process for the applicant and underwriter in question.

(c) When the designated agent cannot be served because of death, disability, or unavailability, the Commandant becomes the agent for service of process.

(d) When serving the Commandant, the server shall also—

(1) Send to the applicant, certificant, or underwriter, by registered mail, at its last address on file with the Coast Guard, a copy of each document served upon the Commandant; and

(2) Attest to that mailing at the time service is made upon the Commandant.

BILLING CODE 4910-14-M

Appendix—Financial Responsibility Application and Supporting Forms

Aporoved OMB No. 2115-0528

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
CG-5358-8 (6-83)

APPLICATION FOR CERTIFICATE OF FINANCIAL RESPONSIBILITY (WATER POLLUTION)

GENERAL
(Part I of 4 Parts)

INSTRUCTIONS

Please type or print clearly and submit this application to the Chief, Financial Responsibility Division (G-WFR), Office of Marine Environment and Systems, U. S. Coast Guard Headquarters, 2100 - 2nd Street, S.W., Washington, DC 20593. The application is in four parts: Part I - General; Part II - Evidence of Financial Responsibility; Part III - Declaration; and Part IV - Concurrence of Agent. Applicants must answer all applicable questions. If a question does not apply, answer "not applicable." Incomplete applications will be returned. If additional space is required, supplemental sheets may be attached.

THIS SPACE FOR USE BY USCG ONLY

1. Legal name of applicant *(Name of legally responsible operator of all vessels listed in Part II).*

a. English equivalent of legal name if customarily written in language other than English.

b. Trade name, *(if any)*

2. Is this the first time the above named applicant is submitting application form CG-5358-8?

☐ YES ☐ NO

If "NO", complete item "a" below

a. What Control Number was assigned to the first application?

3. State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust or other organized group of persons *(whether incorporated or not)*, or as a receiver, trustee or other liquidating agent, and briefly describe current business activities and length of time engaged therein.

a. If a corporation, association, or other organization, please indicate.

Name of State or foreign country in which incorporated or organized.	Date of incorporation or organization

b. If a partnership, give name and address of each partner

4. Name and address of applicant's United States agent or other person authorized by applicant to accept legal service in the United States *(See PART IV) (U. S. applicants may appoint themselves as agent, eliminating the need to complete Part IV.)*

EVIDENCE OF FINANCIAL RESPONSIBILITY (PART II OF 4 PARTS)

5. Please list each vessel over 300 gross tons *(except non-self-propelled barges which never carry oil or hazardous substances as cargo or as fuel to operate equipment)* which uses any port or place in the United States or the navigable waters of the United States. Vessels for which the operator named in item I is not responsible should not be listed in this form. In column (f) indicate the number "1" if the operator is also the registered owner. Indicate "2" in column (f) if the operator is not the registered owner.

NAME OF VESSEL (a)	TYPE OF VESSEL *(See note below)* (b)	COUNTRY OF REGISTRY (c)	REGISTRATION NUMBER (d)	GROSS TONS (e)	"1" OR "2" (f)

NOTE: Please designate the type of vessel by using a number from one of the following categories:

CARGO VESSELS, SELF-PROPELLED

Breakbulk freighter 10
Containership* 11
Roll on-roll off 12
Barge carrier *(e.g., lash, seabee)* 13
Combination breakbulk containership * 14
Combination roll on-roll off containership * 15
Combination barge carrier containership * 16
Tanker 17
Dry bulk carrier 18
All other self-propelled cargo vessels 19

PASSENGER VESSELS

Passenger vessel ** 30
Combination passenger/cargo vessel ** 31
Ferry ** 32

RECREATIONAL VESSELS

All types of pleasure craft 40

UTILITY CRAFT

Tank barge 50
Tug and towboat 51
Barge and scow 52
Drilling rig 53
Fishing vessel 54
Factory vessel 55
Research vessel 56
All other utility craft*** 57

MISCELLANEOUS

Vessels not otherwise specified 60

* Containership categories should be assigned only to vessels having fixed container cells or regularly carrying multi-tier container deckloads.
** Passenger categories should be assigned only to vessels carrying more than 12 passengers for hire.
*** Includes floating cranes, dredges, docks, etc.

5. (g) If applicant indicated "2" for any vessel listed above-in column 5(f), please indicate:

NAME OF VESSEL	OWNER	OWNER'S MAILING ADDRESS

PART II (CONT'D)

6. Items 7 through 10 are optional methods of establishing financial responsibility. Check the appropriate box(es) below and answer only the item(s) which are applicable to this application.

☐ Insurance *(Answer Item 7)*	☐ Surety Bond *(Answer Item 8)*	☐ Guaranty *(Answer Item 9)*	☐ Self-insurer *(Answer Item 10)*

7. Name and address of applicant's insurer *(Insurance Form CG-5358-9 must be filed before a Certificate will be issued. If applicant is applying for a Master Certificate, the correct Insurance Form is CG-5358-9A.)*

8. Total amount of surety bond. *(Surety Bond CG-5358-9B must be filed before a Certificate will be issued).*

$_____

a. Name and address of applicant's surety

9. Name and address of applicant's guarantor. *(Guaranty Form CG-5358-9C and all required financial data must be filed before a Certificate will be issued. If applicant is applying for a Master Certificate, the correct guaranty Form is CG-5358-9D.)*

a. Guarantor's fiscal year

_____ (Month) _____ (Day) _____ (Month) _____ (Day)

10. If applicant intends to qualify as a self-insurer, attach all required financial data and indicate fiscal year

_____ (Month) _____ (Day) _____ (Month) _____ (Day)

DECLARATION (PART III OF 4 PARTS)

11. Applicant's mailing address *(Street, Number, Post Office Box, City, State or Country and ZIP Code in the United States)*	13. Type or print in this space the name and title of the official who is signing this application
	14. Address of principal office in United States *(if any)*
12. Telex number and answer back	15. Telephone Number *(Area Code and Number)*

I DECLARE that I have examined this application, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Furthermore, it is agreed that the applicant named in item 1 of Part I above is the responsible operator of all vessels now listed in or later added to this application. I also agree that in the event the agent designated in item 4 of Part I above, or his replacement as may be appointed later with the approval of the U. S. Coast Guard, cannot be served due to death, disability, or unavailability, the Commandant, U. S. Coast Guard, becomes the agent for service of process. I have signed this application in my above-indicated capacity as an authorized official of the applicant, or, if acting under a power of attorney, under the power vested in me by the applicant as evidenced by the attached documents.

IMPORTANT

DATE	SIGNATURE OF ABOVE OFFICIAL

NOTE: Please be sure that Parts I, II, and III have been completed in full, and that Part III has been dated and signed. Then proceed to Part IV, attached.

NO CERTIFICATE WILL BE ISSUED UNLESS A COMPLETED APPLICATION FORM HAS BEEN RECEIVED, PROCESSED AND APPROVED - 33 CFR 130.

COMMENTS

The statements hereinabove set forth are made subject to penalties prescribed by law for any person who knowingly and willfully makes false statements on any matter within the jurisdiction of an agency of the United States (18 USC 1001)

CONCURRENCE OF AGENT (PART IV OF 4 PARTS)

Part IV-A must be completed by the person designated in item 4 of Part I to serve as applicant's United States agent for service of legal process. Part IV-B must be completed by the applicant. After Parts IV-A and IV-B are completed, Part IV should be submitted to the U. S. Coast Guard by the applicant or by the agent, either separately or together with Parts I, II and III. *(Part IV need not be completed if the agent designated in item 4 of Part I already has submitted to the U. S. Coast Guard an acceptable blanket Concurrence of Agent, agreeing to serve on behalf of certain applicants who designate such agent. Part IV also need not be completed if the applicant is a United States entity and has appointed itself as agent in item 4 of Part I).*

PART IV - A

It is hereby agreed that _____,

shall serve as the herein named applicant's United States agent for service of legal process for purposes of Part 130, Title 33, CFR. This designation and agreement shall cease immediately in the event the applicant designates a new agent acceptable and agreed to by the U. S. Coast Guard.

Date: _____

Signature of person signing on behalf of agent: _____

Title: _____

Business Address: _____

PART IV - B *(TO BE COMPLETED BY APPLICANT)*

Name of applicant (From item 1): _____

Signature of person signing on behalf of applicant: _____

(Person signing here should also sign in appropriate place on Part III)

Date: _____

Type or Print Name and Title: _____

BILLING CODE 4910-14-C

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG-5358-9 (6-83)

Insurance Co. Form No. ————

INSURANCE FORM CG-5358-9 FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER SUBSECTION 311(p) OF THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

(Name of Insurer) ———— (hereinafter "Insurer") hereby certifies that for purposes of complying with the provisions of subsection 311(p) of the Federal Water Pollution Control Act, as amended (hereinafter "Act"), each of the vessel operators specified in the schedules below is insured by it, in respect to each of the vessels respectively specified therein, against oil or hazardous substances removal cost liability to the United States to which such vessel operators could be subjected under section 311 of the Act. The amount of liability to which a vessel operator may be subjected under section 311 of the Act and which is insured herein is:

1. In the case of a vessel which is an "inland oil barge" (as defined in section 311 of the Act) at the time of an incident which causes the United States Government to incur removal costs, $125 per gross ton or $125,000, whichever is greater; or

2. In the case of a vessel which is not an "inland oil barge" (as defined in section 311 of the Act) at the time of an incident which causes the United States Government to incur removal costs, $150 per gross ton (or for a vessel carrying oil or hazardous substances as cargo, $250,000, whichever is greater).

The foregoing amount of insurance coverage provided by the Insurer on behalf of the United States Government in respect to any vessel specified herein is not conditioned or dependent in any way upon any agreement or understanding between an assured operator and the Insurer that any such vessel is or is not an "inland oil barge", will or will not carry oil or certain hazardous substances, or will or will not operate in certain waters.

(Name of Agent ———— with offices located at ———— is hereby designated as the Insurer's agent for service of process for the purposes of section 311 of the Act and implementing rules at Part 130 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to his death, disability, or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

The Insurer consents to be sued directly in respect of any claim against any of the operators arising under subsections 311 (f) and (g) of the Act; provided, however, that in any such direct action its liability per vessel in any one incident shall not exceed, in the case of an inland oil barge, $125 per gross ton of the barge or $125,000 whichever is greater. In the case of any other vessel, its liability per vessel in any one incident shall not exceed $150 per gross ton of the vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000, whichever is greater). The Insurer shall be entitled to invoke only the rights and defenses permitted by section 311 of the Act to the vessel operator and the rights and defenses permitted by section 311 of the Act to the Insurer if an action were brought against the Insurer by the operator.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the termination date of this undertaking, and shall be applicable only to incidents giving rise to claims under subsections 311 (f) and (g) of the Act in respect to any of the below-listed vessels.

The effective date of this undertaking shall, for each vessel listed below, be the date the vessel is named in or added to the schedules below. For each vessel, the termination date of this undertaking shall be 30 days after the date of receipt of written notice by the U.S. Coast Guard (USCG) that the Insurer has elected to terminate the insurance evidenced by this undertaking, and has so notified the vessel operator.

However, for any vessel which is carrying oil or hazardous substances in bulk as cargo that has been loaded before the scheduled date of termination, the termination shall not take effect until (1) completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the USCG of written notice that the Insurer has elected to terminate the insurance evidenced by this undertaking, whichever date is earlier.

Termination of this undertaking as to any vessel shall not affect the liability of the Insurer in connection with an incident occurring prior to the date such termination becomes effective.

If during the currency of this undertaking a below-named operator requests that an additional vessel be made subject to this undertaking and if the Insurer should accede to the request and should so notify the USCG, then the vessel shall be included in the schedules below.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers. The definitions in 33 CFR 130.2 apply to this undertaking.

Effective Date of Coverage for Vessels Originally Named on This Undertaking: Day/month/year .

(Name of Insurer) ————
(Mailing Address) ————

(Signature of Official Signing on Behalf of Insurer) ————
(Typed Name and Title of Signer) ————

Insurance Form CG-5358-9 (6/83) No. ————

SCHEDULE OF VESSELS AND ASSURED OPERATORS

Vessel	Gross tons	Assured operator

Insurance Form CG-5358-9 (6/83) No. ————

SCHEDULE OF VESSELS AND ASSURED OPERATORS ADDED TO ABOVE SCHEDULE

Vessel	Gross tons	Assured operator	Date added

Insurance Form CG-5358-9 (6/83) No. ————

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG-5358-9A (6/83)

Master Insurance Form No. ————

MASTER INSURANCE FORM CG-5358-9A FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY FOR BUILDERS, REPAIRERS, SCRAPPERS, OR SELLERS OF VESSELS UNDER SUBSECTION 311 (p) OF THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

(Name of Insurer) ———— (hereinafter "Insurer") hereby certifies that (Name of Assured) ———— (hereinafter the "Assured") is insured by it against oil or hazardous substances removal cost liability to the United States for purposes of complying with the provisions of subsection 311(p) of the Federal Water Pollution Control Act, as amended, (hereinafter "Act"). This undertaking shall be applicable in relation to vessels which the Assured may from time to time hold for purposes of construction, repair, scrapping, or sale. The maximum amount of insurance evidenced by this undertaking is $150 per gross ton of any such vessel or $250,000, whichever is greater, not to exceed $———— (This amount must not be less than $250,000) per vessel in anyone incident. The foregoing amount of insurance coverage provided by the Insurer on behalf of the United States Government in respect to any of the above-mentioned vessels is not conditioned or dependent in any way upon any agreement or understanding between the Assured and the Insurer that any of the vessels is or is not an "inland oil barge" (as defined in section 311 of the Act), will or will not carry oil or certain hazardous substances, or will or will not operate in certain waters.

(Name of Agent) ———— with offices at ————, is hereby designated as the Insurer's agent for service of process for the purposes of section 311 of the Act and implementing rules at Part 130 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to his death, disability, or unavailability, the Commandant, U.S. Coast Guard becomes the agent for service of process.

The Insurer consents to be sued directly in respect of any claim against the Assured arising under subsections 311 (f) or (g) of the Act; *provided, however,* that in any such direct action (1) its liability per vessel in any one incident shall not exceed the amount stipulated in the first paragraph of this undertaking and (2) it shall be entitled to invoke only the rights and defenses permitted by section 311 of the Act to the Assured and the rights and defenses permitted by section 311 of the Act to the Insurer if an action were brought against the Insurer by the Assured.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents giving rise to claims under subsection 311 (f) and (g) of the Act in respect to any of the above-mentioned vessels, occurring on or after the below-specified effective date of this undertaking and before the termination date of this undertaking. The termination date shall be the date 30 days after the date of receipt by the U.S. Coast Guard (USCG) of written notice that the Insurer has elected to terminate the insurance evidenced by this undertaking and has so notified the Assured.

However, for any of the above-mentioned vessels which are carrying oil or hazardous substances in bulk as cargo that has been loaded before the scheduled date of termination, the termination shall not take effect (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the USCG of written notice the Insurer has elected to terminate the insurance evidenced by this undertaking and has so notified the Assured, whichever date is earlier.

Termination of this undertaking shall not affect the liability of the Insurer in connection with an incident occurring before the date termination becomes effective.

If more than one insurer joins in executing this undertaking, that action constitutes joint and several liability on the part of the insurers. The definitions in 33 CFR 130 apply to this undertaking.

Effective Date: ———

(Name of Insurer) ———

(Mailing Address) ———

By: ———

(Signature of Official Signing on Behalf of Insurer) ———

(Typed Name and Title of Signer) ———

Master Insurance Form CG–5358–9A (6/83)
No. ———

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG–5358–9B (6/83)

Surety Co. Bond No. ———

OIL AND HAZARDOUS SUBSTANCES DISCHARGE SURETY BOND FORM CG–5358–9B FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER SUBSECTION 311 (p) OF THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

KNOW ALL MEN BY THESE PRESENTS, that We (Name of Vessel Operator) ——— of (City) ———, (State and Country) ———, as Principal (hereinafter called Principal), and (Name of Surety) ———, a company created and existing under the laws of (State and Country) ———, and authorized to do business in the United States, as Surety (hereinafter called Surety), are held and firmly bound unto the United States of America for oil or hazardous substances removal cost liability under section 311 of the Federal Water Pollution Control Act, as amended, (hereinafter "Act") in the penal sum of $——— (Penal Sum May Not Be Less Than $250,000) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. The foregoing penal sum is not conditioned or dependent in any way upon any agreement or understanding between the Principal and Surety that any vessel(s) is or is not an "inland oil barge", will or will not carry oil or certain hazardous substances, or will or will not operate in certain waters.

WHEREAS, the Principal intends to become or is a holder of a Certificate of Financial Responsibility (Water Pollution) under the provisions of Part 130 of Title 33, Code of Federal Regulations, and has elected to file with the U.S. Coast Guard (USCG) such a bond as will insure financial responsibility to meet any liability for removal costs incurred under section 311 of the Act; and

WHEREAS, this bond is written to ensure compliance by the Principal with the requirements of subsection 311(p) of the Act, and shall inure to the benefit of claimants under subsections 311 (f) and (g) of the Act;

NOW, THEREFORE, the condition of this obligation is that if the Principal shall pay or cause to be paid to claimants any sum or sums for which the Principal may be held legally liable under subsections 311 (f) or (g) of the Act, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond. In no event shall the Surety's obligation hereunder exceed the amount of the penalty, provided that the Surety furnishes written notice to the USCG forthwith of all suits filed, judgments rendered, and payments made by the Surety under this bond.

Any claim for which the Principal may be liable under subsections 311 (f) or (g) of the Act may be brought against the Surety; *Provided, however,* that in the event of a direct claim the Surety shall be entitled to invoke only (1) the rights and defenses permitted by section 311 of the Act to the Principal (vessel operator) and (2) the rights and defenses permitted by section 311 of the Act to the Surety if an action were brought against the Surety by the Principal.

This bond is effective the ——— day of ———, 19——, 12:01 a.m., standard time at the address of the Surety as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other party with a copy (plainly indicating that the original notice was sent by certified mail) to the USCG at its office in Washington, D.C. The termination becomes effective thirty (30) days after actual receipt by the USCG or written notice; *provided, however,* that with respect to any of the Principal's vessels carrying oil or hazardous substances in bulk as cargo that has been loaded before the time the termination would otherwise have become effective, the termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the USCG of written notice of termination of the bond by the above-named Principal or the Surety under the conditions set forth above, whichever date is earlier. The Surety shall not be liable hereunder in connection with an incident occurring after the termination of this bond as herein provided, but termination shall not affect the liability of the Surety in connection with an incident occurring before the date the termination becomes effective.

The Surety designates (Name of Agent) ——— with offices at ———, as the Surety's agent for service of process for the purposes of section 311 of the Act and implementing rules at Part 130 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to his death, disability, or unavailability; the Commandant, U.S. Coast Guard, becomes the agent for service of process.

If more than one surety company joins in executing this bond, that action constitutes joint and several liability on the part of the sureties. The definitions in 33 CFR 130.2 apply to this bond.

In witness whereof, the above-named Principal and Surety have executed this instrument on the ——— day of ———, 19——.

(Please type name of signer under each signature. In the case of partnership, each partner must sign.)

Principal

Individual Principal or Partner———
(Business Address)———

Individual Principal or Partner———
(Business Address)———

Individual Principal or Partner———
(Business Address)———

Corporate Principal———
Business Address ———

By ———
Title ———

(Affix Corporate Seal)

CG–5358–9B (6/83)
Surety Co. Bond No. ———

Surety

Corporate Surety———
Business address———

By ———
Title ———

(Affix Corporate Seal)

CG–5358–9B (6/83)
Surety Co. Bond No. ———

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG–5358–9C (6/83)

Guaranty No. ———

GUARANTY FORM CG–5358–9C IN RESPECT OF LIABILITY FOR DISCHARGE OF OIL AND HAZARDOUS SUBSTANCES

1. WHEREAS (Name of Vessel Operator) ——— (hereinafter the "Operator") is the Operator of the Vessel(s) specified in the annexed schedules (hereinafter "Vessel" or "Vessels"), and whereas the Operator

desires to establish its financial responsibility in accordance with subsection 311(p) of the Federal Water Pollution Control Act, as amended, (hereinafter the "Act"). The undersigned Guarantor hereby guarantees, subject to the provisions of clause 4 hereof, to discharge the Operator's legal liability to the United States in respect to a claim for oil or hazardous substances removal costs under subsections 311 (f) and (g) of the Act, in the event that such legal liability has not been discharged by the Operator within 21 days after the claimant has obtained a final judgment (after appeal, if any) against the Operator from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Operator, with the approval of the Guarantor. Upon payment of the agreed sum, the Operator is to be fully, irrevocably and unconditionally discharged from all further liability to the claimant with respect to the claim. The Operator's legal liability under section 311 of the Act, which is covered by this Guaranty, is:

a. In the case of a Vessel which is an "inland oil barge" (as defined in section 311 of the Act) at the time of an incident which causes the United States Government to incur removal costs, $125 per gross ton or $125,000, whichever is greater; or

b. In the case of a Vessel which is not an "inland oil barge" (as defined in section 311 of the Act) at the time of an incident which causes the United States Government to incur removal costs, $150 per gross ton (or for a Vessel carrying oil or hazardous substances as cargo, $250,000, whichever is greater).

The foregoing amount of coverage provided by the Guarantor on behalf of the United States Government in respect to any of the Vessels is not conditioned or dependent in any way upon any agreement or understanding between the Operator and the Guarantor that any of the Vessels is or is not an "inland oil barge," will or will not carry oil or certain hazardous substances, or will or will not operate in certain waters.

2. The Guarantor's liability per Vessel in any one incident shall not exceed, in the case of an inland oil barge, $125 per gross ton of such barge or $125,000, whichever is greater, and in the case of any other Vessel, $150 per gross ton of such Vessel (or, for a Vessel carrying oil or hazardous substances as cargo, $250,000, whichever is greater), provided that the Guarantor furnishes written notice to the U.S. Coast Guard (USCG) forthwith of all suits filed, judgments rendered, and payments made by the Guarantor under this Guaranty.

3. The Guarantor's liability under this Guaranty shall attach only in relation to incidents giving rise under subsections 311 (f) and (g) of the Act to causes of action against the Operator in respect of any of the Vessels for removal of oil or hazardous substances, within the meaning of section 311 of the Act, occurring on or after the effective date of this Guaranty, which, as to each of the Vessels, shall be the date the Vessel is named in Schedule A or added to Schedule B below, and before the termination date of this Guaranty, which, as to each of the Vessels, shall be the date 30 days after the date of receipt by the USCG of written notice that the Guarantor has elected to terminate this Guaranty, with respect to any of the Vessels, and has so notified the Operator; *provided, however,* that with respect to any Vessel carrying oil or hazardous substances in bulk as cargo that has been loaded before the scheduled date of termination, the termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the USCG of written notice of termination, whichever date is earlier. Termination of this Guaranty as to any of the Vessels shall not affect the liability of the Guarantor in connection with an incident occurring before the date termination becomes effective.

4. Any claim against the Operator arising under subsections 311 (f) or (g) of the Act may be brought directly against the Guarantor; *provided, however,* that in the event of a direct claim the Guarantor shall be entitled to invoke only (1) the rights and defenses permitted by section 311 of the Act to the vessel operator and (2) the rights and defenses permitted by section 311 of the Act to the Guarantor if the action were brought against the Guarantor by the operator.

5. If, during the currency of this Guaranty, the Operator requests that a vessel operated by the Operator, and not specified in the annexed Schedules A and B, should become subject to this Guaranty, and if the Guarantor accedes to the request and so notifies the USCG in writing, then the vessel becomes one of the Vessels included in Schedule B and subject to this Guaranty.

6. The Guarantor hereby designates (Name of Agent) _____ with offices at _____, as the Guarantor's agent in the United States for service of process for purposes of section 311 of the Act and implementing rules at Part 130 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to his death, disability or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

7. If more than one guarantor joins in executing this Guaranty, that action constitutes joint and several liability on the part of the guarantors.

8. The definitions in 33 CFR 130 apply to this Guaranty.

Effective Date: (Month/Day/Year and Place of Execution)_____.

(Type Name of Guarantor) _____
(Type Address of Guarantor) _____

By: (Signature)_____
(Type Name and Title of Person Signing Above) _____

CG–5358–9C (6/83) Guaranty No. _____

SCHEDULE A—VESSELS INITIALLY LISTED

Vessels	Gross tons	Operator

CG–5358–9C (6/83) Guaranty No. _____

SCHEDULE B—VESSELS ADDED IN ACCORDANCE WITH CLAUSE 5

Vessels	Gross tons	Operator	Date added

CG–5358–9C (6/83) Guaranty No. _____

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG–5358–9D (6/83) Master Guaranty No._____

MASTER GUARANTY FORM CG–5358–9D IN RESPECT OF LIABILITY FOR DISCHARGE OF OIL AND HAZARDOUS SUBSTANCES (BUILDERS, REPAIRERS, SCRAPPERS, OR SELLERS OF VESSELS)

1. WHEREAS (Name of Vessel Operator) _____ (hereinafter the "Operator") is, or from time to time may become, the Operator of a vessel or vessels held for purposes of construction, repair, scrapping, or sale (hereinafter "Vessel" or "Vessels"), and whereas the Operator desires to establish its financial responsibility in accordance with subsection 311(p) of the Federal Water Pollution Control Act, as amended, (hereinafter the "Act"), the undersigned Guarantor hereby guarantees, subject to the provisions of clause 4 hereof, to discharge the Operator's legal liability to the United States in respect to a claim for oil or hazardous substances removal costs under subsections 311 (f) and (g) of the Act, in the event that such legal liability has not been discharged by the Operator within 21 days after the claimant has obtained a final judgment (after appeal, if any) against the Operator from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Operator, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Operator is to be fully, irrevocably and unconditionally discharged from all further liability to the claimant with respect to the claim. The amount of coverage provided by this Guaranty on behalf of the United States is the amount of the Operator's legal liability under section 311 of the Act. This amount is not conditioned or dependent in any way upon any agreement or understanding between the Operator and the Guarantor that any of the Vessels is or is not an "inland oil barge" (as defined in section 311 of the Act), will or will not carry oil or certain hazardous substances, or will or will not operate in certain waters.

2. The Guarantor's maximum liability per Vessel in any one incident is $150 per gross ton of the Vessel or $250,000, whichever is greater, but shall in no event exceed _____, (This amount must not be less than $250,000) provided that the Guarantor furnishes written notice to the U.S. Coast Guard (USCG) forthwith of all suits filed, judgments rendered, and payments made by the Guarantor under this Guaranty.

3. The Guarantor's liability under this Guaranty shall attach only in relation to incidents giving rise under subsections 311 (f) and (g) of the Act to causes of action against

the Operator in respect of any of the Vessels for removal of oil or hazardous substances, within the meaning of section 311 of the Act, occurring on or after the effective date of this Guaranty and before the termination date of this Guaranty, which shall be the date 30 days after the date of receipt by the USCG of written notice the Guarantor has elected to terminate this Guaranty and has so notified the Operator; *provided, however,* that with respect to any Vessel which is carrying oil or hazardous substances in bulk as cargo that has been loaded before to the scheduled date of termination, the termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the USCG of written notice of termination, whichever date is earlier. Termination of this Guaranty as to the Vessels shall not affect the liability of the Guarantor in connection with an incident occurring before the date termination becomes effective.

4. Any claim against the Operator arising under subsection 311 (f) or (g) of the Act may be brought directly against the Guarantor; *provided, however,* that in the event of a direct claim the Guarantor shall be entitled to invoke only (1) the rights and defenses permitted by section 311 of the Act to the Vessel Operator and (2) the rights and defenses permitted by section 311 of the Act to the Guarantor if the action were brought against the Guarantor by the Operator.

5. The Guarantor hereby designates (Names of Agent) ————, with offices at ————, as the Guarantor's agent in the United States for service of process for purposes of section 311 of the Act and implementing rules at Part 130 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to his death, disability, or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

6. If more than one guarantor joins in executing this Guaranty, that action constitutes joint and several liability on the part of the guarantors.

7. The definitions in 33 CFR 130 apply to this Guaranty.

Effective Date: (Month/Day/Year and Place of Execution)————.

(Type Name of Guarantor) ————
(Type Address of Guarantor) ————
(Signature) ————
(Type Name and Title of Person Signing Above) ————

CG–5358–9D (6/83) Guaranty No. ————

PART 131—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—ALASKA PIPELINE

Sec.

Authority: 43 U.S.C. 1653(c); 33 U.S.C. 1321(p); E.O. 11735, as amended by sec. 4 of E.O. 12418 (48 FR 20892); 49 CFR 1.46.

(Approved by the Office of Management and Budget under Control Number 2115–0536.)

§ 131.1 Scope.

(a) This part implements section 204(c) of the Trans-Alaska Pipeline Authorization Act, and applies to all operators of vessels carrying oil transported through the trans-Alaska pipeline, engaged in any segment of the transportation of that oil between the terminal facilities of the trans-Alaska pipeline and the port under the jurisdiction of the United States where that oil is first brought ashore.

(b) Information obtained under this part is used to determine the financial responsibility of vessel operators.

§ 131.2 Definitions.

As used in this part:

(a) "Act" means Title II of Pub. L. 93–153, the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653).

(b) "Applicant" means any vessel "operator," as defined in paragraph (i) of this section, who has applied for a Certificate.

(c) "Application" means Application for Certificate of Financial Responsibility (Alaska Pipeline), Form CG–5358–3.

(d) "Certificant" means any operator, as defined in paragraph (i) of this section, who has been issued a Certificate.

(e) "Certificate" means a Certificate of Financial Responsibility (Alaska Pipeline), Form CG–5358–6 issued by the U.S. Coast Guard under this part.

(f) "Commandant" means the Commandant, U.S. Coast Guard.

(g) "Insurer" means one or more acceptable insurance companies, corporations or associations of underwriters, shipowners' protection and indemnity associations, or other persons acceptable to the Coast Guard.

(h) "Oil" means only crude oil which has been transported through the trans-Alaska pipeline.

(i) "Operator" or "vessel operation" means any person, including, but not limited to, an owner or a demise charterer, who conducts or who is responsible for the operator of a vessel.

(j) "Owner" or "vessel owner" means any person holding legal or equitable title to a vessel; *Provided, however,* That a person holding legal or equitable title to a vessel solely as security is not an owner. In a case where a Certificate of Registry has been issued, the owner is the person or persons whose name or names appear on the vessel's Certificate of Registry; *Provided, however,* That where a Certificate of Registry has been issued in the name of the president or secretary of an incorporated company under 46 U.S.C. 15, such incorporated company is the owner.

(k) "Person" includes, but is not limited to, an individual, a government, a firm, a corporation, an association, a partnership, a joint-stock company, a business trust, or an unincorporated organization.

(l) "Public vessel" means a vessel, not engaged in commerce, the operator of which is the Government of the United States or the government of a foreign nation.

(m) "Underwriter" means an insurer, a surety company, a guarantor, or any other person, other than the operator, which undertakes to pay the liability of the operator.

(n) "United States" means any place under the jurisdiction of the United States, including, but not limited to, the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Trust Territory of the Pacific Islands.

(o) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

§ 131.3 General.

(a) No vessel, except a public vessel, shall load oil at a terminal facility of the trans-Alaska pipeline, unless that vessel has a Certificate covering it and its operator.

(b) No vessel, except a public vessel, shall load, from any source, including, but not limited to, another vessel or a deepwater port as defined in the Deepwater Port Act of 1974, 33 U.S.C. 1502, oil, that having been once loaded aboard a vessel at a terminal facility of the trans-Alaska pipeline, has not, at the time of such loading, yet been brought ashore at a port under the jurisdiction of the United States, unless the vessel to be loaded has a Certificate covering it and its operator.

(c) No vessel, except a public vessel, shall transfer to any other vessel, whether for storage, carriage, or any other purpose, oil, that having been once loaded aboard a vessel at a terminal facility of the trans-Alaska pipeline, has not, at the time of such transfer, yet been brought ashore at a port under the jurisdiction of the United States, unless the vessel to which the oil is to be

transferred has a Certificate covering it and its operator.

(d) No vessel, except a public vessel, shall have on board oil, that, having been once loaded aboard a vessel at a terminal facility of the trans-Alaska pipeline, has not yet been brought ashore at a port under the jurisdiction of the United States, unless that vessel has a Certificate covering it and its operator.

§ 131.4 Certificates, how obtained.

(a) Any operator who wishes to be issued a Certificate shall file, or cause to be filed, with the Coast Guard an application, fees, and evidence of financial responsibility, at the following address:

Commandant (G-WFR/21), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593.

(b) Application forms may be obtained from the address set forth in paragraph (a) of this section, and from the Coast Guard District Offices at New York, NY, Miami, FL; New Orleans, LA; San Francisco, CA; Seattle, WA; Cleveland, OH; St. Louis, MO; Juneau, AK; Long Beach, CA; Honolulu, HA; Boston, MA; or Portsmouth, VA.

(c) Each operator shall file a completed application, fees, and evidence of financial responsibility, at least 45 days before the date upon which the vessel to be covered by the Certificate for which application is made is to load oil. Applications are processed in the order in which they are filed.

(d) All spaces on the application shall be filled in before filing. Spaces must be filled in with the information requested, the phrase "Not Applicable," or the word "None". Each application shall contain—

(1) Complete name and mailing address of applicant;

(2) Applicant's form of organization;

(3) Date and State of applicant's incorporation or organization;

(4) Names and addresses of each partner, if applicable;

(5) Name and address of applicant's U.S. agent for service of process;

(6) Identifying data for all vesels to be covered by the Certificates for which application is made; and

(7) Identification of the evidence of financial responsibility upon which the Certificates being applied for are based.

(e) All applications and supporting documents shall be in English. All monetary term shall be in United States currency.

(f) Each application shall—

(1) Be signed by the applicant or an autorized official of the applicant, whose title shall be shown on the application; and

(2) Be accompanied by a written statement proving authority to sign, where the signer is not disclosed as an individual applicant, a partner in a partnership applicant, or an officer of a corporate applicant.

(g) Written application for renewal Certificates shall be made to the Commandant (G-WFR), at least 45 days, but not earlier than 60 days, before the expiration date of existing Certificates. Each renewal application shall be accompanied by appropriate recertification fees, identify any changes since the original application, was filed, and set forth the correct information in full.

(h) If, before the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the application, request for renewal, or supporting documentation, the applicant shall, in writing, within five days of becoming aware of the change, notify the Commandant (G-WFR) of the change.

(i) All request for assistance, including telephone inquiries, in completing applications should be directed to the Commandant's staff in Washington, D.C., (202) 426-8806.

§ 131.5 Financial responsibility, amount.

(a) Each applicant shall establish financial responsibility which shows the ability to pay $14 million to meet its liability section 204(c) of the Act.

(b) The amount required by paragraph (a) of this section is separate from and in addition to the amount, if any, required of the applicant under Part 130 of this subchapter.

§ 131.6 Financial responsibility, how established.

(a) An applicant shall establish its financial responsibility by any one of, or by any acceptable combination of, the following methods:

(1) Filing with the Commandant (G-WFR) an insurance form CG-5358-4, executed by an insurer acceptable to the Coast Guard.

(2) Filing with the Commandant (G-WFR) a surety bond form CG-5358-4A, executed by a surety company which is acceptable to the Coast Guard. To be acceptable, surety companies, must, at a minimum, be certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the penal sum of the bonds to be issued under this part.

(3) An applicant may establish financial responsibility as a self-insurer by maintaining in the United States working capital and net worth, in the amounts set forth in this subparagraph. The amount of working capital and net worth to be maintained by the applicant shall be determined by the number of vessels operated by the applicant as follows: for one vessel, $19,000,000; for two vessels, $24,000,000; for three vessels $28,000,000; for four vessels, $31,000,000; for five vessels, $33,000,000; and for six or more vessels, $34,000,000. As used in this subparagraph, "working capital" means the amount of current assets located in the United States, less all current liabilities; and "net worth" means the amount of all assets located in the United States, less all liabilities. Maintenance of the required working capital and net worth shall be demonstrated by submitting with the initial application the items specified in paragraph (a)(3)(i) of this section for the last fiscal year preceding the date of application. Thereafter, so long as the application is pending or the certificant is holding a Certificate, the applicant/certificant shall submit the items specified in paragraphs (a)(3) (i) and (ii) of this section and shall be subject to the provision of paragraphs (a)(3) (iii), (iv)(V) of this section:

(i) An annual, current, nonconsolidated balance sheet and an annual, current, nonconsolidated statement of income and surplus, for each fiscal year certified by an independent Certified Public Accountant. Said Financial statements are to be accompanied by an additional statement from the Certified Public Accountant, certifying to the total amount of current assets and total assets included in the accompanying balance sheet which are located in the United States and acceptable for purposes of this part, i,e., not pledged for the purposes of Part 130 of this subchapter. If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, there must also be submitted an additional statement prepared by the involved Certified Public Accountant, certifying to the amount by which the applicant's/certificant's—

(A) Assets, located in the United States and acceptable under this part, exceed total (i.e., worldwide) liabilities; and

(B) Current assets, located in the United States and acceptable under this part, exceed total (i.e., worldwide) current liabilities. Such additional statement must specifically name the applicant/certificant, indicate that the amounts so certified relate only to the applicant/certificant, apart from any other entity, and identify the consolidated financial statement to which it applies.

(ii) Supplementary statements as follows: First, a statement prepared by the Certified Public Accountant, certifying that, as of the end of the first six months of the applicant's certificant's current fiscal year, the applicant's/certificant's working capital and net worth have not fallen below the required amounts and, second, a quarterly affidavit filed by the corporate Treasurer (or equivalent official for a noncorporate entity) stating that the working capital and the net worth, have not, as of the close of the quarter, fallen below the required amounts. Such affidavits are required only for the first and third fiscal-year quarters.

(iii) Such additional financial information as the Coast Guard determines necessary in particular cases shall be submitted.

(iv) All persons subject to paragraph (a)(3) of this section shall, in addition to all other reporting requirements, notify the Commandant (G-WFR) within five days of the date such persons knew, or had reason to believe, that the amounts of working capital or net worth have fallen below the amounts required.

(v) All required annual financial statements shall be received by the Coast Guard within three calendar months after the close of the applicant's/certificant's fiscal year, and the six-month statements within three calendar months after close of such six-month period. Quarterly affidavits shall be received within 30 days of the close of the quarter being attested to. Upon written request, the Commandant (G-WFR) grants a reasonable extension of the time limits imposed by this section: *Provided*, That the request is received 15 days before the statements are due, sets forth sufficient reason to justify the requested extension, and includes an estimate of the final calculation of working capital and of net worth. The Commandant does not consider requests for extensions of more than 45 days.

(vi) Failure to timely file any statement, data, or affidavit required by paragraph (a)(3) of this section shall cause the revocation of the Certificate.

(4) Filing with the Commandant (G-WFR), a guaranty form CG-5358-4B, executed by a guarantor acceptable to the Coast Guard. To be acceptable a guarantor must comply with all of the self-insurance provisions of paragraph (a)(3) of this section. However, the amounts of working capital and net worth required to be demonstrated by such guarantor shall not be less than the aggregate amounts underwritten as a guarantor and an applicant/certificant under this part, and Part 130 of this subchapter.

(5) Any other method specially justified and acceptable to the Coast Guard.

(b) Application form CG-5358-3, insurance form CG-5358-4, surety bond form CG-5358-4A, and guaranty form CG-5358-4B, as appended to this part, are hereby incorporated into this part. If more than one insurer, surety, or guarantor joins in executing an insurance form, surety bond form, or guaranty form, such action constitutes joint and several liability for such joint underwriters.

(c) Forms CG-5358-4 through CG-5358-4B and any other undertaking, filed under this part, shall expressly permit the commencement of an action in court for claims under section 204(c) of the Act by the claimant directly against the underwriter. Such forms and other undertakings shall also provide that, in the event such action is brought directly against the underwriter, such underwriter shall be entitled to invoke only—

(1) The rights and defenses permitted by the Act to the operator; and,

(2) The rights and defenses permitted by the Federal Water Pollution Control Act, as amended, to the underwriter, insofar as those rights and defenses are consistent with the purposes of the Act, if the action were brought against the underwriter by the operator.

(d) Each form submitted to the Coast Guard under this part shall set forth in full the correct legal name of the vessel operator to whom Certificates are to be issued.

(e) Financial data filed by applicants, certificants, and underwriters shall, if specifically requested, be kept confidential, to the extent permitted by the Freedom of Information Act.

(f) If, at any time after a Certificate has been issued, a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificant shall notify the Commandant (G-WFR), in writing, within 10 days of becoming aware of the change.

§ 131.7 Certificates, issuance.

(a) When financial responsibility as required by this part has been established in support of a properly completed application, a separate Certificate for each vessel listed on the application is issued by the Coast Guard. Certificates are issued only to vessel operators and are effective for two years from the date of the issue. The original Certificate shall be carried on the vessel named on the Certificate. Erasures or other alterations on a Certificate are prohibited (even if made by Government Authorities) and automatically void such Certificate.

(b) If for any reason, including a vessel's demise or transfer to a new operator, a certificant ceases to be the operator of a vessel, the certificant shall, within 30 days, complete the reverse side of the original Certificate for the involved vessel and return it to the Commandant (G-WFR). Such Certificate is automatically void (whether or not returned to the Coast Guard), and its use is prohibited. If such Certificate has been lost or destroyed, the certificant shall instead submit the following written information to the Commandant (G-WFR):

(1) The number of the Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was sold or transferred, if any.

§ 131.8 Certificates, denial or revocation.

(a) Certificate is denied or revoked for any of the following reasons:

(1) Making any willfully false statement to the Coast Guard in connection with an application for an initial Certificate or request for a renewal Certificate or the retention of an existing Certificate.

(2) Failure of an appplicant or certificant to establish or maintain financial responsibility.

(3) Failure to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to activities subject to this part.

(4) Failure to timely file the statements of affidavits required by § 131.6(a)(3) (i) and (ii).

(5) Cancellation or termination of any insurance form, surety bond, guaranty or other undertaking issued under this part.

(b) Before the denial or revocation of a Certificate, the Commandant (G-WFR) advises the applicant or certificant, in writing, of the intention to deny or revoke the Certificate, and states the reason therefor.

(c) If the reason for the intended revocation is—

(1) The cancellation or termination of any insurance, bond, guaranty, or other undertaking under this part, the revocation is effective either on the effective date of the cancellation or termination, or 10 days after the date of the notice of intention to revoke, whichever is later, unless the certificant, before such date, provides acceptable

substitute evidence of financial responsibility, or demonstrates that the insurance, bond, guaranty, or other undertaking has not been cancelled or terminated; or

(2) The failure to file statements required under paragraph (a)(4) of this section, the revocation is effective 10 days after the date of the notice of intention to revoke, unless the certificant, before the effective date, demonstrates that the required statements were timely filed.

(d) If the intended denial or revocation is based upon any other reason, the applicant or certificant may request, in writing, a hearing to show that the applicant or certificant is in compliance with this part, and, if such request is received within 30 days after the date of the notification of intention to deny or revoke, the Coast Guard schedules a hearing. Hearings are conducted in accordance § 135.223 of this subchapter.

§ 131.9 Fees.

(a) This section establishes the application fee imposed by the Coast Guard for processing applications, and also establishes the certification fee imposed for the issuance of Certificates.

(b) No Certificate is issued unless the fees set forth in paragraphs (d) and (e) of this section have been paid.

(c) Fees shall be paid in United States currency, by check, draft or postal money order made payable to the U.S. Coast Guard.

(d) Each applicant who submits an application for the first time shall pay an initial nonrefundable application fee of $75. If, at a later date, the same applicant submits a request for a Certificate to cover an additional or renamed vessel, an additional application fee is not required, whether or not the applicant chooses to submit another application in connection with that request. However, once an application is withdrawn or denied for any reason, and the same applicant, holding no valid Certificates, wishes to reapply for a Certificate covering the same or additional vessels, a new application and application fee of $75 shall be filed.

(e) In addition to the $75 application fee, applicants shall pay a vessel certification fee of $40 for each vessel listed in, or later added to, the application form. Where it becomes necessary to reissue a Certificate for any reason, including, but not limited to, a change of owner, a name change, a renewal, or a lost Certificate, the certificant shall pay the certification fee of $40 for each reissued Certificate.

(f) Certification fees are refunded, upon receipt of a written request, if the application is withdrawn or denied before issuance of the Certificates. Overpayments of application and certification fees are refunded on request only if the refund is $20 or more. However, any overpayments not refunded are credited, for the applicant's future use under this part, for a period of two years from the date of receipt of the monies by the Coast Guard.

§ 131.10 Enforcement.

(a) In the event any vessel is engaged in any of the activities prohibited by §131.3, the Coast Guard—

(1) Denies the vessel entry to any port or place in the United States, or the navigable waters of the United States; and

(2) Detains the vessel at the port or place in the United States from which it is about to depart for any other port of place in the United States.

(b) Any person who fails to comply with this part, is subject to a fine of not more than $10,000 for each failure.

§ 131.11 Service of process.

(a) When executing the forms required by this part, each applicant and underwriter shall designate thereon a person in the United States as its agent for service of process for the purposes of section 204(c) of the Act and of this part.

(b) Each designation shall be acknowledged in writing by the designee unless the designee has furnished the Coast Guard with a "master" or "blanket" concurrence showing it has agreed in advance to act as the United States agent for service of process for the applicants or underwriter in question.

(c) When the designated agent cannot be served because of death, disability, or unavailability, the Commandant becomes the agent for service of process.

(d) When serving the Commandant, the server shall also—

(1) Send to the applicant, certificant, or underwriter, by registered mail, at its last address on file with the Coast Guard, a copy of each document served upon the Commandant; and

(2) Attest to that mailing at the time service is made upon the Commandant

BILLING CODE 4910-14-M

Appendix—Financial Responsibility Application and Supporting Forms

Approved OMB No. 2115-0536

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5358-3 (6-83)

APPLICATION FOR CERTIFICATE OF FINANCIAL RESPONSIBILITY (ALASKA PIPELINE)

GENERAL
(PART 1 OF 4 PARTS)

INSTRUCTIONS

Please type or print clearly in ink and submit this application to the Chief, Financial Responsibility Division (G-WFR), Office of Marine Environment and Systems, U. S. Coast Guard Headquarters, 2100 - 2nd Street, S.W., Washington, DC 20593. APPLICANTS MUST ANSWER ALL QUESTIONS WITH THE INFORMATION REQUESTED OR THE PHRASE "NOT APPLICABLE" OR THE WORD "NONE". If more space is needed, please attach supplemental sheets.

THIS SPACE FOR USE BY USCG ONLY

1. Legal name of applicant *(legally responsible operator of all vessels listed Part II)*

a. English equivalent of legal name if customarily written in language other than English

b. Trade name, *(if any)*

2. Is this the first time the above-named applicant is submitting application Form CG-5358-3 for an Alaska Pipeline Certificate?

☐ YES ☐ NO *(If "NO", please complete Item "a" below.)*

a. What control number was assigned to the first application?

_____

3. State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust, or other organized group of persons *(whether incorporated or not)*, or a receiver, trustee, or other liquidating agent, and briefly describe current business activities and length of time engaged therein.

a. If a corporation, association, or other organization, please indicate:

Name of state or foreign country in which incorporated or organized	Date of incorporation or organization

b. If a partnership, please give name and address of each partner

4. Name and address of applicant's United States agent *(or other person)* authorized by applicant to accept legal service in the United States *(See Part IV). (U.S. applicants may support themselves as agent, eliminating the need to complete Part IV.)*

EVIDENCE OF FINANCIAL RESPONSIBILITY (PART II OF 4 PARTS)

5. List each vessel which will carry oil that has been transported through the Trans-Alaska pipeline and which will require a Certificate of Financial Responsibility (Alaska Pipeline). Vessels for which the operator named in Item 1 is not responsible should not be listed in this form. In Column (f) indicate the number "1" if the operator is also the registered owner Indicate "2" in column (f) if the operator is not the registered owner.

Name of Vessel (a)	Type of Vessel (b)	Country of Registry (c)	Registration Number (d)	Gross Tons (e)	"1" or "2" (f)

5.(g) If applicant indicated "2" for any vessel listed above, in column 5(f), please indicate:

Name of Vessel	Registered Owner	Owner's Mailing Address

NOTE: This list of owners must be kept current by applicant.

PART II (Cont'd)

6. Items 7 through 11 are the optional methods of establishing financial responsibility. Check the appropriate box(es) below and answer only the item(s) which are applicable to this application.

☐ Insurance *(Answer Item 7)* ☐ Surety Bond *(Answer Item 8)* ☐ Guaranty *(Answer Item 9)* ☐ Self-Insurer *(Answer Item 10)* ☐ Other *(Answer Item 11)*

7. Name and address of applicant's insurer *(Insurance Form CG-5358-4 must be filed before a Certificate will be issued.)*

8. Amount of surety bond *(Surety Bond Form CG-5358-4A must be filed before a Certificate will be issued).*

$ _____

a. Name and address of applicant's surety

9. Name and address of applicant's guarantor *(Guaranty CG-5358-4B and all required financial data must be filed before a Certificate will be issued).*

a. Guarantor's Fiscal Year

_____ (Month) _____ (Day) to _____ (Month) _____ (Day)

10. If applicant intends to qualify as a self-insurer, attach all required financial data and indicate fiscal year

_____ (Month) _____ (Day) to _____ (Month) _____ (Day)

11. Give a fully detailed explanation of the method desired to be utilized to establish financial responsibility and attach all supporting documentation and schedules.

DECLARATION (PART III OF 4 PARTS)

12. Applicant's mailing address *(Street, number, post office box, city, state, or country and zip code if in the United States).*

a. Type or print in this space the name and title of the official who is signing this application below

b. Address of principal office in United States *(if any)*

c. Telephone Number *(Area code)*

I DECLARE that I have examined this application, including any accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Furthermore, I declare the applicant named in item 1 of Part I above is the operator for all vessels now listed in or later added to this application. I agree that in the event the agent designated in item 4 of Part I above, or his replacement as may be appointed later with the approval of the U. S. Coast Guard, cannot be served due to his death, disability or unavailability, the Commandant, U. S. Coast Guard, becomes the agent for service of process. I have signed this application in my above-indicated capacity as an authorized official of the applicant or if, acting under a power of attorney, under the power vested in me by the applicant as evidenced by the attached document.

IMPORTANT

Date

Signature of above official

NOTE:

- Please be sure that Parts I, II and III have been completed as fully as possibly and that Part III has been dated and signed.
- All applicants must complete question 4 concerning U. S. agents for service of process. Any questions should be submitted to the U. S. Coast Guard or the underwriter.
- If number "2" appears in Column 5(f) for any vessels listed in Column 5(a), the registered owners of those vessels must be listed in question 5(g) and kept current.

NO CERTIFICATE WILL BE ISSUED UNLESS A COMPLETED APPLICATION FORM HAS BEEN RECEIVED, PROCESSED, AND APPROVED - 33 CFR 131.

COMMENTS:

The statements hereinabove set forth are made subject to penalties prescribed by law for any person who knowingly and willfully makes false statements on any matter within the jurisdiction of an agency of the United States (18 USC 1001).

CONCURRENCE OF AGENT (PART IV OF 4 PARTS)

Part IV-A must be completed by the person or firm designated in Item 4 of Part I to serve as applicant's United States agent for service of process. Part IV-B must be completed by the applicant. After Parts IV-A and IV-B are completed, Part IV should be submitted to the U. S. Coast Guard by the applicant or by the agent, either separately or together with Parts I, II, and III. Part IV-A need not be completed if (1) the agent designated in Item 4 of Part I already has submitted to the U. S. Coast Guard an acceptable blanket Concurrence of Agent, agreeing to serve on behalf of any applicant who designates such agent, or (2) the applicant is a United States entity and has appointed itself as agent.

PART IV - A

It is hereby agreed that _____

(Type Name of United States Agent)

shall serve as the herein named applicant's United States agent for service of process under the provisions of Section 131.11, Title 33, CFR. This designation and agreement shall cease immediately in the event the applicant designates a new agent acceptable and agreed to by the U. S. Coast Guard.

Date: _____

Signature of person signing on behalf of agent: _____

_____

(Title)

_____

(Business Address)

_____

_____

_____

PART IV - B - TO BE COMPLETED BY APPLICANT

Name of applicant from Item I _____

Signature of person signing on behalf of applicant _____

(Person signing here must also sign in appropriate place on Part III)

Date	Type or print name and title

BILLING CODE 4910-14-C

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG-5358-4 (6-83)

Insurance Form No. ————

INSURANCE FORM CG-5358-4 FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER SUBSECTION 204(c) OF THE TRANS-ALASKA PIPELINE AUTHORIZATION ACT (PUBLIC LAW 93-153)

(Name of Insurer) ———— (hereinafter "Insurer") hereby certifies that for purposes of complying with the provisions of subsection 204(c), Trans-Alaska Pipeline Authorization Act (hereinafter "Act"), each of the vessel operators specified in the schedules below is insured by it, in respect to each of the vessels respectively specified therein, against liability to which such vessel operators could be subjected under subsection 204(c) of the Act in the amount of $14 million for any one incident.

(Name of Agent) ————, with offices at ———— is hereby designated as the Insurer's agent for service of process for the purposes of the Act and implementing rules at Part 131 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to his death, disability or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

The insurer consents to be sued directly in respect of any claim under the Act against any of the operators; *provided, however* that in any such direct action (a) its liability in any one incident shall not exceed $14 million per vessel and (b) it shall be entitled to invoke only (1) the rights and defenses permitted by the Act to the vessel operator, and (2) the rights and defenses permitted by the Federal Water Pollution Control Act, as amended, to the Insurer, insofar as those rights and defenses are consistent with the purposes of the Trans-Alaska Pipeline Authorization Act, if an action were brought against the Insurer by the operator.

The insurance evidenced by this document shall be applicable only in relation to incidents giving rise to claims under the Act in respect to any of the below-listed vessels, occurring on or after the effective date of this document, which, as to each of the vessels, shall be the date the vessel is named in Schedule A or added to Schedule B below, and before the termination date of this document, which, as to each of such vessels, shall be the date 30 days after the date of receipt by the U.S. Coast Guard (USCG) of written notice the Insurer has elected to terminate the insurance evidenced by this document in respect to any vessel, and has so notified the vessel's operator; *provided, however,* no termination shall become effective with respect to any vessel covered by this document, which, at the time termination would otherwise become effective, was carrying oil transported through the trans-Alaska pipeline and which has been loaded on board such vessel before the time such termination would otherwise become effective; and *provided further,* that such termination shall only become effective when *all* of that oil has been offloaded from such vessel. Termination of this document as to such vessels shall not affect the liability of the Insurer in connection with an incident occurring before the date the termination becomes effective.

If during the currency of this document a below-named operator requests that an additional vessel be made subject to this document, and if the Insurer should accede to the request and should so notify the USCG, then the vessel shall be included in Schedule B hereof.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers.

Effective date of coverage for vessels on Schedule A: Day/month/year————.

(Name of Insurer) ————
(Mailing Address) ————

(Signature of Official Signing on Behalf of Insurer) ————
(Typed Name and Title of Signer) ————

Insurance Form CG-5358-4 (6/83) No. ————

SCHEDULE A—VESSELS AND OPERATORS

Vessel	Operator	Gross tons [1]

[1] For identification purposes only.

Insurance Form CG-5358-4 (6/83) No. ————

SCHEDULE B—ADDITIONAL VESSELS

Vessel	Operator	Gross tons [1]	Date added

[1] For identification purposes only.

Insurance Form CG-5358-4 (6/83) No. ————

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG-5358-4A (6-83)

Surety Co. Bond No. ————

ALASKA PIPELINE—OIL DISCHARGE SURETY BOND FORM CG-5358-4A

KNOW ALL MEN BY THESE PRESENTS, that We (Name of Vessel Operator) ————, of (City) ————, (State and Country) ————, as Principal (hereinafter called Principal), and (Name of Surety) ————, a company created and existing under the laws of (State and Country) ————, and authorized to do business in the United States, as Surety (hereinafter called Surety), are held and firmly bound unto the United States of America and other claimants for damages under subsection 204(c) of the Trans-Alaska Pipeline Authorization Act (hereinafter "Act") in the penal sum calculated as follows: if there is one vessel listed in the attached schedule, $14,000,000; if there are two vessels, $19,000,000; if there are three vessels, $23,000,000; if there are four vessels, $26,000,000; if there are five vessels, $28,000,000; if there are six or more vessels, $29,000,000, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal intends to become or is a holder of a Certificate of Financial Responsibility (Alaska Pipeline) pursuant to the provisions of Part 131 of Title 33, Code of Federal Regulations, and has elected to file with the U.S. Coast Guard (USCG) such a bond as will insure financial responsibility to meet any liability incurred under subsection 204(c) of the Act; and

WHEREAS, this bond is written to assure compliance by the Principal with the requirements of subsection 204(c), of the Act, and shall inure to the benefit of claimants under subsection 204(c);

NOW, THEREFORE, the condition of this obligation is that if the Principal shall pay or cause to be paid to claimants any sum or sums for which the Principal may be held legally liable under subsection 204(c) of the Act, then this obligation, to the extent of such payment, shall be void, otherwise, to remain in full force and effect.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond. In no event shall the Surety's obligation hereunder exceed the amount of the penalty, provided the Surety furnishes written notice to the USCG forthwith of all suits filed, judgments rendered, and payments made by the Surety under this bond.

Any claim for damages for which the Principal may be liable under the provisions of subsection 204(c) of the Act may be brought directly against the Surety; *provided, however,* that in the event of a direct claim the Surety shall be entitled to invoke only (1) the rights and defenses permitted by subsection 204(c) of the Act to the vessel operator, and (2) the rights and defenses permitted by the Federal Water Pollution Control Act, as amended, to the Surety, insofar as those rights and defenses are consistent with the purposes of the Trans-Alaska Pipeline Authorization Act, if an action were brought against the Surety by the operator.

This bond is effective the ——— day of ————, 19—— 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other party, with a copy to the USCG at its office in Washington, D.C. The termination becomes effective thirty (30) days after actual receipt by the USCG of written notice; *provided, however,* that no such termination shall become effective with respect to any vessel covered by this document, which, at the time the termination would otherwise become effective, was carrying oil which had been transported through the trans-Alaska pipeline and which had been loaded on board such vessel before the time the termination would otherwise become effective; and *provided further,* the

termination shall only become effective when *all* of that oil has been offloaded from such vessel. The Surety shall not be liable hereunder in connection with an incident occurring after the termination of this bond as herein provided, but termination shall not affect the liability of the Surety in connection with an incident occurring before the date the termination becomes effective.

The Surety designates (Name of Agent) ———, with offices at ———, as the Surety's agent for service of process for the purposes of the Act and implementing rules at Part 131 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to his death, disability or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

If more than one surety company joins in executing this bond, that action constitutes joint and several liability on the part of the sureties.

In witness whereof, the above-named Principal and Surety have executed this instrument on the ——— day of ———, 19—.

(Please type name of signer under each signature. In the case of a partnership, each partner must sign.)

Principal

Individual Principal or Partner———
(Business Address)———

Individual Principal or Partner———
(Business Address)———

Individual Principal or Partner———
(Business Address)———

Corporate Principal———
Business Address ———

By ———
Title ———

(Affix Corporate Seal)

Surety

Corporate Surety———
Business Address ———

By ———
Title ———

(Affix Corporate Seal)

CG–5358–4A (6/83)

Surety Co. Bond No. ———

SCHEDULE—VESSELS AND OPERATORS

Vessel	Operator	Gross tons *

*For indentification purposes only.

Surety Co. Bond No. ———

CG–5358–4A (6/83)

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG–5358–4B (6–83)

Guaranty No. ———

GUARANTY FORM CG–5358–4B IN RESPECT OF LIABILITY FOR DISCHARGE OF OIL—ALASKA PIPELINE

1. WHEREAS (Name of Vessel Operator) ———, (hereinafter the "Operator") is the Operator of the Vessel(s) specified in the annexed schedules (hereinafter "Vessel" or "Vessels"), and the Operator desires to establish its financial responsibility in accordance with subsection 204(c) of the Trans-Alaska Pipeline Authorization Act (hereinafter the "Act"), the undersigned Guarantor hereby guarantees, subject to the provisions of clause 4 hereof, to discharge the Operator's legal liability in respect to a claim under subsection 204(c) of the Act, in the event that such legal liability has not been discharged by the Operator within 21 days after the claimant has obtained a final judgment (after appeal, if any) against the Operator from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Operator, with the approval of the Guarantor. Upon payment of the agreed sum, the Operator is to be fully, irrevocably and unconditionally discharged from all further liability to the claimant with respect to the claim.

2. The Guarantor's liability under this Guaranty shall not exceed $14 million per incident, provided that the Guarantor furnishes written notice to the U.S. Coast Guard (USCG) of all suits filed, judgments rendered, and payments made by the Guarantor under this Guaranty.

3. The Guarantor's liability under this Guaranty shall attach only in relation to incidents giving rise to causes of action against the Operator in respect of any of the Vessels for damages under subsection 204(c) of the Act, occurring on or after the effective date of this Guaranty, which, as to each of the Vessels, shall be the date the Vessel is named in Schedule A or added to Schedule B below, and before the termination date of this Guaranty, which, as to each of the Vessels, shall be the date 30 days after the date of receipt by the USCG of written notice the Guarantor has elected to terminate this Guaranty, with respect to any of the Vessels, and has so notified the Operator; *provided, however,* that no termination shall become effective with respect to any Vessel covered by this document, which, at the time the termination would otherwise become effective, was carrying oil which had been transported through the trans-Alaska pipeline and which had been loaded on board such Vessel before the time the termination would otherwise become effective; and *provided further,* the termination shall only become effective when *all* of that oil has been offloaded from the Vessel. Termination of this document as to Vessels shall not affect the liability of the Guarantor in connection with an incident occurring before the date the termination becomes effective.

4. Any claim for damages for which the Operator may be liable under the provisions of subsection 204(c) of the Act may be brought directly against the Guarantor; *provided, however,* that in the event of a direct claim the Guarantor shall be entitled to invoke only (1) the rights and defenses permitted by the Act to the vessel operator, and (2) the rights and defenses permitted by the Federal Water Pollution Control Act, as amended, to the Guarantor, insofar as those rights and defenses are consistent with the purposes of the Trans-Alaska Pipeline Authorization Act, if the action were brought against the Guarantor by the operator.

5. If, during the currency of this Guaranty, the Operator requests that a vessel operated by the Operator, and not specified in the annexed Schedules A and B, should become subject to this Guaranty, and if the Guarantor accedes to the request and so notifies the USCG in writing, then the vessel becomes one of the Vessels included in Schedule B and subject to this Guaranty.

6. The Guarantor hereby designates (Name of Agent) ——— with offices at ——— as the Guarantor's agent in the United States for service of process for purposes of subsection (c) of section 204 of the Act and implementing rules at Part 131 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to his death, disability or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

Effective Date: (Month/Day/Year and Place of Execution) ———.

(Type Name of Guarantor) ———
(Type Address of Guarantor) ———

By: (Signature) ———
(Type Name and Title of Person Signing Above) ———

SCHEDULE A—VESSELS INITIALLY LISTED

Vessels	Gross tons	Operator

Note: Gross tons are for identification purposes only.

CG–5358–4B (6/83)

SCHEDULE B—VESSELS ADDED IN ACCORDANCE WITH CLAUSE 5

Vessel	Gross tons	Operator	Date added

SCHEDULE B—VESSELS ADDED IN ACCORDANCE WITH CLAUSE 5

Vessel	Gross tons	Operator	Date added

Note: Gross tons are for identification purposes only.

CG–5358–4B (6/83)

PART 132—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—OUTER CONTINENTAL SHELF

Sec.

Authority: 43 U.S.C. 1815(a)(1), 1822(a)(2); E.O. 12123, as amended by sec. 2 of E.O. 12418 (48 FR 20891); 49 CFR 1.46.

(Approved by the Office of Management and Budget under Control Number 2115-0535.)

§ 132.1 Scope.

(a) This part implements the vessel financial responsibility requirements of Title III of the Outer Continental Shelf Lands Act Amendments of 1978, and applies to all vessels engaged in any segment of the transportation of oil produced from an offshore facility on the Outer Continental Shelf when such vessels are operating in the waters above submerged lands seaward from the coastline of a State or the waters above the Outer Continental Shelf.

(b) Vessels having on board Outer Continental Shelf-produced oil after that oil has been brought ashore, or loaded as a result of removal operations after an oil spill, are not subject to this part.

§ 132.2 Definitions.

As used in this part:

(a) "Act" means Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1811-24).

(b) "Applicant" means any vessel operator, as defined in paragraph (p) of this section, who has applied for a Certificate or for the renewal of a Certificate.

(c) "Application" means Application for Certificate of Financial Responsibility (Outer Continental Shelf), Form CG-5358-1.

(d) "Cargo" means oil carried on board a vessel for purposes of transportation, in any quantity and under any conditions.

(e) "Certificant" means any operator, as defined in paragraph (p) of this section, who has been issued a Certificate.

(f) "Certificate" means a Certificate of Financial Responsibility (Outer Continental Shelf) Form CG-5358 issued by the U.S. Coast Guard under this part.

(g) "Commandant" means the Commandant, U.S. Coast Guard.

(h) "Damages" means economic loss arising out of or directly resulting from oil pollution, including injury to, or destruction of, real or personal property; loss of use of real or personal property; injury to, or destruction of, natural resources; loss of use of natural resources; loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; loss of tax revenue for a period of one year due to injury to real or personal property; and reasonable costs associated with preparation and presentation of natural resource damage claims. Removal costs are not included in this definition.

(i) "Discharge" means any emission, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emptying, or dumping.

(j) "Financial responsibility" means proof of financial ability to satisfy claims for damages and removal costs as required by section 305(a)(1) of the Act.

(k) "Incident" means any occurrence or series of related occurrences, involving one or more vessels, which causes or poses an imminent threat of oil pollution from any source. For purposes of this part an "imminent" threat, as used in the Act, is synonymous with a "substantial" threat, as used in section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321).

(l) "Insurer" means one or more acceptable insurance companies, corporatios or associations of insurers, shipowners' protection and indemnity associations, or other persons acceptable to the Coast Guard.

(m) "Offshore facility" includes any oil refinery, drilling rig, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf, and is located on the Outer Continental Shelf, except that a vessel or a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502)) is not included in this definition.

(n) "Oil" means petroleum, including crude oil or any fraction or residue therefrom, whether or not carried on board a vessel.

(o) "Oil pollution" means:

(1) The presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate—

(i) In or on the waters above submerged lands seaward from the coastline of a State, or on the adjacent shoreline of such State; or

(ii) On the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(2) The presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(i) When discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

(ii) Causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(3) The presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under Title III of the Act.

(p) "Operator" or "vessel operator" means a demise charterer or any other person responsible for the operation of a vessel, including a person who both owns and is responsible for the operation of a vessel.

(q) "Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters (as the term "lands beneath navigable waters" is defined in section 1301 of the Submerged Lands Act (43 U.S.C. 1301)), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(r) "Owner" or "vessel owner" means any person holding legal or equitable title to a vessel. In a case where a Certificate of Registry or equivalent document has been issued, the owner is the person or persons whose name or names appear thereon as owner; and *Provided, however,* That where a Certificate of Registry has been issued in the name of the president or secretary of an incorporated company under 46 U.S.C. 15, such incorporated company is the owner; *Provided, further,* That this definition does not include a person who, without participating in the management or operation of a vessel, holds indicia of ownership primarily to protect a security interest in that vessel.

(s) "Person" includes, but is not limited to, an individual, a governmental entity, a firm, a corporation, an association, a partnership, a joint-stock company, a joint venture, a consortium, a business trust, or an unincorporated organization.

(t) "Public vessel" means a vessel, not engaged in commerce, the operator of which is the Government of the United States or a State or political subdivision thereof, or the government of a foreign entity.

(u) "Remove," "removing," or "removal" means:

(1) The physical removal of oil from the water and shorelines;

(2) The taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife and public or

private property, shorelines and beaches), resulting from a discharge or substantial threat of a discharge of oil;

(3) The restoration or replacement of natural resources damaged or destroyed as the result of a discharge of oil in violation of section 311(b) of the Federal Water Pollution Control Act, as amended;

(4) Reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident; and

(5) Measures of a similar or related nature under section 5 of the Intervention on the High Seas Act (33 U.S.C. 1474).

(v) "Submerged lands seaward from the coastline of a State" means the area of "lands beneath navigable waters" as described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)(2)). Generally, that area can be described as all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastline of a State, and to the boundary line of each such State where in any case such boundary extends seaward (or into the Gulf of Mexico) beyond three geographical miles.

(w) "Underwriter" means an insurer, a surety company, a guarantor, or any other person, other than the operator, who provides evidence of financial responsibility for an operator.

(x) "United States" or "State" means any place under the jurisdiction of the United States, including, but not limited to, the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands.

(y) "Vessel" means every description and size of watercraft or other artificial contrivance, other than a public vessel, which is operating in the waters above the Outer Continental Shelf or in the waters above submerged lands seaward from the coastline of a State, and which is engaged in any segment of the transportation of Outer Continental Shelf-produced oil from an offshore facility, including carrying, lightering, transshipping, or storing such oil.

§ 132.3 General.

(a) This part sets forth the procedures whereby an owner and operator of a vessel can demonstrate that each is financially able to meet liability for removal costs and damages in the amount of $300 per gross ton of such vessel, or $250,000, whichever is greater. That amount represents the maximum amount of liability under section 304 of the Act in a case where the owner and operator of a particular vessel are entitled to limit their liability. Owners and operators are jointly, severally and strictly liable.

(b) Upon the satisfactory demonstration of financial responsibility, the Commandant (G-WFR) issues Certificates which are to be carried aboard the vessels named on such Certificates. The carriage of a valid Certificate indicates the vessel named thereon is in compliance with the financial responsibility provisions of the Act. Failure to carry a valid Certificate subjects a vessel owner and operator to enforcement action and penalty procedures by the Coast Guard.

(c) Where a vessel is operated by its owner, or the owner is responsible for its operation, the owner is the operator and shall file the application for a Certificate. In all other cases, the vessel operator shall file the application.

(d) The gross tonnage of a vessel is the tonnage indicated in the vessel's Certificate of Registry, or, in the absence thereof, other marine documents acceptable to the Coast Guard. If a vessel has more than one gross tonnage, the higher tonnage shall apply.

§ 132.4 Where to apply and obtain forms.

(a) Each operator who wishes to obtain a Certificate shall file an application, together with fees and evidence of financial responsibility, with the Coast Guard at the following address:

Commandant (G-WFR/21), U.S. Coast Guard Headquarters, 2100 Second Street, Washington, DC 20593.

(b) Regulations concerning applications, are set forth in §§ 132.5 and 132.6. Regulations concerning fees are set forth in § 132.12, and regulations concerning evidence of financial responsibility are set forth in § 132.8. Forms may be obtained from the address set forth in paragraph (a) of this section and from the 12 Coast Guard District Offices at New York, NY; Miami, FL; New Orleans, LA; San Francisco, CA; Seattle, WA; Cleveland, OH; St. Louis, MO; Juneau, AK; Long Beach, CA; Honolulu, HA; Boston, MA; or Portsmouth, VA.

(c) All requests for assistance, including telephone inquiries, in completing applications should be directed to the Commandant's Staff in Washington, DC; (202) 426-8806.

§ 132.5 Time to apply.

(a) A completed application, fees and evidence of financial responsibility shall be filed at least 21 days before the date the Certificate is required.

(b) Applications will be processed in the order in which they are filed.

§ 132.6 Applications, general instructions.

(a) All applications and supporting documents shall be in English. All monetary terms shall be in United States currency.

(b) The application shall—

(1) Be signed by an authorized official of the applicant, whose title shall be shown on the application; and

(2) Where the signer is not disclosed on the application as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director or officer of a corporate applicant be accompanied by a written statement proving authority to sign.

(c) If, before the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the applicant shall notify the Commandant (G-WFR) in writing, within five days.

§ 132.7 Renewal of Certificates.

(a) Written applications for renewal Certificates shall be made to the Commandant (G-WFR) at least 21 days, but not earlier than 90 days, before the expiration dates of existing Certificates.

(b) Each renewal application shall be accompanied by appropriate recertification fees, identify any changes since the original application was filed, and set forth the correct information in full.

§ 132.8 Establishing financial responsibility.

(a) *General.* In addition to filing an application and appropriate fees, each vessel operator shall demonstrate the ability to satisfy liability under Title III of the Act, in an amount not less than $300 per gross ton or $250,000, whichever is greater.

(1) The evidence of financial responsibility shall cover the vessel owners as well as the vessel operators, jointly and severally.

(2) The amount of evidence of financial responsibility under this part is separate from an in addition to the amount, if any, required of an applicant under Parts 130 and 131 of this subchapter.

(b) *Methods.* An applicant shall establish evidence of financial responsibility by any one of, or by any acceptable combination of, the following methods:

(1) *Insurance.* Insurance may be established by filing with the

Commandant (G–WFR) an insurance form CG–5358–2, executed by an insurer which is acceptable to the Coast Guard.

(2) *Surety bond.* An applicant may file with the Commandant (G–WFR) a surety bond form CG–5358–2A, executed by a surety company which is located in the United States and which is acceptable to the Coast Guard. To be acceptable, surety companies must, at a minimum, be certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the penal sum of the bonds to be issued under this part.

(3) *Self-insurance.* An applicant may establish financial responsibility as a self-insurer by maintaining, in the United States, working capital and net worth, each in the amount of $300 per gross ton of the largest vessel to be self-insured or $250,000, whichever is greater. As used in this paragraph, "working capital" means the amount of current assets located in the United States, less all current liabilities; and "net worth" means the amount of all assets located in the United States less all liabilities. Maintenance of the required working capital and net worth shall be demonstrated by submitting with the initial application the items specified in paragraph (b)(3)(i) of this section for the applicant's last fiscal year preceding the date of application. Thereafter, for each of the applicant's fiscal years, the applicant/certificant shall submit the items specified in paragraphs (b)(3) (i) and (ii) of this section and shall be subject to the provisions of paragraphs (b)(3) (iii), (iv), (v), and (vi) of this section:

(i) *Initial and annual submissions.* An applicant/certificant shall submit, for its most recent fiscal year, a nonconsolidated balance sheet and related statement of income, retained earnings and changes in financial position for the year then ended audited by an independent Certified Public Accountant. Those financial statements shall be accompanied by an additional statement from the applicant's/certificant's Treasurer (or equivalent official for a noncorporate entity) certifying to both the amount of current and the amount of total assets, included in the accompanying balance sheet, that are located in the United States and acceptable for purposes of this part, i.e., not pledged for purposes of Part 130 or Part 131 of this subchapter. If the balance sheet and related statement of income, retained earnings and changes in financial position cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by supplemental schedules prepared by the applicant/certificant and audited by an independent Certified Public Accountant, and which present the amounts by which the applicant's/certificant's—

(A) Assets, located in the United States and acceptable under this part, exceed total (i.e., worldwide) liabilities; and

(B) Current assets, located in the United States and acceptable under this part, exceed total (i.e., worldwide) current liabilities. Each supplemental schedule must specifically name the applicant/certificant, indicate that the amounts so presented relate only to the applicant/certificant, apart from any other entity, and identify the consolidated financial statement to which it applies.

(ii) *Semi-annual submissions.* When the applicant's/certificant's demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the applicant's/certificant's corporate Treasurer (or equivalent official) covering the first six months of the applicant's/certificant's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have, during the first six months, fallen below the required amounts.

(iii) *Additional submissions.* If an applicant's/certificant's annual and semi-annual submissions of financial data under Parts 130, or 131 demonstrate amounts large enough to meet the requirements of this part as well, separate annual and semi-annual submissions under this part are not necessary. Additional financial information, however, shall be submitted upon request of the Coast Guard. All applicants/certificants who choose self-insurance shall notify the Commandant (G–WFR) within five days of the date such persons know, or have reason to believe, that the amounts of working capital or net worth have fallen below the amounts required.

(iv) *Time for submissions.* All required annual financial statements shall be received by the Coast Guard within three calendar months after the close of the applicant's/certificant's fiscal year, and all six-month affidavits within one calendar month after close of the applicable six-month period. Upon written request, the Commandant (G–WFR) may grant a reasonable extension of the time limits for filing financial statements/affidavits, provided that the request sets forth sufficient reason to justify the requested extension and is received 15 days before the statements/affidavits are due. The Commandant will not consider a request for an extension of more than 45 days.

(v) *Failure to submit.* Failure to timely file any statement, data, or affidavit required by paragraph (b)(3) of this section shall cause the revocation of the Certificate.

(vi) *Waivers of submissions.* For good cause shown in writing by the applicant/certificant, the Commandant (G–WFR) waives the working capital requirement where the applicant/certificant is—

(A) An economically regulated public utility;

(B) A municipal or higher level governmental entity; or

(C) An entity operating solely as a charitable, nonprofitmaking organization.

The Coast Guard considers good cause to have been shown when the applicant/certificant demonstrates in writing that the grant of such waiver would benefit at least a local public interest without resulting in undue risk to the environment and without resulting in undue risk that the applicant's/certificant's limits of liability could not be met. In addition, for good cause shown in writing by an applicant/certificant, the Commandant (G–WFR) waives the working capital requirement where it can be demonstrated that working capital is not a significant factor in the applicant's/certificant's financial condition. An applicant's/certificant's net worth in relation to the amount of its exposure under the Act, and a history of stable operations, are major elements in such demonstration.

(4) *Guaranty.* An applicant may file with the Commandant (G–WFR) a guaranty form CG–5358–2B executed by a guarantor acceptable to the Coast Guard. A guarantor shall comply with all of the self-insurance provisions of paragraph (b)(3) of this section. In addition, the amounts of working capital and net worth required to be demonstrated by an acceptable guarantor shall be no less than the aggregate amounts underwritten as a guarantor and self-insurer under this part, and Parts 130 and 131 of this subchapter.

(5) *Other methods.* An applicant may not choose any other method of demonstrating financial responsibility, nor any modifications of any of the methods in this section.

(c) *Forms-general.* Application form CG–5358–1, insurance form CG–5358–2, surety bond form CG–5358–2A and guaranty form CG–5358–2B, as appended to this part, are hereby incorporated into this part. If more than one guarantor joins in executing a

guaranty form, such action constitutes joint and several liability for such joint guarantors. Each form submitted to the Coast Guard under this part shall set forth in full the correct legal name of the vessel operator to whom Certificates are to be issued.

(d) *Direct Action.* Forms CG–5358–2 through CG–5358–2B permit a claimant to commence an action for removal cost and damage claims authorized by section 303 of the Act directly against the underwriter. Such forms also provide that, in the event such action is brought directly against the underwriter, such underwriter shall be entitled to invoke only those rights and defenses permitted by section 305(c) of the Act.

(e) *Public access to data.* Financial data filed by applicants, certificants, and underwriters shall be public information to the extent required by the Freedom of Information Act and permitted by the Privacy Act.

§ 132.9 Issuance of Certificates.

(a) After acceptable evidence of financial responsibility has been provided and appropriate fees have been paid, the Coast Guard issues a separate Certificate for each vessel listed on a completed application. Certificates are issued only to vessel operators and are effective for three years from the date of issue.

(b) The original Certificate shall be carried on the vessel named on the Certificate. However, a legible copy (certified as accurate by a notary public or other person authorized to take oaths) may be carried in lieu of the original Certificate if the vessel is an unmanned barge which—

(1) Does not require a Certificate of Inspection from the United States Coast Guard;

(2) Is owned and operated by United States entities; and

(3) Does not have a facility which the vessel operator believes would offer suitable protection for the original Certificate. If a copy is carried aboard such barge, the original shall be retained at a location in the United States and shall be kept readily accessible for inspection by U.S. Government officials.

(c) Erasures or other alterations on a Certificate or copy are prohibited (even if made by government authorities) and automatically void a Certificate or copy.

(d) If at any time after a Certificate has been issued a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificant shall notify the Commandant (G–WFR), in writing, within 10 days of becoming aware of the change.

(e) If for any reason, including a vessel's demise or transfer to a new operator, a certificant ceases to be the operator of a vessel, the certificant shall, within 30 days, complete the reverse side of the original Certificate for the involved vessel and return it to the Commandant (G–WFR). Such Certificate and any copy thereof is automatically void (whether or not returned to the Coast Guard), and its use is prohibited. Where such voided Certificate cannot be returned because it has been lost or destroyed, the certificant shall, as soon as possible, submit the following written information to the Commandant (G–WFR):

(1) The number of the Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date the certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was returned, sold or transferred.

(5) The reason why the Certificate cannot be returned.

§ 132.10 Operator's responsibility for identification.

(a) Except in the case of unmanned barges, operators who are not also the owners of certificated vessels shall carry on board such vessels the original or legible copy of the demise charter-party or any other written document which demonstrates that such operators are, in fact, the operators designated on the Certificates.

(b) The documents required by paragraph (a) of this section shall be presented for examination to U.S. Government officials upon request.

§ 132.11 Denial or revocation of Certificates.

(a) A Certificate is denied or revoked for any of the following reasons:

(1) Making any willfully false statement to the Coast Guard in connection with an application for an initial Certificate or a request for a renewal Certificate or the retention of an existing Certificate.

(2) Failure of an applicant or certificant to establish or maintain acceptable evidence of financial responsibility.

(3) Failure to comply with or respond to lawful inquires, regulations, or orders of the Coast Guard pertaining to activities subject to this part.

(4) Failure to timely file the statements or affidavits required by § 132.8(b)(3) (i), (iii).

(5) Cancellation or termination of any insurance form, surety bond or guaranty issued by an underwriter under this part unless acceptable substitute evidence of financial responsibility has been submitted.

(b) Denial or revocation of a Certificate is immediate and without prior notice where the applicant or certificant—

(1) Is no longer the operator of the vessel in question;

(2) Fails to furnish acceptable evidence of financial responsibility in support of an application;

(3) Permits the cancellation or termination of the insurance form, surety bond or guaranty upon which the continued validity of the Certificate was based; or

(4) Where the Certificate no longer reflects current information, as would occur in the case of a name change or other change. In any other case, before the denial or revocation of a Certificate, the Commandant (G–WFR) advises the applicant or certificant, in writing, of the intention to deny or revoke the Certificate, and states the reason therefor.

(c) If the reason for an intended revocation is failure to file the required financial statements or affidavits, the revocation is effective 10 days after the date of the notice of intention to revoke, unless the certificant shall, before revocation, demonstrate that the required statements were timely filed.

(d) If the intended denial or revocations is based upon one of the reasons in paragraph (a) (1) or (3) of this section, the applicant or certificant may request, in writing, a hearing to show that the applicant or certificant is in compliance with this part, and, if such request is received within 30 days after the date of the notification of intention to deny or revoke the Coast Guard schedules a hearing. Hearings are conducted in accordance with § 135.223 of this subchapter.

§ 132.12 Fees.

(a) This section establishes the application fee imposed by the Coast Guard for processing applications and also establishes the certification fee imposed for the issuance or renewal of Certificates.

(b) No Certificate is issued unless the fees set forth in paragraphs (d) and (e) of this section have been paid.

(c) Fees shall be paid in United States currency by check, draft or postal money order made payable to the U.S. Coast Guard.

(d) Each applicant who submits an application for the first time shall pay an

initial, non-refundable application fee of $75. Applications for additional Certificates, or to amend or renew existing Certificates, do not require new application fees. However, once an application is withdrawn or denied for any reason, and the same applicant, holding no valid Certificates, wishes to reapply for a Certificate (covering the same or new vessel), a new application and application fee of $75 shall be filed.

(e) In addition to the $75 application fee, applicants shall pay a $40 fee for each Certificate issued. Applicants shall submit such certification fee for each vessel listed in, or later added to, an application. The $40 certification fee is required to renew or to reissue a Certificate for any reason, including, but not limited to, a name change or a lost Certificate.

(f) Certification fees are refunded, upon receipt of a written request, if the application is withdrawn or denied before issuance of the Certificates. Overpayments of application and certification fees are refunded on request only if the refund is $20 or more. However, any overpayments not refunded are credited, for a period of three years from the date of receipt of the moneys by the Coast Guard, for the applicant's possible future use under this part.

§ 132.13 Enforcement.

(a) Any vessel operator who fails to comply with this part is subject to a civil penalty of not more than $10,000 for each such failure to comply.

(b) No penalty under paragraph (a) of this section is assessed until notice and an opportunity for hearing on the alleged violation have been given.

(c) In the event any vessel subject to this part fails, upon request, to produce a valid Certificate, the Coast Guard—

(1) Denies the vessel entry to any port or place in the United States or the navigable waters of the United States; and

(2) Detains the vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

§ 132.14 Service of process.

(a) When executing the forms required by this part, each applicant and underwriter shall designate thereon a person in the United States as its agent for service of process for the purposes of Title III of the Act and of this part.

(b) Each designation shall be acknowledged in writing by the designee unless the designee has already furnished the Coast Guard with a master concurrence showing it has agreed in advance to act as the United States agent for service of process for the applicant or underwriter in question.

(c) When the designated agent cannot be served because of death, disability, or unavailability, the Commandant becomes the agent for service of process.

(d) When serving the Commandant, the server shall also—

(1) Send to the applicant, certificant, or underwriter, by registered mail, postage prepaid, at its address last on file with the Coast Guard, a copy of each document served upon the Commandant; and

(2) Attest to that mailing at the time service is made upon the Commandant.

BILLING CODE 4910-14-M

Appendix—Financial Responsibility Application and Supporting Forms

Approved OMB No. 2115-0535

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
CG-5358-1 (6-83)

APPLICATION FOR CERTIFICATE OF FINANCIAL RESPONSIBILITY (OUTER CONTINENTAL SHELF)

GENERAL
(Part I of 4 Parts)

INSTRUCTIONS

Please type or print clearly and submit this application to the Chief, Financial Responsibility Division (G-WFR), Office of Marine Environment and Systems, U. S. Coast Guard Headquarters, 2100 - 2nd Street, S.W., Washington, DC 20593. The application is in four parts: Part I - General; Part II - Evidence of Financial Responsibility; Part III - Declaration; and Part IV - Concurrence of Agent. Applicants must answer item 4 and all other applicable questions. If a question does not apply, answer "not applicalbe." Incomplete applications will be returned. If additional space is required, supplemental sheets may be attached.

THIS SPACE FOR USE BY USCG ONLY

1. Legal name of applicant *(name of legally responsible operator of all vessels listed in Part II)*

(a) English equivalent of legal name if customarily written in language other than English

(b) Trade name, *(if any)*

2. Is this the first time the above-named applicant is applying for a Certificate of Financial Responsibility (Outer Continental Shelf)? *(NOTE: This question does not refer to any other type of Certificate.)*

☐ YES ☐ NO *(If "No", complete item "a" below).*

(a) What control number was assigned to the first application?

3. State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust or other organized group of persons *(whether incorporated or not)*, or as a receiver, trustee, or other liquidating agent, and briefly describe current business activities and length of time engaged therein.

(a) If a corporation, association, or other organization, please indicate:

Name of State or foreign country in which incorporated or organized	Date of incorporation or organization

(b) If a partnership, give name and address of each partner

4. Name and address of applicant's United States agent or other person authorized by applicant to accept legal service in the United States *(see PART IV) (U.S. applicants may appoint themselves as agent, eliminating the need to complete Part IV.)*

EVIDENCE OF FINANCIAL RESPONSIBILITY (Part II of 4 Parts)

5.

Please list each vessel for which a Certificate is desired. Vessels for which the operator named in item I (a) is not responsible should not be listed in this form. In column (f) indicate the number "1" if the operator is also the registered owner. Indicate "2" in column (f) if the operator is not the registered owner.

Name of Vessel (a)	Type of Vessel (b)	Country of Registry (c)	Registration Number (d)	Gross Tons (e)	"1" or "2" (f)

(g) If applicant indicated "2" for any vessel listed above in column 5(f), please indicate:

Name of Vessel	Owner	Owner's Mailing Address

EVIDENCE OF FINANCIAL RESPONSIBILITY (Part II of 4 Parts) - Continued

6. Items 7 through 10 are optional methods of establishing financial responsibility. Check the appropriate box(es) below and answer only the item(s) which are applicable to this application:

☐ Insurance (Answer Item 7)	☐ Surety Bond (Answer Item 8)	☐ Guaranty (Answer Item 9)	☐ Self-insurer (Answer Item 10)

7. Name and address of applicant's insurer *(Insurance Form CG-5358-2 must be filed before a Certificate will be issued.)*

8. Total amount of surety bond. *(Surety Bond Form CG-5358-2A must be filed before a Certificate will be issued.)*

$_____

(a) Name and address of applicant's surety

9. Name and address of applicant's guarantor *(Guaranty Form CG-5358-2B and all required financial data must be filed before a Certificate will be issued.)*

(a) Guarantor's fiscal year

_____ (Month) _____ (Day) to _____ (Month) _____ (Day)

10. If applicant intends to qualify as a self-insurer, attach all required financial data and indicate fiscal year

_____ (Month) _____ (Day) to _____ (Month) _____ (Day)

DECLARATION (Part III of 4 Parts)	
11. Applicant's mailing address *(Street, number, post office box, city, State or country, and zip code if in the United States)*	(a) Telex No. and answerback
12. Type or print in this space the name and title of the official who is signing this application	(a) Area code and telephone no.

I DECLARE that I have examined this application, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Furthermore, it is agreed the applicant named in item I of Part I above is the responsible operator of all vessels now listed in or later added to this application. I also agree that in the event the agent designated in item 4 of Part I above, or his replacement as may be appointed later with the approval of the U. S. Coast Guard, cannot be served due to death, disability, or unavailability, the Commandant, U. S. Coast Guard, becomes the agent for service of process. I have signed this application in my above-indicated capacity as an authorized official of the applicant, or, if acting under a power of attorney, under the power vested in me by the applicant as evidenced by the attached document.

DATE	IMPORTANT ▶	SIGNATURE OF ABOVE OFFICIAL

NOTE: Please be sure that Parts I, II and III have been completed in full and that Part III has been dated and signed. Then proceed to Part IV, attached.

NO CERTIFICATE WILL BE ISSUED UNLESS A COMPLETED APPLICATION FORM HAS BEEN RECEIVED, PROCESSED AND APPROVED. 33 CFR 132.

COMMENTS

The statements hereinabove set forth are made subject to penalties prescribed by law for any person who knowingly and willfully makes false statements on any matter within the jurisdiction of an agency of the United States (18 USC 1001).

CONCURRENCE OF AGENT (Part IV of 4 Parts)

Part IV-A must be completed by the person designated in item 4 of Part I to serve as applicant's United States agent for service of legal process. Part IV-B must be completed by the applicant. After Parts IV-A and IV-B are completed, Part IV should be submitted to the U. S. Coast Guard by the applicant or by the agent, either separately or together with Parts I, II, and III. *(Part IV need not be completed if the agent designated in Item 4 of Part I already has submitted to the U. S. Coast Guard an acceptable blanket Concurrence of Agent, agreeing to serve on behalf of certain applicants who designate such agent. Part IV also need not be completed if the applicant is a United States entity and has appointed itself as agent in item 4 of Part I.)*

PART IV - A

It is hereby agreed that _____

shall serve as the herein named applicant's United States agent for service of legal process under Part 132, Title 33, CFR, and Title III of the Outer Continental Shelf Lands Act Amendments of 1978. This designation and agreement shall cease immediately in the event the applicant designates a new agent acceptable and agreed to by the U.S. Coast Guard.

Date: _____

Signature of person signing on behalf of agent: _____

Title: _____

Business address: _____

_____

_____

PART IV - B

TO BE COMPLETED BY APPLICANT

Name of applicant *(from item I (a))*: _____

Signature of person signing on behalf of applicant:

(Person signing here should also sign in appropriate place on Part III) _____ Date: _____

Title: _____

BILLING CODE 4910-14-C

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG-5358-2 (6-83)

Insurance Co. Form No. ————

INSURANCE FORM CG-5358-2 FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 (Pub. L. 95-372)

(Name of Insurer) ———— (hereinafter "Insurer") hereby certifies that for purposes of complying with the provisions of section 305(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978 (hereinafter "Act"), each of the vessel operators specified in the schedules below is insured by it, in respect to each of the vessels respectively specified therein, against liability for removal costs and damages to which such vessel operators could be subjected under Title III of the Act. The amount of liability insured herein is $300 per gross ton or $25,000, whichever is greater, per vessel, in any one incident.

(Name of Agent) ———— with offices located at ———— is hereby designated as the Insurer's agent for service of process for the purposes of Title III of the Act and implementing rules at Part 132 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to death, disability or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

The Insurer consents to be sued directly in respect of any claim authorized under section 303 of the Act against any of the operators; provided, however, that in any such direct action its liability per vessel in any one incident shall not exceed $300 per gross ton of the vessel or $250,000, whichever is greater. The Insurer shall be entitled to invoke only the rights and defenses permitted by Title III of the Act to the vessel operator and the defense that the incident was caused by the willful misconduct of the vessel operator.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the termination date of this undertaking, and shall be applicable only to incidents giving rise to claims authorized under section 303 of the Act in respect to any of the below-listed vessels.

The effective date of this undertaking shall, for each vessel listed below, be the date the vessel is named in or added to the schedules below. For each vessel, the termination date of this undertaking shall be 30 days after the date of receipt of written notice by the U.S. Coast Guard (USCG) that the Insurer has elected to terminate the insurance evidenced by this undertaking, and has so notified the vessel operator. However, for any vessel carrying Outer Continental Shelf-produced oil as cargo loaded before the scheduled date of termination, the termination shall not take effect until (1) completion of the discharge of cargo, or (2) until 60 days after the date of receipt by the USCG of written notice the Insurer has elected to terminate the insurance evidenced by this undertaking, whichever date is earlier.

Termination of this undertaking as to any vessel shall not affect the liability of the Insurer in connection with an incident occurring before the date the termination becomes effective.

If, during the currency of this undertaking, a below-named operator requests that an additional vessel be made subject to this undertaking, and if the Insurer accedes to the request and should so notify the USCG, then the vessel shall be included in the schedules below.

The definitions in 33 CFR 132.2 shall apply to this undertaking.

Effective Date of Coverage for Vessels Originally Named on this Undertaking: Day/Month/Year ————

(Name of Insurer) ————

(Mailing Address) ————

By: ————

(Signature of Offical Signing on Behalf of Insurer)

(Typed Name and Title of Signer) ————

Insurance Form CG-5358-2 (6/83)————

SCHEDULE OF VESSELS AND ASSURED OPERATORS

Vessel	Gross tons	Assured operator

Insurance Form CG-5358-2(6/83)————

SCHEDULE OF VESSELS AND ASSURED OPERATORS ADDED TO ABOVE SCHEDULE

Vessel	Gross tons	Assured operator	Date added

Insurance Form CG-5358-2(6/83)————

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG-5358-2A (6/83)

Surety Co. Bond No. ————

OIL DISCHARGE SURETY BOND FORM CG-5358-2A FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 (P.L. 95-372)

KNOW ALL MEN BY THESE PRESENTS, that We (Name of Vessel Operator) ———— of (City) ———— (State and Country) ————, as Principal (hereinafter called Principal), and (Name of Surety) ————, a company created and existing under the laws of (State and Country) ————, and authorized to do business in the United States, as Surety (hereinafter called Surety), are held and firmly bound unto the United States of America and other claimants for damages and removal cost liability under Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (hereinafter "Act") in the penal sum of $————(Penal Sum May Not Be Less Than $250,000), for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal intends to become or is a holder of a Certificate of Financial Responsibility (Outer Continental Shelf) under the provisions of Part 132 of Title 33, Code of Federal Regulations, and has elected to file with the U.S. Coast Guard (USCG) such a bond as will insure financial responsibility to meet liability for removal costs and damages in connection with claims authorized by section 303 of the Act; and,

WHEREAS, this bond is written to ensure compliance by the Principal with the requirements of section 305(a)(1) of the Act; and shall inure to the benefit of claimants under Title III of the Act;

NOW, THEREFORE, the condition of this obligation is that if the Principal shall pay or cause to be paid to claimants any sum or sums for which the Principal may be held legally liable under Title III of the Act, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond. In no event shall the Surety's obligation hereunder exceed the amount of the penalty, provided the Surety furnishes written notice to the USCG forthwith of all claims filed, judgments rendered, and payments made by the Surety under this bond.

Any claim for which the Principal may be liable under Title III of the Act may be brought against the Surety. In the event of a direct claim, the Surety shall be entitled to invoke only (1) the rights and defenses permitted by Title III of the Act to the Principal (vessel operator) and (2) the defense that the incident giving rise to the claim was caused by the willful misconduct of the Principal.

This bond is effective the ———— day of ————, 19——, 12:01 a.m., standard time at the address of the Surety as stated herein and shall continue in force until terminated as herein after provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other party with a copy (plainly indicating that the original notice was sent by certified mail) to the USCG at its office in Washington, D.C. The termination becomes effective thirty (30) days after actual receipt by the USCG of written notice; *provided, however,* that with respect to any of the Principal's vessels carrying Outer Continental Shelf-produced oil as cargo that has been loaded before the time the termination would otherwise have become effective, the termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the USCG of written notice of termination of the bond by the Principal or the Surety under the conditions set forth above, whichever date is earlier. The Surety shall not be liable hereunder in connection with an incident occurring after the termination of this bond as herein provided, but termination shall not affect the liability of the Surety in connection with an incident occurring before the date the termination becomes effective.

The Surety designates (Name of Agent) _____ with offices at _____, as the Surety's agent for service of process for the purposes of Title III of the Act and implementing rules at Part 132 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to death, disability, or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

The definitions in 33 CFR 132.2 apply to this bond.

In witness whereof, the Principal and Surety have executed this instrument on the ____ day of _____, 19____.

(Please type name of signer under each signature. In the case of a partnership, each partner must sign.)

Principal

(Individual Principal or Partner) _____
(Business Address) _____

(Individual Principal or Partner) _____
(Business Address) _____

(Individual Principal or Partner) _____
(Business Address) _____

Corporate Principal _____
Business Address _____

By _____
Title _____

(Affix Corporate Seal)

Surety

Corporate Surety _____
Business Address _____

By _____
Title _____

(Affix Corporate Seal)

CG-5358-2A (6/83)

Surety Co. Bond No. _____

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

CG-5358-2B (6-83)

Guaranty No. _____

GUARANTY FORM CG-5358-2B IN RESPECT OF LIABILITY FOR DISCHARGE OF OIL UNDER TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 (P.L. 95-372)

1. WHEREAS (Name of Vessel Operator) _____ (hereinafter the "Operator") is the Operator of the Vessel(s) specified in the annexed schedules (hereinafter "Vessel" or "Vessels"), and whereas the Operator desires to establish its financial responsibility in accordance with section 305(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978 (hereinafter "the Act"), the undersigned Guarantor hereby guarantees, subject to the provisions of clause 4 hereof, to discharge the Operator's legal liability for damages and removal costs under Title III of the Act, in the event legal liability has not been discharged by the Operator within 21 days after the claimant has obtained a final judgment (after appeal, if any) against the Operator, in accordance with Title III of the Act, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Operator, with the approval of the Guarantor. Upon payment of the agreed sum, the Operator is to be fully, irrevocably and unconditionally discharged from all further liability to the claimant under this Guaranty with respect to the claim. The Operator's legal liability under Title III of the Act, which is covered by this Guaranty, is $300 per gross ton or $250,000, whichever is greater.

2. The Guarantor's liability per vessel in any one incident, under this Guaranty, shall not exceed $300 per gross ton or $250,000, whichever is greater, provided that the Guarantor furnishes prompt written notice to the U.S. Coast Guard (USCG) of all claims filed, judgments rendered and payments made by the Guarantor under this Guaranty.

3. The Guarantor's liability under this Guaranty shall attach only in relation to incidents giving rise to claims, authorized under section 303 of the Act, against the Operator in respect of any of the Vessels for removal costs and damages, occurring on or after the effective date of this Guaranty and before the termination date of this Guaranty. The effective date, as to each of the Vessels, shall be the date the Vessel is named in Schedule A or added to Schedule B below. The termination date, as to each of the Vessels, shall be the date 30 days after the date of receipt by the USCG of written notice the Guarantor has elected to terminate this Guaranty, *provided, however*, that with respect to any Vessel which is carrying Outer Continental Shelf-produced oil as cargo that has been loaded before the schedule date of termination, the termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the USCG of written notice of termination, whichever date is earlier. Termination of this Guaranty as to any of the Vessels shall not affect the liability of the Guarantor in connection with an incident occurring before the date termination becomes effective.

4. Any claim against the Operator, authorized by section 303 of the Act, may be brought directly against the Guarantor. In the event of a direct claim, the Guarantor shall be entitled to invoke only (1) the rights and defenses permitted by Title III of the Act to the vessel operator and (2) the defense that the incident was caused by the willful misconduct of the Operator.

5. If, during the currency of this Guaranty, the Operator requests that a vessel operated by the Operator, and not specified in the annexed Schedules A and B, should become subject to this Guaranty, and if the Guarantor accedes to the request and so notifies the USCG in writing, then the vessel becomes one of the Vessels included in Schedule B and subject to this Guaranty.

6. The Guarantor hereby designates (Name of Agent) _____ with offices at _____, as the Guarantor's agent in the United States for service of process for purposes of Title III of the Act and implementing rules at Part 132 of Title 33, Code of Federal Regulations. If the designated agent cannot be served due to death, disability, or unavailability, the Commandant, U.S. Coast Guard, becomes the agent for service of process.

7. If more than one Guarantor joins in executing this Guaranty, that action constitutes joint and several liability on the part of the guarantors.

8. The definitions in 33 CFR 132 apply to this Guaranty.

Effective Date: (Month/Day/Year and Place of Execution) _____

(Type Name of Guarantor) _____
(Type Address of Guarantor) _____

By: (Signature) _____
(Type Name and Title of Person Signing Above) _____

CG-5358-2B (6/83) Guaranty No. _____

SCHEDULE A—VESSELS INITIALLY LISTED

Vessels	Gross tons	Operator

CG-5358-2B(6/83) Guaranty No. _____

SCHEDULE B—VESSELS ADDED IN ACCORDANCE WITH CLAUSE 5

Vessels	Grosstons	Operator	Date added

CG-5358-2B (6/83) Guaranty No. _____

(33 U.S.C. 1321(p), 43 U.S.C. 1653(c), 1851(a)(1), 1822(a)(2); E.O. 11735, E.O. 12123, E.O. 12418 (48 FR 20891-2); 49 CFR 1.46)

Dated: August 26, 1983.

B. F. Hollingsworth,

Rear Admiral, U. S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 83-26317 Filed 10-7-83; 8:45 am]

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federal register

Tuesday
October 11, 1983

Part VI

Department of Transportation

Federal Aviation Administration

Floor Proximity Emergency Escape Path Marking; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 23792; Notice No. 83-15]

Floor Proximity Emergency Escape Path Marking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes new performance standards for floor proximity emergency escape path marking to provide visual guidance for emergency cabin evacuation when all sources of cabin lighting more than 4 feet above the aisle floor are totally obscured by smoke. The proposal results from research and fire tests and would make the standards applicable to future type certification of transport category airplanes, and after a specified date, to airplanes type certificated after January 1, 1958, and operating under Part 121. These proposed standards are intended to improve aircraft fire safety and would be in addition to the emergency lighting standards currently in the regulations.

DATES: Comments must be received on or before February 8, 1984.

ADDRESS: Comments on the proposal are to be marked with "Docket No. 23792" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23792, 800 Independence Avenue SW., Washington, D.C. 20591; or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C. Comments may be inspected at Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Henri Branting, Technical Analysis Branch (AWS-120), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone (202) 426-8382.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of this proposal. The comment should carry the regulatory document or notice number and be submitted in duplicate to the address above. All comments received as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for making comments.

Before taking any final action on the proposal, the Administrator will consider any comment made on or before the closing date for comments. The proposal may be changed in light of comments received.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 23792." When the comment is received, the postcard will be dated, time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular NO. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

This notice is based on findings of the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee and the results of research, development, and testing conducted by the Civil Areomedical Institute (CAMI) and the technical center of the FAA.

As a result of information from public hearings on aircraft fire safety, the FAA established the SAFER Advisory Committee in June 1978, charging the Committee to "examine the factors affecting the ability of the aircraft cabin occupant to survive in the post-crash environment and the range of solutions available." The Committee consisted of 24 representatives of a wide range of aviation and general public interests. The Committee technical support groups included approximately 150 of the world's top experts in fire research, accident investigation, materials development, and related fields. The Committee focused primarily on the problems of fuel spill and cabin fire protection and looked into related aspects of post-crash survival, including lighting for emergency evacuation. The Committee found that accident experience indicates smoke from burning fuel and cabin material can obscure overhead emergency lighting and make cabin evacuation difficult. Therefore, the Committee recommended that consideration be given to placing additional sources of lighting at a lower level in the relatively clear air near the floor. The FAA accepted the Committee recommendation and has been conducting research, testing, and design studies necessary to develop this proposed floor proximity marking standard.

Current airworthiness and operating regulations address the problems and the urgency of cabin evacuation immediately following a crash landing. For most airplanes operating under Part 121, the Federal Aviation Regulations require that the emergency evacuation capability of the airplane be confirmed by a fullscale demonstration in which a full cabin load of typical airline passengers is evacuated in 90 seconds. This demonstration is carried out in simulated dark of the night emergency conditions using only emergency lighting and with one-half of the number of emergency exits rendered unusable. While this particular demonstration does not simulate a smoke-filled cabin, it does consider the possibility that a fire exists on the exterior of the airplane, as reflected in the requirement that half of the exits are assumed blocked either by fire or some other cause.

Current regulations require that emergency lighting provide specific illumination at seat armrest level. The sources of this emergency illumination are typically located overhead in the cabin ceiling area. Service experience shows that the current regulations effectively ensure that the airplane is capable of sustaining rapid mass evacuation under critical conditions over a reasonable extended period of time.

The SAFER study indicated that the current regulations do not adequately cover the brief interval between the time when the smoke from a spreading fire begins to overwhelm the mass evacuation process and the time when the cabin is not survivable. That is when buoyant hot smoke and gases might begin to fill the cabin down to near floor level, obscuring all overhead lighting. While this condition is extreme, it is considered desirable to address this in the aircraft design, and safety could be

improved through the use of lights, lights and reflectors, or other devices to provide floor proximity emergency escape path marking.

The FAA conducted a series of small-scale laboratory tests and several full-scale evacuation tests and cabin fire tests (in conjunction with the fire protection research) to look into the problems of emergency lighting in conditions of dense smoke and to study practical ways of developing improved lighting systems for transport category airplane cabins. These tests confirmed that in dense smoke conditions, the evacuation capability of a cabin equipped with conventional overhead lighting is reduced more quickly and to a greater extent than that of a cabin with floor proximity markings. Increasing the intensity of overhead lighting to compensate for the smoke proved to be of little effect. The results of the FAA test program are contained in three FAA reports, available from the National Technical Information Service, Springfield, Virginia 22161.

1. Report No. FAA–AM–79–12, Readability of Self-Illuninated Signs in a Smoke-Obscured Environment, dated November 1979—This study investigated the ability of people with normal distant visual acuity to identify self-illuminated emergency signs in an environment obscured by white smoke. The results indicate that substantial increases in character sizes in the signs produce only moderate improvement in readability.

2. Report No. FAA–AM–80–13, Readability of Self-Illuminated Signs Obscured by Black Fuel-Fire Smoke, dated July 1980—This study, using black fuel-fire generated smoke, is a partial replication of the 1979 study using white smoke. A comparison of the results of the two studies shows both colors of smoke to be approximately equal in their ability to shroud the illuminated signs. Black smoke, however, appears somewhat more effective in obscuring small details at or near the normal visual acuity threshold.

3. Report No FAA–AM–81–7, Emergency Cabin Lighting Installations: An Analysis of Ceiling vs. Lower Cabin-Mounted Lighting During Evacuation Trials, dated February 1981—In this study, full-scale evacuation tests were conducted to compare the evactuation rates with two different emergency lighting systems in an aircraft cabin filed with nontoxic white smoke. Cabin emergency lighting and exit signs mounted below layered smoke in aisle seat armrests, with exit signs mounted at and below the cabin midpoint, provided light directly in the aisle and cross aisle. Results indicated that lights and signs mounted lower in the cabin were more readily visible in smoke and enabled subjects to evacuate from a smoke-filed cabin more rapidly than conventional ceiling-mounted lights and signs.

To implement the test findings, a design feasibility and cost study of floor proximity emergency escape path marking was conducted under FAA contract. Eleven candidate systems were considered in this study, and the two most promising systems in terms of performance and practicality were analyzed in detail. The 11 systems studied included incandescent, fluorescent, electroluminescent, and self-illuminated lighting elements. The various lighting elements were studied at different locations and distributions within the cabin, including aisle seat frames, armrests, and panels, cabin sidewall panels, the aisle floor, and overhead baggage racks. While individual systems studied had certain advantages compared to others, no system was so clearly superior to the others that it warranted its establishment through regulation as the signal standard for floor proximity emergency escape path marking in general. Therefore, this notice proposes an objective performance standard rather than requiring a particular system. A performance standard would allow industry the flexibility to choose among the various systems or to develop an acceptable system to mark the emergency escape path to the exits when all sources of illumination above 4 feet from the aisle floor are totally obscured by smoke.

Discussion of Proposal

Based on the studies carried out, this document proposes performance standards for floor proximity emergency escape path marking for transport category airplanes. The standards would establish the level of performance which must be proved under dark of the night conditions. These conditions are the same as those specified in the emergency evacuation demonstration requirements of § 25.803 and Appendix D to Part 121. The proposal does not include rotorcraft or the types of airplanes operated under Part 135 because of their relatively smaller cabin sizes and shorter aisle lengths and shorter seat-to-exit distances compared to transport category airplanes. Floor proximity emergency escape path marking would provide guidance when all sources of illumination more than 4 feet above the cabin aisle floor are totaly obscured by dense smoke. Although the effective height of clear air would be somewhat less than 4 feet, the choice of 4 feet appears to be a reasonable height based on the studies performed and on accident experience.

There may be any number of acceptable combinations of point lighting, flood lighting, strip lighting, markers, signs, reflective materials, and other components that could meet the performance objectives of this proposal. The approval of radioactive light sources would be subject to applicable requirements of the U.S. Nuclear Regulatory Commission. Although the design feasibility and cost study on which the economic analysis is based took into consideration self-illuminated lighting components containing tritium, the standard proposed in this notice would provide industry the flexibility and latitude to design simplified systems of comparable performance and cost using nonradioactive components. Comments and data on marking systems capable of meeting the proposed performance standards are particularly sought and would be considered in the publication of advisory material on acceptable means of compliance.

The proposal would require that airplanes type certificated after January 1, 1958, and operating under Part 121 comply with the new standards within 2 years after the standards become effective. The limited number of airplanes type certificated before January 1, 1958, which are operating under Part 121 are not included because the relatively advanced age and smaller sizes of these airplanes make compliance with the proposed requirements impractical from an economic standpoint. The 2-year period is intended to allow air carriers lead time to schedule the modifications necessary for compliance to coincide with major maintenance inspections and, therefore, avoid an undue burden. The FAA requests comments on this issue and will consider all responses in establishing the implementation period in the final rule.

Economic Analysis

Under contract, the FAA conducted a detailed cost analysis of two emergency light and exit sign systems for improved passenger evacuation in dense cabin smoke conditions. The two systems that were evaluated are (1) self-illuminated markers on each aisle seat and self-illuminated signs beside each exit, and (2) incandescent lights under each aisel seat, on one side of the aisle, and self-illuminated lights beside each exit. Both of these systems supplement the existing emergency lighting system. The increased illumination provided by the markers and signs is negligible, but

awareness of the escape route is sufficient to aid the passenger during evacuation is dense cabin smoke conditions. The system utilizing incandescent lights and self-illuminated exit signs costs more than four times as much as the self-illuminated marker and exit sign system. Because each concept is likely to meet the requirements of the proposed rule, the FAA developed cost estimates for floor proximity emergency lighting based on a self-illuminated marker and exit sign system which is the least expensive system in the calculation of potential cost to industry. Using this type of system in the calculation of potential cost to industry. Using this type of system, the cost of retrofitting an individual aircraft is estimated at $5,500 for a DC-9 and at $17,400 for a B747. The cost to install a system of this type in a new aircraft is estimated to be 10 percent less than the retrofitting cost.

The weight added with the addition of this lighting system is estimated at 8 pounds for the DC-9 and 17 pounds for the DC-10. Because the weight change is nominal, the payload should not be affected, and the cost impact would be that for additional fuel.

For the 1983 fleet of 2,600 aircraft, the cost to retrofit is estimated at $18.24 million and the cost of additional fuel for carrying the additional weight is estimated at $468,000 per year.

An obvious benefit of the floor proximity emergency escape path marking is the savings of lives and the injuries prevented. Since 1965, 914 fatalities occurred in accidents involving fires. Some of those fatalities resulted from trauma or other causes and could not have been averted by floor proximity emergency escape path marking. However, based on available information, it is estimated that the proposed marking system alone could have helped to prevent 20 percent of these fatalities.

To project the casualty loss over the next 10-year period, the number of enplanements and the fire casualty losses have been estimated. The benefits from 1983 through 1993 are estimated to be more than twice the cost of retrofitting the fleet.

Trade Impact

There would be little or no impact on U.S. or foreign trade if this proposal were adopted. In the United States, both foreign and domestic manufacturers would have to meet the proposed requriements, and there would be no competitive advantage to either. In foreign countries, there would be a minor cost advantage only if the foreign country did not require the floor proximity emergency escape path marking system. Since the cost of the marking system is negligible compared to the total costs of new aircraft, there is essentially no impact on trade.

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Airworthiness directives and standards, Beverages, Cargo, Chemicals, Children, Narcotics, Flammable materials, Handicapped, Hazardous materials, Hours of work, Infants, Liquor, Mail, Drugs, Pilots, Smoking, Transportation, Common carriers.

The Proposed Rule

Accordingly, the Federal Aviation Administration proposes to amend Parts 25 and 121 of the Federal Aviation Regulations (14 CFR Parts 25 and 121) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

§ 25.812 [Amended]

1. By amending § 25.812(a)(1) by removing the phrase "and interior lighting in emergency exit areas" and inserting, in its place, the phrase "interior lighting in emergency exit areas, and floor proximity escape path marking".

2. By amending § 25.812 by redesignating present paragraphs (e) through (k) as paragraphs (f) through (l).

3. By amending § 25.812 by adding a new paragraph (e) as follows:

§ 25.812 Emergency lighting.

* * * * *

(e) Floor proximity emergency escape path marking must provide emergency evacuation guidance for passengers when all sources of illumination more than 4 feet above the cabin aisle floor are totally obscured. In the dark of the night, the floor proximity emergency escape path marking must enable each passenger to—

(1) Visually identify the emergency escape path along the aisle of the cabin floor after leaving a cabin seat; and

(2) Readily identify each exit from the emergency escape path by reference only to markings and visual features not more than 4 feet above the cabin floor.

* * * * *

4. By changing the reference in redesignated paragraph (f) of § 25.812 from "paragraph (g)" to "paragraph (h)".

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

5. By amending § 121.310 by revising paragraph (c) to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(c) *Lighting for interior emergency exit markings.* Each passenger-carrying airplane must have an emergency lighting system, independent of the main lighting system. However, sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system. The emergency lighting system must—

(1) Illuminate each passenger exit marking and locating sign;

(2) Provide enough general lighting in the passenger cabin so that the average illumination when measured at 40-inch intervals at seat armrest height, on the centerline of the main passenger aisle, is at least 0.05 foot-candles; and

(3) For airplanes type certificated after January 1, 1958, after (a date 2 years after the effective date of this regulation), include floor proximity emergency escape path marking which meets the requirements of § 25.812(e) of this chapter in effect on (the effective date of this regulation).

* * * * *

6. By changing the reference in paragraph (d) of § 121.310 from "§ 25.812(g)" to "§ 25.812(h)".

(Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.45).

This proposal was developed jointly by, and is issued on behalf of, the Office of Airworthiness, Washington, D.C., responsible for issuance of Part 121 rulemaking proposals; and the Transport Airplane Certification Directorate, Seattle, Washington, responsible for issuance of Part 25 rulemaking proposals. Recommendations for final rulemaking will be made to the Administrator jointly by these offices after their review and consideration of all comments received.

Note.—Under the terms of the Regulatory Flexibility Act (the Act), the

FAA has reviewed this proposal to determine what impact it might have on small entities. Since the projected cost of compliance could be between $5,500 and $17,400 for each aircraft in the Part 121 fleet, the FAA has determined that this rule, if adopted, may have a significant economic impact on a substantial number of small entities. Consequently, an initial regulatory flexibility analysis and regulatory evaluation has been prepared. It is contained in the docket and is open to public inspection at the place and time stated at the beginning of this document. A copy of the evaluation may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

As required by the Act, various regulatory alternatives were considered, such as: Making the requirements applicable only to new airplanes, having different standards based on the size of the air carrier, letting the market decide whether to use the new systems, and requiring all airplanes operating under Part 121 to come into compliance with the requirements within a certain time period. Safety needs are such that the FAA has selected the latter alternative set forth in this proposal.

This proposal, if adopted, is not likely to result in an annual effect on the economy of $100 million or more or a major increase in costs for consumers; industry; or Federal, State, or local government agencies. In addition, this proposal, if adopted would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. Accordingly, it has been determined that this is not a major regulation under Executive Order 12291. In addition, the FAA has determined that this action is significant under Department of Transportation Regulatory Policy and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on August 23, 1983.

Walter S. Luffsey,

Associate Administrator for Aviation Standards.

[FR Doc. 83-27485 Filed 10-7-83; 8:45 am]

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federal register

Tuesday
October 11, 1983

Part VII

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Rotogravure Printing and Coating of Flexible Vinyl and Urethane

ENVIRONMENAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2382-2]

Standards of Performance for New Stationary Sources; Rotogravure Printing and Coating of Flexible Vinyl and Urethane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Proposal Rule.

SUMMARY: This notice supplements the proposed rule on the standards of performance for Flexible vinyl coating and printing operations that appeared at page 2276 in the **Federal Register** of January 18, 1983 (48 FR 2276). This action is being taken to provide notice that the printing of flexible urethane coated fabrics is included in the proposed standard for flexible vinyl coating and printing operations and to solicit public comments on urethane printing only.

DATES: *Comments.* The proposed regulation is being reopened for comment concerning urethane only. Comments must be received on or before November 10, 1983.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), attention: Docket Number A-80-8, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Background Information Document. The background information document (BID) for the proposed standard may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Flexible Vinyl Coating and Printing Operations—Background Information for Proposed Standards," EPA-450/3-81-016a.

Docket. Docket number A-80-8, containing supporting information used in developing the proposed standard, 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, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number (919) 541-5624.

SUPPLEMENTARY INFORMATION: Flexible vinyl printing refers to the rotogravure process of printing and coating vinyl webs with any mixture of ink, coating solids, volatile organic compounds (VOC), and water that is applied to the web substrate of a rotogravure printing line. The web may consist of a vinyl coated substrate referred to as a supported web, or a vinyl sheet with no substrate, referred to as an unsupported web. Printing and coating methods for supported and unsupported products are essentially identical.

The comment period for the proposed standards for flexible vinyl coating and printing operations ended on April 1, 1983. During the comment period, a letter was received from a major manufacturer of flexible urethane produces. After reviewing the regulation and background information document, the commenter stated that there were no known technical or scientific reasons why the printing of flexible urethane coated fabrics should be regulated differently than the printing of flexible vinyl coated fabrics. The commenter further stated that regardless of the chemical compositioon of the coating, whether polyvinyl chloride (PVC) or urethane, the webs are finished by printing with solvent solutions of PVC, urethanes and/or acrylic resins.

Urethane and vinyl products are commonly printed as a continuous web on rotogravure equipment. At least two manufacturers sometimes use urethane webs and/or urethane inks on equipment normally used for vinyl products. The standard, which reflects the best demonstrated technology (BDT) for the vinyl industry, also reflects BDT for the urethane industry. The Administrator believes that urethane product manufacturers can achieve the emission standard at reasonable costs. Therefore, in the Administrator's judgment, based on the information presented by the commenter, it is reasonable to include the printing of flexible urethane coated fabrics in the proposed standards for flexible vinyl coating and printing operations. since the Agency has not investigated the environmental, energy, and economic impacts of the standard upon urethane product manufacturers, we are soliciting public comments on this issue.

Section 604 of the Regulatory Flexibility Act (RFA) requires that the Administrator certify whether regulations have a significant impact on a substantial number of small entities. There are approximately four companies that manufacture urethane products, one of which would be considered small. The economic analysis conducted for small vinyl manufacturers indicated no significant impacts. Similarly, it is not expected that this supplement, if promulgated, will significantly impact small businesses. Further, this supplement will have no impact on any other small entities.

Paperwork Reduction Act

The information provisions associated with the proposed rule which this notice proposes to amend will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 U.S.C. 3501 et seq. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comment on the information collection provisions.

Dated: September 26, 1983.

William D. Ruckelshaus,

Administrator.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Paper and paper products industry.

PART 60—[AMENDED]

The proposed regulation published at 48 FR 2276, January 18, 1983 is amended as follows:

1. The authority for Part 60 is:

Authority: Sec. 111, 301(a) of the Clean Air Act as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

2. The heading for Subpart FFF is revised to read as follows:

Subpart FFF—Standards of Performance for Rotogravure Printing and Coating of Flexible Vinyl and Urethane

3. Paragraph (a) of §60.580 is revised to read as follows:

§ 60.580 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each rotogravure printing line used to print or coat flexible vinyl or urethane products.

* * * * *

4. In § 60.581, the definitions for "emission control devices", "emission control system", "ink", "Rotogravure printing line", and "vapor capture system" are revised. The term "Flexible vinyl products" is changed to "Flexible vinyl and urethane products", and the definition is revised to read as follows:

§ 60.581 Definitions and symbols.

(a) All terms used in this subpart, not defined below, are given the same meaning as in the Act or in Subpart A of this part.

"Emission control device" means any solvent recovery device used to control VOC emissions from flexible vinyl and urethane rotogravure printing lines.

"Emission control system" means the combination of an emission control device and a vapor capture system for the purpose of reducing VOC emissions from flexible vinyl and urethane rotogravure printing lines.

"Flexible vinyl and urethane products" means those products, except for resilient floor coverings (1977 SIC industry 3996), that consist of or contain a vinyl or urethane sheet or a vinyl or urethane coated web, and are more than 50 micrometers (0.002 inches) thick.

* * * * *

"Ink" means any mixture of ink, coating solids, VOC, and water that is applied to the web substrate of a flexible vinyl or urethane rotogravure printing line.

* * * * *

"Rotogravure printing line" means any number of rotogravure print stations and associated dryers capable of printing or coating simultaneously on the same continuous vinyl or urethane web or substrate, which is fed from a continuous roll.

"Vapor capture system" means any device or combination of devices designed to contain, collect, and route solvent vapors released from the flexible vinyl or urethane rotogravure printing line.

* * * * *

[FR Doc. 83-26907 Filed 10-7-83; 8:45 am]
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federal register

Tuesday
October 11, 1983

Part VIII

Environmental Protection Agency

Ethylene Dibromide—Notices of Decision and Emergency Order Suspending Registrations of Pesticide Products Containing EDB for Use as a Soil Fumigant; Intent To Cancel Registrations of Pesticide Products Containing EDB; Determination Concluding the Rebuttable Presumption Against Registration; and Availability of Position Document

ENVIRONMENTAL PROTECTION AGENCY

[OPP-68012; PH FRL 2450-2]

Ethylene Dibromide; Decision and Emergency Order Suspending Registrations of Pesticide Products Containing Ethylene Dibromide for Use as a Soil Fumigant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Decision; Notice of Emergency Suspension Order.

SUMMARY: Pesticide products containing ethylene dibromide (EDB) are registered for use as a soil fumigant under the Federal Insecticide, Fungicide, and Rodenticide Act. This Notice and Order announces the immediately effective suspension of registrations of products registered for that use and sets forth the Administrator's determinations which form the bases for the emergency suspension Order.

DATE: The suspension Order became effective on September 28, 1983. Request by a registrant for an expedited hearing on the issue of whether an imminent hazard exists must be received by the Office of the Hearing Clerk within five (5) days of receipt of this Notice by that registrant.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Additional information supporting this action is available for public inspection from 8:00 A.M. to 4:00 P.M., Monday through Friday, except legal holidays in: Management and Program Support Division (TS-757C), Room 236, CM No. 2, Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Richard J. Johnson, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 711H, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA., (703-557-7400).

SUPPLEMENTARY INFORMATION:

I. Order

This Notice and Order suspends the registrations of each product containing EDB and labeled for use as a soil fumigant, effective immediately. I have determined that continued registration of EDB as a soil fumigant poses an imminent hazard during the period in which administrative hearings could delay the effectiveness of the cancellation of these registrations. I have also determined that an emergency exists resulting from the soil fumigant uses of EDB such that I cannot permit continued registration of these products for the period that hearings could delay the effectiveness of a suspension Order. Therefore, I have decided to issue an emergency order immediately suspending these registrations. These determinations are based on the risk to human health posed by the soil fumigant uses of EDB. EDB has extremely toxic properties and is a potent animal carcinogen. Use as a soil fumigant is likely to result in leaching to underground water sources, thereby contaminating drinking water. Human health risks from further contamination of drinking water and resulting potential for long-term exposure to large segments of the population as well as risks from occupational exposure which would result from continued registration during administrative hearings clearly outweigh the benefits of registration during that period. Pesticide products containing ethylene dibromide (EDB) are the subject of a companion Notice of Intent to Cancel registrations for all uses including all uses as a soil fumigant.

Pursuant to section 6(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. section 136 *et seq.*, I hereby suspend the registration of each pesticide product containing ethylene dibromide (EDB) whose labeling allows the product's use as a soil fumigant. This Order prohibits the distribution, sale, offering for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver to any person of any EDB-containing pesticide product labeled for use as a soil fumigant. The use by any person of a pesticide product which is sold or otherwise moved in commerce in violation of this Order is also hereby prohibited.

II. Legal Authority

A. Standards for Maintaining a Registration

Before a pesticide product may be sold, held for sale, or distributed in either intrastate or interstate commerce, the product must be registered [FIFRA sections 3(a) and 12(a)(1)]. A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product will be registered only if it performs its intended pesticidal function without causing "unreasonable adverse effects on the environment." [FIFRA section 3(c)(5)], that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of [the] pesticide" [FIFRA section 2(bb)]. For a pesticide product to be registerable the benefits of each of its uses must exceed the risks of that use when the product is used in accordance with commonly recognized practice and in compliance with the terms and conditions of registration. The burden of proving that a pesticide product satisfies the criteria for registration is on the proponents of initial or continued registration. [*Environmental Defense Fund* v. *Environmental Protection Agency*, 510 F.2d 1292, 1297 (D.C. Cir. 1975); *Environmental Defense Fund* v. *Environmental Protection Agency*, 465 F.2d 528 (D.C. Cir. 1972).]

Under FIFRA section 6, the Administrator may issue a notice of intent to cancel the registration of a pesticide product or modify the terms and conditions of its registration whenever it is determined that the pesticide product causes unreasonable adverse effects on the environment. If a hearing is requested by any adversely affected person, the product may be cancelled at the end of the administrative hearing on the cancellation notice.

B. Purpose and Standards for Suspending Pesticide Products

The suspension provisions in section 6(c) of FIFRA give the Administrator authority to take interim action until completion of the time-consuming procedures which may be required to reach final cancellation decisions. Under this section, the Administrator may suspend the registrations of a product and prohibit its distribution, sale, or use during cancellation proceedings upon a finding that the pesticide poses an "imminent hazard" to humans or the environment. "Imminent hazard" is defined by the statue to mean that:

The continued use of a pesticide during the time required for cancellation proceedings would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under Pub. L. 94-135.

As discussed above, "unreasonable adverse effects on the environment" means that the risks from use of a pesticide outweigh the benefits of its use. Thus, in order to find an imminent hazard, it is necessary to find that the

risks of use during the period likely to be required for cancellation proceedings appear to outweigh the benefits. The Administrator may not suspend a pesticide without having issued a notice of intention to cancel the registration, or to change the classification, of the pesticide.

Suspension is the Administrator's mechanism for quickly correcting a situation which endangers public health. The courts have repeatedly held that "the function of a suspension decision is to make a preliminary assessment of evidence, and probabilities, not an ultimate resolution of difficult issues" (*Environmental Defense Fund* v. *Environmental Protection Agency*, 510 F.2d 1292, 1297 (D.C. Cir. 1975) quoting from *Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, *supra*, 465 F.2d 540 (D.C. Cir. 1972)). "It is enough if there is a *substantial likelihood* (emphasis in original) that serious harm will be experienced during the year or two required in any realistic projection of the administrative (cancellation) process" (*Environmental Defense Fund* v. *Environmental Protection Agency*, 510 F.2d 1292, 1297 (D.C. Cir. 1975) quoting from *Environmental Defense Fund* v. *Environmental Protection Agency*, *supra*, 465 F.2d 540 (D.C. Cir. 1972)).

A notice of intent to suspend is not an immediately effective suspension order; instead, the Administrator is required to give registrants notice of his intent to suspend and to allow five days for them to request a hearing. If a hearing is not requested within five days, the suspension order becomes final and is not reviewable by a court. If a hearing is requested, the Administrator is required to convene an expedited proceeding. The sole issue at a suspension hearing is whether or not an imminent hazard exists. In those circumstances, a final effective suspension order cannot be issued until the completion of the expedited hearing.

C. Emergency Suspension of Pesticide Products

Before issuing an emergency suspension order, the Administrator is required to make two findings: (1) That the pesticide poses an "imminent hazard", and (2) that an "emergency" exists. An "emergency" exists when the situation "does not permit [the Administrator] to hold a hearing before suspending" FIFRA section 6(c)(3), 7 U.S.C. 136d(c)(3). The Agency interprets this statutory provision to mean that, if the threat of harm to humans and to the environment is so immediate that the continuation of a pesticide use is likely to result in unreasonable adverse effects—i.e., the risks outweight the benefits—during a suspension hearing, the registration of any product for that use may be suspended immediately.

The term "emergency" is not defined by FIFRA, and the statute's emergency suspension provision does not specifically require the Agency to balance benefits against health and environmental risks of continued pesticide registration in determining whether an emergency exists. One possible reading would be that an emergency exists whenever a serious risk could result from pesticide use during the time for conducting a suspension hearing. However, for the purpose of this proceeding, I have decided to consider the risks and benefits in ordering an emergency suspension, just as I balance risks and benefits in deciding whether to register a pesticide or to take the pesticide off the market through a cancellation or ordinary suspension order. FIFRA is a risk/benefit statute, and I see no reason to depart from this balancing test in issuing emergency suspension orders.

The Administrator's determination that an emergency exists is reviewable in appropriate United States district courts solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. FIFRA section 6(c)(4).

An emergency suspension order is issued without prior notice to registrants and takes effect immediately; it remains in effect until the cancellation decision if no expedited hearing is requested. Registrants are given five days to request an expedited hearing. If an expedited hearing is requested on the issue of imminent hazard, the emergency order continues in effect until the issuance of a final suspension order. The hearing stage is to begin within five days of the Agency's receipt of the hearing request. No party other than registrants of suspended products and the Agency may participate in the expedited hearing following the emergency order, except to file briefs. In any suspension hearing, the presiding officer shall have ten days from the conclusion of the presentation of evidence to submit recommended findings and conclusions to the Administrator. The Administrator shall then have seven days to issue a final order on the issue of suspension. Final suspension orders following a hearing are reviewable in appropriate United States courts of appeals.

III. Findings Supporting Determination of Emergency and Imminent Hazard

EDB is registered as a pesticide to control nematodes and other pests by treating the soil in which a number of different crops are grown. In deciding to order this emergency suspension of the registration of each product registered for the soil fumigant uses of EDB, I have determined that the continued registration of EDB as a soil fumigant would pose an imminent hazard during the period in which administrative hearings could delay the effect of the cancellation of these registrations pursuant to the Notice of Intent to Cancel which accompanies this Order and Determination. For purposes of analysis of imminent hazard, I have assumed that the hearing process would result in a two-year delay in cancellation of the registrations of EDB as a soil fumigant. In addition, I have determined that an emergency exists resulting from the use of EDB as a soil fumigant such that I cannot permit continued registration of these products for that purpose during the approximately six-month period that a suspension hearing could delay the effectiveness of a Notice of Intent to Suspend. The bases for my determinations of "imminent hazard" and "emergency" are set forth below.

A. Risks of Continued Soil Fumigant Uses of EDB

Ethylene dibromide is a potent cancer-causing agent in laboratory animals. The chemical has induced tumors in both sexes of mice and rats, by all routes of exposure (oral inhalation, and dermal). Moreover, EDB induced malignant tumors in laboratory animals at several anatomical sites, including sites distant from the initial organs exposed. After oral exposure, the tumors began to appear after an extremely short duration compared to the results of tests of other chemical carcinogens. In light of the definitive weight of evidence that EDB is a potent animal carcinogen, the extent of human exposure and the potential size of the exposed population is of particularly serious concern. The carcinogenic potential of EDB is reinforced by the evidence of EDB's mutagenic potential in both *in vitro* and *in vivo* systems. The evidence showing that EDB is mutagenic to germ cells raises concern of human genetic damage for exposed populations. Further, EDB has induced adverse reproductive effects (e.g., prostate atrophy) in several animal species and should be considered as a potential

cause of reproductive disorders in exposed human populations.

B. Exposure and Associated Human Health Risks

The soil fumigant uses of EDB are the pesticidal uses which involve the application of the pesticide in connection with growing crops, thereby incurring contact with the soil and direct introduction into the natural environment. EPA has now received evidence that the soil fumigant uses of EDB are likely to result in leaching to groundwater and, therefore, in contamination of human drinking water sources. Because of the persistence of EDB in soil and water, contamination is expected to endure long beyond the period of use. The continued incorporation of EDB into the soil for the period which would be required to conduct suspension and cancellation hearings would add to the total environmental load of the chemical which can contaminate groundwater sources. Use during this interim period could be expected to pose a signficant risk that new groundwater sources will become contaminated and that sources already contaminated will be contaminated at higher levels.

In recent weeks, both California and Florida have taken regulatory actions to restrict the use of EDB as a soil fumigant in those states. California, which authorized EDB use by permits, has suspended permits in five counties where groundwater contamination has been discovered. Florida has temporarily suspended use of EDB as a soil fumigant throughout the State. For several reasons, I have not adjusted my conclusions regarding imminent hazard and emergency because of these developments. These State actions do reduce the risks of continued use of EDB in those areas, but they also reduce the estimated benefits of continued use as well. Moreover, I can neither control nor definitively determine whether these State actions will continue in effect or how they will be enforced during the interim period for which I have determined that continued registration constitutes an emergency and causes an imminent hazard. In any event, I have concluded that an emergency and imminent hazard exists for the soil fumigant uses of EDB in all other parts of the United States.

In addition, the soil fumigant uses constitute more than 90 percent of the pesticidal usage of EDB. The size of the occupationally exposed population associated with this use is also substantial (approximately 14,000). Finally, since EDB is applied to soil used for growing food and feed crops, there is concern about the potential that the crops will be contaminated at low levels, thereby adding to the exposure of the general population to EDB in the diet.

The potential contribution of continued soil fumigant use of EDB to contamination of the drinking water poses unacceptable risks in terms of: (1) The effect on large portions of the general population, (2) the seriousness of any such threat to drinking water supplies, (3) the duration of exposure far beyond the period of use, and (4) the potential human health risk associated with even extremely low levels of contamination. Therefore, this route of exposure forms the principal basis for my determinations of emergency and imminent hazard. However, in weighing the risks of continued registration during this interim period against the corresponding benefits, I have also considered the levels of occupational exposure that would occur during this period, the size of the occupationally exposed population, and the potential for contributions to human dietary exposure from the soil fumigant uses of EDB. Each of these primary routes of exposure to EDB from soil fumigant uses is discussed below.

(a) *Groundwater contamination and associated risks.* clear evidence that EDB applied as a soil fumigant can be expected to leach through soil to underground water supplies has emerged over the past few months. During this period, I have learned from the results of sampling of groudwater supplies in California, Georgia, Florida, and Hawaii that EDB contamination has been identified in approximately 114 sampled wells located in some 16 different counties in those States. These positive samples vary from 0.02 part per billion (ppb) to levels higher than 100 ppb. Most are in the 0.05 to 5 ppb range. These positive samples have been taken from areas where EDB has been used as a soil fumigant and support a conclusion that groundwater contamination results from leaching through soil following normal EDB pesticidal use and associated agricultural practices. Measurements of EDB residues in the soil column taken in California and Georgia confirm that EDB moves through the soil profile in a manner which will result in transport to groundwater. EPA has been informed that appropriate confirmatory analytical processes have been employed for almost all of the samples taken during these programs of monitoring of EDB.

Because EDB is also used as an additive to scavange lead in leaded gasoline, leakage of EDB from underground gasoline storage tanks has been suggested as a possible source of groundwater contamination by EDB. As noted above, the pesticide use history of EDB associated with the positive groundwater samples supports my judgment that the soil fumigant pesticide use of EDB is a significant source of groundwater contamination. Soil core samples at sites of pesticide use also confirm that use pattern as a cause of groundwater contamination. Therefore, continued pesticidal use of EDB poses a hazard to underground water supplies in areas of use whether or not leaking gasoline storage tanks can result in contamination. Moreover, although gasoline is one of the more frequently reported contaminants of wells, EPA has not yet received any data indicating that the observed EDB contamination of groundwater is related to leaking underground gasoline storage tanks.

The scope of contamination already identified and the clear evidence that use of EDB as a soil fumigant can cause leaching to groundwater are sufficient to justify a determination that continued registration and concomitant contribution to further contamination should not be permitted. At current annual usage of approximately 20 million pounds active ingredient for the soil fumigation uses, an immediate suspension of registrations for soil treatment will block the introduction of significant additional environmental loading of this extremely toxic substance. Lifetime consumption of drinking water contaminated at 0.1 ppb results in an estimated increased risk of cancer of 1×10^{-4} (one excess cancer per 10,000 exposed persons); lifetime consumption of water contaminated at 1 ppb is associated with an increased cancer risk of 2×10^{-3} (two excess cancers per 1,000 exposed persons).

These and other estimates of increased cancer risk described in this Notice are derived by extrapolating the carcinogenic effects observed in laboratory animals using models which are based on typical exposures to an adult of average weight averaged over a lifetime. Estimates of increased cancer risks to humans derived in this manner should not be treated as a precise measure of the extent of increased cancer that will actually occur in exposed human populations. The assumptions and limitations of the risk assessment models used for EDB are discussed in the support documents made publicly available in connection with this Notice and the accompanying Notice of Intent to Cancel.

Much of the observed contamination exceeds these levels. At 5 ppb, the

increased cancer risk from lifetime consumption of contamimated water is estimated to be 7×10^{-3}. Because the limit of detection for some of the sampling has been 0.1 ppb, EDB-contaminated water at levels of health concern may not be detected in some of the sampling programs.

Because of the scope of observed contamination at sites in several California locations and several southeastern locations as well as soil profile contamination in both California and Georgia, I have determined that it is prudent to assume a significant risk of groundwater contamination at all mainland United States locations for the soil fumigant uses of EDB. The conclusion is also supported in the absence of any contrary indication that other areas are not also susceptible to groundwater contamination. Further, both the geographic range of contaminated groundwater sites and the identification of leaching through the soil column in both the West and Southwest support the conclusion that the soil fumigant uses of EDB would be expected to contaminate groundwater wherever applied.

Approximately 800,000 lbs. of EDB active ingredient is used annually as a soil fumigant in pineapple culture, which is confined to Hawaii. The volcanic islands which make up that State have several unusual hydrologic and geologic properties which may make extrapolation from observations on the mainland inappropriate. Accordingly, I have carefully examined the available information on EDB's capacity to contaminate underground drinking water sources in Hawaii and I have determined that continued use of EDB as a soil fumigant in pineapple culture poses an imminent hazard and that an emergency exists in Hawaii which prohibits my permitting continued registration of EDB for soil fumigation in pineapple cultivation during possible suspension hearings. Contamination has been observed in four wells in one area in the southeastern section of Oahu; the contamination is in an area where EDB has been applied to pineapple fields. Limited soil core sampling in Hawaii has produced inconclusive results, but EPA's analysis of the properties of the soil profile and hydrologic factors in Hawaii leads to the conclusion that EDB is likely to leach to groundwater, albeit in reduced amounts and intermittent patterns. Because of the location and geography of the State, groundwater supplies in Hawaii are particularly vital and the potential disruptions to life in the State resulting from significant contamination of drinking water would be severe. The observed contamination is in Oahu's Pearl Harbor basal aquifer. Basal aquifers are the primary source of drinking water for a substantial majority of the State's population. In the face of measured contamination of drinking water sources and reasonable evidence that introduction of additional quantities of the pesticide to the soil could contribute to further groundwater contamination, I cannot conclude that risk of use in Hawaii should be assessed differently from risks of use in the mainland United States.

My determination that continued registration of EDB for use on pineapples during the periods which may be required for suspension or cancellation hearings would risk additional long-term contamination of drinking water supplies in Hawaii is influenced by the Agency's experience in regulating the use of 1,2-dibromo-3-chloropropane (DBCP). DBCP is a soil fumigant with use patterns and many chemical properties similar to EDB. When the Administrator suspended the uses of DBCP in 1979 largely because of risks of continued groundwater contamination, he exempted the pineapple use from that suspension order partly because the observed contamination in Hawaii at that time involved only a very few positive samples, none of which were from the basal aquifers, which serve as principal drinking water supplies. **Federal Register** of November 9, 1979 (44 FR 65135). Subsequently, in early 1981, when EPA withdrew its Notice of Intent to Cancel DBCP for use on pineapples, the (acting) Administrator noted that the observed contamination was still very limited in scope and did not involve the basal aquifer. However, the Agency imposed extensive groundwater monitoring requirements. **Federal Register** of March 31, 1981 (46 FR 19592). Since that time, EPA has been informed of approximately six additional positive groundwater samples at new geographic areas in Hawaii. These samples include contamination of the Oahu basal aquifer, although DBCP has apparently not been used on Oahu since the 1979 regulatory actions on DBCP. Because of these recent findings, I intend to send to the Secretary of Agriculture notice of my intention to take action under section 6 of FIFRA regarding continued registration of DBCP. I describe these developments here to illustrate the possible consequences of deferring a decision until definitive evidence of EDB's capacity to contaminate Hawaiian groundwater becomes available. In the case of DBCP, the evidence that past use had, in fact, led to contamination of drinking water supplies on Oahu's basal aquifers did not become known until some three to four years after the suspension decision was made. For EDB, some contamination of one of Oahu's basal aquifers has already been observed. I cannot rely heavily on the fact that contamination has not yet been detected in any other of the sampled locations, particularly in light of the exceptional toxicity of EDB and the fact that pineapple grower's use of EDB has increased substantially in the past three to five years.

(b) *Occupational exposure and associated risks.* As noted above, EDB's tendency to contaminate drinking water supplies forms the principal basis for my determinations of imminent hazard and emergency. However, in weighing the risks of continued EDB use during the periods of possible suspension and cancellation hearings against the benefits of use during that period, I have considered all routes of exposure and have determined that occupational exposure during this interim period would contribute significantly to the total risk of continued registration.

Typically, EDB is applied as a soil fumigant by injection chisels or similar equipment mounted behind tractors. Workers are involved in transferring the chemical to application equipment, in application itself, and any repair and related operations involving loaded or contaminated equipment. As many as 14,000 workers are occupationally exposed to EDB from field use as a soil fumigant. The estimated range of annual exposure to workers using open application equipment and without protective clothing is from 130 milligrams for workers in low frequency use crops like citrus and other orchard crops to 1300 milligrams for workers in the more time-intensive applications.

Workers exposed to EDB used in some of the vegetable crops may apply EDB to more than one crop, which would multiply the exposure to the applicators treating multiple crops and would reduce the total number of different workers involved. Based upon EPA's exposure estimates, the typical worker would experience an increased cancer risk of 2×10^{-4} to 4×10^{-3} (four excess cancers per 1,000 exposed persons) from two additional years of occupational exposure. These estimates do not include exposure and risk associated with equipment repair activities, which could represent a significant additional source of exposure and risk. EPA has examined the potential for protective clothing and equipment to reduce this occupational

exposure. Using [unrealistically] favorable assumptions that such protective equipment would be used without error and would never malfunction, EPA estimates that such protection could reduce increased cancer risk about one order of magnitude. Workers occupationally exposed to EDB are also likely to live in areas susceptible to groundwater contamination.

The approximately 100 pineapple workers exposed to EDB are exposed for longer periods of time than for the other soil fumigant uses of EDB. Although differences in application and agricultural practices make estimates of exposure levels difficult to derive for pineapple workers from data on other uses, these long durations of exposure are of considerable concern. This is particularly true because the wearing of respirators throughout the working day is highly unlikely.

(c) *Potential dietary exposure.* Because the soil fumigant use of EDB involves treatment of soil in which food and feed crops are grown, potential dietary exposure from this use cannot be dismissed. Until this month, no measurable residues of EDB in crops grown in treated soil have been reported in data submitted to EPA; EPA has consistently urged registrants to provide additional data on possible residues in soil-treated crops during the EDB RPAR. EPA has just learned from the California Department of Food and Agriculture of preliminary measurements of residues in miniature carrots grown in EDB-treated soil. These data have not been evaluated by EPA. If residues were present in all treated crops at the level of detection (which available data indicate to be highly unlikely), typical consumption of treated crops alone would be associated with an estimated increased cancer risk of 1×10^{-3} (one excess cancer per 100,000 exposed persons) for lifetime exposure. Consequently, this indication of residues in miniature carrots at or above the detection limit raises additional concerns about the risk of continued registration of EDB as a soil fumigant during the period necessary to conduct suspension or cancellation hearings.

C. Benefits of Interim Use

EPA has developed an assessment of the benefits of continued use of EDB as a soil fumigant for each of the crops to which it is applied in significant quantities. Those estimates are expressed as annual dollar impacts and I have used that assessment to identify the benefits expected on annual crops from continued use during possible suspension and cancellation hearings. Since pineapples are a perennial crop, the full extent of average annual impacts will not be felt until approximately 4.5 years after EDB's withdrawal from the market. The estimated annual benefits of the soil fumigant uses of EDB are summarized in the following Table:

ECONOMIC IMPACTS OF A TWO-YEAR WITHDRAWAL OF EDB FROM MARKET AS SOIL FUMIGANT

CROPS	Active Ingredient Applied Annually 000's pounds	User Impacts of EDB Unavailability over 2 year period	Market and Consumer Impacts
Soybeans	12,787.0	$7.0 million annually	Welfare losses to consumers of about $7 million in second year after suspension, with decreasing costs in later years
California Vegetables	489.6	$1.4 - $4.4 million annually	Growers may shift to alternative crops Negligible consumer impacts
Cotton	4,500.0	$3.0 million annually	Growers may shift to alternative crops negligible consumer imapcts
Peanuts	2,151.8	$7.9 million annually	None
Tobacco (flue-cured)	913.6	$2.0 million annually	None
Sweet Potatoes	160.2 - 236.4	$0.3 - $0.5 million annually	None
White Potatoes	960.0 - 1080.0	$1.6 - $2.2 million annually	Negligible
Pineapples	810.0	$8.3 - $31.5 million total over next 5.5 years. At $8.3 million capital expenditures of $2.0 million would be made in first two years.	Unquantifiable due to oligopolistic nature of Hawaiian pineapple industry
Total 2 Year Impact	45,544.4 - 45,936.8	$54.7 million - $85.5 million with $8.3 - $31.5 million occurrences over next 5.5 years. At $54.7 million capital costs of $2.0 million would occur in first two years.	----------

Annual losses from EDB withdrawal as a soil fumigant on soybeans, vegetables, cotton, peanuts, tobacco, and potatoes is estimated to range from $23.2–$27.0 million depending on the selection of alternative nematicides.

Economic losses are primarily due to increased nematode control costs, although some production losses are anticipated on peanut acreage. Economic impacts at the market and consumer level are not expected to be significant.

Most information submitted to the Agency indicates that the magnitude of economic losses to the Hawaiian pineapple industry appears to be dependent on the performance of Nemacur®, a systemic nematicide registered for use on pineapples in July 1983. At this time, Nemacur® has not been applied on a commercial field scale. Experimental plot data indicate that Nemacur® is as effective as EDB; however, large scale field results may differ. If EDB were unavailable for nematode control on pineapples for two years, and Nemacur® is proven to control nematodes at a level comparable to EDB, economic losses from two years without EDB could be over $8.3 million, incurred over the next 5.5 years. In addition, capital investments of approximately $2.0 million would have to be made. If Nemacur® does not prove to be efficacious for nematode control, economic losses as great as $31.5 million over the next 5.5 years could be experienced if EDB were unavailable for two years. The information on which these estimates are based has been obtained from the companies which produce nearly all of the pineapple commercially marketed.

Telone II®, a preplant chisel injected nematicide, is used on Hawaiian pineapple acreage to control the rootknot nematode, *Meloidogyne javanica* (Treub) while EDB is applied preplant for control of the reniform nematode, *Rotylenchulus reniformis* (Linford). If Telone II® without Nemacur® provided nematode control equivalent to EDB, the losses from unavailability of EDB for two years would be approximately one million dollars. However, EPA has not received documentation that Telone II® alone can achieve comparable efficacy for reniform nematode control to that obtained with EDB.

The total economic benefits attributable to continued use of EDB as a soil fumigant during either the six-month period for possible suspension hearings or the two-year period for cancellation hearings do not outweigh the human health risks expected from increased contribution to groundwater contamination by the soil fumigant uses of EDB and from occupational exposure to EDB during these time periods. In addition, I have considered the estimated benefits of each crop use of EDB as a soil fumigant and have determined that there is no disproportionate benefit value in relationship to volume applied (and consequent environmental loading) which would alter my risk/benefit conclusion for any specific use.

IV. Procedural Matters

This order directs the immediately effective, emergency suspension of pesticide products registered for the soil fumigant uses of ethylene dibromide. Registrants affected by emergency suspension actions may request an expedited hearing before the Agency on the issue of whether an imminent hazard exists. This section explains how to request an expedited hearing, the consequences of requesting or not requesting an expedited hearing, and the procedures which govern an expedited hearing in the event one is requested.

A. Procedures for Requesting a Hearing

(1) *Who may request a hearing and when the request may be made.* Registrants of ethylene dibromide products registered for use as a soil fumigant on any crop site may request a hearing on the specific registered soil fumigant uses of ethylene dibromide within five days after receipt of this opinion and order.

(2) *How to request a hearing.* Registrants who request a hearing must follow the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures specify, among other things: (a) That all requests for a hearing must be accompanied by objections that are specific for each use (i.e., each crop site) for which a hearing is requested (40 CFR 164.121(a) and 164.123(b)) and (b) that all requests must be *received* by the Office of the Hearing Clerk within the applicable five days (40 CFR 164.5(a) and 164.121(a)). Failure to comply with these requirements will automatically result in denial of the request for a hearing.

Requests for hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, D.C., 20460.

C. Consequences of Filing a Hearing Request

Under FIFRA section (c)(3) the emergency suspension order becomes effective immediately and continues in effect until completion of any expedited hearing and issuance of a final order following such a hearing. The final suspension order issued by the Administrator after a hearing may keep the suspension in effect, modify it, or terminate it.

The statute provides that if a hearing is requested on the Administrator's emergency suspension actions regarding ethylene dibromide before the end of the five-day notice period, the hearing stage is to begin within five days after receipt of the request, unless the registrants requesting the hearing and the Agency agree that it shall begin at a later time. No party, other than registrants and the Agency, is to participate, except that any person adversely affected may file briefs within the time allowed by the Agency's rule. The presiding officer has ten days from the conclusion of the presentation of evidence to submit recommendations to the Administrator, who in turn has seven days to issue a final order on the issue of suspension. EPA's Rules of Practice for expedited hearings are set forth at 40 CFR Part 164, Subpart C.

C. Consequences of Not Filing a Hearing Request

Under the statutory scheme, if there is no request for a hearing on the Administrator's suspension action within the five-day notice period, the emergency suspension order becomes a final suspension order, which remains in effect until the conclusion of the cancellation proceedings.

D. Separation of Functions

The Agency's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. 40 CFR 163.7.

Accordingly, the following Agency offices, and the staffs thereof, are designated as the trial staff to perform the prosecutorial and investigatory functions of the agency as a party in this case: the Office of Pesticides and Toxic Substances; the Office of General Counsel; and the Office of Enforcement Counsel.

From the date of this notice until the final Agency decision in this case, neither the presiding Administrative law Judge, the Judicial Officer, the Deputy Administrator, the members of the staff in the immediate office of the Deputy Administrator, the members of the staff in the immediate office of the Administrator, nor the Administrator shall have any *ex parte* communication with the trial staff or any other

interested person not employed by EPA, on the merits of any of the issues involved in this proceeding.

Dated: September 28, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-27646 Filed 10-7-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/25D; PH-FRL 2450-1]

Ethylene Dibromide; Intent To Cancel Registrations of Pesticide Products Containing Ethylene Dibromide; Determination Concluding the Rebuttable Presumption Against Registration; Availability of Position Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Cancel; Notice of Availability.

SUMMARY: Products Containing Ethylene Dibromide (EDB) are registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act. EPA, in December 1977, initiated an RPAR process to consider whether the pesticide registrations for EDB should be cancelled or modified. This Notice concludes the RPAR and announces the Administrator's intent to cancel registrations of pesticide products containing EDB.

DATE: Requests for a hearing by a registrant or applicant must be *received* on or before November 10, 1983 or within 30 days from receipt by mail of this Notice, which ever occurs later. Requests for a hearing by any other adversely affected party must be received on or before November 10, 1983.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Richard J. Johnson, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 711H, CM#2, Arlington, VA (703-557-7400).

Copies of the Position Document 4 are available upon request from Richard L. Johnson.

An administrative file containing public comments and publicly released Agency documents relating to this action is available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays in: Rm. 236, CM#2, Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Regulatory Framework

Before a pesticide product may be sold, held for sale, or distributed in either intrastate or interstate commerce, the product must be registered in compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). FIFRA sections 3(a) and 12(a)(1). A pesticide registration is a license allowing a pesticide product to be sold and distributed for a specified use or uses in accordance with label instructions and precautions, and other terms and conditions of registration. A pesticide product will be registered only if it performs its intended pesticidal function without causing "unreasonable adverse effects on the environment," FIFRA section 3(c)(5), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of the pesticide." FIFRA section 2(bb). Thus, to support an application for initial registration and to maintain an existing registration, the benefits of a pesticide product must exceed the risks of use when the pesticide is used in compliance with the terms and conditions of registration or otherwise used in accordance with commonly recognized practice. The burden of proving that a pesticide product satisfies the standard for registration is on the proponents of initial or continued registration.

Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide product or modify the terms and conditions of registration whenever it is determined that the pesticide product causes unreasonable adverse effects on the environment. The Agency created the Rebuttable Presumption Against Registration (RPAR) process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration, and to provide an informal procedure through which to gather and evaluate information about the risks and benefits of these uses. The regulations governing the RPAR process are set forth at 40 CFR 162.11.

A rebuttable presumption arises if a pesticide meets or exceeds any of the risk criteria set out in the regulations. The Agency announces an RPAR by publishing a notice of determination in the **Federal Register** and by issuing a Position Document (PD 1) detailing the Agency's position and concerns. Registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to human beings or the environment. In addition to submitting evidence to rebut the risk presumption, commenters may submit evidence concerning the economic, social and environmental benefits of the use of the pesticide.

The RPAR process is concluded with a notice of determination in which the Agency states and explains its decision whether the presumption of risk has been rebutted. If all presumptions of risk are rebutted, the RPAR is concluded and no regulatory action is taken. If the Agency determines that any presumption of risk is not rebutted, the notice of determination presents the Agency's evaluation of the information available to the Agency concerning the social, economic, and environmental costs and benefits of continued use of the pesticide for each use pattern. In determining whether each use of a pesticide poses risks which are greater than the corresponding benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risk, and the impacts of such modifications on the benefits of the use. The notice of determination is typically developed through a two-step process: the Position Document 2/3 (PD 2/3) presents the Agency's preliminary determinations and solicits comments and further information. The PD 2/3 is submitted to the Secretary of Agriculture (USDA) and to the FIFRA Scientific Advisory Panel (SAP) for the statutorily required reviews of a proposed notice of intent to cancel registration of a pesticide pursuant to FIFRA sections 6(b) and 25(d).

The Position Document 4 (PD 4) supports the final notice of determination. The final notice of determination may include a notice of intent to cancel the registrations of currently registered pesticide products and to deny applications for the registration of new products. It may also set out conditions which, if fulfilled by the registrant, would be adequate to bring the registration into compliance with the statutory requirements and thus avoid cancellation or denial of registration. The final notice may also require that the registration of the pesticide be reclassified from general to restricted use pursuant to FIFRA section

3(d)(2). In the event of a notice of intent to cancel, deny or reclassify the registration or application for registration of a pesticide product, any person adversely affected by the action may request an administrative hearing to challenge the action pursuant to FIFRA section 6 (b) and (d).

B. Factual Background

The Environmental Protection Agency issued a Notice of Rebuttable Presumption Against Registration and a Position Document 1 (EDB PD 1) concerning the pesticide producers containing ethylene dibromide (EDB) in the **Federal Register** of December 14, 1977 (42 FR 63134). The Agency took this action in response to test results which showed the EDB induced cancer, mutations, and adverse reproductive effects in test animals. The EDB PD 1 discussed the relevant test data and the Agency's concerns with the continued use of EDB as a pesticide. The document also solicited public comments and additional data.

Comments and data in response to the EDB PD 1 were submitted to the Agency by registrants, user groups, and other members of the public. The Agency carefully evaluated the comments and additional data which were submitted, and in the **Federal Register** of December 10, 1980 (45 FR 81516), the Agency announced the preliminary notice of determination for EDB and the availability of the EDB PD 2/3.

In the EDB PD 2/3, the Agency concluded that EDB poses a significant risk of oncogenic, mutagenic, and adverse reproductive effects in the human population. In addition, the EDB PD 2/3 contained analyses of the risks and benefits of continuing the various uses of EDB and presented the Agency's proposed regulatory decisions.

The EDB PD 2/3 was submitted to the Scientific Advisory Panel (SAP) and the U.S. Department of Agriculture (USDA) for review and comment. The SAP held public hearings concerning the EDB PD 2/3 on March 25–26, 1981, and heard presentations by the Agency, registrants and other interested members of the public. Both SAP and USDA submitted comments on the EDB PD 2/3 to EPA. Their comments are presented with the Agency's responses in Unit IV of this Notice.

The Agency also received numerous comments from registrants, user groups, and other members of the public. All comments were reviewed and evaluated by EPA in arriving at the final regulatory positions concerning the uses of EDB as a pesticide. Comments which included significant information are analyzed and discussed in the EDB PD 4.

C. Content of This Notice

This Notice announces the Agency's intent to cancel the registrations of pesticide products containing EDB and provides notice of the availability of the PD 4 supporting this decision and concluding the RPAR for EDB. The Agency has determined that no remedial changes can be made in the registration of EDB for most uses to avoid unreasonable adverse effects on the environment; the Agency, therefore, has determined that the registrations for these uses should all be cancelled. The Agency, however, has determined that the cancellation of EDB products used for post harvest fumigation of citrus, tropical fruit and vegetables should not be made effective until September 1, 1984, in order to allow time for alternatives for this use to become available on a commercial scale. The Agency has decided to continue registration of EDB products used for the minor uses of termite control, fumigation of beehive supers and honeycombs, vault fumigation and Japanese beetle control, only if specified changes are made on the labels to reduce the risks presented by these uses. Elsewhere in today's **Federal Register** a companion emergency Order suspends the registrations of products containing ethylene dibromide for use as a soil fumigant; that emergency suspension order is effective immediately. Details of the Agency's decision are set forth in Unit III of this Notice. A summary of the Agency's final regulatory decision on EDB is presented in Table 1.

TABLE 1.—SUMMARY OF FINAL REGULATORY DECISION ON EDB

Use site	Final decision
Soil Fumigation	Cancellation effective 30 days after this Notice; Emergency Suspension effective immediately.
Stored Grain Fumigation.	Cancellation effective 30 days after this Notice.
Quarantine Fumigation of Citrus, Tropical Fruits and Vegetables.	Cancellation effective September 1, 1984.
Spot Fumigation of Grain Milling Machinery.	Cancellation effective 30 days after this Notice.
Felled Log Fumigation.	Cancellation effective 30 days after this Notice.
Termite Control Beehive Supers; Vault Fumigation, Japanese Beetle Control.	Continued registration with label changes imposing use restrictions; reclassify from general to restricted use; require submission of monitoring and use data.

Unit V sets out the procedures which registrants and applicants should follow in seeking amendments to their registrations to conform with the requirements of this Notice in order to continue their registrations of EDB products for these minor uses. Unit V also sets out the procedures by which a registrant or other person adversely affected by this Notice may request a hearing to challenge the determinations set forth in this Notice. To avoid automatic cancellation at the end of 30 days from publication of this Notice, or from receipt of this Notice by the registrant or applicant, which ever is later, the registrant must amend the registration for a pesticide product containing EDB as requerd by this Notice in order to preserve the registration for the uses permitted under this Notice. In addition, to aviod automatic concellation of the registration for all other uses of EDB, the registrant or other adversely affected person must request a hearing to contest the cancellation of the registration for each of the uses which is the subject of this Notice.

II. Summary of Risks and Benefits of the Pesticidal Uses of EDB

The Agency, in reaching the decisions set out in this Notice, has considered information on health risks, environmental effects and the economic and social benefits associated with the pesticidal uses of EDB. The detailed assessments of risks and benefits and conclusions regarding EDB's uses are set forth in the Position Documents 1, 2/3 and 4. The Position Documents fully set forth reasons for the Agency's determinations concerning EDB. This unit of the Notice summarizes the Agency's bases for its decisions concerning pesticide products containing EDB. The following Table 2 provides an overview of the risks and benefits of the uses of EDB as a pesticide:

TABLE 2.—SUMMARY OF (ESTIMATED RISKS AND BENEFITS OF EDB ESTIMATED RISKS BEFORE USE RESTRICTIONS ARE IMPLEMENTED)

Use site	Annual economic benefits	Lifetime dietary cancer risk [1] [2]	Lifetime applicator cancer risk [1] [3]
Soil fumigation	$26–42 million	10–5 up to 10–1 from ground water contamination.	10–3 to 10–2.[4]

TABLE 2.—SUMMARY OF (ESTIMATED RISKS AND BENEFITS OF EDB ESTIMATED RISKS BEFORE USE RESTRICTIONS ARE IMPLEMENTED)—Continued

Use site	Annual economic benefits	Lifetime dietary cancer risk [1] [2]	Lifetime applicator cancer risk [1] [3]
Stored grain fumigation	Negligible	10–3	Could be high depending on method of application.
Quarantine Fumigation:			
Citrus	$30 million	10–5	10–4 to 10–1.[4]
U.S. California only [5].		10–4	
Tropical Fruits	1.2 million	10–4	10–2 to 10–1.
Spot Fumigation of Grain Milling Machinery.	$3–6 million	10–4	10–3 to 10–2.
Felled Log Fumigation	Negligible		10–2.
Termite Control, Beehive Supers, Vault Fumigation, Beetle Control.	$10 million for beehvie use; no data on other uses.	No exposure data.	No exposure data.

[1] The cancer risk estimates are based upon hazard information in experimental animals coupled with human exposure data or estimates. In making these assessments, the Agency assumed 40 years occupational exposure and 70 years dietary exposure. Estimates of increased cancer risks to humans derived in this manner should be considered as rough estimates and should not be treated as a precise measure of the extent of increased cancers that will actually occur in exposed human populations.

[2] The Agency developed a risk extrapolation model for calculating risk from dietary exposure that varied with dose and time in accordance with the Weibull model. Risk probabilities were calculated from the formula, $P(t,d) = 1-e-x$, where:

$P(t,d)$ = predicted risk
$x = [1.02 \times 10^{-13} \times d \times W_m^{-3}][(t-s)\ 7.6 - (t-f)\ 7.6]$
d = average daily exposure to EDB (mg/kg/day);
s = person's age in years at start of exposure;
s = person's age in years at end of exposure;
t = person's age in years at end of observation; and
W_m = average body weight (kg) as person's age goes from s to f.

[3] The cancer risk estimates for applicators were calculated using the risk extrapolation model used in the PD 2/3.

[4] Range due to varying exposure depending on operations performed during application and variation of exposure for specific crops.

[5] Percentage of treated fruit in states which require fumigation, such as California, is much greater than in states which do not require fumigation.

A. Uses of EDB as a Pesticide

Over 20 million pounds of ethylene dibromide are used as a pesticide in this country each year. The major use of this chemical as a pesticide, accounting for more than 90 percent of the volume used, is as a soil fumigant. In this use EDB is injected directly into the soil to kill nematodes which may damage agricultural crops such as soybeans, peanuts, cotton, tobacco, pineapples and various fruits and vegetables.

Other significant uses of EDB include its use as a quarantine fumigant for fruits and vegetables, as a fumigant for the spot treatment of grain milling equipment, and as a fumigant for grain stored in bulk. In the quarantine use, citrus in Florida and Texas, papayas in Hawaii, and various vegetables are fumigated to prevent the spread of fruit flies from one State to another. In addition, fruit exported from the United States to Japan is fumigated to prevent the spread of fruit flies into the importing countries. For spot treatment of milling equipment, EDB is injected into grain milling equipment to control insect infestation of the machinery. In the stored grain use, the EDB is poured directly into the stored grain, in order to control insect infestation.

The remaining uses represent only a minor proportion of EDB use as a pesticide. These uses include treatment of felled logs to control bark beetles, use of EDB in vault fumigation, use of EDB as a termiticide, use of EDB to control wax moths in beehive supers and honeycombs, and use of EDB in Japanese beetle quarantine programs.

B. Assessment of Risks

Ethylene dibromide has long been known to present a risk of serious acute toxicity, including death, at even relatively low levels of exposure. It was not until the 1970s, however, that an NCI-sponsored study (Weisburger, 1977) conclusively demonstrated EDB's potential to cause cancer in laboratory animals. There are now a number of studies demonstrating EDB's potency as an oncogen in a variety of species and strains of laboratory animals at a variety of sites when the chemical is administered by inhalation, skin painting and gavage. (Olson, 1973; Powers, 1975; Weisburger, 1977; Plotnick, 1979; Van Duuren, 1979; NCI, 1982; Wong, 1982). The Agency has also reviewed numerous studies demonstrating the mutagenic potential of EDB in both *in vitro* and in vivo systems (e.g., NIOSH, 1977; Ranning, 1980). EDB has also been demonstrated to cause adverse reproductive effects in animals. (Amir, 1973, 1973a; Edwards, 1970; Short, 1978).

Based on these studies, the Agency has concluded that EDB poses: (1) Increased risk of cancer; (2) increased risk of mutations; and (3) increased risk of adverse reproductive effects. The Agency's quantitative assessments of risk have been limited to the oncogenic risk of EDB, because these cancer risks can be estimated quantitatively, and the potential cancer risks to humans posed by this chemical are extremely high.

1. *Risks to Applicators and Others Occupationally Exposed.*

This unit summarizes the oncogenic risks posed by EDB to those who are occupationally exposed to the chemical. Detailed discussion of these risks has been presented in the PD 1, PD 2/3 and PD 4. This summary presents only a brief discussion of the occupational risks presented by each use pattern. It should be noted that occupationally exposed persons are also exposed to EDB in the food they eat.

a. *Soil fumigation.* When ethylene dibromide is applied as a soil fumigant, applicators may be exposed to EDB in the air from volatilization of the EDB escaping from the treated soil and from EDB which is released when the application equipment is removed from the soil. Applicators are also exposed by inhalation of vapors when the pesticide is transferred from its container to the application equipment. In addition, applicators are further exposed by skin contact with the liquid when the pesticide is transferred to application equipment and during equipment malfunction and repairs; these latter, possibly important sources of exposure are not included in EPA's assessment of exposure and resulting risk.

The agency has calculated the typical annual dose of EDB to applicators involved in soil fumigation. Depending on the crop, a typical applicator working with open-type equipment and without protective clothing is estimated to inhale from 130 milligrams to 1300 milligrams (1.3 grams) of EDB in a year from using the chemical on a single crop alone. Based on these exposure estimates, EPA estimates that a typical applicator of EDB for a soil fumigant use experiences an additional lifetime risk of cancer of 4 x 10–3 to 4 x 10–2 (4 excess cancers per thousand exposed persons to 4 excess cancers per 100 exposed persons) for each crop treated. Approximately 14,000 applicators are exposed to EDB from the soil fumigant uses. Moreover, soil fumigant applicators are likely to live in areas where they risk being exposed from drinking contaminated ground water.

b. *Post-harvest quarantine fumigation.* Fumigation of fruits and vegetables is typically performed in a large fumigation chamber. The commodities to be fumigated are placed in the chamber by backing in a loaded trailer (typical of centers in Florida and Texas) or moving in wooden bins filled with fruit by hand

labor or machinery (typical of centers in Hawaii). The commodity is then treated with gaseous EDB, the chamber vented into the atmosphere, and the fruit removed. At the site of application the fumigation center employees (including the applicators, employees involved in loading and unloading the chamber, as well as employees not directly involved in the fumigation operations) are exposed to significant levels of EDB. In addition, truckers also may be exposed when backing the loaded trailers into the chamber and when driving the trailer out. Because the fruit or vegetables and any packing materials which are fumigated absorb and then slowly release EDB, workers handling the commodities after fumigation may also be exposed to high levels in the air; such exposed workers include truck drivers who transport the commodity, workers who unload the commodity from the trucks, warehouse workers where the commodity is held, and others who handle or are exposed to the commodity as it moves through commerce. People in the vicinity of the fumigation chambers also would be expected to be exposed when the EDB is vented from the fumigation chamber into the atmosphere.

EPA has calculated expected exposure of various workers from post-harvest quarantine fumigation use of EDB. Average air concentrations to which workers are exposed may differ approximately one hundredfold for different occupations and tasks. Moreover, the duration of exposure differs markedly among jobs. The health risks to workers, therefore, vary accordingly. Warehouse workers who handle the fumigated commodities receive the greatest annual dose of EDB both because of the high air concentrations to which they are exposed and the long duration of their exposure. A worker exposed to these levels over his working life could have an estimated increase in risk of cancer as high as 2 x 10–1 due to occupational exposure to EDB from the citrus quarantine use alone. Workers performing different jobs at citrus fumigation centers are estimated to be at an increased cancer risk of from 2 x 10–2 to 4 x 10–4 under present conditions. Workers at tropical fruit fumigation centers in Hawaii are at even greater risk, in part due to the large amount of handling involved in sorting and packing the fumigated fruit for market. The estimated increased risk of cancer from 40 years of work at the levels of exposure in the Hawaiian fumigation centers and packing stations ranges from 1 x 10–2 to 8 x 10–2. In arriving at these estimates, EPA has assumed that the individual at risk would be exposed throughout the operating season of the fumigation centers for the typical work week and job routine throughout a 40-year working life. To the extent an individual worked less than the time periods assumed, he would be at a lower individual risk; the number of individuals at risk, however, would increase correspondingly.

c. *Spot fumigation of milling machinery.* EDB is also used for the spot treatment of grain milling machinery. Workers exposed to EDB from this use incude the applicators, personnel involved in opening and closing the mill, and the mill workers who potentially are exposed EDB during start up operations and to lesser concentrations to substantial concentrations during the next few days. The same individuals may be involved in all three tasks.

Based on the available data concerning levels of exposure of workers to EDB due to spot fumigation, the Agency has developed estimates of the increased risk of cancer to these workers. Applicators of EDB for the spot fumigant use work in areas where air concentrations are high, but are assumed to use effective protective equipment and to be exposed to the high ambient concentrations for relatively short periods of time. (In calculating the risk to applicators from this use, the Agency has assumed that applications are not also working as mill workers.) The amount of EDB protected applicators inhale from the spot fumigation of a single mill over a 40-year working life is estimated to result in an increased risk of cancer from this use of EDB of 8×10^{-3}. The Agency estimates that there are between 2,400 and 6,000 applicators of EDB as a spot fumigant.

Mill workers not involved in application of the spot fumigant are actually at greater risk than a well protected applicator, because of the longer period of exposure of mill workers and because the ordinarily would not use respirators or other protective equipment. The exposure to EDB of the 16,000 individuals who work in mills has been estimated by the Agency to result in an increased risk of cancer to an individual exposed over his 40-year working life of about 2×10^{-2}.

d. *Felled log treatment.* EDB is also used to control several bark beetles species that attack coniferous trees in the Western States. The EDB for this use is sprayed on the felled logs and applcators are exposed to significant amounts of the chemical both through inhalation and dermal absorption. The actual exposure depends on the protective equipment and care used in application.

EPA has based its estimate of probable exposure to EDB from this use on actual data measuring air concentrations of EDB to which applicators are exposed during felled log fumigation and surrogate dermal exposure information derived from measurements of exposure to another pesticide with similar application technique. The estimate presumes the use of no respirator and that only three percent of a working lifetime is spent treating felled logs with EDB. The estimated exposure over a working life will result in an estimated increased cancer rick of 9×10^{-3}.

2. *Dietary Risks.*

Everyone in the United States is potentially exposed to significant levles of EDB in his diet EDB is found in grain products including cereals and bread, and in citrus and tropical fruit which has been fumigated with EDB. Although EDB had until recently never been detected in crops grown in soil which has been fumigated with EDB, residues have now been preliminarily reported in miniature carrots. EDB may still be present in other foods grown in treated soil at levels which are below the limit of detection of the best available analytical techniques. The consumption of crops grown in EDB fumigated soil containing EDB at the limit of detection could cause an increased lifetime risk of cancer of 10^{-5} (or 1 excess cancer per one hundred thousand exposed persons). Such a calculation of exposure is, however, hypothetical; available evidence indicates that residues, if they occur, would be below that level. This unit summarizes the estimated risks of increased cancer attributable to exposure to pesticidal EDB in the foods in which EDB has been detected. A more complete discussion of these estimates is provided by the EDB Position Documents.

a. *Grain products.* EDB is introduced into grain products by two different use patterns. EDB is used to fumigate grain in bulk storage to control insect infestation. In the stored grain use, the pesticide is poured directly on the stored grain and allowed to remain in contact. In addition, when grain is milled into flour, meal, and other products, it can be further contaminated by EDB from milling equipment which has been spot treated with EDB.

The Agency's dietary risk assessment for EDB is grain products is based on data showing EDB's persistence in fumigated grain, data showing that both fumigated grain and spot treatment of

milling equipment contribute to the presence of EDB in flour, and data showing EDB's presence in flour and baked products in commerce. In addition, the Agency has developed a model for predicting EDB residues in these products. The exposure assessment has focused exclusively on contamination of wheat and wheat products with EDB because wheat makes up a comparatively large (over 10 percent) component of the typical American's diet. Other grains, such as corn, sorghum, barley, rye, rice, and oats are also fumigated with EDB, but the risks attributable to consumption of EDB in these grains has not been included because they represent such a relatively small proportion of the typical American's diet. Individuals and subpopulations may be exposed to significantly higher risks than the Agency has estimated, if they eat unusually high proportions of one or more of these potentially contaminated grains. From the available information the Agency estimates that the typical member of the public is exposed to a dietary EDB burden of 8.0×10–5 mg/kg/day from the fumigation of stored wheat and of 5.8×10–6 mg/kg/day for spot treatment of wheat milling equipment. The total dietary burden for wheat alone, therefore, is estimated to be 8.6×10–5 mg/kg/day. The resulting increase in the estimated risk of cancer to the typical American from a lifetime of exposure solely to EDB in wheat treated in these combined uses is 1×10–4 (one excess cancer per ten thousand exposed persons).

b. *Citrus.* Because quarantine fumigation of fresh citrus is carried out to prevent the spread of fruit flies from one citrus-growing region to another, or 18 into this or another nation, estimates of dietary exposures are unusually complex. Individuals living in Arizona, California, New Mexico, and Texas consume a higher proportion of EDB-fumigated citrus than is typical for the nation as a whole. For example, the highest calculated dietary exposures to EDB from citrus are found in California where the State required fumigation of fresh citrus shipped into the State.

The Agency has estimated dietary exposure to EDB from the citrus quarantine use based on data from actual monitoring of citrus in the marketplace. The monitoring data show average EDB residue levels in edible portions of citrus from 51 ppb in grapefruit and 48 ppb in oranges to no detectable levels in lemons. The Agency estimates that EDB in fresh citrus results in an increased lifetime risk of cancer of 2 × 10–5 in States which do not require fumigation. California residents are exposed to higher dietary burdens of EDB from ciTrus because a higher proportion of citrus consumed in California has been fumigated. These dietary risk estimates are based on typical consumers of citrus, and individuals who consume higher amounts will be subject to correspondingly higher risks.

c. *Tropical fruit.* Tropical fruit, particularly papaya, are fumigated wiTh EDB prior to shipment from Hawaii to the mainland. Monitoring data indicate that the average EDB residues are 11 ppb in papaya. The dietary exposure due to this use of EDB, however, is relatively low for the "typical" mainland American because relatively little tropical fruit is consumed in this country. Thus, the increased risk of cancer from consumption of food treated in this use of EDB is estimated to be 7×10–6 for a typical mainland American.

Tropical fruit, however, is mostly consumed by a relatively small subpopulation; a risk estimate based on the national average consumption, therefore, does not reflect the dietary exposure to this subpopulation. Accordingly, EPA has evaluated the risks for a subpopulation which is presumed to consume 12 tropical fruits a year. Such an individual has an estimated increased cancer risk from EDB in these tropical fruits of 2×10–4. Individuals who consume this amount of tropical fruit are probably uncommon; the total number of such individuals is limited but the risk to them posed by fumigation of tropical fruit is serious.

3. *Groundwater Contamination.*

Although the Agency has for some time recognized that the injection of EDB into soil in the soil fumigant uses posed a possibility of subsequent leaching and consequential groundwater contamination, EPA, at the time of issuance of the PD 2/3, had no evidence that EDB actually contaminated groundwater. Recent monitoring of groundwater, however, has identified groundwater contaminated with EDB in four States. EPA is currently aware of 114 EDB contiminated wells in California, Florida, Georgia and Hawaii. The levels of contamination found range from 0.02 ppb, the current limit of detection for EDB in water, to almost 300 ppb. Contamination of most of these wells ranges between 0.05 ppb and 5 ppb. In addition, analysis of soil cores taken in Georgia and California demonstrate EDB's capacity to leach through the soil. Based on the new information of EDB's potential to leach through soil to groundwater as well as EDB's probable persistence in soil and water, EPA now concludes that the use of EDB as a soil fumigant has an alarming ability to contaminate groundwater.

A person who used a well contaminated at the limit of detection (0.02 ppb EDB) for a lifetime would have an estimated increased risk of cancer of 3×10^{-5} from this source alone. At 1 ppb the increased risk of cancer due to a lifetime exposure is 2×10^{-3}.

4. *Summary of Risks.*

The use of EDB as a pesticide poses significant risks to workers exposed through application of the pesticide products, and to the general public from contamination of food and groundwater used for drinking. The Agency has developed quantified cancer risk estimates for many of the groups at risk. While these estimates provide probable upper bounds of risk for the hypothetical member of each group, individuals are at higher risk if their exposure is higher from a particular source than is typical. In addition, individuals almost inevitably are exposed to EDB from more than a single source; therefore, their risks increase with the added exposures. Finally, these quantified increased prospects of cancer from exposure to EDB do not reflect the increased risks of genetic damage or reproductive disorders which may result from exposure to EDB.

C. Assessment of Benefits

The use of ethylene dibromide as a pesticide has substantial benefits for preplant soil fumigation, spot fumigation of milling equipment, post-harvest quarantine fumigation of fruits and vegetables, and fumigation of beehive supers and honeycombs. Cancellation of registrations of EDB-containing products for use in felled log fumigation and bulk fumigation of stored grain would have little, if any, adverse economic impact. This unit summarizes the Agency's evaluation of the benefits of the pesticidal uses of EDB.

1. *Soil Fumigation.*

The Agency has recently completed a new evaluation of the benefits of the use of EDB as a soil fumigant. Currently, approximately 1.0 million acres are treated for nematode control with nearly 23 million pounds of EDB active ingredient (a.i.) annually. The major use sites are soybeans (12.8 million pounds a.i.), cotton (4.5. million pounds a.i.), and peanuts (2.2 million pounds a.i.) with lesser volumes applied to other crops. Most of the use is located in the Southeastern United States.

Based on an assessment of the soil fumigant uses, the Agency has estimated the benefits attributable to all of the uses of EDB as a soil fumigant range between $26.4 and $40.9 million per year. Hawaiian pineapple growers may also be required to make a $6.9 million capital investment. The range in economic losses due to cancellation of EDB is the result of uncertainty regarding the alternative pesticides which will replace EDB as a soil fumigant, and the relative effectiveness of the alternatives in controlling nematodes. The estimated economic losses include both losses in production and increased nematode control costs.

2. *Stored Grain Fumigation.*

The cancellation of liquid grain fumigants containing EDB for use to control insects in stored grain in expected to have little adverse economic effect on users. Because alternative grain fumigants are widely available, presently in use, and comparable in efficacy and cost, the unavailability of EDB-containing products is not expected to have any significant adverse effect on local, regional or national farm income or grain markets.

3. *Spot Fumigation of Milling Equipment.*

Use of EDB to spot treat milling equipment has substantial benefits. The only other registered spot fumigant, a mixture of ethylene dichloride and carbon tetrachloride (EDC/CT), is not so efficacious, and may clog equipment. Whole mill fumigation with methyl bromide or aluminum phosphide is the alternative most likely to be adopted, although some increase in use of EDC/CT formulations could also occur. Use of general fumigation in place of spot fumigation will require more care in sealing the mills to maintain proper levels and durations of exposure to the fumigant. The Agency believes that, on the average, individual mills could use 4 to 8 additional general fumigations per year in place of the current 12 to 14 spot treatments. The economic losses due to cancellation of this use of EDB are estimated to range between $3 and $6 million annually depending on the alternative chosen and the frequency of application.

4. *Post-Harvest Fruit and Vegetable Quarantine Fumigation.*

The Agency has evaluated in detail the economic impacts of cancellation of EDB for post-harvest fruit and vegetable quarantine fumigation. In PD 2/3 the Agency estimated total adverse effects of approximately $24.7 million if EDB were cancelled. Depending on the acceptability of cold storage and/or irradiation as viable alternatives, the magnitude of adverse effects may be reduced.

Cold treatment is one alternative to EDB for citrus fruit disinfestation. In March 1982, the Japanese government approved cold treatment to control the Mediterranean fruit fly in oranges and grapefruits shipped to Japan from California. Recent studies also demonstrate the feasibility of cold treatment to control the caribbean fruit fly in fruit shipped from Florida to Japan. Because the potential loss of the Japanese market without EDB accounts for most of the benefits of the use of EDB as a quarantine fumigant in citrus, acceptance by Japan of this alternative would significantly reduce the adverse effects of an EDB cancellation for post-harvest quarantine fumigation. If the export market to Japan is lost due to an EDB cancellation, the adverse effects to citrus growers is not expected to exceed $28 million a year. In addition, domestic citrus prices would likely decrease and consumers would therefore benefit in the short term.

Gamma irradiation is also considered as a potential alternative for EDB fumigation of citrus and Hawaiian tropical fruits. Depending on the technological and commercial feasibility of this alternative, the adverse effects associated with cancellation of EDB for post-harvest fumigation would be further reduced.

5. *Felled Log Fumigation.*

EPA's evaluation of EDB's use on felled logs shows that cancellation of this use will result in little if any adverse impact. Lindane is registered for this use and is the preferred treatment chemical. Although lindane is currently under RPAR review, EPA soon will issue its determination on lindane and anticipates that this use pattern will be continued. Endosulfan is also considered a potential alternative for EDB in this use. Although endosulfan is less efficacious than EDB, its use would reduce the costs of treatment.

6. *Minor Uses.*

The Agency has quantified the economic benefits of EDB use for fumigation of beehive supers and honeycombs. Due to data limitations, the economic benefits of EDB use for termite control, vault fumigation, and Japanese beetle quarantine have not been quantified. Fumigation of beehive supers and honey combs to control wax moths has significant benefits; the Agency estimates that cancellation would result in over $10 million of adverse impacts including a 20 percent reduction in honey production. Although EDB benefits from termite control have not been quantified, EDB is the only registered pesticide suitable for control of subterranean termites under concrete foundations in the Southeast and Southwest by fumigation. EPA has been unable to provide a quantified assessment of the benefits of EDB use for Japanese beetle control or vault fumigation.

D. Risk-Benefit Analysis

This unit presents EPA's analysis of the relative risks and benefits of the use of EDB as a pesticide. It sets out EPA's determinations whether these uses cause unreasonable adverse effects on the environment.

1. *Soil Fumigation.*

As summarized above, EDB's use of a soil fumigant poses a substantial cancer risk to applicators, a possible cancer risk to the general population from potential dietary exposure to treated crops, and adverse health risks including substantial cancer risks from contaminated drinking water sources which could affect large number of people. Although the benefits from this use are high, the known risks, including the long-term contamination of groundwater, require a finding that this use causes unreasonable adverse effects on the environment. EPA, therefore, has determined to cancel and is immediately suspending registrations of EDB products for this use.

2. *Stored Grain Fumigation.*

Although EPA has been unable to quantify occupational exposure to EDB from stored grain fumigation, the Agency believes this exposure may not be very high. However, increased cancer risk from dietary exposure caused by this use is estimated to be significant. In contrast, the adverse economic effects of cancellation of EDB as a fumigant for grain stored in bulk are expected to be small or non-existent. EPA, therefore, has conculed that this use causes an unreasonable advese effect on the environment, and has determined to cancel this use. The Agency is extremely concerned about the exposure of the population to EDB from this use and is gathering additional information concerning dietary exposures to EDB from this use pattern. When this additional information has been evaluated, the Agency will consider whether that information shows the need for immediate suspension of the EDB registrations for fumigation of grain stored in bulk (in the event that present

registrations remain in effect during the pendency of cancellation hearings). In any event, registrants and users of EDB for stored grain fumigation are urged to implement all reasonable measures to reduce use, provide worker protection, and otherwise reduce exposure to EDB if this use continues during cancellation proceedings.

3. *Spot Fumigation.*

As discussed above, the use of EDB as a spot fumigant in flour and other grain mills poses a significant dietary cancer risk to the general public and extremely high risks to applicators and millworkers. The economic benefits of the use of EDB as a spot fumigant are also significant. The Agency has carefully evaluated this use, and has considered regulatory restrictions which could lower the applicator and dietary risks. Even with the most restrictive conditions which the Agency considers enforceable, the use of EDB for spot treatment of milling equipment still poses an unreasonable adverse effect on the environment. The Agency, therefore, has determined to cancel the spot fumigant use of EDB. The Agency is extremely concerned about the potential exposure of the public from this use of EDB. The Agency, therefore, is continuing to gather additional information concerning exposures due to this use, and will consider whether it shows the need for immediate suspension of EDB registrations for use as a spot fumigant. As with the bulk grain fumigation use, registrants and users are urged to take all available steps to minimize exposures during any continued registration for this use which results from requests for cancellation hearings.

4. *Post-Harvest Quarantine Fumigation.*

The use of EDB as a quarantine fumigant to ensure fruit fly disinfestation of food commodities shipped out of quarantine areas poses substantial risks to both occupationally exposed workers and to the general public. EPA estimates that the workers most exposed to the highest levels of EDB from this use have an extremely high increase in their risk of cancer and that the general public may typically face significant increases in cancer risks from consumption of treated fruit. Although the adverse economic impacts of cancellation were estimated in the PD 2/3 to be substantial, alternative technologies are under development which may reduce the adverse impacts of cancellation of EDB as a post-harvest quarantine fumigant. The Agency, therefore, concludes that the risks of continued use of EDB as a quarantine fumigant exceed its benefits, and that it cause an unreasonable adverse effect on the environment.

Hence, EPA is cancelling products registered for this use. The effective date of this concellation, however, has been delayed until September 1, 1984, to allow USDA/APHIS and the industry time to implement alternative means of quarantine fruit fly disinfestation. After consideration of the disruption likely to be caused by cancellation at this time, and an evaluation of the risk posed by a one-year phaseout, the Agency has concluded that continuation of registrations for this use until September 1, 1984 will not pose an unacceptable risk. However, registrants and users of EDB for post-harvest quarantine fumigation of fresh fruits are strongly urged to implement worker protection measures during any period of continued use of EDB for this purpose and to move as expeditiously as possible to implement alternatives to EDB.

5. *Felled Log Fumigation.*

The use of EDB as a felled log fumigant to control various species of bark beetles poses estimated substantial increased cancer risk to applicators, while providing little or no economic benefit. Therefore, the Agency has concluded that this use causes an unreasonable adverse effect on the environment, and has determined that this use should be cancelled.

6. *Minor Uses.*

EPA has been unable to fully evaluate the risks to applicators caused by the use of EDB as a fumigant of beehive supers and honeycombs, as a vault fumigant, to control termites, or to control Japanese beetles, but believes lack of adequate worker protection will lead to unacceptably high exposures while the benefits associated with EDB use as a fumigant of beehive supers and honeycombs is substantial, the Agency has been unable to quantify the benefits associated with the other minor uses of EDB. The Agency, therefore, has decided that although these uses currently are likely to cause an unreasonable adverse effect on the environment, the risk may be lowered to acceptable levels by use restriction. Therefore, the Agency is issuing a notice of intent to cancel these uses, but has specified amendments to the terms and condition of use which, if made, will be adequate to permit continued registration of EDB-containing products for these uses. The Agency is also requiring that these uses be reclassified from general to restricted use pesticides. In order to assess more fully the risks posed by these EDB uses, EPA, by separate action, is also imposing data requirements on registrants of EDB products labelled for these uses.

III. Initiation of Regulatory Action

Based upon the assessment summarized above, and discussed in detail in Position Documents 1, 2/3, and 4, the Agency determined that the present use patterns for EDB pose risks greater than the social, economic and environmental benefits of those uses. Therefore, the Agency has deterrmined to cancel registrations of EDB-containing products for the uses for soil fumigation, spot treatment of milling equipment, fumigation of grain stored in bulk and felled logs, and post-harvest quarantine fumigation of citrus, vegetables, and tropical fruit. Cancellation of products for the post-harvest quarantine use will not become effective until September 1, 1984. The Agency has also determined to continue registration of the low volume uses for termite control, beehive supers and honeycombs, vault fumigation and Japanese beetle control, only if specified changes are made on the label to reduce the risks presented by these uses. In addition to the regulatory actions set forth below, pursuant to the Federal Food, Drug, and Cosmetic Act, EPA will establish appropriate tolerances for EDB *per se* to regulate residues of EDB which may continue in the human diet as a result of delays in these cancellation actions pending hearings, stored commodities previously fumigated, iported foods, or from other causes.

A. All Uses

Except as provided below, all registrations for pesticide products containing EDB are cancelled, effective at the end of the statutorily prescribed 30-day period.

B. Manufacturing Use Products

Each registration of a product labeled for manufacturing use (use to make other pesticide products) must be amended so that the label states that the product may be used to formulate pesticide products which are labeled to allow only the uses which are permitted by this Notice. Such products, therefore, must bear labeling such as the following:

For use only to formulate pesticide products for end use as a post-harvest quarantine fumigant only until September 1, 1984 or for end use for termite control, vault fumigation, the APHIS Japanese beetle control program, and beehive super and honeycomb fumigation. Such end use products must be labeled in accordance with the

October 11, 1983 EPA Notice of Intent to Cancel EDB-containing pesticide products.

C. Post-Harvest Quarantine Fumigation

EDB-containing products labeled for quarantine fumigation of citrus, tropical, and miscellaneous fruits and vegetables are cancelled effective September 1, 1984. Registrants and users are strongly urged to adopt measures to reduce use and protect exposed workers during this interim period and during any period that use may continue during cancellation hearings.

D. Minor Uses—Termite Control, Beehive Supers, Vault Fumigation, and Japanese Beetle Control

The Agency is requiring that all remaining registrations of pesticide products containing EDB be reclassified from general to restricted use. The Agency has determined to permit continued registration of EDB-containing products for termite control, vault fumigation, USDA/APHIS Japanese beetle control, and fumigation of beehive supers and honeycombs, provided that registrants and applicants make the label changes specified below.

1. *Termite Control.*

For termite control, the following use restrictions must be stated on the label:

a. Use is restricted to control of subterranean termites in structures constructed on a concrete slab.

b. Fumigation may be conducted only by a certified commercial applicator.

c. A full-face, black canister respirator approved for use with EDB by the Mine Safety Health Administration or the Occupational Safety and Health Administration (MSHA/OSHA), EDB-resistant gloves made of butyl rubber, and EDB resistant boot covers and apron made of butyl rubber, nitrile or polyethylene must be worn by the applicator at all times during the treatment.

d. Persons not involved with the fumigation for termites must leave the premises before fumigation, and may not return until after treatment and aeration are completed.

e. The label must specify the dosage per square foot, the hole spacing, and the volume of EDB which may be injected into each hole drilled through the concrete slab supporting the infested structure. The label must state that all treatment holes drilled in construction elements in commonly occupied areas of structures must be securely plugged. The label must atate that use of EDB is not permitted under slabs which contain or cover heat and air conditioning ducts, electrical conduits, wells, water, sewer, gas, or steam pipes, or other similar structures which cause a potential for escape of EDB vapors and that application may not begin until the locations of such escape routes is known. Application must not be made in any manner to an area intended as a plenum air space.

f. After fumigation, all doors, windows, and vents in the treatment area and connected buildings must be opened. Premises must be aerated 24 hours before reentry is permitted. Warning signs which prohibit entry during the aeration period must be posted at all entrances to the premises.

In addition, by separate action, the Agency will require, pursuant to section 3(c)(2)(B), that registrants provide data by July 1, 1984 which will be utilized in an exposure analysis; this information includes:

a. Air concentration of EDB to which applicators are exposed, their annual time spent using EDB, the number of applicators using EDB in the U.S. for this use, and the amount of formulation sold annually.

b. Air monitoring studies which assess the potential EDB air levels to which persons not involved in fumigation can be exposed.

2. Fumigation of Beehive Supers and Honeycombs.

For fumigation of beehive supers and honeycombs, the Agency is requiring the following use restrictions be stated on the label for such EDB products:

a. Fumigation may be conducted only by a certified applicator.

b. A full-face black canister respirator approved for use with EDB by MSHA/OSHA, and EDB-resistant gloves (butyl rubber only), and boot covers and apron (made of butyl rubber, nitrile, or polyethylene) must be worn by the applicator at all times during the treatment.

c. Supers and honeycombs must be placed in a gas-tight room or under a gas-tight covering such a polyethylene tarpaulin held down with sand-filled "snakes." If the treatment is performed in a building, all windows, doors, and vents must sealed. All persons not involved with the fumigation must be vacated from the building. If a tarpaulin is used, it must be completely aired for at least 24 hours before re-use.

d. Following the treatment period, a full-face black canister respirator approved by MSHA/OSHA must be worn when reentering during the 24 hours following treatment. All doors, windows and vents in the structure must be opened at this time. Aeration of the building and beehive supers or honeycombs for 24 hours is required before reentry is permitted. During fumigation and aeration, warning signs must be posted which contain these reentry restrictions.

e. Treatments must be applied solely to clean supers or honeycombs mounted in frames in storage.

In addition to these label changes, the Agency will require by separate action, pursuant to FIFRA section 3(c)(2)(B), the following data from registrants by July 1, 1984:

a. EDB air levels to which applicators are exposed during conditions of use of EDB products for fumigation of beehive supers and honeycombs.

b. Numbers of users and volume of EDB used for this purpose.

c. Residue studies to determine if EDB is detectable in honey from fumigated supers and honeycombs.

3. *Vault Fumigation.*

For vault storage, the Agency is requiring that the following use restrictions be stated on the label:

a. Vault fumigation with EDB formulations may be conducted only by certified commercial applicators in commercial fumigation vaults.

b. A full-face black canister respirator approved for use with EDB by MSHA/OSHA, and EDB-resistanct gloves (butyl rubber only), and boot covers and apron (made of butyl rubber, nitrile or polyethylene) must be worn by the applicator at all times during the treatment.

c. Before fumigation, all doors and leaks in the vault must be sealed.

d. Following the treatment period, a full-face black canister respirator approved by MSHA/OSHA for EDB must be worn during reentry. All doors and vents in the treatment area and connected buildings must be opened at this time. Before workers may reenter the vault without a respirator, the vault must be aerated to reduce EDB air levels to the OSHA workplace standard. Warning signs must be posted stating these restrictions during fumigation and aeration.

In addition to these label changes, the Agency will require the following information from registrants of EDB-containing products for vault fumigation by July 1, 1984:

a. Monitoring studies of the EDB air levels to which applicators may be exposed, both during pouring EDB into dispensing containers, and also during reentry into the vault after fumigation.

b. Survey data on the number of vault fumigation operations using EDB and the number of applicators involved in this practice.

c. Data on the amount of EDB applied annually for this use.

4. *Japanese Beetle Control.*

For the APHIS Japanese Beetle Control Program, the Agency is requiring the following label restrictions and suggesting the following revisions in the APHIS Manual:

a. Fumigation may be conducted only by a certified applicator.

b. A full-face black canister respirator approved for use with EDB by MSHA/OSHA, and EDB-resistant gloves (butyl rubber only), and bootcovers and apron (made of butyl rubber, nitrile, or polyethylene) must be worn by the applicator at all times during the treatment.

c. The pesticide spray mixture, rinse water, or excess treatment material that cannot be used must be disposed of according to the procedures established under Subchapter III of the Resource Conservation and Recovery Act.

d. Treated sod must be covered with heavy plastic sheeting or an impervious tarp during the treatment period to ensure an efficacious treatment and to minimize air exposures. The tarp or sheeting mut be completely aired for at least 24 hours before re-use.

e. Potting and bench soil must be covered with heavy plastic sheeting or an impervious tarp for duration of the treatment period. The tarp or sheeting must be completely aired for at least 24 hours before reuse.

f. Soil for beds and other uses must be covered with heavy plastic sheeting or an impervious tarp for duration of the treatment period. The tarp or sheeting must be completely aired before re-use.

g. Materials may be treated with EDB to control Japanese beetles only when beetle larvae and pupae are present. The APHIS manual should be amended to add this requirement.

In addition to these label changes, the Agency will require by separate action, pursuant to FIFRA section 3(c)(2)(B), the following information, by July 1, 1984, from registrants of products for quarantine fumigation under the APHIS Japanese Beetle Control Program:

a. Monitoring studies of the air levels to which applicators are exposed during mixing and during use.

b. Data on the amount of EDB use annually, the number of applicators and the frequency of use.

E. Existing Stocks and Disposal Provisions

FIFRA prohibits any person from distributing, selling, offering for sale, holding for sale, shipping, delivering for shipment, or receiving (and having so received) delivering or offering to deliver, to any person any pesticide which is not registered. A pesticide product whose registration is cancelled is not registered. Products whose registrations have been cancelled by the terms of this notice are subject to these statutory prohibitions.

In addition, the use of any product containing EDB which is not registered for such use at the time of such use is prohibited after September 1, 1984. Use of such a product or of a registered EDB product for any unregistered use after September 1, 1984, is a violation of this cancellation order and is an unlawful act under section 12 of FIFRA.

Disposal of unused pesticide products containing EDB must be in accordance with the requirements of the Resource Conservation and Recovery Act and the regulations implementing it. Quantities exempted from those requirements by virtue of small volume or the "farmer exemption" must nevertheless be disposed of in an approved landfill or incinerator to avoid the potential that disposed pesticide will leach to groundwater.

IV. Comments of Scientific Advisory Panel and Secretary of Agriculture

A. Comments of the Scientific Advisory Panel and EPA's Response

1. *Comments of Scientific Advisory Panel*

The comments of the Scientific Advisory Panel (SAP) regarding the Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of EDB are presented below in their entirety.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel

Review of Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration (RPAR) of Pesticide Products Containing Ethylene Dibromide (EDB)

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel has completed review of plans by the Environmental Protection Agency (EPA) for initiation of regulatory action on pesticide products containing ethylene dibromide (EDB) under the provisions of section 6(b)(2) of FIFRA as amended. The review was completed in an open meeting held in Arlington, Virginia, on March 25–26, 1981.

Maximum public participation was encouraged for the review. Public notice of the meeting was published in the **Federal Register** on February 25, 1981. In additional, telephone calls were received from and mailings sent to the general public who had previously expressed an interest in activities of the Panel. Oral, and in most cases, written statements were received from the technical staff of EPA's Office of Pesticide Programs, and from representatives of the U.S. Department of Agriculture; the State of Florida, Department of Citrus; Ethyl Corporation; the University of California; the Hawaii papaya industry; Dow Chemical Corporation; National Pest Control Association; Hopes Consulting Company; National Association of Wheat Growers; Emergent Technologies, Incorporated; and Radiation Dynamics, Incorporated.

The excellent briefings by the staff of OPP's Special Pesticide Review Division (SPRD) were of great value to the Panel. The Panel wishes to express its appreciation to SPRD for having prepared a Position Document 2/3 on EDB of very high quality. Also, the Panel would like to thank Dr. Carol Sakai, Reproductive Effects Assessment Group, EPA, for an outstanding scientific briefing on the reproductive effects of EDB.

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency and other parties, the panel unanimously submits the following report:

Report of Scientific Advisory Panel Recommendations

The Agency requested the Panel to focus its attention upon these issues:

1. The data requirements (ground water, food residues for pre-plant exposures, and survey data for minor use applicators)

2. The acceptability of risks during the phase out of citrus

3. The similarities of this pesticide to dibromochloropropane (DBCP): use sites, health risks, chemical structure.

4. The acceptability of alternatives relative to the toxic hazards of EDB especially for grain and citrus. The Panel's response to each of the above issues is as follows:

1. *The data requirements (ground water, food residues for pre-plant exposures, and survey data for minor use applicators).*

The Panel expresses considerable concern over the potential human hazzard as a result of the spot fumigation in flour mills use of Ethylene Dibromide (EDB) and recommends that EPA require a thorough and critical study of EDB residues in grain, as well

as obtain residue data in bread and other bakery products.

The Panel also indicates its concern over the possible appearance of EDB in ground water, and urges that ground water be monitored closely in high use areas.

The Panel recommends that a reproductive study on rodents be performed with critical structural and functional analysis of endocrine, reproductive and fetal tissues.

Finally, the Panel recommends that EPA monitor high risk workers in the grain, citrus and minor use areas, both during and following exposure.

2. *The acceptability of risks during the phase out of citrus*

The Panel differs with the Agency's position that EDB use on citrus should be phased out by July 1983. Rather, the Panel proposes that this use be retained in a similar manner as several other uses which the Agency is proposing be allowed, but with certain restricitions imposed, including pre-plant fumigation of soil, stored beehive fumigation, stored furniture and clothing, and nursery stock. The reason for this is that the Panel finds it difficult to evaluate whether it is feasible for the citrus industry to move to irradiation as an alternative to EDB control of fruit flies. Therefore, the Panel recommends reevaluation of the risks and benefits of irradiation as an alternative for EDB as soon as possible.

In the meantime, the Panel recommends the use of additional protective measures to reduce worker exposure. It appears to the Panel that substantial improvements can be made in EDB application technology, and that such improvements will reduce both the number of workers exposed and the severity of the exposure.

3. *The similarities of EDB to DBCP with regard to chemical structure, use sites and health risks*

The Panel finds that EDB has certain structural qualities, uses and adverse effects which resemble those of DBCP. However, extrapolation from one compound to another entails the same kind of uncertainties as does extrapolation in testing from one species to another. Therefore, the Panel recommends that the data be obtained on EDB directly rather than on the basis of extrapolation from other compounds.

4. *The acceptability of alternatives relative to the toxic hazards of EDB especially for grain and citrus.*

The Panel finds that alternatives to EDB appear to be available in several areas, e.g., fumigation of stored grain, termite control, bark beetle control and other minor uses. Alternatives for soil fumigation and citrus are not well developed and clearly demonstrated to be efficient, practical, and feasible from a cost standpoint.

The Panel's response to the issues listed by EPA as regards EDB is based on the following evaluation of the available data base for this agent:

1. EDB is a carcinogen for multiple animal species of both sexes producing oncogenic effects in several tissues following exposure by at least two routes of administration.

2. EDB is a potent mutagen producing point (gene) mutation, chormosomal aberration and primary DNA damage in multiple test systems involving both prokaryotic and eukaryotic systems (including mammals).

3. EDB has been demonstrated to produce adverse reproductive effects in several species. None of these studies definitively demonstrates a no observed effect level (NOEL). As indicated above, the Panel recommends that a reproduction study in rodents be required to characterize the threshold dosage level for EDB effects on fertility, mating, gestation, etc.

The Panel notes that it will be very difficult to conduct epidemiological studies that will enable EPA to ignore the results of animal studies. Such epidemiological studies which have been conducted thus far do not provide convincing evidence that animal tests do not accurately predict potential human hazards in the area of oncogenicity and reproductive effect. Therefore, it is necessary to regulate on the basis of animal studies alone.

The Panel wishes to make a clear distinction between the apparent hazards of citrus and grain fumigation insofar as human *dietary* factors are concerned, and thus does not concur with the Agency's proposal to cancel the use of EDB on citrus. As regards stored grain fumigation and spot fumigation of grain milling machinery, the Panel wishes to express its great concern over the possible presence of EDB residues in finished bakery products. The evidence is far from solid, but because of the extremely large population potentially at risk, the problem demands resolution. Therefore, the Panel concurs with EPA proposal to cancel stored grain fumigation and spot fumigation of grain milling machinery uses until such time as convincing evidence exists that such uses present little or no hazard to consumers of bakery products.

For the Chairman: Certified as an accurate report of findings:

Philip H. Gray, Jr.,

Acting Executive Secretary, FIFRA Scientific Advisory Panel.

Dated: April 22, 1981.

2. *EPA Response to the Scientific Advisory Panel*

a. *Data requirements.* The SAP recommended additional data should be obtained regarding: residues on grain and bread and other bakery products; monitoring of groundwater in high use areas; reproductive effects study on rodents with special emphasis on fetal, endocrine and reproductive tissues; and the monitoring of high risk workers in the grain, citrus and minor use areas.

The Agency believes that the cancellation of the grain fumigation and spot fumigant uses of EDB will effectively eliminate detectable residues of EDB in grain, flour or other bakery products. Additional monitoring of these commodities for EDB residues has occurred since the SAP comments, and further monitoring is under way.

Groundwater studies have been completed or are underway in California, Florida, Georgia, and Hawaii, to assess the potential of EDB to contaminate groundwater.

The Agency is not requiring a rodent reproductive study because the reproductive risks are adequately reduced as a result of the cancellation of most major uses, the phased cancellation of citrus and other fruit and vegetables quarantine uses, and the additional label use precautions and restrictions on the minor uses.

The Agency is not requiring monitoring of grain and mill workers or of citrus and tropical fruit workers because the relevant uses are cancelled. The Agency is requiring additional data concerning EDB exposure of applicators involved in vault fumigation and applicators involved in Japanese beetle quarantine (fumigation of grass sod, bareroot plants, balled or containerized plants, potting and bench soil, and beds) and other minor uses.

b. *Acceptability of risks during phase out of citrus.* The SAP initially recommended maintaining the citrus use with the imposition of certain use restrictions and a reevaluation of the risks and benefits of irradiation as an alternative to EDB. The Panel recommended interim measures to reduce worker exposure.

The Agency made a detailed re-evaluation of the risk/benefit analysis for citrus fumigation. The Agency concluded that the risks from citrus

fumigation far outweigh the benefits and that cancellation is the only viable means of reducing the risks from citrus fumigation. The Agency also is providing additional time before the effective date of cancellation to allow implementation of alternative control procedures. Subsequent to their review of the PD ⅔, the members of the SAP panel were provided with the new information the Agency has developed concerning the quarantine use, and they now indicate that they concur in EPA's choice of phased cancellation of this use.

c. *Similarities of EDB to DBCP.* The SAP recommended not using DBCP data in lieu of data on EDB for purposes of risk assessment. The Agency concurs with the Panel.

d. *Acceptability of alternatives relative to the toxic hazards of EDB for preplant and citrus fumigation.*

The Panel did not find the Agency's discussion of alternatives for soil fumigation and citrus to be sufficient regarding efficacy, practicality and cost feasibility. As stated earlier, the Agency carefully re-evaluated the risks/benefit analysis for citrus fumigation and concluded that cancellation was the only suitable means of controlling risks from citrus fumigation. The Agency has also performed a new and more complete assessment of the alternatives for these uses.

The Agency appreciates the Panel's thorough review of the pesticidal uses of EDB and thanks the Panel for their assistance.

B. Comments of the United States Department of Agriculture and EPA's Response

1. *COMMENTS OF THE DEPARTMENT OF AGRICULTURE.*

The comments of the Department of Agriculture regarding the Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of EDB (Proposed Notice of Cancellation) are presented below in their entirety.

April 6, 1981.

Honorable Walter C. Barber, Jr.
Acting Administrator, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Dear Mr. Barber: This is the U.S. Department of Agriculture's response to the U.S. Environmental Protection Agency's Preliminary Notice of Determination concluding the Rebuttable Presumption Against Registration (RPAR) of pesticide products containing ethylene dibromide (EDB).

We concur in the decision to continue use of EDB for soil fumigation and to the postponement of a decision on several other uses pending receipt of additional data. We do not concur that EDB should be cancelled for fumigation of felled logs, or for quarantine purposes. It is our conclusion that there is insufficient information to adequately indicate that gamma irradiation is or will be a feasible substitute for EDB quarantine fumigation on a broad scale basis by July 1, 1983. We believe that in light of new information on use and the lack of viable alternatives the actions on these uses of EDB should be reevaluated.

We agree that more data are needed on residue levels of EDB on treated and processed commodities as well as more data on the effectiveness of worker and applicator protection techniques associated with EDB. We will cooperate with EPA and industry to provide additional data as necessary. Our specific comments are contained in the enclosure which is an integral part of this response. In view of the complex issues involved, the additional time that your Agency granted for review of this document was very beneficial and is appreciated.

Sincerely

John R. Block,
Secretary.

Enclosures.

Secretary of Agriculture's Specific Comments to EDB Notice of Determination PD 2/3

I. Preplant Soil Fumigation

USDA is willing to provide input and assistance to EPA and industry to develop acceptable experimental design and/or additional data to resolve concerns associated with potential residues on crops grown in soil that has been treated with EDB.

II. Fumigation of Stored Grain

More recent data has been developed from an interAgency study in SEA: AR, ASCS, and FGIS, which is now in progress to measure the level of insect and fungal activity in farm stored grain. This study consists of grain samples and storage information from about 4,000 bins of wheat, 3,000 bins of corn, and 1,000 bins of oats stored on farms in 20 states. Storage information obtained in this study includes a record of measures taken by the producer to maintain the quality of the grain during storage. Preliminary analysis of these data indicated that less than 3 percent of the wheat bins and less than 1 percent of the corn and oat bins were fumigated during the 1–4 year on-farm storage. Fumigation occurred most often during the second year of storage, generally in the late summer or early fall. Fumigant materials identified as being used in the farm treatment included aluminum phoshide, chloropicrin, and a liquid fumigant mixture composed entirely of carbon tetrachloride ($CC1_4$) and carbon disulphide (CS2) (80:20) or these two used in conjunction with 1.2 to 5 percent ethylene dibromide. An interim analysis of EDB use in on-farm storage may be estimated from the study now in progress which shows the following percentages of grain being treated with EDB.

GRAIN IN AMOUNT IN STORAGE

Storage	(1,000 bushels)	Percent treated	Lbs. EDB used
Wheat	972,054	2.0	52,492
Corn	2,494,504	.5	4,489
Oats	388,625	.25	349
Barley	240,442	.25	108
Sorghum	39,708	.25	54

The results of this study are expected to be tabulated in computer storage by May 1, 1981.

EDB liquid fumigant formulations are lebelled for use in both on-farm and commercial elevator storage. In actual prictice EDB fumigation of stored grain is concentrated in on-farm storage. Liquid formulations were developed specifically for this purpose. EDB is included in liquid grain fumigants to improve effectiveness in the upper layer of the treated grain. In the event of the cancellation of EDB for this use, farmers would have to switch to a less efficient liquid fumigant, 80 percent carbon tetrachloride/20 percent carbon disulfide or phosphine. Carbon tetrachloride is presently under RPAR review. The additional applications necessary for comparable control would result in both increased expense and exposure hazard because of lower efficiency. Some level of mixing with untreated grain would be expected in movement from on-farm storage, in further movement from the elevator, as well as mixing in the milling or other processing operations. The level of EDB (as organic bromide) in most processed products should, therefore, be low. Because of the changes in use patterns and the current availability of more accurate data on the volume of use, EPA's proposed regulatory action regarding fumigation of stored grain should be reevaluated.

III. Spot Fumigation of Grain Milling Machinery

Three types of fumigant furmulations containing EDB have been used in the fumigation of milling machinery. The

two liquid types contained carbon tetrachloride (CCl_4), ethylene dichloride (EDC) and EDB in different proportions. The third type was a gaseous mixture of 70 percent EDB and 30 percent methyl bromide. Today, virtually the entire EDB usage in this industry involves the application of this 70:30 mixture and only one company is currently formulating it. The annual use of EDB for this purpose was originally estimated at 465,000 lbs. Interim data from the study mentioned previously indicate this use at approximately 162,000 lbs. The original estimate was based primarily on the use of the EDB liquid fumigant mixture and does not accurately reflect use of the present 70:30 mixture in the milling industry. As with grain fumigation, the exposure resulting from the amount of EDB known to be applied is much less than originally estimated. The primary alternative to spot fumigation is general fumigation of the entire structure. However, general fumigation is not feasible at the frequency necessary to obtain control equivalent to spot fumigation. Most mills cannot close completely for several days at a time. To obtain adequate insect control, mills would have to shut down four or more times per year. In addition, specialized mills such as those located in breweries cannot use either methyl bromide or phosphine in their plants because of the corrosive effects of these fumigants on materials in non-milling areas of the facility. The use of EDB does not pose this problem. The common use of manifold systems in spot fumigations serves to remove applicators from sites of gas generation, lessens the risk of spillage on applicators, and thus reduces hazards to these personnel. Good sanitation in milling areas is necessary for effective pest control; however, it will not serve as an alternative to EDB use which is still required since milling residues collect in unaccessible places in the machinery. The only alternative is spot treatment with a fumigant. Because of the changes in use patterns to the gaseous 70:30 mixture in the past few years, the current availability of more accurate data on volume of use, and the fact that proposed alternatives are not economically feasible and are associated with high risk, we strongly feel that EPA's proposed regulatory action regarding spot fumigation of milling machinery similarly should be reevaluated. EPA should strongly consider and evaluate the use of protective clothing and other safety options to minimize risk as an alternative to cancelling this critical use.

IV. Quarantine Fumigation

The registration for post harvest commodity quarantine uses should be continued for the following reasons:

1. As noted by EPA, there is presently no effective and practical alternative to EDB for these uses. The assumption that irradiation will be available by July 1983 is unrealistic. Although EPA has evidently had interaction with specialists in the field of irradiation, we are unaware of data demonstrating the feasibility of irradiation as a near term, viable, on-line alternative for bulk quantities of fruit. Data concerning the timeframes for getting on line, chamber design, as well as design and on-line costs should be made available. Research has been conducted by USDA, as well as other groups in Hawaii, California, Florida, Illinois, Massachusetts, and elsewhere, to determine if fresh fruits and vegetables will tolerate insect destroying rates of gamma irradiation. Much of this research is outlined in "The Proceedings of a Panel on The Use of Irradiation to Solve Quarantine Problems in the International Fruit Trade." (Attached) The Panel was organized by the joint Foreign Agriculture Organization and the International Atomic Energy Agency, Division of Atomic Energy in Food and Agriculture and held in Honolulu, Hawaii, in December 1970. A petition (FAP 3045) from USDA to FDA requesting approval of the use of gamma irradiation on papaya was submitted to FDA in 1973. The Food and Drug Administration has not acted on this petition during the past eight-year period. A new petition relating to these uses is in preparation. Additional research is needed on mango and papaya as well as citrus and other fruit to determine dosages necessary to control insect pests, potential injury to fruit, and chemical or other changes in fruit composition including feeding studies on nutritional value. This data collection will require considerable time and expense.

2. EPA noted in its Notice of Determination that USDA's estimated benefits of post-harvest commodity treatments on grapefruits for export market to Japan may be substantially overstated. The benefits estimates were premised on the assumption that the grapefruit export market to Japan will be lost if this registered use is canceled. This assumption has been validated. Communicaiton with the Government of Japan since the publication of PD 2/3 indicates that *Japan will not* approve of gamma irradiation as an alternative to EDB fumigation. The refusal is primarily on the basis that irradiation at the dosages used does not actually kill all fruitflies. In addition, Japan has indicated that even the effective use of gamma irradiation may still not be acceptable. However, they did state that they would continue to accept EDB treated fruit. (See attached letter of February 12, 1981, from American Embassy, Tokyo). Recent studies (SAND 79–1727, Attachment B) suggest that dosages of 25 to 75 K-rads will sterilize fruitfly larvae, but not kill them. However, this study did not statistically evaluate the effects of varying dosages of gamma irradiation on fruitfly egg, larval and pupal sterility and mortality, when infested commodities are subjected to irradiaiton. The results are of limited value in assessing gamma irradiation as an alternative to EDB for commodity treatment.

3. As indicated in USDA's biologic and economic assessment report, citrus and tropical fruits are imported from countries such as Mexico, Haiti, Israel, and Morocco, thereby strengthening our trade position with them. Of the crops received from those countries, cold treatment can only be used for oranges and is limited to certain insect growth stages at the time the fruit is harvested. The facilities for such treatment are not available and must be constructed and approved before shipments could be initiated. Further, in the case of Mexican oranges in addition to the expense involved, the delay of a minimum of three weeks for cold treatment would bring their fruit into competition with the California harvest and could virtually eliminate Mexican fruit from the U.S. market. In these cases, the Department's quarantine requirements cannot be met without the use of EDB.

4. EDB fumigation chamber operation, construction, and personnel safety specifications are available to meet or exceed proposed OSHA safety standards. A revised section of the PPQ Treatment Manual on EDB Fumigation Chambers was issued in July 1980. Fumigation conducted at packing sheds in Texas and Hawaii currently meet the proposed 0.13 ppm (time weighted average) for worker exposure. Further, a study was recently conducted entitled, "Behavioral Effects of Prenatal Exposure to Ethylene Dibromide." This study indicates that an exposure of 6.67 ppm EDB for four hours per day on alternate days throughout gestation did not result in an observable behavioral effect to the study animals. Tests determined that maternal behavior, sensorimotor coordination, activity, passive avoidance, complex learning and motivation were unaffected at exposure levels in the offspring of

exposed pregnant Long-Evans hooded rats. (These documents are attached).

5. The proposed cancellation of EDB post-harvest fumigation of citrus, tropical fruits and vegetables should not occur. This determination can be based upon the newly available safety data contained herein and the lack of effective alternatives. A reevaluation could be made when all the foregoing questions have been resolved. EPA should strongly consider and evaluate the use of protective clothing and other safety options to minimize risks as an alternative to cancelling these critical uses.

V. Fumigation of Felled Logs

EDB is an important use in the control of bark beetles where non-chemical control methods, including site slection and thinning, are not viable control options. EDB is only used after an infested tree has been cut. If the tree is not treated to destroy the beetles, they will emerge and attack adjacent trees. The proposed alternative, endosulfan, is not specifically registered for the particular insert of concern which is the mountain pine beetle (*Dendroctonus ponderosae*). There is no efficacy data comparing its effectiveness with EDB. Lindane would be the preferred alternative although it was not considered by EPA as a viable alternative due to its RPAR status. EDB should be classified as a restricted use pesticide, requiring protective clothing, and covering the treated stack of logs with heavy plastic. Such restrictions should adequately minimize exposure.

VI. Other Uses

We concur in the decision to postpone regulatory action concerning continued use of EDB for the control of termites, fumigation of beehive supers, vault fumigation of stored clothing and furniture, and Japanese Beetle quarantine control, until further data are acquired. We agree with the requirements for protective measures for applicators in these situations.

VII. Dietary Burden

The EPA calculations of dietary intake now appear to be inconsistent with actual use figures. While we support and encourage protection of the public health, the environment and agricultural workers, we question the EPA dietary exposure calculations in light of the more recent information outlined above concerning the quantities of EDB uses in fumigation of grain, milling equipment, and citrus.

VIII. Ongoing Studies

The Department is currently implementing a collaborative study for the anaylsis of EDB and carbon tetrachloride in wheat, citrus, and some of their processed products. The data obtained from this study will be subjected to a specific statistical treatment to establish the interlaboratory variation of the method for determining EDB. Participants in this study are USDA, EPA, citrus user groups, and private laboratories. The projected completion date is September 1981.

2. *Responses to the U.S. Department of Agriculture.* The Agency's responses follow USDA's subject headings of specific comments.

a. *Soil fumigation.* The USDA expressed willingness to provide assistance and information to help resolve the concerns associated with potential residues of EDB on crops as a result of soil fumigation. While the Agency appreciates USDA's offer, in light of the new information concerning groundwater contamination by this use, EPA has determined that products registered for this use pattern must be suspended immediately by an emergency suspension Order and these uses are subject to this Notice of Intent to Cancel. Although the soil fumigation uses were the subject of the proposed cancellation notice submitted to USDA as the PD 2/3, that document did not propose cancellation of these uses. Therefore, to the extent required by FIFRA 6(b)(2), the Administrator waives the further requirement of notice and consultation with the Secretary of Agriculture under that provision because these uses are suspended on an emergency basis.

b. *Fumigation of stored grain.* The USDA suggested that the Agency reevaluate the proposed cancellation of EDB fumigation of stored grain based on changes in use patterns and the availability of more data on the volume of use.

The Agency received substantive comments from the USDA, OSHA and others regarding cancellation of EDB fumigation of stored grain. The stored grain use has been reevaluated in detail. The Agency believes applicator exposure could be reduced substantially; however, there remains exposure of workers involved in handling and transporting fumigated grain and a high dietary risk to the general public. The Agency believes that cancellation will result in the use of aluminum phosphide products, carbon tetrachloride-based formulations and other products that are effective, readily available, and already in widespread use. In addition, these substitutes for EDB are less costly. The Agency believes there are no other viable regulatory options available to reduce the risks involved with this use of EDB.

c. *Spot fumigation of grain milling machinery.* The USDA suggested that the Agency reevaluate the proposed cancellation of EDB for spot fumigation of milling machinery. The suggestion was based on changes in use patterns, availability of data regarding use, and the economics and risks associated with the alternatives.

The Agency has reevaluated spot fumigation of milling machinery and has concluded that cancellation of this use remains the only appropriate regulatory alternative. Continued use would present unacceptable risks to applicators, mill workers, and members of the general public. Although none of the alternatives for this use of EDB is completely satisfactory, none presents risks approaching that of EDB, and the Agency believes the alternatives will be reasonably efficacious.

d. *Quarantine fumigation.* The USDA opposed the cancellation of EDB used as a post-harvest, quarantine fumigant for citrus, tropical fruits and miscellaneous vegetables. The USDA urged that lack of effective and practical alternatives for this use, loss of grapefruit export to Japan, questionable efficacy of gamma irradiation, quarantine programs for fruit imported from other countries, and current worker safety programs at fumigation chambers are all factors which support continued registration.

At the request of the USDA and other interested parties, the Agency performed a detailed reevaluation of the use of EDB for quarantine fumigation of citrus and other tropical fruits and permitted registrants and user groups to present new information. This reevaluation indicates greater dietary risks than were estimated earlier and potentially lower benefits.

Adverse impacts may be reduced over those estimated in PD 2/3 due to several factors. APHIS has recently implemented a mexican fruit fly certification program in Texas which should reduce (over time) the absolute volume of EDB applied to Texas citrus shipped to California and Arizona. Furthermore, experimental results indicate that cold storage of Florida citrus shipped to Japan adequately disinfests the fruit while maintaining fruit quality. Although the technique has been demonstrated as technologically feasible, Japan has not yet accepted this quarantine method for the

Mediterranean fruit fly. Research on disinfestation of produce with irradiation treatment is also continuing.

The Agency is aware of current efforts to reduce applicator and dietary exposure problems; however, the estimated lifetime cancer risks and other expected adverse health effects remain unacceptable.

The Agency, therefore, has determined to cancel the registration for post-harvest quarantine use of EDB effectice September 1, 1984. The Agency is extending the original effective date proposed for cancellation from July 1983, to September 1, 1984 to provide sufficient time to allow commercial development of the new, demonstrated treatment capabilities. Although the Agency recognizes that exposures during the phase out period will pose some risk, it believes that the risks can be reduced to acceptable levels during the brief interim phaseout period.

e. *Fumigation of felled logs.* The USDA did not concur with the proposed cancellation of EDB fumigation of felled logs to control the mountain pine bettle (*Dendroctonus ponderoae*). The USDA indicated that lindane is actually the preferred alternative, but due to its RPAR status, was not considered viable.

The Agency's opinion is that the use of EDB to fumigate felled logs presents unreasonably high risks to applicators. Lindane, applied properly and with the use of protective equipment, does not present unreasonable health risks to applicators. Because the Agency expects to permit continued registration of lindane, the economic impacts of cancelling EDB for this use are negligible. The Agency's decision is to cancel the registration of products for fumigation of felled logs with EDB.

f. *Other uses.* The USDA concurred with the decision to postpone regulatory action concerning the use of EDB for termite control, fumigation of stored beehive supers and honeycombs, vault fumigation, and Japanese beetle quarantine control. The Department also agreed that additional data are necessary regarding these uses and that additional protective measures are required to reduce applicator exposure.

g. *Dietary burden.* The Agency's estimates of dietary exposure were questioned by the USDA in light of additional data that were submitted to the Agency subsequent to the PD 2/3. The uses of EDB for stored grain fumigation, spot fumigation of grain milling equipment and citrus quarantine were questioned specifically. As was discussed earlier, under each appropriate subject heading, the Agency reevaluated benefits and risks for a number of uses including grain milling machinery, and citrus and tropical fruit quarantine fumigation. The Agency's decisions regarding these uses have been discussed earlier in this Notice.

V. Procedural Matters

This Notice announces the Administrator's intent to cancel the registrations of each product containing ethylene dibromide (EDB) as an active ingredient, and to deny any application for registration of a pesticide product containing EDB as an active ingredient, unless in each case the product's labelling complies (or is modified to comply) with the requirements of this Notice. As provided by FIFRA sections 6(b) and 3(c)(6), the cancellation and denial actions set forth in this Notice become final and effective at the end of 30 days from receipt by the registrant or applicant, or publication of this Notice (whichever is later), unless within that time either: (i) The registrant or applicant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the Notice. This unit of the Notice explains how registrants and applicants may seek to modify the terms and conditions of registration to make any necessary corrections, and how registrants, applicants, and other adversely affected parties may request a hearing on the actions set forth in this Notice.

A. Summary of the Requirements of This Notice

The Agency has determined that no corrections to the terms and conditions of registration will be sufficient to prevent the cancellation of products registered for most uses of EDB. These products include all EDB products registered for soil fumigation, quarantine fumigation of vegetables, tropical fruits and citrus fruit, the fumigation of stored grains, the spot fumigation of grain milling equipment, and the fumigation of felled logs. The effective date of cancellation of the registrations of products for quarantine fumigation, however, is to be delayed until September 1, 1984. The registrations of products labeled for any of these uses, therefore, will be cancelled unless action is taken within the time period provided by this Notice to amend the registrations to delete these uses, or unless an administrative hearing is properly requested during the period provided by this Notice in order to contest the cancellation of the registration of the product for specified uses.

Products containing EDB registered only for fumigation of beehive supers and honeycombs, vault fumigation, Japanese beetle control and termite control may avoid cancellation if certain changes are made in their registrations. The modification to the terms and conditions of registration required for products registered for each of these uses have been set forth in detail in Unit III. D. of this Notice. The changes required to continue the registrations of these products must be made in compliance with the procedures set forth in Subunit B below. Unless the necessary steps to amend the registrations are taken within 30 days, or unless a hearing is properly requested to contest the cancellation of the registration of a specific EDB product for specific uses, the cancellation of the registration will become final at the end of 30 days from receipt of this Notice by the registrant or publication in the **Federal Register**, whichever is later.

Finally, EPA is aware of a number of pesticide products containing EDB which are not federally registered and which are being marketed under the authority of 40 CFR 162.17. The Agency hereby notifies all persons producing or distributing such products that they must submit a full application for Federal registration, including all required supporting data as prescribed by the provisions of section 3 of FIFRA, of 40 CFR Part 162, and of P.R. Notice 83–4 and 83–4a, within 30 days of receipt of this Notice or publication in the **Federal Register**, whichever is later. The Agency further notifies all such applicants that only products which conform with the requirements of this Notice will be registered. Any person who wishes to register a product which would not conform with the requirements of this Notice is informed that this Notice is a denial of his application, and that if he wishes to contest the denial, he must request a hearing within the applicable 30-day period provided by this Notice.

The 30-day period in which to request a hearing applies to all regulatory actions proposed in this Notice, including all denials of registration, all cancellations (including the delayed effective date cancellation of quarantine fumigation), and all registrations which must be amended to implement changes in the terms and conditions of use in order to avoid cancellation.

B. Procedures for Amending the Terms and Conditions of Registration

To make the changes required to avoid cancellation, registrants must apply for an amended registration requesting that the necesary corrections be made. In addition, any applications for Federal registration pursuant to 40

CFR 162.17 must be submitted. Applications for an amended registration, copies of the amended labeling, and applications for registration pursuant to 40 CFR 162.17, must be submitted to: By mail: William Miller, Product Manager (PM–16), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In person, bring material to: Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2600).

All questions conerning changes which must be made to the registrations of affected products and all applications to amend the affected registrations, or any requests for extension of time to apply for an amendment should be submitted to Mr. Miller before the close of the applicable 30-day period specified in Subunit C below. No extensions will be granted without the express written agreement of EPA. No request for an extension will be considered unless the applicant for registration or amended registration promises the Agency in writing that he will submit a full application which will conform with the requirements of this Notice by a date agreed to by the Agency and the applicant. In no event may any product be distributed, sold, held for sale, offered for sale, shipped, delivered for shipment, or received and (having been so received) delivered or offered to be delivered to any person, if the product's label contains any uses which have been suspended or finally cancelled for that product's registration.

C. Procedure for Requesting a Hearing

Any registrant adversely affected by the cancellation actions described above, and any applicant for registration whose application has been denied by this Notice, may request a hearing on such actions within 30 days of receipt of this Notice, or within 30 days from publication of this Notice in the **Federal Register**, whichever occurs later. Any other person adversely affected by the cancellation actions described above, or any interested person with the concurrence of an applicant whose application for registration has been denied, may request a hearing within 30 days of publication of this Notice in the **Federal Register**.

Each person who requests a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require, among other things, that (1) each request must identify the specific registration(s) by registration number(s) and the specific use(s) (e.g. crops) for which a hearing is requested, (2) each request must be accompanied by objections that are specific for each use of the identified pesticide products for which a hearing is requested, and (3) each request must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing.

Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

D. Consequence of Filing or Failing to File a Hearing Request

1. *Consequence of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for Hearings under FIFRA section 6 (40 CFR part 164). In the event of a hearing, cancellation of the registrations for the uses which are the subject of the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing. Similarly, in the event of a hearing, each denial of registration for the uses which are the subject of the hearing will not become effective prior to the final order of the Administrator at the conclusion of the hearing. The hearing will be limited to the specific uses and specific registrations or applications for which the hearing is requested.

2. *Consequences of failure to file in a timely and effective manner.* If no hearing is requested regarding specific registration(s) and/or specific use(s), the cancellation of such registrations and/or of all registrations for such use(s) becomes effective 30 days after publication of this Notice, or receipt by the affected registrant, whichever comes later.

A registrant may contest the cancellation of his registration for some uses of a product, while modifying the terms and conditions of the registration of the same product to bring it into compliance with the requirements of this Notice. In order to do so, he must (1) make a timely request for a hearing challenging the cancellation of the registration of the product for the uses which he wishes to contest, and (2) make a timely application for amendment to modify the terms and conditions of the registration for uses permitted under this Notice which he wishes to retain.

E. Separation of Functions

The Agency's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. 40 CFR 163.7.

Accordingly, the following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Office of Pesticides and Toxic Substances; the Office of General Counsel; and the Office of Enforcement Counsel.

From the date of this Notice until the final Agency decision in this case, neither the presiding Administrative Law Judge, the Judicial Officer, the Deputy Administrator, the members of the staff of the immediate office of the Deputy Administrator, the members of the staff in the immediate office of the Administrator, nor the Administrator shall have any *ex parte* communication with the trial staff or any other interested person not employed by EPA, on the merits of any of the issues involved in this proceeding.

Dated: September 28, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83–27645 Filed 10–7–83; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
October 11, 1983

Part IX

Department of Transportation

Federal Aviation Administration

Flammability Requirements for Aircraft Seat Cushions; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 25, 29, and 121

[Docket No. 23791; Notice No. 83-14]

Flammability Requirements for Aircraft Seat Cushions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to establish new and more stringent flammability requirements for seat cushions used in transport category aircraft certificated under Part 25 and Part 29 and to require that the cushions in transport category airplanes type certificated after January 1, 1958, and operating under Part 121 comply with these new requirements after a specified date. The proposed requirements would be in addition to the present flammability requirements contained in the Federal Aviation Regulations (FAR). This proposal is a result of research and fire tests, both small-scale and full-scale, and is intended to increase aircraft fire safety.

DATES: Comments must be received on or before February 8, 1984.

ADDRESS: Comments on the propsoal are to be marked "Docket No. 23791" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23791, 800 Independence Avenue, SW., Washington, D.C. 20591; or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C. Comments may be inspected at Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Henri Branting, Technical Analysis Branch (AWS-120), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-8382.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of this proposal. The comment should carry the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments.

Before taking any final action on the proposal, the Administrator will consider the comments made on or before the closing date, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter submits a self-addressed, stamped postcard with the comment and on the postcard the following statement is made: "Comments to Docket No. 23791." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of proposed Rulemaking Distribution System, which describes the application procedure.

Background

This notice responds in part to the findings and recommendations of the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee and is the result of supporting research and development carried out by the Ames Research Center of the National Aeronautics and Space Administration, and by the FAA Technical Center.

As a result of information from public hearings on aircraft fire safety, the FAA established the SAFER Advisory Committee in June 1978. The Committee was directed to "examine the factors affecting the ability of the aircraft cabin occupant to survive in the post-crash environment and the range of solutions available." The Committee consisted of 24 representatives of a wide range of aviation and general public interests. The Committee technical support groups included approximately 150 of the world's top experts in fire research, accident investigation, materials development, and related fields. At the conclusion of its investigation into cabin materials technology, the Committee issued findings and formal recommendations pertaining to long-range research, design, testing, and the problems of smoke and toxic gas emission. One recommendation was that the fire blocking layer concept be develped for aircraft seat cushions as a means of retarding flame spread. The FAA concurred in this recommendation and carried out the research and development necessary for implementation of the concept. This proposal is a result of that research and development. The proposal would amend the type certification standards for both transport category airplanes and transport category rotorcraft, since the flammability requirements for these two categories of aircraft are identical.

Aircraft seat cushions are typically constructed of fire-retardant polyurethane foam and an outer upholstery covering, all of which must presently pass the small-scale upholstery covering, all of which must presently pass the small-scale Bunsen burner tests prescribed in § 25.853 of the Federal Aviation Regulations (FAR). In a prolonged full-scale cabin fire condition, however, the severity of thermal radiation can break down the outer upholstery covering and penetrate into the relatively large fuel mass of the polyurethane foam core. This causes the core to become involved in the fire, spreading flame and producing potentiallyl ethal smoke, combustible gases, and toxic gases. The results of accident investigations and numerous experimental fire tests conducted by the FAA have demonstrated that this involvement of foam cushion material is a dominant factor in the spread of cabin fire. To counter this, performance standards for seat cushions based on the level of protection that can be achieved by the fire blocking layer concept are proposed in this notice.

The fire blocking layer concept involves the use of a thin layer of highly fire-resistant cloth or foam material to completely encapsulate and protect the larger mass of foam core material of a cushion from involvement in the cabin fire. This layer of fire resistant cloth or foam material thus delays the onsite of ignition and retards the involvement of the core in the fire. FAA research has confirmed the efficacy and practicality of this concept for aircraft seat cushions.

The initial phase of the FAA research program for fire blocking layers consisted of a series of fully instrumented, controlled environment, cabin fire tests. These tests subjected numerous sets of seats to intense and realistic full-scale cabin fire conditions. The tests were conducted on both standard cushions typical of airline

service today and various experimental fire-blocked cushions constructed of polyurethane foam. Several cushions constructed of nonfire blocked experimental polyimide foam were also tested. Comparison of the results of these tests confirmed clearly that in a full-scale cabin fire, including those involving fire from a major fuel spill, properly fire-blocked cushions substantially delay the onset of ignition and reduce the spread of flame and products of combustion. This relates directly to increased time available for the occupants to evacuate the airplane. The test results applied through theoretical modeling indicate that an increase of at least 40 seconds in postcrash evacuation and survival time can be gained through the use of fire-blocked cushions. For each floor-level emergency exit equipped with a single-lane escape slide typically capable of handling one evacuee per second, this could mean the evacuation of an additional 40 passengers; for a double-lane slide, such as those in wide-body transports, an additional 80 passengers.

The phase of the research program which developed the design technology included work carried out for the FAA by the Ames Research Center of the National Aeronautics and Space Administration. This work examined the potential of the fire blocking concept and nonfire blocked experimental foams for providing an optimal seat cushion with adequate fire protection at minimal weight and cost. Combinations of various fire blocking materials and polyurethane foams were investigated. The results of this work are published in FAA Report No. DOT/FAA/CT-82-132, Optimization of Aircraft Seat Cushion Fire Blocking Layers, dated March 1983, available from the National Technical Information Service, Springfield, Virginia 22161.

One phase of the research program developed the test for evaluation and certification of cushions. This test used an adaptation of the type of 2 gallon/hour kerosene burner which is currently in standard use throughout industry as a high-intensity fire test for metallic tubing assemblies and components. As adapted, this test subjects the cushion test specimen to temperature and heat flux typical of full-scale cabin fire and is far more realistic and severe than the Bunsen burner tests currently required in Part 25 for cushion materials.

Full-scale tests demonstrate that, by reducing the onset of flashover, the improved cushions greatly reduce smoke and gases in both inflight and post-crash fires, but no specific limits are proposed on these emissions, because at present there are no small-scale tests to measure smoke and gas emission from a full-size cushion assembly. Smoke and gas emission continues to be the subject of FAA long-range research. Setting limits on the emissions of smoke and gases from cabin furnishings, including cushions, may be considered in the future when the results of this research are available and the development of a suitable small-scale test are complete.

While any one of several burner models can be used for this type of test, the burner used in the FAA fire blocking layer test apparatus was the Park Model DPL, available from Park Oil Burner Manufacturing Company, North New York Avenue and Absecon Boulevard, Atlantic City, N.J. 08401.

Other equipment items used in the FAA test apparatus included: Model No. 1000-1 calorimeter, available from Thermogage Inc., 330 Allegany Street, Frostburg, Maryland 21532; Marinite I Insulating Block, a durable alternative to sheet-rock, available from Johns-Manville Corporation, Ken-Caryl Ranch, Denver, Colorado 80217; Ceramocouple thermocouples available from Thermo Electric Company, Inc., Saddle Brook, N.J. 07662; and the Model No. 4644AP weight scale, with a 25-pound capacity, available from Toledo Scale Co., Toledo, Ohio.

The FAA is considering the need to propose similar flammability requirements for seat cushions in small airplanes and rotorcraft used in Part 135 operations. Regulatory action in this regard would be the subject of a separate notice.

Discussion of Proposal

Flammability Requirements

This proposal would establish more stringent flammability requirements for seat cushions for type certification of transport category airplanes and rotorcraft and for most of th airplanes operating under Part 121. Under this proposal, seat cushions would be required to meet the Bunsen burner test requirements in the present regulations as well as the new flammability requirements. The proposed criteria for acceptance are based, in part, on the percentage weight loss of the cushion specimen during the test. Weight loss is a direct measure of the involvement of the material in the fire and a relevant indication of the merit of the cushion, for both fire blocked and nonfire blocked construction. The criteria proposed would limit the average weight loss of all specimens tested to 10 percent. From the study of various experimental cushions, at 10 percent limit would represent a major advancement in fire safety, while is would allow a variety of commercially available foam and fire blocking materials to be used that would be adequate for design innovation and that also would be optimal from the standpoint of weight and costs. While the proposal is based on the performance attained by cushions constructed with fire blocking layers, the proposal would not require that all seat cushions be constructed in that way. Rather, the proposal would set objective standards of performance for seat cushions.

Other Requirements

This document proposes that 3 years from the effective date of the final regulation, all seat cushions in compartments occupied by crew or passengers of airplanes type certificated after January 1, 1958, and operated under Part 121 meet the new requirements. The limited number of airplanes type certificated before January 1, 1958, which are operating under Part 121 are not included because the relatively advanced age and smaller sizes of these airplanes make compliance with the proposed requirements impractical from and economic standpoint. The 3-year period was taken as the typical life span of airline seat cushions and is intended to allow the airlines to come into compliance with the new requirements while routinely replacing cushions in service. Comments on the adequacy and appropriateness of this particular time period are requested.

Long-term cyclical flotation tests were performed on several experimental fire blocked cushions and indicated that cushions can be designed to meet fire blocking requirements as well as the requirements for individual flotation devices under Technical Standard Order (TSO)-C72b.

The test criteria proposed in this notice also include detailed drawings and specifications suitable for use in the construction of test apparatus.

Regulatory Evaluation

In the future several materials and designs may be developed which will comply with these proposed flammability requirements. However, this regulatory evaluation is based on the use of fire blocking layers on seat cushions, which is considered the best technology available at this time.

Compliance with the proposal would result in a lower fatality rate, lower injury rate, less severe injuries, and lower property damage as result of fire. As a result of the more stringent flammability standards which are

proposed for seat cushions, the estimated rate of survival could be increased so that between one-third and two-thirds of those who are not killed by trauma from a crash might be saved. Projections of 4.05 billion enplanements for the period of 1984-1993 indicate that compliance with the proposed standards would save between 247 and 494 lives. At a value of $653,000 for life saved,[1] the range of benefit for loss of life is $16.4 to $32.0 million per year.

Accident data are not sufficiently detailed to permit an estimate of the number of nonfatal injuries that could be prevented by compliance with the proposed standards, but injuries as a result of a fire are quite serious in terms of human and material costs. For the purposes of this rulemaking, the FAA is assuming that the dollar saving from the reduction in nonfatal injuries would be approximately equal to 10 percent of total savings that result from the prevention of fatalities.

The savings with respect to property damage are also difficult to quantify since in a crash followed by a fire, there is no way to apportion the damage as that attributable to the crash and that attributable to the fire. A number of ramp fires have occurred which have resulted in serious property damage and which might have been reduced in severity if the proposed seat cushion standards existed. If the proposed standards only saved aircraft from such ramp damage, the savings could range from $500,000 to $1 million per year.

Table 1 summarizes the benefit estimated for an average forecast year.

TABLE 1.—SUMMARY OF ANNUAL BENEFIT ESTIMATES[1]

[In millions of dollars]

	Low range	High range
Fatalities prevented	16.4	32.0
Nonfatal injuries prevented	1.6	3.2
Property damage prevented	0.5	1.0
Total	18.5	36.2

[1] Average for period 1984-1993, after phase-in period.

Cost of Compliance

The National Aeronautics and Space Administration (NASA) conducted studies in which cost scenarios were developed for 12 different fire safety improvement options. Each of the 12 options was examined for 3 different periods of compliance. The three periods examined were: (1) Immediate compliance for both existing and newly manufactured aircraft; (2) immediate compliance by newly manufactured aircraft and no replacement of existing equipment; and (3) a phase-in period of 3 years (based on an assumed average 3-year life for seat cushions in service), after which all aircraft operating under Part 121 would have to comply with the proposed standards.

The cost estimates considered the weight of various seat types, the fuel characteristics of the fleet, the cost to purchase materials, and the manufacture of seats.

Of the 12 options tested, the FAA is basing its cost estimate upon seats using a Norfab fire blocking layer over fire retardant urethane. This option presently appears to be the most reasonable and economical means of compliance. The NASA findings estimate that this seat option would cost $17.7 million in 1982 dollars, or $18.5 million in 1983 dollars, using a 4.5 percent inflation factor.

Minimum benefits are estimated at $18.5 million annually which would balance the annual fleet cost of $18.5 million in 1983 dollars, while the maximum estimated benefits would be almost twice the cost. The benefit/cost ratios are summarized in Table 2.

TABLE 2.—SUMMARY OF BENEFITS AND COSTS AVERAGE YEAR 1984–1993

[In millions of dollars]

Benefits	Minimum	Average	Maximum
Fatalities prevented	16.4	24.2	32.0
Nonfatal injuries prevented	1.6	2.4	3.2
Property damage prevented	0.5	0.7	1.0
Total	18.5	27.3	36.2
Cost estimate	18.5	18.5	18.5
Benefit/cost ratio	1.00	1.48	1.96

Some of the key assumptions in the NASA studies were that conversion of cushions to include a fire-blocking layer would not require special maintenance downtime for aircraft and that the producers of fire-blocking layer materials would have adequate capacity to produce necessary material at reasonable prices. Comments on industry's ability to produce these materials in adequate quantities to support the 3-year compliance period are requested.

The National Bureau of Standard (NBS) is conducting a benefit cost analysis of fire blocking layers for seat cushions under an agreement with the FAA. The NBS will review each relevant accident in detail and will also review the estimated costs of compliance with this proposal. The present study covers the same general areas as the NBS research, although in less detail. The NBS study will be completed before any final rule is issued. It will be placed in the docket for inspection and made available on request. If the FAA proceeds to final rulemaking the NBS study, together with all comments thereon, as well as all other studies and related comments filed in the docket, will form the basis for the agency final actions.

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Tires, Rotorcraft.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Airworthiness directives and standards, Beverages, Cargo, Chemicals Children, Narcotics, Flammable materials, Handicapped, Hazardous materials, Hours of Work, Infants, Liquor, Mail, Drugs, Pilots, Smoking, Transportation, Common carriers.

The Proposed Rule

Accordingly, the Federal Aviation Administration proposes to amend Parts 25, 29, and 121 of the Federal Aviation Regulations (14 CFR Parts 25, 29, and 121) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. By amending § 25.853 by redesignating present paragraphs (c) through (e) as new paragraphs (d) through (f) and adding a new paragraph (c) as follows:

§ 25.853 Compartment interiors.

* * * * *

(c) In addition to meeting the requirements of paragraph (b) of this section, seat cushions must meet the test requirements of Part II of Appendix F of this part.

* * * * *

2. By amending Appendix F to Part 25 by removing the introductory sentence and by designating the text of Appendix F to Part 25 as follows:

Appendix F

Part I—An Acceptable Test Procedure for Showing Compliance With §§ 25.853, 25.855, and 25.1359

* * * * *

[1] Based on *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*, FAA, September 1981. Values are updated to 1983 dollars.

3. By amending Appendix F to Part 25 by adding a new Part II to read as follows:

Appendix F

* * * * *

Part II—Flammability of Seat Cushions

(a) *Criteria for Acceptance.* Each seat cushion most meet the following criteria:

(1) At least three sets of seat bottom and seat back cushion specimens must be tested.

(2) If the cushion is constructed with an outer layer of fire blocking material, the fire blocking material must completely enclose the cushion foam core material and there must be provision for venting internal cushion pressure.

(3) Each specimen tested must replicate the seat bottom and seat back cushion for which the testing of compliance is performed.

(4) For at least one-half of the total number of specimen sets tested, the flame spread from the burner must not reach the side of the cushion opposite the burner. The flame spread after the test is determined by measuring the extent of the charring on the outer upholstery of each seat bottom and each seat back cushion specimen.

(5) For all specimen sets tested, the average percentage weight loss must not exceed 10 percent. The percentage weight loss for a specimen set is the weight of the specimen set before testing less the weight of the specimen set after testing expressed as the percentage of the weight before testing.

(6) At no time during any test may the foam material of a cushion specimen form a flaming accumulation of melted material beneath the specimen.

(b) *Test Conditions.* Vertical air velocity in the vicinity of the test must not exceed 100 feet per minute. Horizontal air velocity must be kept to a minimum.

(c) *Test Specimens.* (1) For each test, one set of cushion specimens representing a seat bottom and seat back cushion must be used.

(2) The seat bottom cushion specimen, including the outer upholstery covering and fire blocking layer if used, must be 18 inches (457 mm) wide by 20 inches (508 mm) deep by 4 inches (102 mm) thick.

(3) The seat back cushion specimen, including the outer upholstery covering and fire blocking layer if used, must be 17 inches (432 mm) wide by 25 inches (635 mm) high by 2 inches (51 mm) thick.

(4) The seat bottom and seat back cushion specimens must be made of the materials (including upholstery covering) used in the cushions subject to the demonstration of compliance.

(5) The specimens must be conditioned at 73°F. plus or minus 5° (23°C. plus or minus 2°) for at least 24 hours before testing.

(d) *Test Apparatus.* The arrangement of the test apparatus is shown in Figures 1 through 5 and must include the components described in this section. Minor details of the apparatus may vary, depending on the model burner used.

(1) *Specimen Mounting Stand.* The mounting stand for the test specimens consists of steel angles, as shown in Figure 1. The length of the mounting stand legs may vary from a minimum of 12 inches, to allow for adjustment to the stand used to support the 2 gallon/hour kerosene burner. The mounting stand must be used for mounting the test specimen seat bottom and seat back, as shown in Figure 2.

(2) *Test Burner.* The burner to be used in testing must—

(i) Be a modified gun type;

(ii) Have an 80° spray angle nozzle nominally rated for 2.25 gallons/hour;

(iii) Have a 12-inch (305 mm) burner extension installed at the end of the draft tube, with an opening 6 inches (152 mm) high and 11 inches (280 mm) wide, as shown in Figure 3; and

(iv) Have a burner fuel pressure regulator that is adjusted to an operating pressure of 85 pounds per square inch gage for a 2.25 gallon/hour nominally rated 80° nozzle, delivering the 2.03 gallons/hour kerosene required for the test.

Burner models which have been used successfully in testing are the Lennox Model OB-32, Carlin Model 200 CRD, and Park Model DPL. FAA published reports pertinent to this type of burner are: 1) Powerplant Engineering Report No. 3A, Standard Fire Test Apparatus and Procedure for Flexible Hose Assemblies, dated March 1978; and 2) Report No. DOT/FAA/RD/76/213, Reevaluation of Burner Characteristics for Fire Resistance Tests, dated January 1977.

(3) *Calorimeter.* (i) The calorimeter to be used in testing must be a 0–15.0 Btu/ft²-sec. (0–17.0 W/cm²) calorimeter mounted in a 6 by 12 inch (152 by 305 mm) by ¾ inch (19 mm) thick insulating block which is attached to a steel angle bracket for placement in the test stand during burner calibration, as shown in Figure 4.

(ii) Because crumbling of the insulating block with service can result in misalignment of the calorimeter, the calorimeter must be monitored and the mounting shimmed, as necessary, to ensure that the calorimeter face is in a plane parallel to the exit of the test burner cone.

(4) *Thermocouples.* The seven thermocouples to be used for testing must be 1/16-inch, ceramic sheathed, type K, grounded thermocouples with a nominal 30 American wire gage (AWG)-size conductor. The seven thermocouples must be attached to a steel angle bracket to form a thermocouple rake for placement in the test stand during burner calibration, as shown in Figure 5.

(5) *Apparatus Arrangement.* The test burner must be mounted on a suitable stand to position the exit of the burner cone a distance of 4 inches from one side of the specimen mounting stand. The burner stand should have the capability of allowing the burner to be swung away from the specimen mounting stand during warmup periods. During the test the exit of the burner cone and the flame impingement must be centered on the 4-inch by 20-inch side of the bottom cushion test specimen, as shown in Figure 2.

(6) *Instrumentation.* A recording potentiometer or other suitable instrument with an appropriate range must be used to measure and record the outputs of the calorimeter and the termocouples.

(7) *Weight Scale.* A scale with 2/100th-pound (9 grams) graduations and a minimum 10-pound (5.54 kg) capacity must be used for obtaining the weight of each set of seat cushion specimens before and after the test.

(8) *Timing Device.* A stopwatch or other device must be used to measure the time of application of the burner flame.

(e) *Preparation of Apparatus.* Before calibration, all equipment must be turned on and the burner fuel must be adjusted as specified in paragraph (d)(2).

(f) *Calibration.* To ensure the proper thermal output of the burner, the following test must be made:

(1) Place the thermocouple rake on the test stand as shown in Figure 5 at a distance of 4 inches (102 mm) from the exit of the burner cone.

(2) Turn on the burner, allow it to run for 2 minutes for warmup, and adjust the burner air intake damper to produce a minimum of 1,850° F (1,010° C) on all thermocouples. Turn off the burner.

(3) Replace the thermocouple rake with the calorimeter (Figure 4).

(4) Turn on the burner and ensure that the calorimeter is reading a minimum of 10.0 Btu/ft²-sec. (11.4 Watts/cm²). If the calorimeter does not read this, repeat steps in paragraphs (1) through (4) and adjust the burner air intake damper until the proper calorimeter reading is obtained.

(5) Turn off the burner and remove the calorimeter.

(g) *Test Procedure.* The flammability of each set of specimens must be tested as follows:

(1) Record the weight of each set of seat bottom and seat back cushion specimens to be tested to the nearest 2/100th of a pound (9 grams).

(2) Mount the seat bottom and seat back cushion test specimens on the test stand as shown in Figure 2, securing the seat back cushion specimen to the test stand with safety wire, if necessary.

(3) Swing the burner into position and ensure that the distance from the exit of the burner cone to the side of the seat bottom cushion specimen is 4 inches (102 mm).

(4) Swing the burner away from the test position. Turn on the burner and allow it to run for 2 minutes to provide adequate warmup of the burner cone and flame stabilization.

(5) To begin the test, swing the burner into the test position and simultaneously start the stopwatch.

(6) Expose the seat bottom cushion specimen to the burner flame for 2 minutes and then turn off the burner. Allow the specimen set to self-extinguish.

(7) Remove the remains of the set of seat bottom and seat back cushion specimens and record the weight of the remains to the nearest 2/100th of a pound (9 grams).

(h) *Test Report.* With respect to all specimen sets tested for a particular seat cusion for which testing of compliance is performed, the following information must be recorded:

(1) An identification and description of the specimens being tested.

(2) The number of specimen sets tested.

(3) The initial weight and residual weight of each set, and the calculated average percentage weight loss for the total number of sets tested.

(4) For each set tested, the extent to which observable charring of the outer upholstery reached the opposite side of the cushion.

(5) For each set tested, the extent to which the melted material formed a flaming accumulation beneath the specimen being tested.

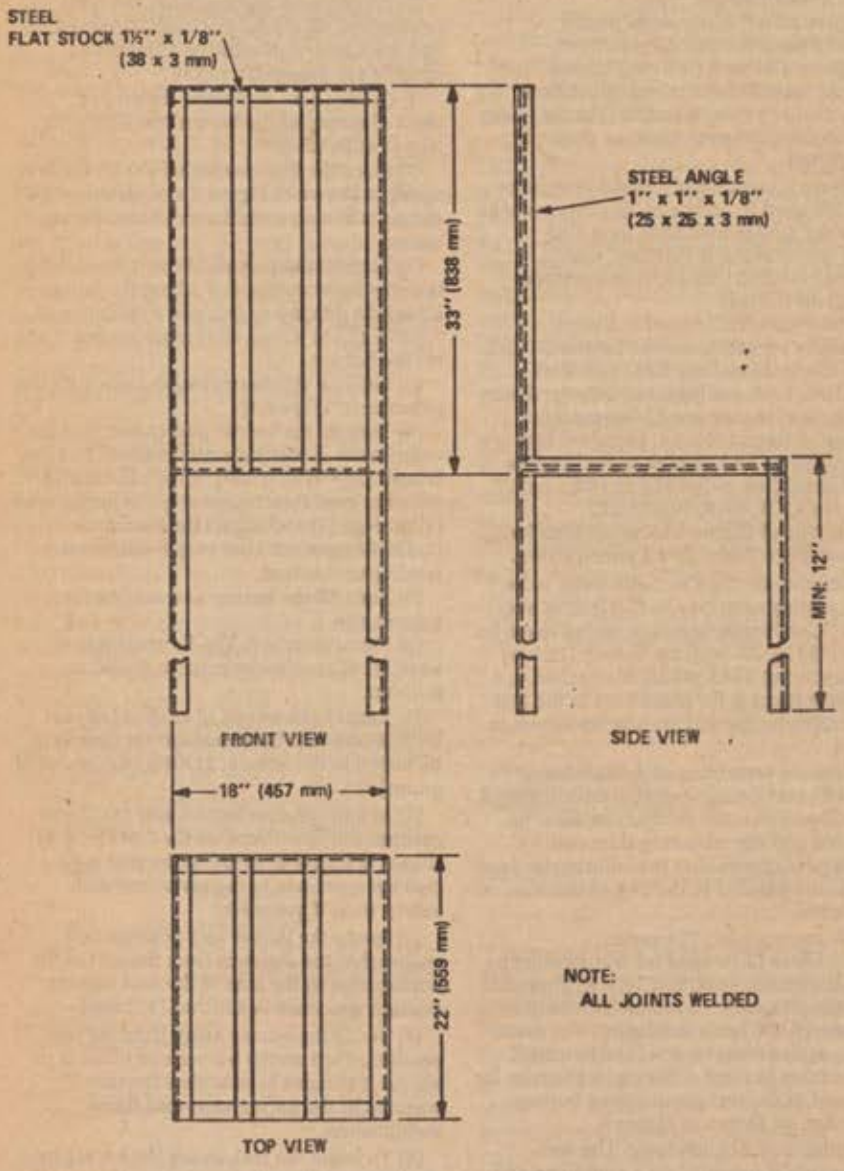

FIGURE 1 TEST STAND

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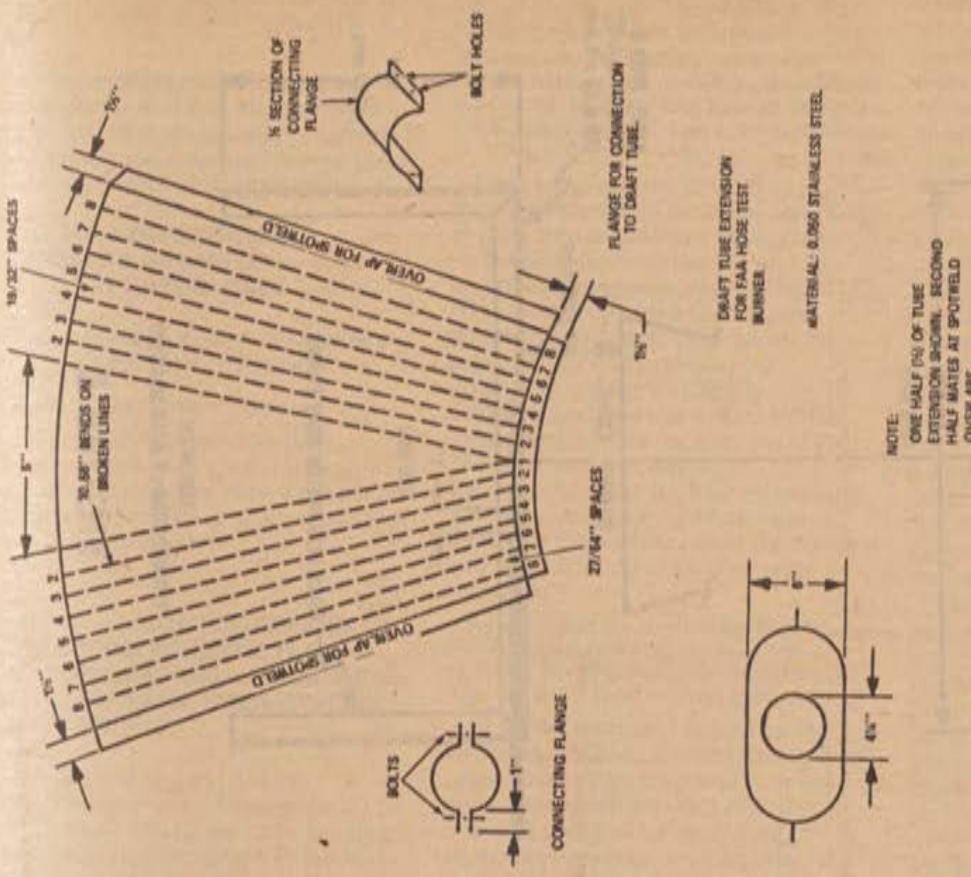

FIGURE 3

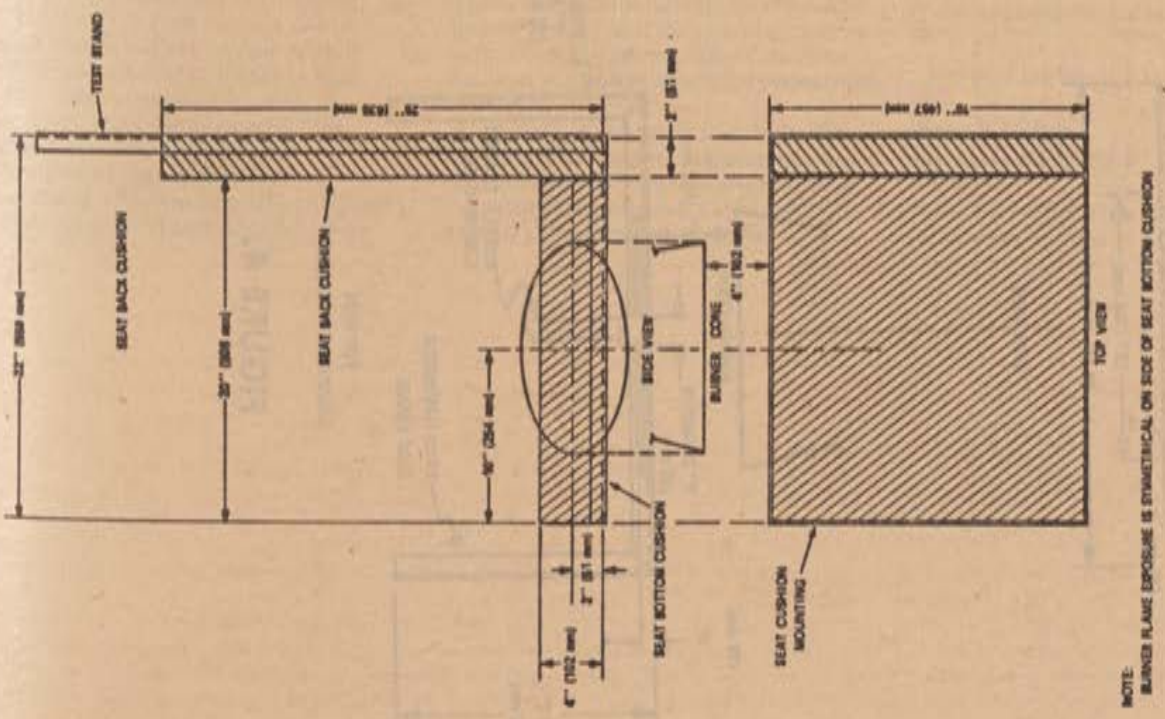

FIGURE 2.

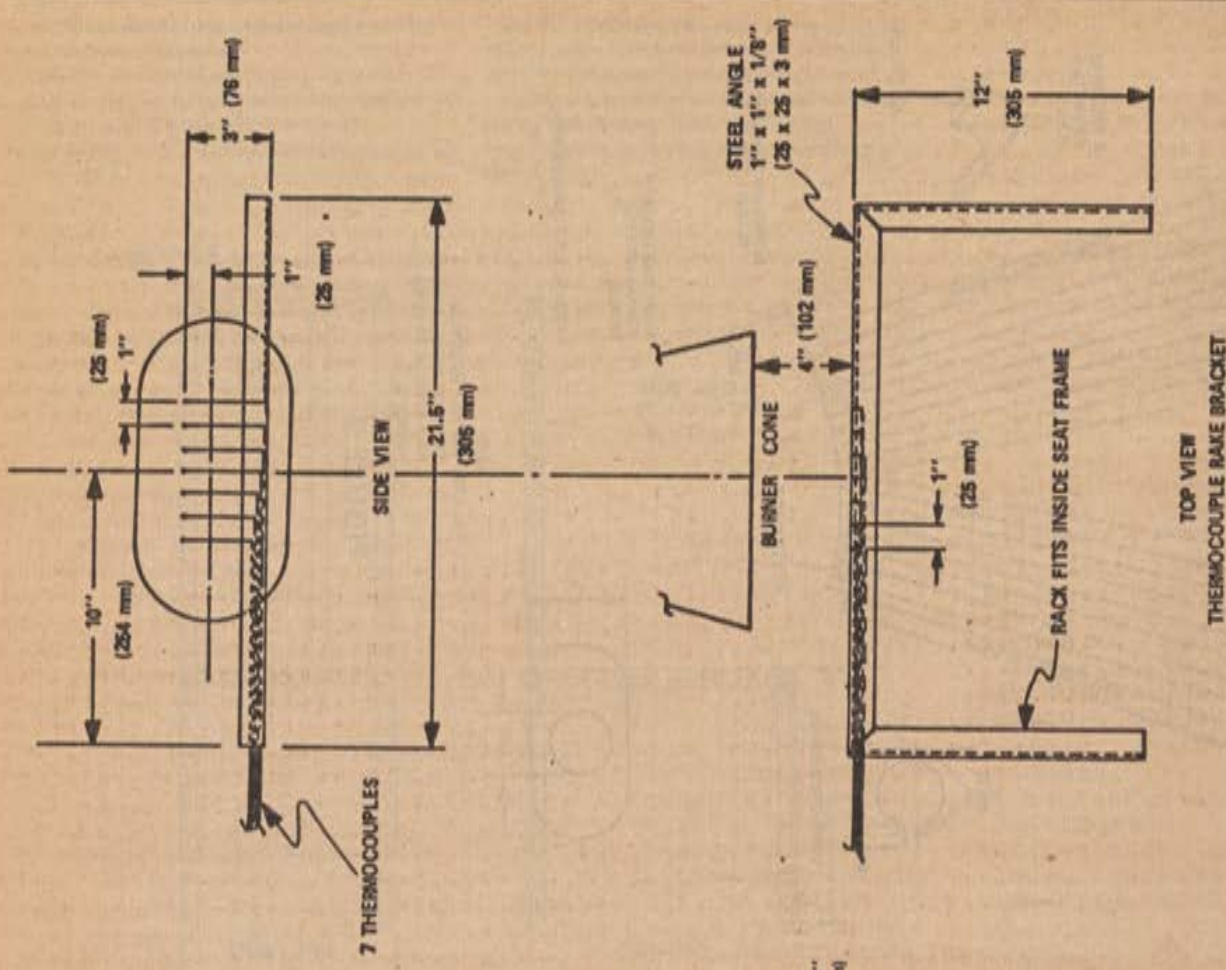

FIGURE 5

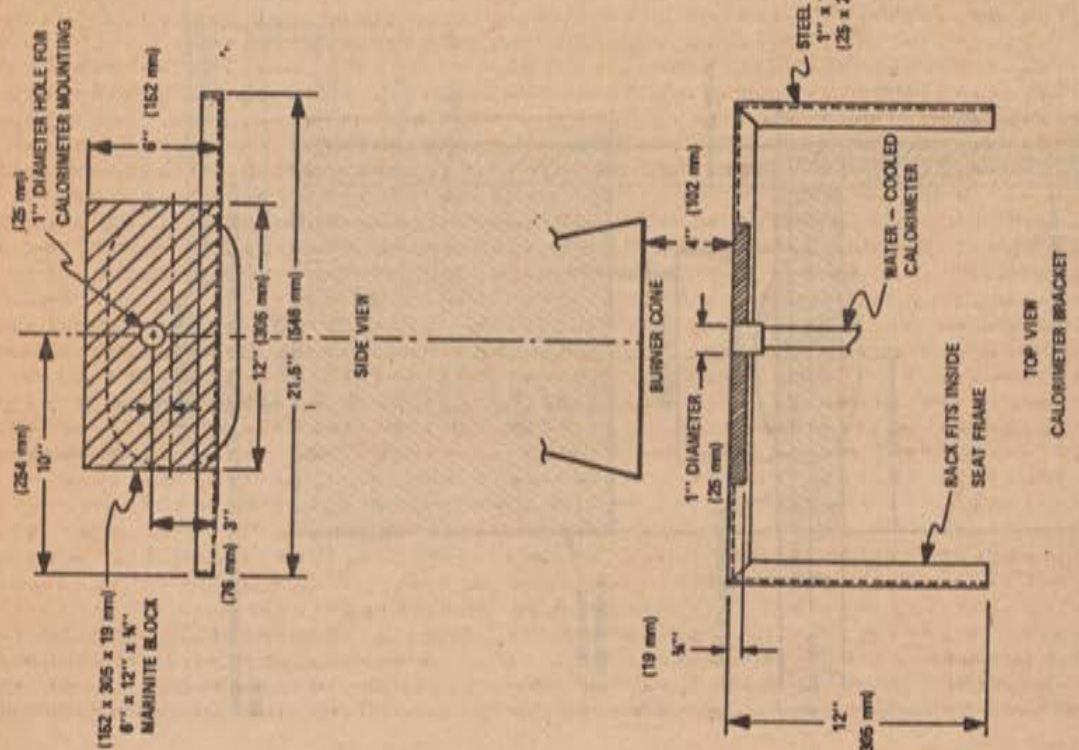

FIGURE 4.

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(Approved by the Office of Management and Budget under OMB control number 2120-0018)

4. By amending newly designated Part I of Appendix F of Part 25 by removing the words "of this appendix" whereever they appear and inserting, in their place, the words "Part I of this appendix".

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

5. By amending § 29.853 by adding a new paragraph (b) as follows:

§ 29.853 Compartment interiors.

(b) In addition to meeting the requirements of paragraph (a)(2) of this section, seat cushions must meet the test requirements of Part II of Appendix F of Part 25 of this chapter.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

6. By amending § 121.312 by redesignating present paragraphs (a) and (b) as (1) and (2), by redesignating the introductory paragraph as (a), and by adding a new paragraph (b) to read as follows:

§ 121.312 Materials for compartment interiors.

* * * * *

(b) For airplanes type certificated after January 1, 1958, after (a date 3 years from the effective date of this regulation), all seat cushions in any compartment occupied by crew or passenger must complyu with the requirements pertaining to fire protection of seat cushions in § 25.853(c), effective (the effective date of this regulation) and Appendix F to Part 25 of this chapter, effective (the effective date of this regulation).

(Sections 313, 314, and 601 through 610, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

[This proposal was developed jointly by, and is issued on behalf of, the Office of Airworthiness, Washington, D.C., responsible for issuance of Part 121 rulemaking proposals; the Transport Airplane Certification Directorate, Seattle, Washington, responsible for issuance of Part 25 rulemaking proposals; and the Rotorcraft Certification Directorate, Fort Worth, Texas, responsible for issuance of Part 29 rulemaking proposals. Recommendations for final rulemaking will be made to the Administrator jointly by these offices after their review and consideration of all comments received.]

Note.—Under the terms of the Regulatory Flexibility Act (the Act), the FAA has reviewed this proposal to determine the impact it might have on small entities.

Since the estimated impact on the small unscheduled air carriers could be approximately $9,000 per year, it has been determined that this rule, if adopted, may have a significant economic impact on a substantial number of small entities, such as small air carriers operating under Part 121. As required by the Act, the FFA has completed an intial regulatory flexibility analysis as part of the regulatory evaluation. A copy of the analysis/evaluation is contained in the regulatory docket. A copy of it may be obtained by contracting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

The Act also requires that when there is a significant impact on small entities the agency must consider alternative in the rulemaking process. In the case of flammability requirements, the alternatives are limited in number. One alternative would be to lessen the impact on small entitles by making the more stringent requirements apply only to the larger air carrier or to allow the smaller entities a longer period to come into compliance. These alternatives were rejected because of the importance of passenger safety, whether traveling on large, scheduled airline or on a smaller, unscheduled airline. As alternative approaches, the FAA considered both regulations that would specify the only materials and construction process permitted to be used and regulations that set performance standards to be met. The FAA has proposed performance standards to permit those operating under Part 121 the opportunity to choose the most economical materials and processes as long as the flammability performance standards wer met.

This proposal, if adopted, is not likely to result in an annual effect on the economy of $100 million or more, or a major increase in costs for dconsumers; industy; or Federal, State, or local government agencies. In addtion, this proposal, if adopted, would have little or no impact on trade opportunities for United States firms doing business overseas or for foregin firms doing business in the United States. Accordingly, it has been determined that this is not a major regulation under Executive Order 12291. In addtion, the FAA has determined that this action is significant under Department of Transportion Regulatory Policy and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on August 23, 1983.

Walter S. Luffsey,

Associate Administrator for Aviation Standards.

[FR Doc. 83-27486 Filed 10-6-83; 4:15 pm]

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LIST OF PUBLIC LAWS

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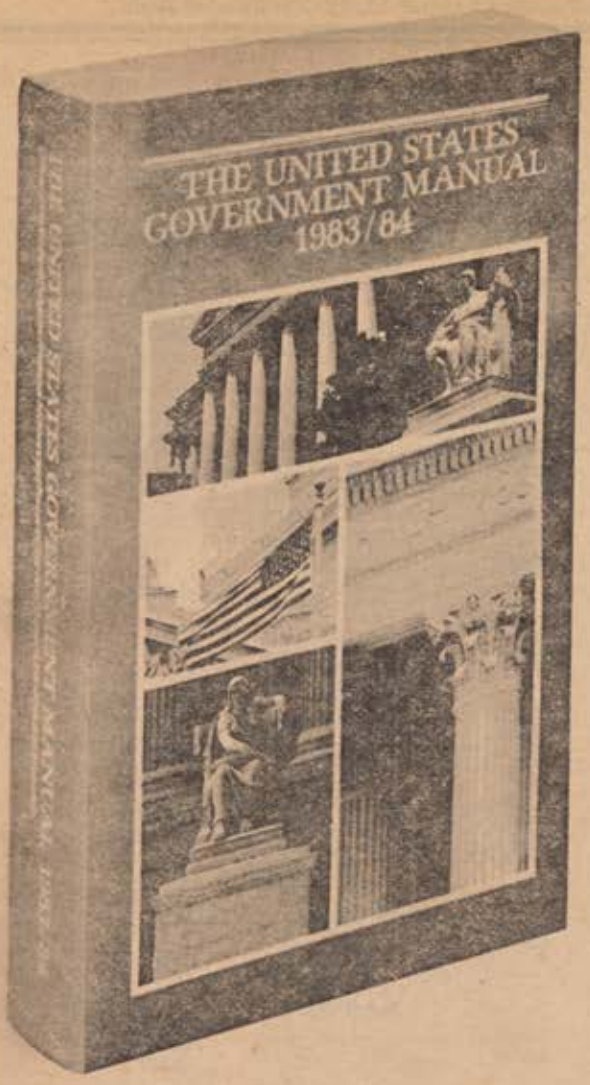
This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

S.J. Res. 140/Pub. L. 98-113 To provide for the designation of the week of October 2 through October 8, 1983, as "Myasthenia Gravis Awareness Week". (Oct. 5, 1983; 97 Stat. 755) Price: $1.50



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