3-14-88
Vol. 53 No. 49
Pages 8141-8420

Federal Register

Monday
March 14, 1988

Briefings on How To Use the Federal Register—
For information on briefings in Tampa, FL, Fort Lauderdale, FL, Washington, DC, and Boston, MA, see announcement on the inside cover of this issue.

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

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

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for six months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

TAMPA, FL

WHEN: March 24; at 9:30 a.m.
WHERE: Auditorium
Tampa-Hillsborough County Public Library
900 North Ashley Drive, Tampa, FL.
RESERVATIONS: Call the St. Petersburg Federal Information Center on the following local numbers

St. Petersburg	813–893–3495
Tampa	813–229–7911
Orlando	305–422–1800

FORT LAUDERDALE, FL

WHEN: March 25; at 10:00 a.m.
WHERE: Room 8 A and B
Broward County Main Library
100 S. Andrews Avenue, Fort Lauderdale, FL.
RESERVATIONS: Call the St. Petersburg Federal Information Center on the following local numbers:

Fort Lauderdale	305–522–8531
Miami	305–536–4155
West Palm Beach	305–833–7566

WASHINGTON, DC

WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Carolyn Payne, 202–523–3187

BOSTON, MA

WHEN: April 19; at 9 a.m.
WHERE: Thomas P. O'Neill Federal Building
Auditorium,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8123

Contents

Federal Register

Vol. 53, No. 49

Monday, March 14, 1988

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
595 8141
630 8301

7 CFR
946 8142
948 8145
1240 8147
1980 8148

Proposed Rules:
1030 8205
1772 8219

9 CFR

Proposed Rules:
92 8301

10 CFR
430 8304

12 CFR
564 8167

14 CFR
71 (4 documents) 8172, 8173, 8301
73 (3 documents) 8173, 8175

Proposed Rules:
39 8220
61 8368
63 8368
65 8368
121 8368
135 8368

15 CFR

Proposed Rules:
379 8221

18 CFR
157 8176
380 8176

21 CFR

Proposed Rules:
182 8301

22 CFR
303 8178

26 CFR
1 (2 documents) 8302
48 8302

29 CFR
1910 8322

30 CFR
202 8181
203 8181
206 8181
207 8181
210 8181
241 8181

Proposed Rules:
918 8222

34 CFR

Proposed Rules:
300 8390
653 8397

40 CFR
60 8182
61 8182
81 8182
228 8183

Proposed Rules:
300 8223

41 CFR

Proposed Rules:
51-7 8225

43 CFR
20 8186

46 CFR
308 8186

47 CFR
73 (3 documents) 8189, 8190

Proposed Rules:
2 8225
73 (8 documents) 8225–8228

49 CFR
571 (2 documents) 8190, 8202

Proposed Rules:
395 8228

50 CFR

Proposed Rules:
661 8234

Rules and Regulations

Federal Register
Vol. 53, No. 49
Monday, March 14, 1988

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 595

Physicians Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is amending the regulations for the Physicians Comparability Allowances (PCA) to comply with the revisions in the Federal Physicians Comparability Allowances Amendments of 1987 (Pub. L. 100–140). The law extends the PCA authority for three years, to September 30, 1990. Physicians Comparability Allowances are paid to physicians in certain situations where an agency is experiencing recruitment and retention problems. The revised regulations increase the maximum allowances and extend the criteria used to determine a physician's allowance category to include certain service as a physician in the Veterans Administration or as a medical officer in the Commissioned Corps of the Public Health Service. In addition, the revised regulations increase the time period for review of agency PCA program plans from 15 calendar days to 45 calendar days.

DATES: Interim rules effective March 14, 1988. Comments must be received on or before May 13, 1988.

ADDRESSES: Send or deliver written comments to: U.S. Office of Personnel Management, Personnel Systems and Oversight Group, Office of Pay Programs, Room 3353, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: JoAnn Perrini, (202) 632–7184.

SUPPLEMENTARY INFORMATION: Current regulations in 5 CFR Part 595 authorize the payment of Physicians Comparability Allowances (PCA) to eligible Federal physicians who enter into service agreements with their agencies. The allowances are paid only for certain categories of physicians for which the agency is experiencing recruitment and retention problems. The revised regulations increase the maximum allowance from $7,000 to $14,000 for a physician who has served as a Government physician for 24 months or less, and from $10,000 to $20,000 for one who has served as a Government physician for more than 24 months.

The revised regulations allow that for the purpose of determining the amount of the comparability allowance in relation to the length of service as a Government physician, certain other service will be creditable. Service as a physician in the Veterans Administration, under sections 4104 or 4114 of Title 38, or as a medical officer in the Commissioned Corps of the Public Health Service, under Title II of the Public Health Service Act (42 U.S.C Ch. 6A), would be deemed service as a Government physician. However, physicians currently employed under Title 38 and Title 42 are not eligible for the allowances provided in 5 U.S.C. 5948.

The revised regulations increase the time period for review of agency PCA program plans by the Office of Management and Budget from 15 calendar days to 45 calendar days.

Public Law 100–140 was not enacted until October 26, 1987, and agencies were not authorized to enter into PCA service agreements between October 1 and October 25, 1987. In addition, agencies may not apply the amended provisions of Pub. L. 100–140 any earlier than October 26, 1987.

Waiver of Notice of Proposed Rulemaking

Pursuant to sections 553(b)(3)(B) and (d)(3) of Title 5 of the United States Code, I find the good cause exists for waiving the general notice of proposed rulemaking and making this amendment effective immediately upon publication. The legislation requiring the revisions to the PCA regulations was enacted on October 26, 1987. It is critical that the agencies are permitted to immediately implement the revised regulations which are designed to improve the agencies' ability to recruit and retain physicians.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 595

Government employees, Health Professions, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 595 as follows:

PART 595—PHYSICIANS COMPARABILITY ALLOWANCES

1. The authority citation for Part 595 continues to read as follows:

Authority: 5 U.S.C. 5948.

2. Section 595.105 is amended by revising paragraph (b), redesignating paragraph (d) as paragraph (e) and paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 595.105 Determination of amount of comparability allowance.

* * * * *

(b) Under the subsection (a) of 5 U.S.C. 5948, the comparability allowance payable to any Government physician may not exceed $14,000 per annum for a physician who has served as a Government physician for 24 months or less, or $20,000 per annum for

a physician who has served as a Government physician for more than 24 months. For the purpose of determining a physician's length of service for this requirement, prior service as a Government physician need not have been continuous, but any periods of leave without pay may not be counted as service.

(c) Subsection (a) of 5 U.S.C. 5948 allows that for the purpose of determining length of service as a Government physician, service as a physician in the Veterans Administration, under sections 4104 or 4114 of Title 38, or active service as a medical officer in the Commissioned Corps of the Public Health Service, under Title II of the Public Health Service Act (42 U.S.C. ch. 6A), would be deemed service as a Government physician. Physicians currently employed under title 38 in the Veterans Administration or under title 42 as Commissioned Corps officers of the Public Health Service are not eligible for the allowances provided in 5 U.S.C. 5948.

* * * * *

§ 595.107 [Amended]

3. Section 595.107, paragraph (c), is amended by revising the phrase "15 calendar days" to read as "45 calendar days."

[FR Doc. 88-5435 Filed 3-11-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Relaxation of Inspection Requirements for Shipments of Potatoes to District 5 and Spokane County in District 1 in Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule which relaxed inspection requirements for certain shipments of potatoes grown in Washington. This action will facilitate the movement of potatoes from growers to packing facilities and reduce inspection costs. This final rule also includes all of the other handling requirements currently in effect under the marketing order. The inclusion of these requirements will make them easier for interested persons to locate and use, because they will be published in the Code of Federal Regulations. The inclusion of these requirements does not result in a change in regulatory effect.

EFFECTIVE DATE: April 13, 1988.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946 (7 CFR Part 946), as amended, regulating the handling of Irish potatoes grown in Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and have been assigned OMB No. 0581-0070.

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

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

There are approximately 60 handlers of Washington potatoes subject to regulation under the Washington potato marketing order and approximately 361 producers in Washington. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of Washington potatoes may be classified as small entities.

The interim final rule was issued on October 27, 1987, and was published in the **Federal Register** on November 2, 1987 (52 FR 41946). That rule amended, effective November 2, 1987, the handling regulation for Washington potatoes set forth in § 946.336 (46 FR 39117, July 31, 1981; 47 FR 33245, August 2, 1982; 47 FR 38493, September 1, 1982; 48 FR 31851, July 12, 1983; 49 FR 32539, August 15, 1984; 52 FR 15490, April 29, 1987). That rule provided that interested persons could file written comments through December 2, 1987. No comments were received.

Section 946.54 of the order provides authority to modify, suspend, or terminate regulations in order to facilitate shipments of potatoes for grading or storing between the districts within the production area or to and within specified locations in the adjoining States of Idaho and Oregon. Section 946.55 authorizes regulations to prevent the transportation of such potatoes to points outside the production area. Prior to the issuance of the interim final rule, potatoes which were shipped for grading and storing purposes to District 5 for the period July 15 through August 31 each year and to Morrow and Umatilla Counties in Oregon throughout the year were exempted from inspection (§ 966.336 of the regulations). If they were subsequently reshipped for other than exempted purposes, the potatoes had to be inspected and meet the requirements of the regulations. The interim final rule expanded the inspection exemption by allowing uninspected potatoes to be shipped for grading or storing purposes to District 5 the entire year and by also allowing such shipments to Spokane County in District 1 the entire year.

Many growers outside of District 5 and Spokane County in District 1 prefer to deliver their potatoes to packing facilities in these areas because the facilities are closer to their farming operations. However, the handling requirements in § 946.336 required such potatoes to be inspected and certified as meeting minimum grade, size, maturity, and packing requirements before they were moved within the production area. From the 1978-79 through the 1981-82 seasons potatoes were allowed to be moved into District 5 and Spokane County in District 1 throughout the year for grading and storing without first having the potatoes inspected. Several years ago, when potatoes started to appear on the fresh market without the required inspection, this procedure was discontinued in order to improve compliance and prevent the marketing problems associated with such uninspected shipments.

However, the need to facilitate the movement of potatoes from growers to packing facilities without added cost persisted. In addition, handlers in District 5 and Spokane County in District 1 are near urban areas with sizable wholesale/retail markets, and many handlers repack bulk potatoes into consumer size containers. The regulation requires potatoes which are regraded, resorted, repacked, or in any other way further prepared for market to be reinspected. As a result, with the exception of those shipments which were exempted, potatoes shipped from other districts within the area of production had to be inspected twice, first within the district grown, and second after repacking.

To make it more convenient for producers to deliver their potatoes, and reduce inspection costs, the committee recommended that shipments of uninspected potatoes into District 5 throughout the year, and into Spokane County in District 1 for grading and storing purposes should again be allowed. The committee plans to monitor these shipments more closely than it did previously to prevent shipments of uninspected potatoes into the fresh market.

This action adopts the provisions of the interim rule with a modification for clarity. The impact of this action is expected to be positive and to benefit the Washington potato industry as a whole. By not having to obtain inspection twice on potatoes shipped to certain areas for grading, storing, or repacking, handlers' inspection costs will be lessened.

Also, under this action, the entire handling regulation (§ 946.336) will be published in the **Federal Register**. The purpose for taking this action is to consolidate the handling regulation, and the various amendments to it, into one document and have the entire regulation published in the Code of Federal Regulations. This will make the requirements easier to locate and use. In addition, this action deletes as unnecessary an earlier effective date in the introductory text and changes citations to the United States Standards for Grades of Potatoes and for Grades of Peeled Potatoes to reflect their current codification in the Code of Federal Regulations. A conforming change is made in subparagraph (d)(8) to reflect the changes made by this final rule concerning District 5. Pursuant to subparagraph (d)(8), potatoes which were shipped for grading and storing purposes to District 5 for the period of July 15 through August 31 each year were exempt from inspection. Since this final rule allows uninspected potatoes to be shipped for grading and storing purposes to District 5 the entire year, the exemption in subparagraph (d)(8) is unnecessary and therefore is deleted. Further, paragraph (j) *Forms* is deleted as unnecessary because the applicable provisions concerning OMB control numbers assigned pursuant to the Paperwork Reduction Act currently appear in 7 CFR 900.601.

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

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

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For reasons set forth in the preamble, the interim rule amending § 946.336 which was published at 52 FR 41946 on November 2, 1987, is adopted as a final rule as changed, and the entire text of § 946.336 is republished as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

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

2. Section 946.336 is revised to read as follows. This section will appear in the Code of Federal Regulations.

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e) or (f) of this section, except that shipments of the non-white fleshed varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41.

(a) *Minimum quality requirements*—(1) *Grade: All varieties*—U.S. No. 2 or better grade.

(2) *Size:* (i) *Round varieties*—1⅞ inches (47.6 mm) minimum diameter, except round red varieties may be Size "B" (1½ inches minimum diameter), if U.S. No. 1.

(ii) *Long varieties*—All long varieties must be 2⅛ inches (54.0 mm) minimum diameter or 5 ounces minimum weight during July 15 through August 31 each season, and 2 inches (50.8 mm) or 4 ounces during remainder of each season, except White Rose variety from District 5 must be 1⅞ inches in diameter through each season.

(iii) *Tolerances*—The tolerances for size contained in the United States Standards for Grades of Potatoes shall apply except that for long varieties of potatoes packaged in other than 50-pound cartons and which are packed to meet a minimum size of 5 ounces, a 3 percent tolerance for undersize shall apply.

(3) *Cleanness:* All varieties and grades—as required in the United States Standards for Grades of Potatoes. For example: U.S. No. 2—"not seriously damaged by dirt," and U.S. No. 1—"fairly clean."

(b) *Minimum maturity requirements*—(1) *Round and White Rose varieties:* Not more than "moderately skinned."

(2) *Other long varieties (including but not limited to Russet Burbank and Norgold):* Not more than "slightly skinned."

(c) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(d) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Livestock feed;

(2) Charity;

(3) Seed;

(4) Prepeeling;

(5) Canning, freezing, and "other processing" as hereinafter defined;

(6) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon, in District 5, or in Spokane County in District 1; or

(7) Export, except to Alaska or Hawaii.

Shipments of potatoes for the purpose specified in paragraphs (d) (1) through (7) of this section shall be exempt from inspection requirements specified in paragraph (g) of this section except shipments pursuant to paragraph (d)(6) of this section shall comply with inspection requirements of paragraph (e)(2) of this section. Shipments specified in paragraphs (d) (1), (2), (3), and (5) of this section shall be exempt

from assessment requirements specified in § 946.41.

(e) *Safeguards.* (1) Handlers desiring to make shipments of potatoes for prepeeling shall:

(i) Notify the committee of intent to ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipments;

(ii) Prepare on forms furnished by the committee a special purpose shipment report on each such shipment, a copy of which must also accompany each shipment. The handler shall forward copies of each such special purpose shipment report to the committee office and to the receiver with instructions to the receiver to sign and return a copy to the committee office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for cancellation of such handler's certificate applicable to such special purpose shipments and/or the receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of such certificate, the handler may appeal to the committee for reconsideration; such appeal shall be in writing;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(2) Handlers desiring to ship potatoes for grading or storing to any specified location in Morrow or Umatilla Counties in the State of Oregon, to District No. 5, or to Spokane County in District No. 1 shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Upon receiving such application, the committee shall supply to the handler the appropriate certificate after it has determined that adequate facilities exist to accommodate such shipments and that such potatoes will be used only for authorized purposes;

(ii) If reshipment is for any purpose other than as specified in paragraph (d) of this section, each handler desiring to make reshipment of potatoes which have been graded or stored shall, prior to reshipment, cause each such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Such shipments must comply with the minimum grade, size, cleanness, maturity, and pack requirements specified in paragraphs (a), (b), and (c) of this section;

(iii) If reshipment is for any of the purposes specified in paragraph (d) of this section, each handler making reshipment of potatoes which have been graded or stored shall do so in accordance with the applicable safeguard requirements specified in paragraph (e) of this section.

(3) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (d) of this section shall:

(i) First apply to the committee for and obtain a Certificate of Privilege to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's list of canners, freezers, or other processors of potato products maintained by the committee, or to persons not on the list provided the handler furnishes the committee, prior to such shipment, evidence that the receiver may reasonably be expected to use the potatoes only for canning, freezing, or other processing;

(iii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iv) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment unless other arrangements are made;

(v) Bill each shipment directly to the applicable processor.

(4) Each receiver of potatoes for processing pursuant to paragraph (d) of this section shall:

(i) Complete and return an application form for consideration of approval as a canner, freezer, or other processor of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purpose and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(5) Each handler desiring to make shipments of potatoes for export shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Such information shall include the quantity of potatoes to be shipped and the name and address of the exporter;

(ii) After the certificate is approved and the shipment is made, furnish the committee with a copy of the on-board bill of lading applicable to such shipment unless other arrangements are made;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(f) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed 20 hundredweight of potatoes per day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment over 20 hundredweight of potatoes.

(g) *Inspection.* Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless a Federal-State Inspection Notesheet or certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the document is valid at the time of shipment. Further, any bulk load shipments of potatoes not relieved in paragraphs (d) or (f) of this section must also be accompanied by a Shipping Clearance Report issued by the Federal-State Inspection Service and valid at the time of shipment.

(h) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "not seriously damaged by dirt," "fairly clean," "slightly skinned," and "moderately skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), including the tolerances set forth in it. The term "prepeeling" means the commercial preparation in the prepeeling plant of clean, sound, fresh tubers by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 52.2421–52.2433). The term "other processing" has the same meaning as the term appearing in the Act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." Other terms used in this section have the same meaning as when used in the marketing agreement, as amended, and this part.

(i) *Applicability to imports.* Pursuant to section 8e of the Act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the red skinned round type imported during the months of July and

August each year shall meet the minimum grade, size, quality, and maturity requirements for round varieties specified in paragraphs (a) and (b) of this section.

Dated: March 8, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5405 Filed 3-11-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 948

Irish Potatoes Grown in Colorado—Area 2; Change in Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum diameter for round variety potatoes from 2 inches to 2⅛ inches and for long varieties (except Russet Burbank) grading U.S. No. 2 from 1⅞ inches to 2 inches minimum diameter or four ounces minimum weight. This action also changes the starting date of maturity requirements from September 1 to August 25 beginning with the 1988–89 crop year. The size change will also apply to imported red skinned, round type potatoes. This action is intended to prevent potatoes of undesirable size and quality from being distributed in fresh market channels.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-5331.

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

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

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

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

There are approximately 125 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. Also, there are about 25 potato importers subject to the requirements of the potato import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes and importers of potatoes may be classified as small entities.

The Colorado Agricultural Statistics Service estimated planted acreage for the 1987-88 crop in the San Luis Valley (Area 2) at 59,000 acres, an increase of 4,000 acres over the 55,000 acres harvested in 1986-87. Shipments during the 1986-87 season totaled 29,745 loads at about 480 hundredweight (cwt.) per load. Of the total, 97 percent or 13,814,866 cwt., entered the fresh market, and the remaining three percent (462,103 cwt.) was shipped to processors. Culls approximated 1.4 million cwt, which were utilized for starch.

The breakdown of fresh shipments by variety was 70.4 percent Centennial Russets (9,725,665 cwt.), 23.5 percent Russet Burbanks (3,246,494 cwt.), 5.9 percent reds (815,077 cwt.), and 0.2 percent other varieties (27,630 cwt.).

Two percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 60 percent U.S. No. 1, 22 percent U.S. Commercial, 17 percent U.S. No. 2, and one percent U.S. No. 1/Size B.

The handling requirements for fresh Colorado Area No. 2 potatoes are specified in § 948.386 (46 FR 52324, October 27, 1981) and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements require that fresh potatoes be shipped under the following conditions. Round variety potatoes must grade at least U.S. No. 2 and be at least 2 inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must grade at least U.S. Commercial and be at least 2 inches in diameter or at least 4 ounces in weight, or grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All varieties of potatoes may be Size B if graded at U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2¼ inches and no minimum or maximum weight requirement. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period September 1 through October 31, specify that all potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This final rule will increase the minimum diameter for round variety potatoes from 2 inches to 2⅛ inches and for long varieties (other than Russet Burbank) grading U.S. No. 2, from 1⅞ inches to 2 inches or a 4 ounce minimum weight. This action will also change the starting date of maturity requirements from September 1 to August 25 beginning with the 1988-89 crop year.

Changes will be made in the introductory text of § 948.386 in paragraphs (a)(1), (a)(3), (b), and (h) to help maintain the quality of Colorado Area 2 potatoes. This final rule is being issued pursuant to § 948.22 of the order.

Notice of this change was published in the February 3, 1988, issue of the **Federal Register** (53 FR 3039) affording interested persons 15 days in which to submit written comments. None were received.

The changes in the size requirements will eliminate the less desirable sizes of potatoes from the marketplace without shorting the market. Requiring handlers to ship larger sized potatoes, which are preferred in the marketplace, is expected to foster increased consumption and have a positive impact on the industry.

The change in the starting date of the maturity requirements recognizes the industry's switch to earlier maturing varieties and the need to ensure the maturity of early season shipments in the interest of the Colorado potato industry and potato consumers. The maturity requirements are based on the degree of skinning on a shipment of potatoes, and are effective during the period September 1 through October 31 each season. Maturity requirements

relate to the amount of skin on the potato, which is a factor in the storability of potatoes. All varieties of potatoes that grade U.S. No. 2 cannot be more than "moderately skinned" which means that not more than 10 percent of the potatoes in a lot have more than one-half of the skin missing or "feathered." For all other grades, potatoes cannot be more than "slightly skinned" which means that not more than 10 percent of the potatoes in the lot have more than one-fourth of the skin missing or "feathered." These requirements prevent badly skinned potatoes from being distributed to fresh market outlets.

In recent years the producers in this area have switched to earlier maturing varieties, and season shipments now begin in late August rather than September. To reflect these changes in production and marketing practices, the starting date for maturity requirements will be changed to August 25 each season. The earlier starting date is in the interest of producers, handlers, and consumers and will have no measurable effect on the quantity of potatoes shipped from Colorado Area No. 2. The earlier starting date enables the Colorado Area No. 2 potato industry to better compete with other potato producing areas in the United States by ensuring the shipment of qualities acceptable to buyers early in its season. The shipment of unacceptable quality potatoes early in the season can have a negative impact on market demand and grower returns throughout the entire season.

While this regulation will increase the minimum diameter for round variety potatoes and all long varieties (except Russet Burbank) grading U.S. No. 2 and also establishes an earlier starting date for maturity requirements for the 1988–89 crop year, exemptions to the handling regulation will continue to be available. For example, each person may handle up to but not more than 1,000 pounds of potatoes without regard to the requirements of the handling regulation. This exception does not apply to any shipment which exceeds 1,000 pounds of potatoes. Furthermore, grade, size, maturity, and inspection requirements are not applicable to shipments of potatoes for seed, livestock feed, relief or charity, or canning, freezing, and "other processing."

Quality assurance is very important to the Colorado (Area 2) potato industry both within and outside of the State. Providing the public with acceptable quality produce which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action will increase the quality of potatoes in the marketplace, it will also be of benefit to both Colorado (Area 2) potato growers and handlers.

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

In the case of potatoes, the current import regulation (§ 980.1, 34 FR 8043) specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (M.O. 945) during each month of the marketing year and that for round white types, they be based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31, and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year.

The quality standards imposed upon potatoes grown in Colorado Area 2 are applied only to imports of red-skinned, round type potatoes and only during the months of September through June. During July and August, the import requirements are based upon those in effect for potatoes grown in Washington.

While the maturity requirements for Colorado Area 2 potatoes are being made effective at an earlier date, it has been determined that shipments from this area in late August are minimal, and that those from Washington continue to dominate throughout the month. Imports of red- skinned, round type potatoes during July and August are in most direct competition with the same type as produced in Washington State, the area covered by Order No. 946. Therefore, the import requirements for round red varieties will continue to be based upon those established for Colorado Area 2 only from September 1 through June 30. Accordingly, the language of the determinations made in § 980.1(a)(2) concerning direct competition does not have to be changed.

While no change is made in the import requirement pertaining to maturity, imports of round red-skinned potatoes will have to meet the increased minimum size requirement (from 2 to 2⅛ inches) during the September 1 to June 30 period. No change is required in the language of § 980.1 or § 948.386(h) *Applicability to imports.* However, a conforming change to § 948.386(h) is made to delete obsolete language. A change to the introductory paragraph of § 948.386 is made to delete language concerning a prior effective date.

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

It is hereby found that increasing the minimum diameter for round and long variety (except Russet Burbank) potatoes and imported round, red potatoes, and establishing an earlier effective date for maturity requirements beginning with the 1988–89 season, will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the harvesting and shipping of Colorado Area 2 potatoes has begun and it is desirable to make the rule changes effective for as much of the current season as possible. However, it is also found that delaying the effective date of this action until 10 days after publication in the **Federal Register** would provide the committee adequate time to notify the affected handlers of this action prior to its effective date.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

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

PART 948—IRISH POTATOES GROWN IN COLORADO

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

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

2. Section 948.386 (46 FR 52324, October 27, 1981) is amended by revising the introductory text, paragraphs (a)(1), (a)(3), (b), and (h) to read as follows. This regulation will appear in the Code of Federal Regulations.

§ 948.386 **Handling regulation.**

On or after March 24, 1988, no person shall handle any lot of potatoes grown in Area No. 2 unless such potatoes meet the requirements of paragraphs (a), (b), and (c) of this section, or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section.

(a) *Minimum grade and size requirements.* (1) Round varieties, U.S. No. 2, or better grade, 2⅛ inches minimum diameter.

* * * * *

(3) *All other long varieties except Russet Burbank.* U.S. Commercial, or better grade, 2 inches minimum diameter or 4 ounces minimum weight, or U.S. No. 2 grade, 2 inches minimum diameter or 4 ounces minimum weight.

* * * * *

(b) *Maturity (skinning) requirements.* From August 25 through October 31 minimum maturity requirements shall be: * * *

* * * * *

(h) *Applicability to imports.* Pursuant to section 8e of the Act and § 980.1 *Import regulations* (7 CFR 980.1), Irish potatoes of the red skinned round type, except certified seed potatoes, imported into the United States during the period September 1 through June 30 each year shall meet the minimum grade, size, and quality requirements prescribed in paragraph (a), and during the period September 1 through October 31 shall meet the maturity requirements as specified in paragraph (b) of this section.

Dated: March 8, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5404 Filed 3-11-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1240

Honey Research, Promotion and Consumer Information Order; Change of Refund Application Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will change the dates by which applications for assessment refunds from honey producers, producer-packers and importers must be filed with the National Honey Board hereinafter referred to as the Board. The change is designed to allow sufficient time to process applications for refunds of assessments paid under the program. The Honey Research, Promotion, and Consumer Information Order and Act require refund applications to be processed by June and December of each year. To meet this requirement, the application deadlines will be April 30 (previously May 31) and October 31 (previously November 30).

EFFECTIVE DATE: April 13, 1988.

FOR FURTHER INFORMATION CONTACT: Perry R. Letson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: 202-447-4140.

SUPPLEMENTARY INFORMATION: The rule is issued under the Honey Research, Promotion and Consumer Information Order (7 CFR Part 1240) (order). The order is effective under the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 *et seq.*) (Act).

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

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

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

The honey industry is made up of many small entities, and several larger entities, which are engaged in the production, importation, and marketing of honey. There are generally three categories of honey producers in the United States: The hobbyist; the part-time beekeeper; and commercial beekeepers. There are about 190,000 hobbyist beekeepers; about 10,000 part-time beekeepers; and about 1,600 commercial beekeepers. Because the Act and the order exempt persons who annually produce or import less than 6,000 pounds of honey, hobbyist beekeepers and a significant number of part-time beekeepers are not required to pay assessments and thus are not affected by this action.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of producers, producer-packers and importers of honey may be classified as small entities.

This rule changes the dates by which honey producers, producer-packers and importers must submit applications for assessment refunds and does not affect their eligibility for refunds. Accordingly, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in Part 1240, including § 1240.117, have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581-0153 under the provisions of the Paperwork Reduction Act of 1980 (5 U.S.C. 3501 *et seq.*). This rule will not increase the information collection requirements under the Paperwork Reduction Act. The Act and the order provide that honey producers, producer-packers, and honey importers importing 6,000 pounds of honey or more per year pay an assessment on honey entering channels of commerce in the United States. Honey handlers are required to act as collection agents for honey producers subject to the provisions of the order. The U.S. Customs Service collects the assessments on imported honey. Assessments are paid to the Board, which administers the promotion program.

The order provides that a refund of assessments may be obtained by submitting to the Board documentation of assessments paid and that any demand for a refund is to be made within the time and in the manner prescribed by the Board and approved by the Secretary. The Act and the order stipulate that refunds will be made in June and December.

Section 1240.117(b) of the regulations provides that any producers, producer-packers only for their own production, or importers requesting a refund must mail an application on a prescribed form to the Board within 90 days from the date the assessment becomes payable under the regulations. Pursuant to § 1240.117(d), refund applications may be received until May 31 for refunds payable in June and until November 30 for refunds payable in December. The

May and November assessment reports are not due from collection agents until June 15 and December 15, respectively. The Board's refund processing time, therefore, may be limited to 15 days, a period which is insufficient in light of the processing steps required and the number of refund requests submitted.

This action changes the refund application deadlines from May 31 to April 30, and from November 30 to October 31. It will allow more time for the National Honey Board to verify refund applications by correlating them with monthly assessment reports received from collection agents, and to process the refund payments.

Notice of this change was published in the November 4, 1987, issue of the **Federal Register** (52 FR 42300) affording interested persons 30 days in which to submit written comments. None were received.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and record keeping requirements, Market development, Consumer information.

For the reasons set forth in the preamble, 7 CFR Part 1240 is amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1240 continues to read as follows:

Authority: Honey Research, Promotion, and Consumer Information Act, Secs. 1–13, 98 Stat. 3115; 7 U.S.C. 4601–4612.

2. Section 1240.117 is amended by revising paragraph (d) to read as follows:

Subpart: General Rules and Regulations

§ 1240.117 Refunds.

* * * * *

(d) *Payment of refund.* Refunds will be made in June and December only; applications for refunds payable in June must be received by April 30 and applications for refunds payable in December by October 31. For joint application the remittance shall be payable to all eligible producers, producer-packers or importers signing the refund application form.

William J. Boyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–5539 Filed 3–11–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to provide that lenders participating in the guaranteed farm loan program must enter into an agreement with FmHA that if liquidation of a farm loan account becomes imminent, the lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of this part, and request a determination of eligibility by FmHA. The lender may not initiate any foreclosure action on the loan until 60 days after a determination has been made by FmHA with respect to the borrower's eligibility to participate in the program. This legislation requires these conditions be placed in every contract of guarantee on a farm loan entered into under the consolidated Farm and Rural Development Act after the date of enactment. President Reagan signed the Agricultural Credit Act of 1987 into law on January 6, 1988. The intended effect of this action is to immediately comply with this provision of the Agricultural Credit Act of 1987.

DATES: March 14, 1988.

Comments must be submitted on or before April 13, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farmer Programs Loan Making Division, USDA, Room 5440–S, Washington, DC 20250, telephone (202) 475–4017.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291; and it has been determined to be non-major because there is no substantial change from practices under existing rules, and no annual effect on the econmy of $100 million or more; or a major increase in cost or prices for consumers, individual industry agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30-day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable because of the requirement of section 613(b) of the Agricultural Credit Act of 1987, and for the same reason good cause is found for making this final rule effective upon publication.

This program is listed in the catalog of Federal Domestic Assistance under No. 10.404 Emergency Loans, No. 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans, No. 10.416 Soil and Water Loans, 10.422 Business and Industrial Loans, and 10.410 Very Low Income and Low Income Housing Loans. For the reasons set forth in the Interim rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and record keeping requirements contained in this regulation have been approved by the Office of Management and Budget under control numbers 0575–0024 and 0575–0079.

The 1987 Agricultural Credit Act signed into law by President Reagan on January 6, 1988, requires that the Agency take immediate action on certain provisions of the Act upon enactment of the law. Specifically, Title VI, section 613(b) requires that the Agency immediately stipulate in all contracts of guarantee entered into with guaranteed lenders that the lender of a guaranteed farm loan may not initiate foreclosure action on the loan until 60 days after a determination is made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown Program.

This document has been reviewed in accordance with 7 CFR Part 1940.

Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Need for Governmental Action

The FmHA programs affected by this regulation change are Farm Ownership (FO) guaranteed loans, Operating (OL) guaranteed loans, and Soil and Water (SW) guaranteed loans. FmHA guaranteed loans are made and serviced by commercial sources such as Federal Land Banks, Production Credit Association, banks, insurance companies and savings and loan associations. FmHA may provide the lender with a guarantee not to exceed 90 percent of loss of principal and interest on a loan.

FmHA is implementing these changes immediately because of the requirement to immediately comply with Title VI, section 613(b) of the Agricultural Credit Act of 1987.

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

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

Subpart A—General

Appendix A—[Amended]

2. Appendix A—Form FmHA 449–34 is revised to read as follows:

BILLING CODE 3410-07-M

APPENDIX A

USDA-FmHA
Form FmHA 449 34
(Rev 2-88)
Type of Loan. _____
Applicable 7 C.F.R. Part 1980
Subpart _____

LOAN NOTE GUARANTEE

	State
	County
	Date of Note
Borrower	FmHA Loan Identification Number
Lender	Lender's IRS ID Tax Number
Lender's Address	Principal Amount of Loan $

The guaranteed portion of the loan is $ _____ which is _____ (_____ %)

percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note

_____ in the face amount of $ _____ and is number _____ of _____.

LENDER'S IDENTIFYING NUMBER	*FACE AMOUNT*	*PERCENT OF TOTAL FACE AMOUNT*	*AMOUNT GUARANTEED*
	$	%	$
TOTAL	$ _____	100%	$ _____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961, P.L. 93-357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1921, P.L. 95-334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et. seq.) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:
   a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and
   b. Any loan subsidy due and owing, and
   c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA 449-36, "Assignment Guarantee Agreement," is used.

Definition of Lender.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable Subpart 7 CFR of Part 1980. The Lender is also the party requesting a loan guarantee.

CONDITIONS OF GUARANTEE

1. Loan Servicing.

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities.

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. Payments.

Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. FmHA Purchase.

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations.

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. Repurchase by Lender for Servicing.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When Guarantee Terminates.

This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. Settlement.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. Loan Subsidy.

*In addition to the interest rate of the note attached hereto, FmHA will pay a loan subsidy of _____ percent per year. Payments will be made annually.

15. Notices.

All notice and actions will be initiated through the FmHA _____

for _____ (State) with mailing address at the date of this instrument:

_____

_____

UNITED STATES OF AMERICA
Farmers Home Administration

By: _____

Title: _____

_____
(Date)

Assumption Agreement by _____ dated _____, 19__

Assumption Agreement by _____ dated _____, 19__

**If not applicable delete paragraph prior to execution of this instrument.*

Position 2

FmHA 449-34 (Rev. 2-88)

BILLING CODE 3410-07-C

Appendix B—[Amended]

3. Appendix B—Form FmHA 449–35 is revised to read as follows:

USDA-FmHA
Form FmHA 449-35
(Rev. 2-88)

Position 5

FORM APPROVED
OMB NO. 0575–0024

APPENDIX B

LENDER'S AGREEMENT

Type of Loan: _____ FmHA Loan Ident. No.
Applicable 7 CFR Part 1980 Subpart _____

_____ (Lender) of

_____ has made a loan(s) to

_____ (Borrower)

_____ in the principal

amount of $ _____ as evidenced by _____ note(s)

(include Bond as appropriate) described as follows: _____

_____

_____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449–34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a

percentage of any loss on the loan not to exceed _____ % of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud of misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

This report contains certain agreements to provide future reports and information which must be agreed to by the Lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96–511

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449–36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449–34, for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.
(b) The interest rate does not exceed the interest rate in effect when the loan was closed.
(c) The maturity of the loan is not changed.
(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.
(e) There is adequate collateral securing the note(s).
(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders, or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. **Default.**

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980—44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).
4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA's, Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accured interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans(s) accuring after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to faciliate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accuring from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder'(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necesssry to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, line 13 and 14.

XVI. Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVII. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII. Notices.

All notices and actions will be initiated through FmHA for _____

(State) with mailing address at the date of this instrument _____

_____

Dated this _____ day of _____, 19____.

LENDER:

ATTEST: _____ (SEAL)

By _____

Title _____

UNITED STATES OF AMERICA
Farmers Home Administration

By _____

Title _____

Appendix D—[Amended]

4. Appendix D—Form FmHA 1980–27 is revised to read as follows:

APPENDIX D

USDA-FmHA
Form FmHA 1980-27
(Rev 2-88)

CONTRACT OF GUARANTEE
(Line of Credit)

		Type of Loan ☐OL ☐EL or ☐EE
		Case No
		State
		County
Lender	Lender's IRS Tax No	Date of Line of Credit Agreement
Lender's Address		Line of Credit Ceiling $
Borrower's Name and Address		

The guaranteed portion of this line of credit is _____ % of the principal balance owed at any one time on advances made within an approved line of credit by the above-named Lender to the above-named Borrower.

In consideration of making advance(s) by the Lender within the line of credit ceiling pursuant to the Line of Credit Agreement, the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (P.L. 93-357), as amended, or the Emergency Agricultural Credit Adjustment Act of 1978 (P.L. 95-334) agrees that in accordance with and subject to the conditions and requirements in this agreement, it will pay to the Lender who holds the line of agreement(s) (and note(s), if any exist) for said advance(s) (or assumption agreement) covered by this contract the lesser of 1 or 2 below

1 Any loss sustained by such Lender on the guaranteed portion including:
   a. Principal and interest indebtedness as evidenced by said line of credit agreement(s) (and note(s), if any exist) or by assumption agreement(s), and
   b Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2 The guaranteed principal advances to or assumed by the Borrower under said line of credit agreement(s) (and note(s), if any exist) or assumption agreement(s) and any interest due thereon.

If an Operating Loan Line of Credit is involved, advances under that line of credit must be made within three years from the date of this Contract. Advances made after that date will not be covered by this Contract. If FmHA conducts the liquidation of the line of credit, loss occasioned to a Lender by accruing interest after the date FmHA accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If Lender conducts the liquidation of the line of credit, accruing interest shall be covered by this Contract of Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

CONDITIONS OF GUARANTEE

1 Line of Credit Servicing

Lender will be responsible for servicing the entire line of credit, and Lender will remain mortgagee and/or secured party of record. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities

The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of the line of credit will not be paid first nor given any preference or priority over the guaranteed portion.

3 Full Faith and Credit

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. If the line of credit agreement to which this Contract of Guarantee is attached provides for the payment of interest on interest, this Contract of Guarantee is void. In addition, the Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4 Protective Advances

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Contract of Guarantee.

5 Custody of Unguaranteed Portion

The Lender may retain or sell the unguaranteed portion of the line of credit only through participation. Participation, as used in this instrument, means the sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists) collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit.

6 When Guarantee Terminates

This Contract of Guarantee will terminate automatically (a) upon full payment of the guaranteed line of credit; or (b) upon full payment of any loss obligation under this Contract; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Contract is returned to FmHA to be cancelled.

7 Settlement

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

8 Notices

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County) _____ (State) with mailing address at the date of this instrument

_____

_____

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

_____ (Date)

By: _____

Title _____

Assumption Agreement by _____ dated _____, 19__

Assumption Agreement by _____ dated _____, 19__

Appendix E—[Amended]

5. Appendix E—Form FmHA 1980-38 is revised to read as follows:

APPENDIX E

USDA-FmHA
Form FmHA 1980-38
(Rev 2-88)

FORM APPORVED
OMB NO. 0675-0079

Type of Loan
☐ OL ☐ EL or ☐ EE
FmHA Loan ID No.

LENDER'S AGREEMENT
(Line of Credit)

Applicable 7 CFR Part 1980, Subpart _____

_____ (Lender) of _____

has established a line of credit to _____ (Borrower) for the fiscal period ending

_____, 19__, for the purpose of _____

_____

in the maximum sum of $_____ as evidenced by a "Line of Credit Agreement" dated _____, 19__.

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Contract of Guarantee (Line of Credit)" (Form FmHA 1980-27) or has issued a "Conditional Commitment for Contract of Guarantee (Line of Credit)" (Form FmHA 1980-15) to enter into a Contract of Guarantee with the Lender applicable to such line of credit to participate in a percentage of any loss on the loan advances not to exceed _____ % of the amount of the principal and any accrued interest. The terms of the Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advances the Lender enters into this agreement

THE PARTIES AGREE:

I. The maximum loss covered under the Contract of Guarantee will not exceed _____ percent of the principal and accrued interest owed on any Operating Loan, Emergency Livestock Loan or Economic Emergency Loan advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II Full Faith and Credit.

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any line of credit agreement which provides for the payment of interest on interest shall not be guaranteed. Any Contract of Guarantee attached to or relating to the line of credit agreement which provides for the payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Contract of Guarantee Line of Credit. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III Lender's Sale of Guaranteed Line of Credit by Participation.

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, or owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line of credit through participation at or subsequent to execution of the line of credit agreement, such line of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make the entity a holder.

This form is used by lenders to meet certain conditions precedent to issuance of a Contract of Guarantee in Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan cases. This report contains information that is required to provide future reports and information which must be agreed to by the lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511.

IV. The Lender agrees funds advanced under the line of credit will be used for the purposes authorized in either Subpart B, C or F of Title 7 CFR, Part 1980 as applicable in accordance with the terms of Form FmHA 1980-15.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, the Borrower's business or any parent, subsidiaries, or affiliates since it requested a Contract of Guarantee

VII. Lender certifies that the Line of Credit Agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower

VIII. If an Operating Loan line of credit is guaranteed under Subpart B of 7 CFR, Part 1980, Lender certifies it has paid the required guarantee fee

IX. Servicing.

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority of the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note, if one exists), security instruments, and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the line of credit in a reasonable prudent manner
2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized or removed only with FmHA's written concurrence.
3. Inspecting the collateral as often as necessary to properly service the line of credit.
4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.
5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments; condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $ _____ without written concurrence of FmHA, the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm or ranch
6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.
7. Obtaining the lien coverage and line priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.
8. Assuring that the Borrower obtains marketable title to the collateral.
9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the line of credit, except in accordance with FmHA regulations.
10. Providing FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report".
11. Obtaining from the Borrower periodic financial statements under the following schedule _____

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

2. Monitoring the use of loan funds to assure that they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Defaults.

A. The Lender will notify FmHA when a Borrower is thrity (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status". A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in either Subpart B, C or F as applicable, or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR. Part 1980. and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

XI. Liquidation.

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreement(s) and related security instruments.
2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credits.
3. A proposed method making the maximum collection possible on the indebtedness.
4. Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation proposal. FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.
2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.
3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation. Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with the applicable FmHA regulations.
2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared on Form FmHA 449-30, using the basic formula as provided in the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss Estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss Estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the Final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the Final Report of Loss has been tentatively approved.

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the Final Report Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5 If FmHA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Payment. Such loss will be paid by FmHA within 60 days after the review of the account of the collateral.

XII. Protective advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include but are not limited to, advances for taxes, annual assessments, ground rent, hazard or flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenses or new lines of credit or loans without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to Subpart B, C or F of Title 7 of CFR, Part 1980. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, lines 13 and 14.

XVI. Other Requirements.

This agreement is subject to all the requirements of either Subpart A, B, C or F of Title 7 CFR, Part 1980 as applicable, and any future amendments of these regulations, or other FmHA regulations, not inconsistent with this agreement.

XVII. Execution of Agreements.

If this agreement is executed prior to the execution of the Contract of Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVII. Notices.

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County)

_____ (State with mailing address at the date of this instrument):

_____

Dated this _____ day of _____, 19__

LENDER:

ATTEST. _____ *SEAL*

By _____

Title _____

UNITED STATES OF AMERICA

Department of Agriculture

Farmers Home Administration

By _____

Title _____

BILLING CODE 3410-07-C

Subpart B—Farmer Program Loans

6. Section 1980.115 is revised by amending Administrative paragraph B.2 to read as follows:

§ 1980.115 County Committee Review.

* * * * *

Administrative

* * * * *

B. * * *

2. Set forth in the space provided on Form FmHA 449–14 (A.1., above) or Form FmHA 1980–15 (A.1., above) any special conditions of approval, including requirements for security, improved management practices, relating to highly erodible land and conversion of wetland found in Exhibit M of Subpart G of Part 1940 of this chapter, and type and frequency of financial reports required by FmHA but not required by the lender. The loan approval official will also include the following requirement as condition of approval in the Conditional Commitment:

"The lender agrees that, if liquidation of the account becomes imminent, the lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR Part 1980, and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan (or line of credit if Form FmHA 1980–15 is used) until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown Program."

An attachment to the form may be used, if necessary. Return Forms FmHA 449–14 or FmHA 1980–15 to the County Supervisor for execution and proper distribution.

* * * * *

7. Exhibit A of Subpart B is amended by revising paragraph IV B to read as follows:

Exhibit A—Approved Lender Programs—Farm Ownership and Operating Loans

* * * * *

IV. * * *

B. FmHA will monitor each ALP lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of § 1980.113 of this subpart. The FmHA County Supervisor will make a complete review of the first loan or line of credit developed by an ALP lender. FmHA will examine the lender file on each guaranteed OL at least quarterly and each guaranteed FO at least annually. The FmHA official who conducts these reviews will document the review in the FmHA County Office file. Any discrepancies noted and not resolved will be reported to the State Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guarantee program complies with Subparts A and B of Part 1980 of this chapter.

Each Approved Lender who currently has an Approved Lender Agreement executed prior to January 6, 1988, will be required to execute a new Approved Lender Agreement (Attachment 1 or 2 to this Exhibit) so that the Lender recognizes that, if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under this Exhibit and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown.

Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) dated _____." The date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 1.

Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement for Operating Line of Credit Guarantee dated _____." The date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 2.

The Lender's Agreement will be duplicated and a copy will be placed in the FmHA County Office file maintaned for each Loan Note Guarantee and Contract of Guarantee issued.

Exhibit A of Subpart B—[Amended]

8. Exhibit A of Subpart B, Attachment 1 is amended by revising paragraph VIII B to read as follows:

Attachment 1—Farmers Home Administration Approved Lender Program (ALP)

* * * * *

VIII. * * *

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

* * * * *

9. Exhibit A of Subpart B, Attachment 2 is amended by revising paragraph VIII B to read as follows:

Attachment 2—Farmers Home Administration Approved Lender Program (ALP)

* * * * *

VIII. * * *

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the borrower to cure a default, where reasonable. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

* * * * *

Date: January 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–5412 Filed 3–11–88; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 88–147]

Settlement of Insurance

Date: March 7, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board" or "Board") as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is amending its regulations pertaining to the settlement of insurance by deleting the requirement that each co-owner of a joint account must personally execute a signature card for that account if that account is to be insured separately. The amendments also consolidate provisions of the regulations governing joint accounts, clarify the provisions affecting joint accounts established by intermediaries, and revise the Appendix and examples illustrating joint account insurance coverage.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Assistant Director for Insurance, Regulations and Legislation Division, Office of General Counsel, (202) 377–6445; or Michelle Kosse, Acting Chief, Legal Review Section, Insurance Division, Federal Savings and Loan Insurance Corporation, (202) 254–2292; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 564.9 of the Board's Settlement of Insurance Regulations ("Insurance Regulations") sets forth the requirements for separate insurance coverage of a joint account. Currently, each holder of a joint account not evidenced by a negotiable certificate of

deposit must personally execute a signature card for it and must possess equal withdrawal rights, in order to obtain separate insurance coverage. On June 30, 1987, the Board proposed to delete the signature card requirement and to consolidate and clarify the treatment of joint accounts. *See* Board Resolution No. 87–738, 52 FR 26017 (July 10, 1987).

Nine comments were received in response to this proposal. Eight commenters supported the proposal to eliminate the signature card requirement. One commenter opposed the proposal. The commenters favoring the revision agreed that it should alleviate the difficulties the prior rule had caused some depositors and lighten the recordkeeping requirements of insured institutions. The commenter opposing the amendment argued that deleting the signature card requirement would encourage fraud and deceit on the part of depositors seeking separate joint account coverage of what are, in fact, individual funds.

Two commenters requested elimination of the requirement that joint account holders possess equal withdrawal rights, while two commenters favored retaining the equal withdrawal rights requirement. Commenters opposing the equal withdrawal rights requirement expressed the concern that the requirement of equal withdrawal rights would prejudice some holders of joint accounts established as tenancies in common, because tenants in common contributing unequal amounts would have unequal withdrawal rights and thus might not qualify for separate joint account insurance coverage. Those opposing the requirement, however, did not offer an alternative to minimize the heightened risk of fraudulently created "joint accounts" where only one named holder had the right to withdraw funds from the account of knowledge or the account's existence. One commenter urged the Board to clarify when state law will be relevant in insurance determinations on joint accounts. One commenter urged the Board to clarify the two-step process used in determining the insurance coverage of joint accounts.

After reviewing the comments received and taking into account the FSLIC's experiences in liquidating institutions in default, the Board has determined to adopt the proposal in substantially the form proposed, with certain modifications discussed below. The Board is also revising the Appendix to 12 CFR Part 564 and the illustrative examples contained therein to reflect today's amendment and to clarify the regulation's application in common fact situations. The Board believes that these revisions will assist both accountholders and institutions in determining the insurance coverage afforded joint accounts.

Under the regulation as adopted, all named holders of a joint account no longer must personally execute a signature card for that account if the account is to qualify for separate insurance coverage. As discussed in the proposal, the Board believes that the requirement's utility as a deterrent to fraud is outweighed by the hardship that may be caused by the loss or destruction of a single account record, the signature card, through no fault of the accountholder. The Board wishes to make several points in this regard, however. First, institutions should still make every effort to obtain the signatures of all named holders of a joint account for their own recordkeeping purposes. *See* 12 CFR 563.17–1(c)(8) (1987). Second, signature cards will continue to be important account records evidencing knowledge of the existence of a joint account and the capacity in which it is held. Finally, if available evidence indicates that an ostensible joint account is merely an attempt to increase insurance coverage fraudulently on individual funds, the FSLIC may pay claims for insurance on the basis of actual rather than ostensible ownership. *See* 12 CFR Part 564, Appendix (1987).

Under the revised regulation, accounts held jointly on the books and records of an insured institution where all named holders have equal withdrawal rights shall be treated as joint accounts for purposes of insurance coverage. The Board has determined to retain the equal withdrawal rights requirement for joint accounts. It serves a useful purpose in deterring the fraudulent use of joint accounts to increase FSLIC insurance coverage, without the potential for inadvertent hardship resulting from reliance on a single account record that has existed with the signature card requirement. The final regulation follows the proposed regulation in providing that the withdrawal rights to an account will be deemed equal for purposes of insurance coverage unless the books and records of the insured institution indicate that the accountholders affirmatively created the account with unequal withdrawal rights between them. In this regard, it should be noted that boilerplate language on a signature card indicating that only those signing the card may withdraw funds, standing alone, is not enough to overcome this regulatory presumption.

The existing withdrawal rights requirement has consistently been interpreted by the Board as the right of each holder of a joint account to withdraw funds from the account on the same basis as any other holder of the account. This characteristic distinguishes a joint account from other capacities in which accounts are held. As discussed in the proposal, the Board believes that the addition of the word "equal," codifying this longstanding Board interpretation, makes the regulation easier for accountholders and insured institutions to understand and apply. If none of the accountholders may withdraw funds from the account, each would still be considered to have equal withdrawal rights for purposes of determining insurance coverage. Thus, jointly owned negotiable certificates of deposit would be considered as joint accounts for insurance purposes even though no owner had withdrawal rights before maturity of the certificate.

Several commenters expressed the concern that this requirement might result in some tenancies in common failing to qualify for joint account insurance coverage. Tenants in common may hold a joint account to which they have contributed unequal amounts, and each may only have the right to withdraw the funds he or she contributed. The Board is amending the provisions of the Appendix discussing joint accounts to clarify the Board's interpretation of "equal" withdrawal rights in this context. The Board deems a joint account shown on the institution's records as a tenancy in common to meet the equal withdrawal rights requirement if the tenants in common possess withdrawal rights commensurate with their ownership interests. The institution's records must reflect both the account's status as a tenancy in common and the different levels of contributions of funds.

In the FSLIC's experience, an insured institution's records are often silent as to the treatment of funds in a joint account upon the death of a named accountholder. In such cases the FSLIC has found that most joint accountholders intend for the funds in the joint account to pass to the surviving accountholder or accountholders on the death of any named joint accountholder. Therefore, the Board is amending the regulation to incorporate this experience into a presumption that, unless otherwise stated in the records of the institution, a joint account will be treated as a joint tenancy with a right of survivorship for insurance purposes, as

illustrated in example 9, which has been added to the Appendix following 12 CFR Part 564.

In response to a comment requesting an explanation of the relevance of state law in determining joint account coverage, the Board is also taking this opportunity to reiterate its longstanding position that insurance coverage depends on how the books and records of an insured institution show accounts as held. The National Housing Act mandates security for depositors investing funds in federally insured savings and loan institutions through uniform nationwide deposit insurance coverage. Evidencing this congressional intent, the statute provides for uniform joint account insurance coverage, regardless of state community property laws. *See* 12 U.S.C. 1724 (b) (1982). The FSLIC's experience has demonstrated the importance of uniform nationwide standards for joint accounts, as depositors hold joint accounts in institutions of different states with little, if any, knowledge of particular state laws that might be read to affect their insurance coverage. The Appendix to 12 CFR Part 564 is therefore hereby amended by deleting reference in the examples to joint ownership that is "valid under state law." The purpose in deleting such sections is to clarify that depositors may rely on the provisions set forth in the Insurance Regulations in determining the amount of their joint account insurance coverage and that state law not affect the amount of federal deposit insurance coverage available for joint accounts. The FSLIC will continue to look to the institution's books and records, including signature cards, savings instruments, and computer records, to determine whether an account is held jointly and is insured accordingly. Thus, the FSLIC will not consider state law as determinative of which accounts qualify for joint account insurance coverage upon the default of an insured institution. State law will continue to govern the relationship between the thrift institution and its accountholders on issues such as passage of funds upon the death of a named acccountholder. This regulation is not intended to affect such relationships.

Finally, the Board is taking this opportunity to set forth the circumstances under which accounts held through intermediaries may qualify for separate joint account coverage. Questions have arisen about the interaction of the joint account regulation and other regulations such as the agency account regulation (12 CFR 564.3(b)) and the trust account regulation (12 CFR 564.10). Additional questions have arisen as to the aggregation and the recordkeeping requirements applicable to such accounts as well as the treatment of funds commingled for investment purposes by an accountholding intermediary.

In response to these questions, the Board is clarifying in the Appendix on joint account coverage that accounts held jointly by individuals but established at an insured institution through an agent, nominee, guardian, custodian, conservator, or loan servicer are insured as joint accounts under the same conditions as if the accounts had been established directly by those holding the funds jointly if all applicable recordkeeping requirements are met. This requires, first, that the records of the insured institution disclose the relationship pursuant to which the funds are on deposit (*e.g.*, as agent or nominee for others). The accountholding intermediary is then required to provide records showing that the funds were in fact held jointly. Such accounts are aggregated for insurance purposes with other joint accounts held by or for the same individuals, in the same manner as accounts held directly at an insured institution. Examples 10 and 11 are being added to the Appendix to illustrate these requirements for insurance coverage for joint accounts established by intermediaries.

Finally, the Board is amending the Appendix on joint account coverage to include a statement regarding its longstanding position that separate joint account insurance coverage is not available to accounts held in trust for two or more beneficaries. Trust accounts complying with the requirements of the Insurance Regulations are already afforded insurance coverage separate from the individual accounts of their settlors, trustees, and beneficiaries. Similarly, joint account coverage separate from individual account coverage is also already available. Nothing in the statute or regulations contemplates compounding these two distinct types of separate insurance coverage to proliferate insurance coverage further.

Pursuant to 12 CFR 508.14, the Board finds that a 30-day delay of the effective date of the amendments is unnecessary as they relieve restrictions on accountholders and insured institutions. Therefore, in order to facilitate implementation of today's amendments and to decrease confusion on the part of accountholders, the Board has decided that this rule will be effective immediately upon publication in the **Federal Register**. In this regard, it is the Board's intention that today's amendments may be applied to all requests for reconsideration of initial insurance determinations that have been timely filed with the Director of the FSLIC pursuant to 12 CFR 564.1(d).

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated elsewhere in the **SUPPLEMENTARY INFORMATION** regarding this rule.

2. *Issues raised by comments and agency assessment and response.* The comments have been summarized and addressed in the **SUPPLEMENTARY INFORMATION** section of this rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The rule will not have a negative impact on small institutions.

List of Subjects in 12 CFR Part 564

Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 564, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority citation for Part 564 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 564.2 [Amended]

2. Amend § 564.2 by removing paragraph (b)(3) and by reserving the paragraph designation for future use.

3. Revise § 564.9 to read as follows:

§ 564.9 Joint accounts.

(a) *Separate insurance coverage.* Funds held in an account in the names of two or more persons, each possessing equal withdrawal rights, shall be insured as a joint account, unless the account records of the insured institution disclose that the named

persons are holding funds in a different capacity (for example, as agents, nominees, custodians, or trustees). Such joint account insurance coverage shall be separate from the insurance of funds invested in individual accounts of the named persons.

(b) *Determination of withdrawal rights.* The withdrawal rights of each named holder of a joint account shall be deemed equal unless the records of the insured institution state otherwise.

(c) *Failure to qualify.* An account that does not qualify as a joint account because of a lack of equal withdrawal rights shall be deemed to be held by each of the named persons as an individual account, and the interests of each person in the account shall be added ot any other individual accounts of such person and insured up to $100,000 in the aggregate.

(d) *Determination of interests.* The interests of each named holder of a qualifying joint account shall be deemed equal unless the insured institution's records state otherwise in the case of a tenancy in common. For purposes of insurance coverage, a joint account will be deemed to be held as a joint tenancy with rights of survivorship unless the records of the insured institution state otherwise.

(e) *Determination of coverage on joint accounts.* (1) All qualifying joint accounts held by the same combination of persons shall be added together and insured up to $100,000 in the aggregate.

(2) The interests of each person in all qualifying joint accounts held by different combinations of persons shall then be added together and insured up to $100,000 in the aggregate.

(f) *Accounts held by intermediaries.* An account held by an agent, nominee, guardian, custodian, conservator, or loan servicer, disclosed as such in accordance with § 564.2(b), where records maintained in good faith and in the ordinary course of business demonstrate that two or more persons hold the funds in the account jointly, shall be insured as a joint account of those persons in accordance with paragraph (e) of this section.

4. Revise Section F of the Appendix to Part 564 to read as follows:

Appendix—Examples of Insurance Coverage Afforded Accounts in Institutions Insured by the Federal Savings and Loan Insurance Corporation

* * * * * *

F. Joint Accounts

Funds held in an account in the names of two or more persons, each possessing equal withdrawal rights, are insured up to $100,000. This insurance is separate from that afforded individual accounts held by any of the joint accountholders. Any person, including a minor, may be a holder of a joint account for purposes of insurance coverage, provided that he or she may withdraw funds from the account on the same basis as the other holders.

An account held in the names of two or more persons is insured as a joint account unless, pursuant to § 564.2(b), the account records of the insured institution disclose that the named persons are acting pursuant to a different relationship, such as agents for a principal, custodians for a ward, or trustees for a beneficiary.

An account held jointly that does not qualify as a joint account for insurance purposes because the holders do not possess equal withdrawal rights is insured as if held by the named persons as individuals. In that case, the actual ownership interest in the account of each person is added to any other accounts individually held by such person and insured up to $100,000 in the aggregate. Absent affirmative evidence in the institution's records showing the accountholders' actions establishing unequal withdrawal rights, the equal withdrawal rights requirement will be deemed satisfied for purposes of insurance coverage.

For insurance purposes, the holders of any joint account are deemed to have equal interests in the account, unless the institution's records show the form of joint ownership as a tenancy in common. With a tenancy in common, equal interests are presumed unless otherwise specifically stated on the records of the institution. A tenancy in common will meet the equal withdrawal rights requirement and qualify for joint account insurance coverage, if the tenants in common possess withdrawal rights commensurate with their ownership interests. For purposes of insurance coverage, a joint account is presumed to be held as a joint tenancy with a right of survivorship unless otherwise stated on the records of the institution.

All funds invested in joint accounts held by the same combination of individuals, regardless of the form of joint account (*e.g.*, joint tenancy with right of survivorship, community property, or tenancy in common), are first added together and insured up to the $100,000 maximum. The accompanying examples refer to this as "step one" of § 564.9(e). Where an individual has an interest in more than one joint account and different joint accountholders are involved, his interests in all such joint accounts are then added together and insured up to $100,000 in the aggregate. The accompanying examples refer to this as "step two" of § 564.9(e).

State law is not determinative of the amount of joint account insurance coverage. Rather, to determine which accounts are held jointly for purposes of insurance coverage, the FSLIC looks to the books and records of an insured institution.

Accounts held jointly by individuals but established at an insured institution through an agent, nominee, guardian, custodian, conservator, or loan servicer are insured as joint accounts under the same conditions as if the accounts had been established directly by those holding the funds jointly if the recordkeeping requirements set forth in § 564.2(b) are met. An account held in trust for two or more beneficiaries, however, is not eligible for joint account insurance coverage, since such trust accounts are considered to be held for beneficiaries as individuals, not jointly, for purposes of determining insurance coverage.

Example 1

Question: A and B maintain a joint account and, in addition, each holds an individual account. Is each account separately insured?

Answer: If both A and B possess equal withdrawal rights with respect to the joint account, each of these accounts is separately insured up to the $100,000 limit. (§ 564.9(a) and (b)).

Example 2

Question: H and W, husband and wife, reside in a community property state. Each holds an individual account and, in addition, they hold a qualifying joint account. The funds in all three accounts consist of community property. Is each account separately insured?

Answer: Yes. An account in the individual name of a spouse will be insured up to $100,000 whether the funds consist of community property or separate property of the spouse. Qualifying joint accounts containing community property are also insured up to $100,000. For purposes of insurance coverage such accounts are considered to be held in separately insurable capacities, regardless of the underlying state law. (§§ 564.3(a) and 564.9(a)).

Example 3

Question: Three accounts of $100,000 each are held by a husband and his wife under the following names:

1. John Doe and Mary Doe, husband and wife, as joint tenants with right of survivorship.
2. Mary and John Doe (community property).
3. Mrs. John Doe or John Q. Doe.

The first two accounts carry John's social security number for taxpayer identification purposes. The third account carries Mary's social security number.

Are the accounts separately insured?

Answer: No. All three accounts are considered to be joint accounts held by the same combination of individuals, regardless of the form of joint ownership. Reversal of names or use of different styles does not change the result, as long as the accountholders are in fact the same in both cases. Additionally, the use of different taxpayer identification numbers on the accounts does not affect the insurance coverage. For insurance purposes, the three account balances would be aggregated and insured up to $100,000. (§ 564.9(e)).

Example 4

Question: The following accounts are held by A, B, and C, each of whom has equal withdrawal rights in the accounts in which he has an interest.

1. A—$100,000
2. B—$100,000

3. C—$100,000
4. A and B, as joint tenants w/r/o survivorship–$90,000
5. A and C—$90,000
6. B and C, joint tenants—$90,000
7. A, B, and C—$90,000

What is the insurance coverage?

Answer: Accounts numbered 1, 2, and 3 are each separately insured up to $100,000 as individual accounts held by A, B, and C, respectively. (§ 564.3(a)). The joint accounts are analyzed pursuant to a two-step process. With regard to accounts numbered 4, 5, 6, and 7, each is held by a different combination of individuals. Under step one of § 564.9(e), each is separately insured. The analysis does not stop here, however. Under step two of § 564.9(e), the respective interests of A, B, and C in each of the accounts are added together for purposes of determining insurance coverage. (§ 564.9(e)). The interests of the holders of each joint account are deemed equal for insurance purposes. (§ 564.9(d)). Thus, A has an interest of $45,000 in account No. 4, $45,000 in account No. 5, and $30,000 in account No. 7, for a total joint account interest of $120,000, of which $100,000 is insured and $20,000 is uninsured. The interests of B and C are similarly calculated and insured. (§ 564.9(e)).

Example 5

Question: H, W, and C hold accounts as follows:

1. H—$100,000
2. W—$100,000
3. H and C, joint tenants—$90,000
4. W and C, joint tenants—$90,000

H and W are husband and wife. C, their minor child, cannot make a withdrawal from account No. 3 without A's written consent. In account No. 4, the signature of both B and C are required for withdrawal. A has provided all of the funds for account No. 3. What is the insurance coverage?

Answer: If any of the holders of a joint account does not have equal withdrawal rights, the account is not insured as a joint account. Instead, the account is insured as if it consisted of commingled individual accounts of each of the accountholders in accordance with his or her actual contribution of the funds. (§ 564.9(c)). Account No. 3 is not insured as a joint account because C does not possess the right to withdraw the funds in accordance with his purported interest in the account. (§ 564.9(a)). However, account No. 4 does qualify as a joint account for insurance purposes since each accountholder possesses the right to withdraw funds on the same basis. Since H contributed all of the funds in account No. 3, the funds in this account would be treated for insurance purposes as individual funds of H. (§ 564.9(c)). Thus, the $90,000 in this account is added to the $100,000 in account No. 1, H's individual account, and insured up to $100,000 in the aggregate, leaving $90,000 uninsured. Account No. 4, the remaining joint account, is insured to $100,000 as a qualifying joint account, separate from the individual accounts of the accountholders.

Example 6

Question: A, B, and C hold the following three joint accounts:

1. A and B—$100,000
2. A and B—100,000
3. A, B, and C—75,000

What is the insurance coverage?

Answer: Since accounts numbered one and two are owned by the same combination of individuals, step one of § 564.9(e) requires that those two accounts be added together and insured up to $100,000 in the aggregate, leaving $100,000 uninsured. Proration of the insurance coverage, as required by § 564.1(c), results in $50,000 of insurance coverage for the funds invested in each of accounts 1 and 2. Under step one of § 564.9(e), the $75,000 balance of account number 3 is fully insured because it is held by a different combination of individuals and its balance is less than $100,000.

All three accounts are next analyzed under step two of § 564.9(e), which provides that the interests of a single person with interests in multiple joint accounts can only be insured up to $100,000 in the aggregate. For insurance purposes, A has a one-half interest in the insured balances ($50,000 each) of accounts numbered 1 and 2, as well as a one-third interest in the insured balance ($75,000) of account number 3. Thus, A has a $25,000 interest in each of the three accounts. A's $75,000 total interest in multiple joint accounts is within the step two insurance limitation, resulting in no further uninsured funds. B's and C's interests are similarly analyzed.

Example 7

Question: The following accounts are held by A, B, and C.

Each holder possesses equal withdrawal rights.

1. A—$100,000
2. B—$100,000
3. A, B, and C, as joint tenants—$100,000
4. A, B, and C, as tenants in common—$200,000
5. A and B, as joint tenants w/r/o survivorship—$100,000

What is the insurance coverage?

Answer. Accounts numbered 1 and 2 are each separately insured for $100,000 as individual accounts held by A and B, respectively (§ 564.3(a)). With respect to the joint accounts, accounts numbered 3 and 4 are held by the same combination of individuals and are added together and insured up to $100,000 in the aggregate pursuant to step one of § 564.9(e). The different types of joint ownership are irrelevant for purpose of insurance coverage. Because these two accounts totaled $300,000, $200,000 would be uninsured. A, B, and C each has a one-third interest in the insured balance ($100,000) of accounts 3 and 4 because the institution's records do not show different ownership interests for the tenancy in common.

A and B also maintain another joint account, account number 5. Under the step two insurance limitation of § 564.9(e), A's $50,000 interest in account number 5 is added to his $33,334 insured interest in accounts 3 and 4. A's $83,334 total of interests in multiple joint accounts is within step two insurance limitation, resulting in no further uninsured funds. B's interests in accounts 3, 4 and 5 are identical to A's and are insured in a like manner.

Example 8

Question: A, B, and C hold a joint account as tenants in common to which A and B have each contributed $25,000 and C has contributed $50,000. They have executed a signature card that indicates that A and B each may withdraw a quarter of the account and C may withdraw half of the funds. In addition, A, B, and C each hold individual accounts. Is each account separately insured?

Answer: Since each of the accountholders has withdrawal rights commensurate with his interest in the joint account held as a tenancy in common and this is indicated in the institution's records, the joint funds are separately insured up to $100,000. The joint account is separately insured from funds in the individual accounts of A, B, and C. (§§ 564.9(a) and 564.3(a)).

Example 9

Question: A, B, and C deposit $60,000 in an account as joint tenants with right of survivorship. In addition, A and C deposit $50,000 in an account as tenants in common. B dies. What is the insurance coverage of these accounts?

Answer: Before B's death, the two accounts are considered joint accounts held by a different combination of individuals and entitled to separate insurance coverage. Upon B's death, however, the two accounts are held and owned by the same combination of individuals, A and C. Although the books and records of the institution indicate that the first account is held by A, B, and C, the FSLIC may, in its discretion, look to actual ownership as of B's death rather than ostensible ownership in determining insurance coverage. Therefore, the two accounts are aggregated for insurance purposes and insured up to $100,000. The different types of joint ownership are irrelevant for insurance purposes. Since there is $110,000 in the aggregated accounts, $100,000 is insured and $10,000 is uninsured. (§ 564.9(e)).

Example 10

Question: B and C each maintain individual accounts with an insured institution in the amount of $100,000. In addition, they each contribute $50,000 of their individual funds to an account titled, "A, as agent for others." The institution's records indicate that these funds are not jointly held, but rather are commingled individual funds of B and C, as well as others. What is the insurance coverage of these accounts?

Answer: Funds held by an individual and deposited in the name of an agent are added to any individual accounts of the principal and insured up to $100,000 in the aggregate. (§ 564.3(b)). Because the funds deposited by A were commingled individual funds of B and C and were not held jointly, separate joint account insurance coverage is not afforded this account. The funds of B and C held through A are aggregated with their individual accounts at the institution, resulting in each having uninsured funds of $50,000. (§ 564.9(f)).

Example 11

Question: B and C each have on deposit $100,000 in an insured institution in individual accounts. In addition, A deposits $100,000 as agent for B and C in the same institution. The account records of the institution indicate that these funds are deposited by A acting as agent for B and C. Also, A's business records, maintained in good faith and in the ordinary course of business, indicate that B and C jointly hold the funds deposited by A. What is the insurance coverage of these accounts?

Answer: The funds deposited by B and C in their individual accounts are each insured up to $100,000. (§ 564.3(a)). The funds deposited by A as agent for B and C are insured separately as a joint account from the funds held individually by B and C. The account records of the institution indicate that A deposited the funds as an agent, and A's business records indicate that the funds are jointly held by B and C. Therefore, the FSLIC deems the funds to be jointly held by B and C for insurance purposes and insures such funds as a joint account separately from the individual accounts of B and C up to $100,000. (§ 564.9(f)).

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-5499 Filed 3-11-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AGL-25]

Alteration of VOR Federal Airways; Bloomington, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the name of the Bloomington, IN, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Hoosier, IN. This change is to eliminate the confusion that currently exist between Bloomington, IN, VORTAC and Bloomington, IL, VORTAC. This action improves flight planning and increases safety.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the descriptions of V-221 and V-305 located in the vicinity of Bloomington, IN, by changing the name Bloomington to Hoosier. This name change does not require changes to controlled airspace. Because this action only involves a name change, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-221 [Amended]

Wherever the word "Bloomington" appears substitute the word "Hoosier."

V-305 [Amended]

Wherever the world "Bloomington" appears substitute the word "Hoosier."

Issued in Washington, DC, on February 29, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-5456 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ACE-10]

Alteration of VOR Federal Airway V-138; Omaha, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the description of Federal Airway V-138, located in the vicinity of Omaha, NE, by extending V-138 from Lincoln, NE, to Omaha. This action eliminates a break in the airway structure between Lincoln and Omaha. This extension simplifies flight planning, reduces controller workload and saves fuel.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On November 4, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-138, located in the vicinity of Omaha, NE, by extending it from Lincoln, NE, VORTAC to Omaha VORTAC (52 FR 42309). This extension has been made possible through negotiations with Offutt Air Force Base RAPCON and Minneapolis, MN, ARTCC. This action simplifies flight planning by eliminating a break in the airway structure between Lincoln and Omaha and reduces controller workload and saves fuel by eliminating a circuitous routing between these points. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section

71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the description of Federal Airway V-138, located in the vicinity of Omaha, NE, by extending V-138 from Lincoln, NE, to Omaha. This action eliminates a break in the airway structure between Lincoln and Omaha. This extension simplifies flight planning, reduces controller workload and saves fuel.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-138 [Amended]

By removing the words "Lincoln. From" and substituting the word "Lincoln;"

Issued in Washington, DC, on February 29, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-5454 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 73

[Airspace Docket No. 85-ASO-20]

Alteration of Restricted Areas R-2903; Stevens Lake, FL and R-2904 Starke, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters Restricted Areas R-2903B Stevens Lake, FL, and R-2904 Starke, FL. R-2903B is segmented into four separate areas, the time of designation is reduced from continuous use, and the vertical limits of the area are increased. The proposed expansion of the lateral limits of R-2903A and R-2903B is withdrawn. In addition, R-2904 is segmented into two separate areas, and the vertical limits are also increased.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 28, 1986, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to alter the lateral and vertical limits of Restricted Area R-2903B Stevens Lake, FL, and the vertical limits of R-2904 Starke, FL (51 FR 15790). The original comment period closed on June 10, 1986. On June 27, 1986, the FAA reopened the comment period to provide an additional 30 days for interested parties to comment on the proposal (51 FR 23430). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Twenty-five objections to the proposal were received.

Most commenters objected to the proposed southwestward expansion of Restricted Areas R-2903A and R-2903B toward the Keystone Airpark, Keystone Heights, FL. The commenters stated that the proposed expansion would severely impact the operation of Keystone Airpark by limiting access to the airport from business and general aviation users and hampering the future growth of the facility. The commenters stated that the adverse effects on the Keystone Airpark would result in substantial economic impact on the community due to the loss of revenue and employment generated by the airport. After a thorough analysis of these comments, the FAA has determined that the proposed lateral expansion of R-2903A and R-2903B would, in effect, close Runway 04/22 and Runway 10/28 operations at Keystone Airpark. In addition, the proposed lateral expansion would prevent use of the airport as an established landmark along a VFR flyway during those periods of restricted area activation. In consideration of these impacts, the Department of the Army has withdrawn that portion of the proposal. Therefore, the southwest boundary of R-2903A and R-2903B will remain aligned with the existing R-2903B boundary. The FAA concludes that this amendment enables the continued operation of Keystone Airpark and mitigates the expressed economic concerns.

One commenter questioned the need for the vertical expansion of R-2904B to Flight Level (FL) 320 in light of the request to expand R-2903B to the same altitude. The commenter stated that activation of R-2904B in conjunction with R-2903A or R-2903B would require large deviations by pilots to avoid the areas. The Department of the Army stated that the proposed vertical expansions are necessary in order to support Army training requirements for units to maintain proficiency in high angle artillery fire operations. Actual utilization of R-2903B and R-2904B would be limited to a maximum of 24 days per year and only during specific times as advertised by a Notice to Airmen at least 24 hours in advance. Sections 71.151 and 73.29 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations alter Restricted Area R-2903B Stevens Lake, FL, by reducing the published time of designation for the area, segmenting the area into four separate restricted areas and raising the upper limit of R-2903B from FL 230 to FL 320. In addition, Restricted Area R-2904 Starke, FL, is segmented into two separate restricted areas and the upper limit of the area is raised from 1,800 feet above mean sea

level to 32,000 feet MSL. The Continental Control Area is amended to incorporate R-2903A and R-2904B. These actions enhance efficient airspace utilization by designating more accurate times of use and by segmenting the areas to enable the release of restricted airspace when not required for hazardous military training activities.

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

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted Areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2903A Stevens Lake, FL [New]

R-2901B Starke, FL [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

4. Section 73.29 is amended as follows:

R-2903A Stevens Lake, FL [New]

Boundaries. Beginning at lat. 29°58'05" N., long. 81°59'10" W.; to lat. 29°58'55" N., long. 81°59'33" W.; to lat. 29°58'55" N., long. 81°56'05" W.; to lat. 29°56'45" N., long. 81°53'15" W.; to lat. 29°55'31" N., long. 81°54'08" W.; thence clockwise along an arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to lat. 29°48'26" N., long. 81°56'58" W.; to lat. 29°52'35" N., long. 82°01'40" W.; to lat. 29°53'45" N., long. 82°04'51" W.; thence clockwise along an arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to the point of beginning.

Designated altitudes. Surface to but not including 23,000 feet MSL.

Time of designation. Intermittent, 0700–1900 local time, Tuesday-Sunday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA., Jacksonville ARTCC.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2903B Stevens Lake, FL [Revised]

Boundaries. Beginning at lat. 29°58'05" N., long. 81°59'10" W.; to lat. 29°58'55" N., long. 81°59'33" W.; to lat. 29°58'55" N., long. 81°56'05" W.; to lat. 29°56'45" N., long. 81°53'15" W.; to lat. 29°55'31" N., long. 81°54'08" W.; thence clockwise along an arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to lat. 29°48'26" N., long. 81°56'58" W.; to lat. 29°52'35" N., long. 82°01'40" W.; to lat. 29°53'45" N., long. 82°04'51" W.; thence clockwise along an arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to the point of beginning.

Designated altitudes. 23,000 feet MSL to 32,000 feet MSL.

Time of designation. Intermittent, 2000–0500 local time, Saturday-Sunday, activated by NOTAM at least 24 hours in advance; not to exceed 24 days per year.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2903C Stevens Lake, FL [New]

Boundaries. Beginning at lat. 29°52'30" N., long. 81°53'26" W.; to lat. 29°51'13" N., long. 81°50'57" W.; to lat. 29°47'00" N., long. 81°53'55" W. to lat. 29°48'26" N., long. 81°56'58" W.; thence counterclockwise along the arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to the point of beginning.

Designated altitudes. Surface to 7,000 feet MSL.

Time of designation. Intermittent, 0700–1900 local time, Tuesday-Sunday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville TRACON.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2903D Stevens Lake, FL [New]

Boundaries. Beginning at lat. 29°51'13" N., long. 81°50'57" W.; to lat. 29°49'00" N., long. 81°46'20" W.; to lat. 29°44'50" N., long. 81°49'05" W.; to lat. 29°47'00" N., long. 81°53'55" W.; to the point of beginning.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. Intermittent, 0700-1900 local time, Tuesday–Sunday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville TRACON.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2904 Starke, FL [Remove]

R-2904A Starke, FL [New]

Boundaries. Beginning at lat. 30°03'30" N., long. 81°55'40" W.; to lat. 29°58'55" N., long. 81°55'40" W.; to lat. 29°58'55" N., long. 82°02'46" W.; to lat. 30°03'30" N., long. 82°02'46" W.; to the point of beginning.

Designated altitudes. Surface to but not including 1,800 feet MSL.

Time of designation. April–August, daily 0800-1700 local time; Septembe–March, Saturday–Sunday 0800–1700 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville TRAGON.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2904B Starke, FL [New]

Boundaries. Beginning at lat. 30°03'30" N., long. 81°55'40" W.; to lat. 29°58'55" N., long. 81°55'40" W.; to lat. 29°58'55" N., long. 82°02'46" W.;. to lat. 30°03'30" N., long. 82°02'46" W.; to the point of beginning.

Designated altitudes. 1,800 feet MSL to 32,000 feet MSL.

Time of designation. Intermittent, 2000-0500 local time, Saturday-Sunday, activated by NOTAM at least 24 hours in advance; not to exceed 24 days per year.

Controlling agency. FAA, Jacksonville ART CC.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

Issued in Washington, DC, on March 3, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-5452 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-AAL-1]

Alteration of Restricted Areas R-2203A/B/C; Eagle River, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the times of use for Restricted Areas R-2203A/B/C located near Eagle River, AK, indicating more accurately when the areas are being utilized. This action will reduce the time the restricted areas are in effect.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9250.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the times of use for Restricted Areas R-2203A/B/C located near Eagle River, AK. Because this would amend the time of designation to reflect actual times of use and would reduce the time the restricted areas are in effect, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.22 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.22 [Amended]

2. Section 73.22 is amended as follows:

R-2203A Eagle River, AK

Remove the present Time of designation and substitute the following: Time of designation. 0500-2400 Monday-Friday; other times by NOTAM at least 24 hours in advance.

R-2203B Eagle River, AK

Remove the present Time of designation and substitute the following: Time of designation. 0500-2400 Monday-Friday; other times by NOTAM at least 24 hours in advance.

R-2203C Eagle River, AK

Remove the present Time of designation and substitute the following: Time of designation. 0500-2400 Monday-Friday; other times by NOTAM at least 24 hours in advance.

Issued in Washington, DC, on February 29, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-5455 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-AEA-1]

Change of Controlling Agency to Restricted Area R-5201; Fort Drum, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the controlling agency for Restricted Area R-5201 Fort Drum, NY, from Watertown Flight Service Station (FSS) to Boston Air Route Traffic Control Center (ARTCC). This action is required due to the closure of Watertown FSS.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 73 of the Federal Aviation Regulations assigns Boston ARTCC as the controlling agency for Restricted Area R-5201. Because this action only involves changing the controlling agency, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.52 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.52 [Amended]

2. Section 73.52 is amended as follows:

R-5201 Fort Drum, NY [Amended]

By removing the present Controlling agency and substituting the following:

Controlling agency. FAA, Boston ARTCC.

Issued in Washington, DC, on March 2, 1988.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-5453 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM87-16-000]

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts; Correction

Issued March 7, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction notice.

SUMMARY: On February 5, 1988, the Commission issued a final rule regarding abandonment of sales and purchases of natural gas under expired, terminated, or modified contracts. (53 FR 4121, Feb. 12, 1988.) This notice makes technical corrections to §§ 157.30 and 157.301 to accurately cross reference paragraphs (c) and (d).

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8315.

SUPPLEMENTARY INFORMATION:

§ 157.30 [Corrected]

1. In § 157.30, paragraph (e) after "paragraph (c)" add "or (d)".

§ 157.301 [Corrected]

2. In § 157.301, paragraph (a) after "§ 157.30(c)" add "or (d),".

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5508 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 380

[Docket Nos. RM87-15-001 et al.]

Order Granting in Part and Denying in Part Applications for Rehearing and Making Technical Correction

Issued March 9, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting in part and denying in part rehearing and making technical correction.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part rehearing of its final rule (Order No. 486, 52 FR 47897 (Dec. 17, 1987)) that adopted and supplemented the regulations of the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321-4370a (1982). The Commission is also correcting a technical error in the final rule.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Regulations Implementing the National Environmental Policy Act of 1969; Order No. 486-A

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part rehearing of its final rule [1] that adopted and supplemented the regulations of the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969 (NEPA).[2] The Commission is also correcting a technical error in the final rule.

II. Background and Discussion

The Commission has received three timely requests [3] for rehearing of its final rule issued in this proceeding. The final rule stated that the Commission would comply with the CEQ's regulations implementing NEPA and supplemented the CEQ's regulations to address the particular actions of the Commission that require environmental review. The rule established three categories of Commission actions for environmental review purposes: (1) Actions that do not require an environmental assessment (EA) or an environmental impact statement (EIS) since they have no significant impact on the human environment (categorical exclusions); (2) actions that require an EA to determine their environmental effects; and (3) actions that have a significant environmental impact and therefore require an EIS. In addition, the rule established procedures for preparing environmental documents.

1. Environmental Review of Nonjurisdictional Facilities

All three petitioners for rehearing raise issues regarding the Commission's examination of the environmental effects of nonjurisdictional facilities in its evaluation of proposed jurisdictional projects. Both INGAA and the AGA request that the Commission grant rehearing to define and limit the Commission's environmental review of nonjurisdictional facilities. In contrast, the IPAA argues that the final rule should have specifically stated in the regulations that both jurisdictional and nonjurisdictional facilities would be considered in evaluating the environmental impact of major pipeline construction projects.

The Commission believes that the final rule adequately addressed the question of the Commission's environmental responsibilities as they relate to nonjurisdictional facilities. The final rule codified Commission precedent, case law and CEQ provisions to the extent they require the Commission to consider the environmental impact of nonjurisdictional facilities when these are an integral part of an entire project that includes jurisdictional facilities subject to Commission approval.[4] As the final rule pointed out, however, the Commission does not intend to use the environmental review process to exercise jurisdiction over nonjurisdictional facilities. Moreover, the general regulations promulgated in the final rule cannot address the specific circumstances under which the environmental impact of nonjurisdictional facilities may be taken into account. The extent to which the Commission will examine the environmental effects of nonjurisdictional facilities will vary with each proposed project. Therefore, the Commission believes that these issues are more appropriately addressed on a case-by-case basis.

---

[1] Order No. 486, 52 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30783 (1988).

[2] 42 U.S.C. 4321-4370a (1982). The CEQ regulations implementing NEPA are codified at 40 CFR Parts 1500-1508 (1987).

[3] American Gas Association (AGA), Independent Petroleum Association of America (IPAA), and Interstate Natural Gas Association of America (INGAA).

[4] *See* Henry v. FPC, 513 F.2d 395 (D.C. Cir. 1975), 40 CFR 1508.7 (1987).

2. Reliance on Other Environmental Reviews

AGA states that the Commission should not duplicate the efforts of state agencies in its own environmental reviews. The Commission agrees that duplication of efforts should be avoided. In fact, the CEQ regulations adopted by the Commission direct Federal agencies to "cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements." [5]

The CEQ regulations also encourage Federal agencies to incorporate the environmental reviews of other Federal agencies in their environmental analyses.[6] This eliminates repetitive discussion of issues already examined and allows the agency to focus on the issues ripe for decision. However, while the Commission will consider the comments and studies of state agencies and will incorporate the environmental analyses of other Federal agencies where possible, the Commission remains ultimately responsible for the environmental review mandated by NEPA for actions under its jurisdiction.[7]

3. Natural Gas Import/Export Sites.

Under delegation authority from the Department of Energy,[8] the Commission has the authority to approve the point of entry of imported gas and the point of exit of exported gas. The IPAA points out that the Commission in the final rule did not address the issue of the type of environmental review that should be done for the approval of natural gas import sites. IPAA suggests that these approvals should require an EA.

The Commission notes that if imported or exported gas is to be transported through existing sites and no new construction is required, then the approval of the import/export site will have no significant environmental impact. Therefore, the Commission is categorically excluding this type of action from requiring an EA or an EIS. However, the Commission agrees that if the site requires the construction of additional facilities, an EA is necessary. Therefore, the Commission is amending the regulations to include approval of these actions in the category of actions requiring an EA. Additionally, the Commission notes that because liquified natural gas import/export facilities are major industrial facilities, the siting of these facilities will probably have a significant environmental effect. It is therefore including the review for approval of these sites in the category of actions requiring an EIS.

4. Technical Correction

The Commission is also making a technical correction to the final rule. Although, in the final rule electric rate filings submitted by the Federal power marketing agencies were properly categorically excluded, the Commission incorrectly referenced the legal authority under which these rate filings are submitted. These filings are not submitted under the Federal Power Act as indicated in the final rule, but rather are submitted under the Pacific Northwest Electric Power Planning and Conservation Act,[9] the Department of Energy Organization Act,[10] and DOE Delegation Order No. 0204–108.[11] The final rule has been revised to correct this error.

III. Paperwork Reduction Act Statement and Effective Date

This order will not be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act,[12] and OMB's regulations [13] since the order does not change the information collection requirements in Order No. 486 and does not impose any additional information collection requirements that require OMB's approval. Therefore, the changes to the Commission's regulations contained in this order are effective March 14, 1988.

List of Subjects in 18 CFR Part 380

Environment, National Environmental Policy Act, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 380 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

1. The authority citation for Part 380 is revised to read as follows:

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370a (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 380.4, paragraph (a)(15) is revised and a new paragraph (a)(31) is added to read as follows:

§ 380.4 Projects or actions categorically excluded.

(a) * * *

(15) Electric rate filings submitted by public utilities under sections 205 and 206 of the Federal Power Act, the establishment of just and reasonable rates, and confirmation, approval, and disapproval of rate filings submitted by Federal power marketing agencies under the Pacific Northwest Electric Power Planning and Conservation Act, the Department of Energy Organization Act, and DOE Delegation Order No. 0204–108.

* * * * *

(31) Approval of natural gas import/export sites under DOE Delegation Order Nos. 0204–26 and 0204–112, if the site does not involve the construction of any facilities.

* * * * *

3. In § 380.5, paragraph (b)(1) is revised to read as follows:

§ 380.5 Actions that require an environmental assessment.

* * * * *

(b) * * *

(1) Except as identified in §§ 380.4, 380.6 and 2.55 of this chapter, authorization for the site of new gas import/export facilities under DOE Delegation Order Nos. 0204–26 and 0204–112 and authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

* * * * *

4. In § 380.6, paragraph (a)(1) is revised to read as follows:

§ 380.6 Actions that require an environmental impact statement.

(a) * * *

(1) Authorization under section 3 or 7 of the Natural Gas Act and DOE Delegation Order Nos. 0204–26 and 0204–112 for the siting, construction, and operation of jurisdictional liquefied natural gas import/export facilities used wholly or in part to liquefy, store, or

---

[5] 40 CFR 1506.2 (1987).

[6] 40 CFR 1502.20 (1987).

[7] *See* Steamboaters v. FERC, 759 F.2d 1383 (9th Cir. 1985).

[8] DOE Delegation Order No. 0204–26, 43 FR 47769 (Oct. 17, 1978), I FERC Stats. & Regs. ¶ 9906 (1988), and DOE Delegation Order No. 0204–112, 49 FR 6684 (Feb. 22, 1984), I FERC Stats. & Regs. ¶ 9913 (1988).

[9] 16 U.S.C. 839 (1982).

[10] 42 U.S.C. 7107 (1982).

[11] 48 FR 55664 (Dec. 14, 1983), I FERC Stats. & Regs. ¶ 9910 (1988).

[12] 44 U.S.C. 3501–20 (1982).

[13] 5 CFR 1320.12 (1987).

regasify liquified natural gas transported by water;

* * * * *

[FR Doc. 88-5446 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

PEACE CORPS

22 CFR Part 303

Inspection and Copying of Records; Rules for Compliance with the Freedom of Information Act

AGENCY: Peace Corps.

ACTION: Final rule.

SUMMARY: This rule implements certain provisions of the Freedom of Information Reform Act of 1986 which requires Federal Agencies to establish a uniform schedule of FOIA fees.

EFFECTIVE DATE: April 13, 1988.

ADDRESS: Paperwork and Records Management Branch, Peace Corps, 806 Connecticut Avenue NW., Room P-314, Washington, DC 20526.

FOR FURTHER INFORMATION CONTACT: John von Reyn, Chief, Paperwork and Records Management Branch, Office of Administrative Services, (202) 254-6020.

SUPPLEMENTARY INFORMATION: A proposed rule was published on November 16, 1987. Peace Corps received comments from an association of journalists.

Executive Order 12291

The Peace Corps has determined that this rule is not a major rule because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The Director certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Section by Section Analysis of Comments

Section 303.10(b)(8).

The commentator urged Peace Corps not to use the definition of "representative of the news media," as contained in the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines." Peace Corps has left the definition as it is set forth in the OMB guidance. The Agency believes it is required by the Freedom of Information Reform Act of 1986 to conform its regulations to OMB's guidelines. Further, the Agency does not foresee difficulty, as is suggested by the comment, in applying the definition in an equitable manner.

Section 303.10(f)(2)(i).

The commentator urged Peace Corps to adopt an appeal procedure with regard to denial of fee waivers. The Agency has incorporated a new appeal procedure as § 303.10(f)(2)(iii).

Section 303.10(f)(2)(ii).

The commentator urged Peace Corps not to use the fee waiver guidance developed by the Department of Justice to determine whether granting a fee waiver would be in the public interest. Peace Corps has incorporated the Department of Justice's guidance. The Agency has an obligation to inform the public as to the criteria that will be used to determine the public interest. It believes that the criteria developed by the Justice Department provides a fair method of determination which can easily be applied by requesters and the Agency.

Section 303.10(g)(4).

The commentator urged the Peace Corps not to require advance payment of fees because this would delay release of information. The Peace Corps has retained the advance payment requirement if estimated fees exceed $250.00. This requirement will not affect many requesters. However, where requests may involve substantial amounts of search time or extensive copying, the advance payment provision is not, in the Peace Corps' opinion, unreasonable.

List of Subjects in 22 CFR Part 303

Administrative practice and procedure, Freedom of information, Records.

For reasons set out in the preamble, 22 CFR Part 303 is amended to read as follows:

PART 303—INSPECTION AND COPYING OF RECORDS; RULES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

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

Authority: 5 U.S.C. 552; Pub. L. 87-293 as amended (22 U.S.C. 2501 et seq.); Pub. L. 97-113, sec. 601; Pub. L. 99-570; E.O. 12137, May 16, 1979.

2. Section 303.10 is revised to read as follows:

§ 303.10 Schedule of fees.

(a) *General.* It is the policy of the Peace Corps to encourage the widest possible distribution of information concerning programs under its jurisdiction. To the extent practicable, this policy will be applied under this part so as to permit requests for inspection or copies of records to be met without substantial cost to the person making the request. Search and reproduction charges will be made in accordance with paragraph (c) of this section. On a case-by-case basis, the Peace Corps will conduct a thorough review of all fee waiver requests and will grant waivers of reductions in fees only in those cases in which the requester establishes that the disclosure of the information will primarily benefit the general public. The Agency shall charge fees that recoup the full direct costs incurred. The most efficient and least costly methods to comply with requests for documents made under the FOIA shall be used. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, the Agency shall inform requesters of the steps necessary to obtain records from those sources.

(b) *Definitions.* The Agency adopts the following definitions contained in OMB's "Uniform Freedom of Information Act Fee Schedule and Guidelines," that relate to this section:

(1) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (b)(5) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who made their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency will also look to the past publication record of a requester in making a determination.

(c) *Fees to be charged*—(1) *Manual searches for records.* Whenever feasible, the Agency will charge at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), the Agency may establish an average rate for the range of grades typically involved.

(2) *Computer searches for records.* The Agency will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to an FOIA request and operator/programmer salary apportionable to the search. When the Agency can establish a reasonable Agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, it may do so and charge accordingly.

(3) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges shall be assessed only for the initial review; i.e., the review undertaken the first time the Agency analyzes the applicability of a specific exemption to a particular record or portion of a record. The Agency will not charge for review at the administrative appeal level of an exemption already applied. However, if records or portions of records withheld in full under an exemption which is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, the cost for such a subsequent review is properly assessable. Where a single class of reviewers is typically involved in the review process, the Agency may establish a reasonable Agency-wide average and charge accordingly.

(4) *Duplication of records.* The charge for paper copy reproduction of documents as of the date of publication is three cents per page. This charge represents the average Agency-wide direct cost of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. The rate shall be adjusted annually. Current rates may be requested from the Director, Office of Administrative Services. For copies prepared by computer, such as tapes or printouts, the Agency will charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Agency will charge the actual direct costs of producing the document or documents.

(5) *Other charges.* (i) The Agency shall recover the full cost of certifying that records are true copies. The Agency will charge the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) certifying the records. (ii) The Agency shall recover the full cost of sending records by special methods such as express mail, etc. The Agency shall not furnish the records until payment for such service has been received by the Agency. The Agency is not required to comply with requests for special mailing services.

(6) *Restrictions on assessing fees.* (i) With the exception of requesters seeking documents for a commercial use, the Agency will provide the first 100 pages of duplication and the first two hours of search time without charge. The Agency will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. Except for commercial use requesters, the Agency will not begin to assess fees until after the free search and reproduction services have been provided.

(ii) The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittance will not be considered in the Agency's determination.

(iii) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14."

(iv) The term "search time" in this context means manual search. To apply this term to searches made by computer, the Agency will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, the Agency will begin assessing charges for computer search.

(d) *Payment of Cost.* (1) A request for documents must state that the requester will pay any or all reasonably necessary costs, or costs up to an amount specified in such request. If the head of the unit or the Director of Administrative Services determines that the anticipated cost for search and duplication of the records requested will be in excess of $25, or in excess of the limit specified in the request, the Director of Administrative Services shall advise the requester promptly after receipt of the initial request. Such notification shall specify

the anticipated cost of search and reproduction of the records requested. The requester may thereafter amend his or her request to specify fewer documents or agree to accept the estimate of anticipated costs, in which case the request shall be deemed received by the Agency upon the receipt date of the requester's response. A requester may, prior to making a request, ask for an estimate of cost from the Director of Administrative Services who shall promptly respond to such request.

(2) *Method of Payment.* Payment shall be sent or delivered to the Collections Officer, Accounting Division. Such payment must be by check or money order payable to Peace Corps—FOIA. A receipt for fees shall be provided upon request.

(e) *Fees to be Charged—Categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.* The Agency will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(2) *Educational and non-commercial scientific institution requesters.* The Agency will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* The Agency will provide documents to requesters in this category for the cost of reproduction alone excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the definition described in paragraph (b)(8) of this section, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* Requesters who do not fit into any of the categories above will be charged fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Requests from individuals for records about themselves filed in the Agency's systems of records will continue to be treated under the fee provisions published in the Agency's Privacy Act regulations (22 CFR Part 308).

(f) *Waiving or Reducing Fees*—(1) *General.* The Agency will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A requester may, in his or her original request, or subsequently, ask for a fee waiver or that documents be furnished at a reduced charge. A request for documents shall not be deemed to have been received until a determination of the question of fee waiver or reduction has been made, provided however, that such determination shall be made within five working days from the receipt of a fee waiver request. A request for waiver or reduction of fees shall specify the amount of reduction requested and the reasons which cause the requester to feel that the criteria for waiver or reduction of fees have been met.

(2) *Procedures.* (i) Upon receipt of a fee waiver or fee reduction request the Director of Administrative Services will promptly determine whether such request should be granted in whole or in part. The request shall be reviewed in accordance with the following Statutory Freedom of Information Act fee waiver criteria:

(A) Whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government"; and

(B) That disclosure of the information "is not primarily in the commercial interest of the requester."

(ii) There are six general factors which are considered in determining whether the statutory criteria for fee waiver have been met:

(A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(B) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(E) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(iii) The decision to refuse to waive or reduce fees as requested under paragraph (f)(1) of this section may be appealed to the Director of the Peace Corps or such official as he or she may designate. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees. The requester will be notified within ten working days from the date of which the Agency received the appeal.

(g) *Administrative Actions to Improve Assessment and Collection of Fees.* The Agency shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly.

(1) *Charging interest.* The Agency will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by the Agency, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31, United States Code, will accrue from the date of the billing.

(2) *Charges for unsuccessful search.* The Agency will assess charges for time spent searching, even if the Agency fails to locate the records or if records located are determined to be exempt from disclosure.

(3) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Agency reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency may aggregate any such requests and charge accordingly. The Agencies will not aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* (i) Advance payment, i.e., payment before work is commenced or continued on a request are not required unless:

(A) The Agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the date of the billing), the Agency may require the requester to pay the full amount owed plus any applicable interest as provided above, or to demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or a pending request from that requester.

(ii) When the Agency acts under paragraph (g)(4)(i) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Agency has received fee payments described above.

(5) Effect of the Debt Collection Act of 1982 (Pub. L. 97–365). The Agency will follow those debt collection procedures published in 22 CFR Part 309 where appropriate, to encourage repayment.

Dated: February 29, 1988.

Loret Miller Ruppe,

Director.

[FR Doc. 88–5443 Filed 3–11–88; 8:45 am]

BILLING CODE 6051–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

Oil and Gas Product Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Announcement of training sessions.

SUMMARY: The Minerals Management Service (MMS) published a Notice in the **Federal Register** on February 11, 1988 (53 FR 4011), providing notification that it will conduct seven training seminars at different geographic locations on the new oil and gas product valuation regulations that were published in the **Federal Register** on January 15, 1988 (53 FR 1184 and 53 FR 1230, respectively). The seminars will also include a discussion of Pub. L. 100–234, "Notice to Lessees Numbered 5 Gas Royalty Act of 1987," which was signed by the President of the United States on January 6, 1988. The MMS hereby gives notice that it will conduct two additional seminars at the locations and on the dates identified below.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: John L. Price, Chief, Oil and Gas Valuation Branch, Royalty Valuation and Standards Division (303) 231–3392, FTS 326–3392, or Dennis C. Whitcomb, Chief, Rules and Procedures Branch (303) 231–3432, FTS 326–3432.

SUPPLEMENTARY INFORMATION: The new oil and gas valuation regulations that were published in the **Federal Register** on January 15, 1988, amended and clarified existing regulations governing the valuation of oil and gas for royalty computation purposes. The regulations govern the methods by which value is determined when computing oil or gas royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). Public Law 100–234, "Notice to Lessees Numbered 5 Gas Royalty Act of 1987" (the Act) applies to the valuation of natural gas produced from onshore Federal and Indian oil and gas leases during the period January 1, 1982, through July 31, 1986, which was, prior to the Act, required to be valued under Section I.A.2, II.A.2, and VI of "Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases Number 5" (NTL–5).

The training seminars will include discussions on the following topics:

- Impact of Public Law 100–234 on gas valuation.
- Impact of the new regulations on oil and gas valuation.
- Impact of the new regulations on oil and gas transportation and processing allowances.
- Information collection requirements and reporting forms (MMS–4109, "Gas Processing Allowance Summary Report"; MMS–4110, "Oil Transportation Allowance Report"; and MMS–4295, "Gas Transportation Allowance Report") required to support oil and gas transportation and processing allowance deductions from royalties due. On the second day of each seminar, the forms will be reviewed in a "how to complete," step-by-step process.

Location and Dates

See the prior **Federal Register** Notice published on February 11, 1988 (53 FR 4011), for the location and the dates of the seven initially scheduled training seminars. The two additional seminars will be held from 9:00 a.m. to 4:30 p.m. each day on the dates and at the locations shown below:

Dates	Locations
April 5–6, 1988	Marathon Oil Company, 5555 San Felipe, Houston, Texas 77253.
April 7–8, 1988	Union Texas Petroleum Corp., Auditorium, Room 1638, 1330 Post Oak Boulevard, Houston, Texas 77252.

Reservations

The training seminars are open to the public. Persons interested in attending one of these seminars should make a reservation by telephone on or before March 28, 1988, to Ms. Julie White (303) 231–3155, FTS 326–3155.

Telephone reservations should be confirmed in writing to Ms. Julie White, Minerals Management Service, Royalty Valuation and Standards Division, P.O. Box 25165, MS 653, Denver, Colorado 80225.

Persons requesting reservations should specify the seminar location that they are interested in attending and the number of attendees. Due to space limitations, the number of attendees may be limited at each seminar location. (Likewise, if insufficient interest is shown in attending any of the individual training sessions, such sessions may be canceled and alternate arrangements will be made for those who expressed

interest.) Reservations will be provided on a first-come-first-served basis.

Date: March 4, 1988.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 88-5442 Filed 3-11-88; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL-3340-1]

Standards of Performance for New Stationary Sources; National Emissions Standards for Hazardous Air Pollutants; North Carolina; Delegation of Additional Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On December 15, 1987, the North Carolina Division of Environmental Management requested delegation of authority for the implementation and enforcement of certain standards in 40 CFR Part 60 (Standards of Performance for New Stationary Sources) and 40 CFR Part 61 (National Emission Standards for Hazardous Pollutants) that had been promulgated or revised as of June 15, 1987. On January 27, 1988, these standards were delegated to North Carolina.

DATE: The effective date of the delegations is January 27, 1988.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letters of delegation of authority may be examined during normal business hours at the Agency's regional office, 345 Courtland Street NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (listed below) should be submitted to Mr. N. Ogden Gerald, Chief, Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

FOR FURTHER INFORMATION CONTACT: Gregg M. Worley of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Sections 111(c)(1) and 112(d)(1) of the Clean Air Act authorize EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

On December 15, 1987, the North Carolina Division of Environmental Management (NCDEM) requested delegation of authority of NSPS for Subpart Kb (Standards of Performance for Storage Vessels (Including Petroleum Liquid Storage Vessels) for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after July 23, 1984). NCDEM also requested redelegation of authority of NSPS for Subpart Ka (Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984), Subpart HH (Lime Manufacturing Plants), and NESHAP Subpart E (Mercury).

After thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letter of November 24, 1976.

I certify, pursuant to 5 U.S.C. 605(b), that these delegations will not have a significant impact on a substantial number of small entities.

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

Authority: Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412)

Date: March 3, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-5468 Filed 3-11-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[Region II Docket No. 68; FRL-3340-3]

Designation of Areas for Air Quality Planning Purposes; Revisions to Section 107 Attainment Status Designation for the State of New Jersey; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error in the Clean Air Act Section 107(d) attainment status designations for sulfur dioxide (SO_2) in New Jersey which appeared in the preamble of a **Federal Register** rulemaking notice on December 31, 1987 (52 FR 49408). This correction will insert a phase into the text of the document which describes the extent of the SO_2 nonattainment area in Warren County, New Jersey.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

On December 31, 1987, EPA announced final action on a request from the State of New Jersey to revise its air quality designations with respect to sulfur dioxide (SO_2) of a part of Warren County (52 FR 49408). Such designations are required by section 107(d) of the Clean Air Act and may be revised from time to time at the request of a State. This notice is being submitted to correct a typographical error in the preamble of the December 31, 1987 rulemaking notice.

A phase in the preamble of the December 31, 1987 notice which describes the extent of the SO^2 nonattainment area in Warren County was inadvertently omitted. The extent of the area in question is the same as originally proposed on October 29, 1986 (51 FR 39550).

The following correction is made in FRL-3307-9, "Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for the State of New Jersey", published in the **Federal Register** on December 31, 1987 (52 FR 49408). The second full paragraph under the Section III, the "Conclusion" section on page 49410 is revised to read as follows:

The areas being redesignated from "better than national standards" to "does not meet national standards" for sulfur dioxide are the Town of Belvidere, the entire Townships of Harmony, White, and Oxford, and that portion of Liberty Township south of the Universal Transverse Mercator Grid System (UTM) coordinate N4522 and west of UTM coordinate E505, and that portion of Mansfield Township west of UTM coordinate E505. Warren County is located in the northwestern part of New Jersey in the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region.

Authority: 42 U.S.C. 7401-7642.

Dated: March 3, 1988.

William J. Muszynski

Acting Regional Administrator, Environmental Protection Agency.

[FR Doc. 88-5469 Filed 3-11-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3340-6]

Ocean Dumping; Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates three existing dredged material disposal sites ("the Calcasieu River and Pass sites") located in the Gulf of Mexico off the mouth of the Calcasieu River and adjacent to the Calcasieu Bar Channel for the continued disposal of dredged material removed from the Calcasieu River and Pass Project. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material. This Final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable adverse impacts do not occur.

DATE: This designation shall become effective April 13, 1988.

ADDRESSES: The file supporting this designation is available for public inspection at the following locations:

EPA, Region VI (E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Ch. I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established seven sites for the disposal of dredged material from the Calcasieu Bar and Entrance Channel. Because some of the seven sites either shared a common boundary or overlapped another site, they were subsequently combined to form three sites of similar total area. In January 1980, the interim status of the Calcasieu sites was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Draft and Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Calcasieu River and Pass Ocean Dredged Material Disposal Site Designation." On September 7, 1984, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register** (49 FR 35413). The public comment period of this Draft EIS closed on October 22, 1984. The Agency received nine comment letters on the Draft EIS and responded to them in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated as text changes were addressed point by point in the Final EIS. On December 4, 1987, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register**. The public comment period on the Final EIS closed on January 4, 1988. Two letters were received on the Final EIS. One letter identified an editorial correction and the other letter provided "no comments". The EIS is available for review at the addresses given above.

The action discussed in the EIS is designation for continuing use of ocean disposal sites for dredged material. The purpose of the designation is to provide environmentally acceptable locations for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in EPA's Final EIS based on information from the Corps of Engineers. Inland disposal sites are currently used for the inland reaches of the Calcasieu River and Pass project. In 1983, approximately 590,000 cubic yards of dredged material were pumped into inland shallow water disposal areas creating 80 acres of marsh. In 1985, 650,000 cubic yards were pumped into two additional inland shallow water areas to create 125 acres of marsh. These inland sites, however, cannot accommodate the dredged material from the bar and entrance channels. Use of these inland sites for material which has traditionally been dumped at sea would quickly decrease the lifetime of the sites. Additionally, the only available inland sites are miles upstream from the bar channel making the use of these sites economically impractical.

Three ocean disposal alternatives—a shallow water area (including the proposed sites), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve increased transportation costs without any corresponding environmental benefits. In addition, the removal of sediments from the nearshore environment would make them unavailable for movement and deposition by longshore currents. Lastly, mounding of dredged material in the deeper waters could occur due to slow erosion and transport. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration.

The EIS evaluates the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

In accordance with the requirements of the Endangered Species Act, EPA has completed its biological assessment and determined that no adverse effects to endangered/threatened species will result from site designation. The National Marine Fisheries Service has concurred with this determination.

Although a consistency determination from the State of Louisiana, Department of Natural Resources has not been received, EPA will continue coordination with this agency regarding their coastal zone program.

This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On December 28, 1987, EPA proposed designation of these sites for the continuing disposal of dredged materials from the Calcasieu River and Pass Project. The public comment period on this proposed action closed on February 11, 1988. No comments were received on the proposed rule.

Site 1 is located on the east side of the Calcasieu River Entrance Channel while sites 2 and 3 are located on the west side of the channel. Site 1 and the upper portion of site 2 are only used during jetty maintenance. The remainder of site 2 and site 3 receive dredged material from the channel.

Site 1 is located approximately 0.5 nautical miles (nmi) from shore and extends out approximately 3 nmi. Water depths within the site range from 2 to 8 meters. The boundry coordinates are as follows: 29d 45' 39"N, 93d 19' 36"W; 29d 42' 42"N, 93d 19' 06"W; 29d 42' 36"N, 93d 19' 48"W; 29d 44' 42"N, 93d 20' 12"W; 29d 44' 42"N, 93d 20' 24"W; 29d 45' 27"N, 93d 20' 33"W.

Site 2 is located approximately 0.5 nmi from shore and extends out approximately 6 nmi. Water depths within the site range from 2 to 11 meters. The boundary coordinates are as follows: 29d 44' 31"N, 93d 20' 43"W; 29d 39' 45"N, 93d 19' 56"W; 29d 39' 34"N, 93d 20' 46"W; 29d 44' 25"N, 93d 21' 33"W.

Site 3 is located approximately 8 nmi from shore and extends out approximately 17.5 nmi. Water depths within the site range from 11 to 14 meters. The boundary coordinates are as follows: 29d 37' 50"N, 93d 19' 37"W; 29d 37' 25"N, 93d 19' 33"W; 29d 33' 55"N, 93d 16' 23"W; 29d 33' 49"N, 93d 16' 25"W; 29d 30' 59"N, 93d 13' 51"W; 29d 29' 10"N, 93d 13' 49"W; 29d 29' 05"N, 93d 14' 23"W; 29d 30' 49"N, 93d 14' 25"W; 29d 37' 26"N, 93d 20' 24"W; 29d 37' 44"N, 93d 20' 27"W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; Section 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Final EIS, that the three existing sites are acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing three sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed sites are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast. (40 CFR 228.6(a)(1).)*

Geographical positions, average water depths, and distance from the coast for each existing site are given above. Bottom topography within each existing site is essentially flat with little relief. Each site varies in size, in distance from shore and depth.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. (40 CFR 228.6(a)(2).)*

The northwestern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and other bottomfish. Seasonal migration between the estuaries and the Gulf is most intensive in the spring and fall. The Calcasieu disposal sites represent a small area of the total range of the fisheries resource.

3. *Location in relation to beaches and other amenity areas. (40 CFR 228.6(a)(3).)*

Beaches are located between Calcasieu Pass and Holly Beach (4.5 nmi west). Activities in the vicinity of the sites include fishing and boating. There will be some interferences with recreational activities during and in the immediate vicinity of the dredged material disposal operation. This interference will be restricted to the area of the sites being utilized for disposal. Previous dredging and disposal operations have not significantly affected these activities.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any. (40 CFR 228.6(a)(4).)*

Dredged material released at approved dredged material disposal sites must conform to the EPA criteria in the Ocean Dumping regulations (40 CFR Part 227). The dredged material to be disposed of consists of varying amounts of sand, silt and clay. Surficial sediments within the existing disposal sites consist of silt and clay sands and silty clays. Higher percentages of fines are present in the nearshore areas off Calcasieu; whereas sediments in areas further offshore (depths greater than 10m) consist primarily of sand.

The annual volume of material dredged from the Calcasieu Channel averages about 14 million cubic yards. Material discharged at sites 1, 2, and 3 is accomplished by agitation dredging, bottom dumping and side casting. Agitation dredging involves filling a hopper dredge to capacity and allowing it to overflow. With bottom dumping sediments transported to the site are discharged through subsurface doors in the bottom of the hopper dredge. Side casting is accomplished by pumping dredged material through a boom-supported pipeline extending laterally from the dredge.

5. *Feasibility of surveillance and monitoring. (40 CFR 228.6(a)(5).)*

Surveillance and monitoring at the existing sites appears feasible considering transportation costs to and from the sites as well as costs associated with acquiring samples from the shallow water-depths. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA in coordination with the Corps of Engineers will develop a monitoring plan.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any. (40 CFR 228.6(a)(6).)*

Current patterns in the vicinity of the existing sites are predominately influenced by winds, particularly in late autumn through early spring. The water column is generally well mixed in the winter with stratification occurring in late spring and summer.

Surface current speeds average 0.8 to 1.0 knots and flow primarily to the west. Bottom currents are generally less than 0.8 knots and also flow predominantly to the west.

The agitation method utilized involves the release of fine sediments into surface waters which are swept away by riverine and littoral currents. The sediments settle out slowly as they are carried off. The distance over which the sediments are transported depends upon the existing current velocity at the time of dredging and the settling rate of sediments. Although no studies have been conducted to determine the extent

to which the material is transported, it is felt that most agitated material settles within site 2.

In the absence of strong currents, the bulk of the dredged material released by bottom dumping or side casting settles to the bottom almost immediately after dumping and only a small portion is lost from the main surge. This small portion dispenses as individual particles. Bottom currents slowly resuspend the disposed dredged material. This resuspension will result in the disappearance of the mound through dispersal and horizontal transport.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). (40 CFR 228.6(a)(7).)*

Over 30 years of dredged material disposal at the sites have caused no major adverse impacts. No major changes in the benthic community of the existing sites and areas outside the sites have occurred based on 1980 and 1981 field surveys. The accumulation of contaminants in the sediments of the Calcasieu sites were also investigated during the surveys. Trace metal concentrations in the Calcasieu sediments were generally comparable to values reported for sediments in an area located five miles to the west. Relatively low levels of chlorinated hydrocarbons were observed in surficial sediments during the surveys.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean. (40 CFR 228.6(a)(8).)*

All the sites extend into the navigational safety fairway; however, any temporary interferences with shipping can be mitigated through close coordination between the dredging operators and the shipping interests.

Recreational and commercial fishing and recreational boating occurs throughout the year in the area of the existing sites. Although there will be some interference with fishing and boating activities during the disposal operations, it should be of short duration.

There is active oil and gas development in the area of the existing sites. However, past use of the disposal sites has not interfered with the oil and gas exploratory or production operations. Other types of mineral extraction do not occur within the sites.

No desalination facilities occur within the sites. The nearest aquaculture activities take place in Calcasieu Lake where oyster seed beds are located. Disposal activities pose no threat to this activity. Naturally occuring fish and shellfish within the site, particularly bottom dwelling types, will be affected by the dredged material disposal. Some of these may be trapped and destroyed. Dispersion and transport of the dredged material outside the site should not significantly affect the fish and shellfish. The material dispersed from the site will settle in very thin layers and be mixed with the naturally occurring sediments of the region.

The sites do not contain or overlap any areas of special scientific interest. Periodically, scientific studies are carried out in the offshore region and the bays of the area. Use of the sites should not interfere with these studies. It is not expected that use of the sites for disposal of dredged material will interfere with any other legitimate use of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys. (40 CFR 228.6(a)(9).)*

The water quality and ecology of the existing disposal sites are generally reflective of that of the nearshore region off the Louisiana coast affected by discharges from the Atchafalaya River. There are variations in the water quality depending on the mixture of fresh water runoff occurring at the time. Data developed during the 1980 and 1981 surveys were generally comparable to historic data for the area.

10. *Potentiality for the development of recruitment of nuisance species in the disposal site. (40 CFR 228.6(a)(10).)*

Past disposal of dredged material at the existing sites has not resulted in the development of recruitment or nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance. (40 CFR 228.6(a)(11).)*

Based on coordination with the Louisiana State Historic Preservation Office, there are no known features of historical importance that occur within the existing sites.

E. Action

Based on the completed EIS process and available data, EPA concludes that the three Calcasieu sites may appropriately be designated for continuing use for the ocean disposal of dredged material. The existing sites are compatible with the general criteria and specific factors used for site evaluation. The designation of the three Calcasieu sites as EPA Approved Ocean Dumping Sites is being published as final rulemaking.

While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: March 2, 1988.

Robert E. Layton Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entries for Calcasieu River and Pass, LA and by adding paragraphs (b)(48), (49), and (50)

for three ocean dumping sites to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(48) Calcasieu Dredged Material Site 1—Region VI.

Location: 29d 45' 39" N, 93d 19' 36" W; 29d 42' 42" N, 93d 19' 06" W; 29d 42' 36" N, 93d 19' 48" W; 29d 44' 42" N, 93d 20' 12" W; 29d 44' 42" N, 93d 20' 24" W; 29d 45' 27" N, 93d 20' 33" W.
Size: 1.76 square nautical miles
Depth: Ranges from 2–8 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.

(49) Calcasieu Dredged Material Site 2—Region VI.

Location: 29d 44' 31" N, 93d 20' 43" W; 29d 39' 45" N, 93d 19' 56" W; 29d 39' 34" N, 93d 20' 46" W; 29d 44' 25" N, 93d 21' 33" W.
Size: 3.53 square nautical miles.
Depth: Ranges from 2–11 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.

(50) Calcasieu Dredged Material Site 3—Region VI.

Location: 29d 37' 50" N, 93d 19' 37" W; 29d 37' 25" N, 93d 19' 33" W; 29d 33' 55" N, 93d 16" 23" W; 29d 33' 49" N, 93d 16" 25" W; 29d 30' 59" N, 93d 13' 51" W; 29d 29' 10" N, 93d 13' 49" W; 29d 29' 05" N, 93d 14' 23" W; 29d 30' 49" N, 93d 14' 25" W; 29d 37' 26" N, 93d 20' 24" W; 29d 37' 44" N, 93d 20' 27" W.
Size: 5.88 square nautical miles.
Depth: Ranges from 11–14 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.

[FR Doc. 88–5470 Filed 3–11–88; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 20

Employee Responsibilities and Conduct

AGENCY: United States Department of the Interior.

ACTION: Notice of availability of Appendix C.

SUMMARY: This notice announces the availability of Appendix C to 43 CFR Part 20. This Appendix list positions within the Department of the Interior for which Confidential Statements of Employment and Financial Interestes (DI–212) are required to be filed. This Appendix has been updated as of December 1, 1987 and has been printed as an agency document. This Appendix will not be published in the **Federal Register** but will be available to the public upon request.

EFFECTIVE DATE: December 1, 1987.

ADDRESS: Copies of Appendix C may be obtained from the Deputy Ethics Counselor for each bureau or office within the Department of the Interior. You may address your requests to the Deputy Ethics Counselor, (insert the name of the specific bureau or office), 18th & C Streets NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Gabriele J. Paone or Mr. Mason Tsai, Departmental Ethics and Audit Coordination Staff, U.S. Department of the Interior, Washington, DC 20240, (202) 343–5916 or 343–3932.

SUPPLEMENTARY INFORMATION: The Department of the Interior has received approval from the Office of Government Ethics, Office of Personnel Management, to publish Appendix C to 43 CFR Part 20 as an agency document. The availability of this document is hereby announced in the **Federal Register.** The initial notice of this annual process was provided with the publication of 43 CFR Part 20 as proposed rule on October 6, 1980 (45 FR 66370). This arrangement meets administrative requirements which affect only Department of the Interior employees and at the same time defrays the cost of publishing the Appendix C listing in the **Federal Register.**

Appendix C lists Department of the Interior positions, in addition to GS (or GM)–15's for which a Confidential Statement of Employment and Financial Interests (Form DI–212) is required to be filed by Executive Order 11222 (as amended). Positions identified in Appendix C are effective for the February 1, 1988 filing deadline. Appendix C has been approved by the Office of Personnel Management.

List of Subjects in 43 CFR Part 20

Conflicts of interest, Government employees.

Authorities: Appendix C to Part 20 of Title 43 of the Code of Federal Regulations is published under Executive Order 11222 (as amended), 30 FR 6459, 3 CFR, 1964–65 Comp., as amended (18 U.S.C. 201 Note); 5 CFR 735.104; and 5 U.S.C. 301.

Appendix C was compiled by Bureau and Office Ethics Counselors and consolidated by Deborah Williams of the Departmental Ethics and Audit Coordination Staff.

Date: March 7, 1988.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 88–5365 Filed 3–11–88; 8:45 am]
BILLING CODE 4310–RK–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 308

[Docket No. R–116]

War Risk Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending the war risk insurance regulation (46 CFR Part 308) to allow certain vessels registered in the commonwealth of the Bahamas (Bahamas) to become eligible to apply for war risk insurance. MARAD administers these regulations as a standby emergency program, which now allows only vessels registered under the laws of the United States, as well as certain vessels that are owned or controlled by U.S. citizens and registered under the laws of Panama, Honduras, and Liberia, to apply for available war risk insurance interim binders. These interim binders insure vessels against liabilities resulting from war or warlike actions when commercial war risk insurance is unavailable on reasonable terms and conditions. The final rule will make certain vessels registered in the Bahamas eligible for war risk insurance and subject to the same considerations now applicable to vessels registered under the laws of Panama, Honduras or Liberia. This final rule will also make editorial amendments, including those that reflect MARAD organizational changes.

EFFECTIVE DATE: April 13, 1988.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Washington, DC 20590 or telephone (202) 366–2400.

SUPPLEMENTARY INFORMATION: The authority of the Secretary of Transportation (Secretary) to provide insurance and reinsurance under Title XII, Merchant Marine Act, 1936, as amended, 46 U.S.C. 1281–1293 (Act), was reinstated by Pub. L. No. 99–59, which was enacted on July 3, 1985, and which will expire on June 30, 1990. The

implementing war risk insurance regulations were reissued on December 9, 1985 (50 FR 50165) to provide the terms and conditions under which war risk insurance interim binders are issued for U.S.-flag vessels and certain foreign-flag vessels owned or controlled by U.S. citizens.

As authorized by section 1203, of the Act, as amended (46 U.S.C. 1283), the Secretary of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States, if such insurance cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a state of the United States. The U.S. government's war risk insurance program is a standby emergency program. It becomes effective simultaneously with the automatic termination of commercial ocean marine war risk insurance policies. (Those commercial policies are automatically terminated upon the outbreak of war, whether declared or not, between any of the five great powers (United States, United Kingdom, France, People's Republic of China, or the Union of Soviet Socialist Republics) or upon the hostile detonation of a weapon of war employing atomic or nuclear fission). Thus, the program allows the continued flow of essential U.S. trade by protecting the shipowner from loss due to risks of war.

A war risk insurance interim binder is a contract under which the U.S. government agrees to provide the applicant with war risk insurance coverage in the interim period, after termination of commercial insurance coverage, for a fee and upon the conditions set forth in 46 App. U.S.C. 1282. An agent of MARAD issues the interim binders.

In 1976, Pub. L. No. 94–523 amended the prior war risk authority (46 App. U.S.C. 1283) by requiring that the Secretary shall determine whether to grant war risk insurance or reinsurance to foreign-flag vessels based upon consideration of "the characteristics, the employment, and the general management of the vessel by the owner or charterer" (46 U.S.C. 1203). That authority was reinstated in 1979 and 1985, and has been implemented by regulations published in the **Federal Register** on April 3, 1980 (45 FR 22041) and December 9, 1985 (50 FR 50165).

Included in these implementing regulations are special provisions restricting foreign-flag vessels eligibility for war risk insurance interim binders. MARAD's regulations provide for a case-by-case review of foreign-flag vessels applying for war risk insurance binders to assure the continued delivery of important U.S. cargoes when commercial war risk insurance is unavailable, and to make it possible for the U.S. government to obtain the use of certain foreign-flag vessels under a Voluntary Contract of Commitment (VCC). A VCC between the U.S. government (MARAD) and a vessel's U.S. citizen applicant makes that vessel available to the U.S. during any period in which vessels may be requisitioned under section 902 of the Act (46 App. U.S.C. 1242), i.e., whenever the President proclaims that there is a national emergency or that security or the national defense make it advisable.

Vessels now eligible to apply under MARAD regulations are those that are documented under the laws of the United States (except sport fishing vessels), as well as vessels not more than 20 years old that are registered under the laws of Panama, Honduras, and Liberia. Under this final rule, vessels registered under the laws of the Bahamas are now eligible for war risk insurance. Owners of vessels registered in these four countries must be U.S. citizens, or U.S. citizen-owned corporations, or the vessels must be under the operational control of U.S. citizens. These vessels cannot be subject to requisition for title or use by any national government, other than the U.S. government. Further, the foreign country in which the vessel is registered may not have a statutory restraint preventing the U.S. government from requisitioning a U.S. citizen-owned or controlled vessel registered in that foreign country.

Eligible foreign-flag vessels that qualify for war risk insurance interim binders are those that are: (1) Substantially engaged in the foreign commerce of the U.S. (considered to be so if they carry thirty (30) percent of net cargo tonnage on a semiannual basis in the U.S. foreign commerce); (2) product tankers up to 90,000 deadweight tons; (3) dry cargo vessels; (4) heavy lift vessels; (5) refrigerated vessels; (6) and other classes of vessels in short supply in the U.S.-flag fleet, with special capabilities.

If a vessel meets any of these criteria, the owner must affirm that it will: (1) Make the vessel available during a U.S. national emergency or to serve the U.S. economy or cooperate with U.S. military authorities under section 902 of the Act (46 App. U.S.C. 1242); (2) maintain it in its eligible category; and (3) report its location to the U.S. Coast Guard.

Vessels owned or controlled by U.S. citizens and registered under the laws of a foreign government are subject to the laws of the country of registry. Such laws may prevent U.S. citizens or U.S. operators of a foreign-flag vessel from making that vessel available to the U.S. government during periods of U.S. national emergency. MARAD's regulations require that applicants for war risk insurance on a foreign-flag vessel submit, with their application, a certified copy of the evidence of any official action or approval required by the government of the country of registry as a prerequisite to the execution of a VCC with the U.S. government (46 CFR 308.3(d)(4)).

In 1983, the Bahamian government enacted amendments to the Bahamian Merchant Shipping Act, 1976, (MSA). These amendments allow certain U.S. citizen-owned or controlled Bahamian-flag vessels to comply with the foregoing MARAD criteria, approved by the U.S. Navy, and to become eligible for war risk insurance. Section 286 of the MSA provides that the Bahamian registrar may grant written permission to the vessel's owner to transfer operating control of that vessel to another country's government during a state of emergency or time of war in the country where the owner resides or is a citizen. Thus, the Bahamian government would allow a U.S. citizen-owner or controlled vessel registered in the Bahamas to be made available to serve the U.S. national economy or U.S. national defense in times of U.S. national emergency under applicable U.S. laws.

This change in Bahamian law has removed the basis for objection by the U.S. Department of the Navy, Office of the Chief of Naval Operations (Navy), which previously objected to approving U.S. citizen-owned or operated vessels registered in the Bahamas as transport vessels to complement U.S. strategic sealift capability. Primarily, the Navy objected to certain provisions in the prior Bahamian law, e.g., the requirement that all equity owners and mortgagees consent to the requisitioning of the vessel, and the provision that the country requesting title or use of the vessel declare that a state of emergency exists before the Bahamian government would allow the vessel's operational control to be transferred to another country's government where the owner resides or is a citizen. Thus, the Bahamian government will now allow a U.S. citizen-owned or controlled vessel registered in the Bahamas to be made available to serve the U.S. national economy or U.S. national defense in times of U.S. national emergency under applicable U.S. laws.

Moreover, Bahamian law now requires that vessels registered under its MSA must comply with numerous safety standards. For example, foreign-owned

vessels are eligible for registration in the Bahamas, if they are less than 12 years old at the time of first registry, and if they are oceangoing vessels of 1,600 or more net registered tons engaged in "foreign-going trade." Foreign-going trade is defined as not trading exclusively within the Bahamian Islands or between the Bahamas and the East Coast of Florida. Under the MSA, a foreign owner can hold direct title to a Bahamian-flag vessel and such vessel is considered "foreignowned" unless its ownership is entirely in the hands of citizens of the Bahamas.

The MSA provides that six international classification societies can survey Bahamian-registered vessels, including The American Bureau of Shipping. In addition, the Bahamian Maritime Division of the Ministry of Transport, located in Nassau, London, and New York makes its inspection service available to shipowners. Four of the approved classification societies are members of the International Association of Classification Societies (IACS), based in London.

The willingness of The Bahamian government to include members of the IACS to survey Bahamian-flag vessels shows a desire to impose strict safety inspection standards on vessels under its registry. Further, all Bahamian-registered vessels must be inspected before the vessel is put into service, on an annual basis, whenever an accident occurs which affects the safety of the ship, or whenever either important repairs are made or registration renewals are requested. The Bahamian MSA adjures to worldwide shipping concerns and has modeled its regulations after United Kingdom shipping legislation. The Bahamian government has also joined the International Maritime Organization (IMO) and has been a party to conventions sponsored by the IMO.

As a result of the changes in Bahamian law, the U.S. Navy now regards U.S. citizen-owned or controlled vessels registered in the Bahamas as providing available cargo capacity to be relied upon to contribute to the cargo sealift capability support complementing U.S. strategic defense requirements. Accordingly, the Navy has requested that MARAD provide war risk insurance for certain Bahamian vessels, as appropriate.

An additional reason for allowing Bahamian-flag vessels to qualify for war risk insurance is that U.S. citizens are presently registering their vessels under the Bahamian flag. MARAD statistics which were compiled for publication in the document entitled *Foreign Flag Merchant Ships Owned by U.S. Parent Companies*, published effective January 1, 1987, indicate that there are 26 U.S. citizens-owned vessels registered in the Bahamas. Seventeen of these 26 vessels will be eligible to apply for an interim binder. Approximately 58 percent of these 17 vessels were formerly registered under the Liberian or Panamanian flags.

In view of the foregoing events, on October 6, 1987, MARAD issued a notice of proposed rulemaking (52 FR 38486) that would amend the existing regulations to allow certain vessels registered in the Bahamas to become eligible to apply for war risk insurance.

Comments on the Proposed Rule

All three comments that were received (Chevron, Federation of American Controlled Shipping (FACS) and Republic of Vanuatu) supported expansion of war risk coverage to U.S.-controlled Bahamian-registered vessels. FACS generally supported MARAD's proposal as "appropriate and meritorious." However, it suggested that the proposed regulation "Does not go far enough. * * *" It argued that war risk insurance should be extended to all Effective U. S.-Controlled (EUSC) ships, *i.e.* ships registered under Panamanian, Honduran, Liberian and Bahamian flags not subject to requisitioning by the country of registry in certain emergencies, not just those in the presently eligible categories (e.g. product tankers up to 90,000 dwt.), since it believes that, as with U.S.-flag fleet vessels, all vessels of any value to the national security or defense should be covered. FACS also criticized the existing regulations' vessel classifications, i.e. that the distinctions made between vessels for eligibility lack an underlying rationale, e.g., a 150,000 dwt. gearless bulker is eligible for war risk insurance but a 150,000 dwt. product or crude tanker is not.

The FACS comment also states that the war risk regulations need to be updated as far as militarily useful vessels are concerned. It claims that the current criteria in 46 CFR 308.2(b) (1)–(6)—special regulatory eligibility restrictions for foreign flag vessels—needs to be broadened.

In this connection, it cites a 1987 COMMAD (The Commission on Merchant Marine and Defense) report and a 1987 study prepared for MARAD by Stanley Associates to support its contention that the definition of militarily useful vessels has changed over the years, has been "relaxed", and that all tankers under the 100,000 dwt. should be designated regulatorily as militarily useful.

The FACS comment would also support use of additional vessels as tankers in war: to "replace Jones Act tankers in the Alaskan trade, to maintain the flow of oil imported from abroad and to serve as floating storage to assure U.S. refineries have adequate oil supplies." The FACS comments would also include passenger vessels as eligible vessels in the regulations.

FACS recommends that the final regulation should include language defining eligible vessels that is in accord with section 1203(a) of the 1976 amendment to the Merchant Marine Act, 1936:

> The Secretary may provide the insurance and reinsurance authorized by section 1202 with respect to the following persons, property, or interest: (a) American vessels, including vessels under construction, foreign flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged * * *" In determining whether to grant such insurance or reinsurance to foreign flag vessels, the Secretary shall further consider the characteristics, the employment and the general management of the vessel by owner or charterer.

One comment, from the Republic of Vanuatu, stated that country's desire to be added to the list of countries whose registry of U.S. controlled vessels would be approved for war risk coverage. It, too, supported the proposed rule.

Responses

First, MARAD notes the Republic of Vanuatu's request to become one of the foreign countries that could register U.S. controlled vessels. However, no determination about Vanuatu's status can be made in this rulemaking as any such decision would be outside its scope.

In regard to the eligibility of vessels under the language of section 1203, the 1976 amendment language resulted from a Congressional investigation of MARAD practices in issuing war risk insurance binders on all Panamanian, Honduran, and Liberian registered vessels regardless of their value in national defense efforts. As a consequence of the Congressional investigation and hearing on this matter, a compromise was reached that would make war risk insurance binders available to a limited number of vessels registered in Panama, Honduras, and Liberia. This compromise resulted in an amendment to the statute, as mentioned before, and the subsequent issuance of implementing regulations (43 FR 54092,

Nov. 20, 1978). These regulations have established the present eligibility criteria which permit the compromised allotment of about one-fourth of the previously registered and eligible vessels to be considered by the Secretary as eligible recipients of war risk insurance binders.

MARAD's present belief is that it is unnecessary to broaden these regulatory criteria to include more vessel types (e.g. passenger vessels or tankers) or provide for more circumstances under which more vessel types will qualify. This belief is based, in part, on the findings of the 1970's Congressional investigation as to which vessels are most optimally to be used for national defense and to be eligible for war risk coverage. Moreover, these determinations of eligibility are made after the shipowner's application, for insurance, primarily on the basis of advice from U.S. military authorities on their expected needs in the event of national emergency. Further, section 1203 of the statute and 46 CFR Part 308, in its entirety, allow the Secretary flexibility in issuing war risk insurance and policies and in determining which vessels are militarily useful and, therefore, should be eligible for interim war risk insurance coverage. Therefore, the suggested FACS amendments are not needed to provide legal authority to issue coverage for vessels of various types. Accordingly, MARAD is amending regulations at 46 CFR Part 308 to provide that certain vessels registered in the Bahamas be eligible to apply for war risk insurance interim binders. Such vessels, MARAD believes, could serve the national economy and defense needs of the United States.

E.O. 12291 Statutory and DOT Requirements

The Maritime Administration has determined that this final rule is not major, as defined in E.O. 12291, and is not significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Bahamian law now allows entities registering their vessels in the Bahamas to qualify for U.S. government issued war risk insurance binders, subject to enabling amendments to MARAD regulations. Available data indicates that, if all eligible U.S. citizen-owned or controlled vessels registered in the Bahamas applied for war risk insurance binder coverage, a total of 17 vessels under the control of three companies would be involved. More than half of these 17 vessels were previously eligible for an interim binder while registered under either the Liberian or Panamanian flags. Accordingly, the economic impact has been found to be minimal. Since the rule affects principally the owners and operators of large commercial ships, the Maritime Administrator certifies that it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

This rule would amend the regulations at 46 CFR Part 308, which contain information collection requirements in §§ 308.3 and 308.6. The information collection for vessels that are registered in the Bahamas will be identical to that which has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). In March 1986 (under OMB Control No. 2133–0011), these new forms were approved for use and are now entitled: War Risk Insurance Application (Form MA–528); War Risk Insurance Binder, Form MA–942; Vessel data, Form MA–828; and Underwriting Agency Agreement, Form MA–355.

List of Subjects in 46 CFR Part 308

Maritime carriers, War risk insurance.

Accordingly, 46 CFR Part 308 is amended as follows:

PART 308—[AMENDED]

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

Authority: Sections 204, 1203, 1209, Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1114, 1282, 1283, 1289; 49 U.S.C. 1.66).

§ 308.2 [Amended]

2. Section 308.2(a) is amended by inserting between the word "Honduran," and the word "or," the word "Bahamian."

§§ 308.3, 308.6, 308.304, 308.404 and 308.410 [Amended]

3. Sections 308.3 (c) and (g), 308.6(d), 308.304, 308.404, and 308.410 are amended by replacing the title of Director, Office of Marine Insurance with the title of Director, Office of Trade Analysis and Insurance.

§ 308.5 [Amended]

4. Section 308.5 is amended by deleting the phrase "and General Order 75, as revised" and deleting the phrase "(General Order)."

§ 308.205 [Amended]

5. Section 308.205 is amended by replacing the title of Office of Marine Insurance with the title of Office of Trade Analysis and Insurance.

§ 308.404 [Amended]

6. Section 308.404 is amended by replacing the title, Chief, Division of Insurance with the title, Director, Office of Trade Analysis and Insurance.

(Catalog of Federal Domestic Assistance Program No. 20.803 (War Risk Insurance))

By Order of the Maritime Administrator.

Date: March 8, 1988.

James E. Saari,

Secretary.

[FR Doc. 88–5375 Filed 3–11–88; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–116; RM–5541]

Radio Broadcasting Services; Trussville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 290A to Trussville, Alabama, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Trussville Broadcasting, Inc. With this action, the proceeding is terminated.

DATES: Effective April 18, 1988; The window period for filing applications on Channel 290A at Trussville, Alabama, will open on April 19, 1988, and close on May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Allocations Branch, Mass Media Bureau, (202) 634–6530, concerning the allotment. Questions related to the application process should be addressed to Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–116, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Trussville, Channel 290A, under Alabama.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5481 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-318; RM-5825]

Radio Broadcasting Services; Tri-City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robert W. Larson d/b/a Gee Jay Broadcasting, Inc., allocates Channel 282C2 to Tri-City, Oregon, as the community's first local FM service. Channel 282C2 can be allocated to Tri-City in compliance with the Commission's minimum distance separation requirements without a site restriction. With this action, this proceeding is terminated.

DATES: Effective April 18, 1988. The window period for filing applications will open on April 19, 1988, and close on May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-318, adopted January 29, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oregon is amended by adding Tri-City, Channel 282C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5482 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-320; RM-5906]

Television Broadcasting Services; Albuquerque, NM

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document, at the request of Exponential Broadcasting Association, allocates Channel 50 to Albuquerque, New Mexico, as the community's ninth local television service. Channel 50 can be allocated to Albuquerque in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-320, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for Albuquerque, New Mexico, is amended by adding Channel 50.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5483 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket Nos. 70-27; Notice 29, and 83-07; Notice 4]

Federal Motor Vehicle Safety Standards; Burnish Procedures for Heavy Duty Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Before a vehicle is tested for compliance with most of the requirements of this agency's braking standards, the vehicle's brakes are broken-in by a series of brake applications. This break-in is called a burnish, and is intended to simulate the break-in that vehicle's brakes would get when they are initially used on the public roads. With respect to heavy vehicles (those with a gross vehicle weight rating greater than 10,000 pounds), the burnish procedure now requires that the brakes be heated to not more than a specified maximum temperature by means of a series of brake applications.

The agency initiated rulemaking regarding this temperature limit because the limit is more favorable to drum brake designs than to disc brake designs. This situation arises because the limit was based on drum brake systems whose normal safe operating temperatures are significantly lower than those of disc brake systems. As a result, disc brake systems may not be adequately broken-in under the current burnish procedure.

To address this problem, this rule establishes a new burnish procedure for vehicles with a gross vehicle weight rating greater than 10,000 pounds. Under this new procedure, the vehicle will make 500 brake applications to slow the vehicle from 40 to 20 miles per hour (mph), without regard to the resulting

temperature. This procedure will break-in brakes in a manner that is more realistic and representative of the break-in the vehicle brakes actually get when in service on the roads, without favoring any particular braking system design.

Since this new burnish procedure may affect the design and certification of new and existing braking systems, the agency believes it is appropriate to allow a transition period for implementing this new burnish procedure. Therefore, this rule allows manufacturers to base the certification of their heavy vehicle brakes on either the new or the old burnish procedures until September 1, 1993. In testing a vehicle for compliance, the agency will use the same procedures on which the manufacturer's certification of compliance was premised. All vehicles manufactured on or after September 1, 1993 will be burnished under the new burnish procedures set forth in this rule.

DATES: This rule is effective September 12, 1988.

Any petitions for reconsideration of this rule must be received by NHTSA not later than April 13, 1988.

ADDRESS: Any petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Crash Avoidance Division, NHTSA, 400 Seventh Street, SW., Washington DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION:

Background and Notice of Proposed Rulemaking

NHTSA has established two standards applicable to the braking systems on vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds. These two standards are Standard No. 105, *Hydraulic Brake Systems* (49 CFR 571.105) and Standard No. 121, *Air Brake Systems* (49 CFR 571.121). Standards No. 105 and 121 both specify road tests to measure the brake systems' compliance with the performance requirements. Both standards specify also that the brake systems on these heavy vehicles shall be "burnished" before undergoing road testing to determine if the brake systems satisfy the performance requirements of the applicable standard. The burnish is a series of brake applications that serve to "break-in" the brakes on a new vehicle.

Before the initiation of this rulemaking, the burnish procedure was as follows. The burnish consisted of a series of 500 brake applications at specified speeds. During the burnish procedure, the maximum temperature of the hottest brake on the vehicle was not permitted to exceed 550 °F. The first 175 brake applications (hereinafter referred to as "snubs") were made so as to slow the vehicle from 40 miles per hour (mph) to 20 mph. Subsequent snubs were conducted at initial speeds that increase in increments of 5 mph until the final series of snubs brake the vehicle from 60 mph to 20 mph. However, if the maximum allowable brake temperature were reached at some speed less than 60 mph, the speed was not increased for the following snubs. The snub speed could even be reduced if such a reduction were needed to maintain the brake temperature below the specified maximum level.

Standard No. 121 also specifies a dynamometer test. The burnish for brake systems to be tested on the dynamometer specifies a series of 400 brake applications from 40 mph, at a specified rate of deceleration. For these brake applications, Standard No. 121 specifies that the initial brake temperature shall be within a stated range. The initial brake temperature is defined in section S4 of Standard No. 121 as "the average temperature of the service brakes on the hottest axle of the vehicle 0.2 miles before any brake application."

The maximum brake temperatures during the road test burnish, which apply to both disc and drum brake systems, were based on SAE Recommended Practice J880, "Brake System Rating Test Code—Commercial Vehicles." This recommended practice was established in 1963, based solely on test data for drum brakes. One problem that became apparent with respect to the maximum burnish temperatures specified in the standards was that the specified maximum temperature may not have been appropriate for disc brake systems. Disc brake systems are generally designed to operate at appreciably higher temperatures than are drum brake systems. It has been difficult to avoid exceeding the specified 550 °F maximum temperature during the burnish of vehicles with disc brake systems, even at the lowest of the burnish speeds set forth in the standards, i.e., 40 mph.

In response to this situation, International Harvester (IH) filed a petition for rulemaking with NHTSA. In its petition, IH asked the agency to amend the burnish procedures to take account of the differing characteristics of disc and drum brake systems. International Harvester has subsequently changed its corporate name to Navistar. However, all of the material in the public docket for this rulemaking action identify the company as International Harvester. To avoid potential confusion, this preamble refers to the company as International Harvester.

Notice of Proposed Rulemaking

After granting this petition, the agency published a notice of proposed rulemaking (NPRM) at 48 FR 29560; June 27, 1983. The NPRM proposed to amend the sections of Standards No. 105 and 121 applicable to burnish before road testing as follows. If the temperature of the hottest brake exceeded 550 °F at a snub condition of 40 to 20 mph, the remaining snubs would be run from 40 to 20 mph without regard to the brake temperature. NHTSA anticipated that this proposed change would not create any compliance problems for existing drum brake systems, which do not typically exceed the specified temperature during burnish, while resolving the burnish problems that could occur for disc brake systems.

No change was proposed for the dynamometer burnish temperature in Standard No. 121 because the temperature problems which had arisen during the road test burnish had not occurred with respect to the dynamometer burnish. Accordingly, NHTSA saw no reason to propose changing that burnish procedure.

The NPRM also proposed some more minor revisions to the standards. One proposed change was intended to clarify the procedure for loading tractors and trailers during burnish testing. Another proposed change would have specified brake adjustments at equal intervals during the burnish. This change was proposed to ensure uniformity and repeatability of test results. The final proposed change involved automatic slack adjusters and automatic brake adjusters. Under the NPRM, both standards would have been amended to specify that brake systems equipped with such devices could not deactivate the devices during the testing for compliance with Standards No. 105 and 121.

The agency received seven comments on the NPRM. Motion Control Industries (Motion Control) suggested in its comments that NHTSA delete entirely the temperature restrictions during the burnish. In support of this position, Motion Control asserted that the existing burnish procedures do not sufficiently condition rear drum brakes on vehicles equipped with disc brakes on the front axle. This assertion was based on the fact that the temperature of

the front disc brakes will exceed 550 °F during the 40 to 20 mph snubs, and so the vehicle would not run any snubs at speeds in excess of 40 mph. The failure to condition the rear drum brakes at the higher snub speeds meant, according to Motion Control, that those drum brakes would not perform as well as they are designed to do during the compliance testing. Motion Control contended that if the friction materials in the brake systems are designed to stop vehicles from 60 mph while in service and are subjected to 60 mph stops during testing, it is desirable for the friction materials to experience whatever temperatures result from 60 mph stops during the burnish.

In a related vein, Ford Motor Company (Ford) stated that the amendment set forth in the NPRM would relieve the problems encountered by vehicles with disc brakes on all axles, but would not achieve its purpose for vehicles equipped with a combination of disc and drum brakes. According to Ford's comment, "the procedure which would burnish the brakes most effectively on a vehicle equipped with a combination of disc and drum brake systems would be one which maintained the drum brake temperatures within the window of 450–550 °F, while allowing the disc brake temperatures to find their own level, unrestricted." This suggestion was similar to Motion Control's, in that no temperature restrictions would apply to disc brake systems. If the Ford suggestion were adopted, vehicles with disc brake systems on all axles would not be subject to any temperature limitations during the burnish procedure. However, the Ford suggestion would have retained the temperature limitations for drum brake systems.

After publication of the NPRM, NHTSA had conducted some testing to determine what burnish procedures would expose heavy duty vehicle brakes to sufficiently high temperatures to simulate a break-in of the brakes under normal driving conditions without favoring any particular design. That testing indicated that heavy duty vehicle brakes should be burnished by 500 snubs slowing the vehicle from 40 to 20 mph, without regard to the brake temperatures generated during the burnish. Such a burnish procedure exposes all types of brake systems to the temperatures they are likely to experience in city driving, without penalizing or favoring any particular type of brake design. Such a procedure would also be consistent with the burnish procedures specified by the Society of Automotive Engineers (SAE) for heavy duty vehicle brake performance testing; see SAE Recommended Practice J786a. (The burnish procedure in SAE Recommended Practice J880a, allowing snubs from 60 to 20 mph, is for a brake *energy absorption* test, not a brake *performance* test).

Supplementary Notice of Proposed Rulemaking

The agency wanted to give the public an opportunity to comment on the approaches suggested by Ford and Motion Control and the agency research, before proceeding to establish a final rule. Accordingly, NHTSA published a supplementary notice of proposed rulemaking (SNPRM) at 50 FR 21313; May 23, 1985. The SNPRM proposed four alternative methods for amending the burnish procedures. These were the Ford approach, the Motion Control approach, the approach suggested by the agency research, and the approach originally proposed in the NPRM with some minor changes.

Further, the SNPRM asked for additional comments on the minor amendments proposed in the NPRM. First, the NPRM had erroneously proposed the following conditions for burnishing the brakes of a truck tractor. As proposed, the truck tractor would be loaded to its gross vehicle weight rating and a trailer attached to the tractor would be loaded to its gross axle weight rating. However, the NPRM would have required that the control trailer be *unbraked*. Such loading would overtax the tractor's brakes during the burnish, since those brakes would be stopping far more weight than they were designed to stop. To correct this error, the SNPRM proposed to require that the combination of the tractor and the unbraked trailer be loaded only to the gross vehicle weight rating of the tractor.

Second, the NPRM had proposed that brake adjustments be made at specified intervals during the burnish procedure. Past interpretations and preambles had repeatedly stated that brake adjustments were permitted during burnish. To establish uniformity for both manufacturer and agency testing as to when such adjustments would be made, the NPRM proposed that the brakes be manually adjusted at specified intervals. In the case of the road test burnishes, the adjustments would be made manually after 125, 250, and 375 snubs, in accordance with the manufacturer's recommendations. For the dynamometer test burnishes specified in Standard No. 121, the brakes would be adjusted manually after 100, 200, and 300 snubs.

General Motors (GM) objected to the proposed brake adjustment procedures in its comments on the NPRM. While acknowledging that manual adjustment might provide the most accurate adjustment, GM did not believe that manual adjustments would always be necessary. GM stated that, in most instances, use of the automatic brake adjustment feature in accordance with the manufacturer's recommendations would provide adequate adjustment.

NHTSA was persuaded by this comment. Accordingly, the SNPRM proposed that brakes shall be adjusted in accordance with the manufacturer's recommendations. If a vehicle manufacturer recommended manual adjustment for its brakes, the brakes would be so adjusted. Alternatively, if the manufacturer recommended that the brakes be inspected and adjusted only if necessary, that recommendation would be followed. If the inspection showed that no adjustment to the brakes were necessary, none would be performed.

Third, several commenters to the NPRM objected to the proposed requirement to prohibit deactivation of automatic brake adjusters during testing for heavy vehicle's brake performance. These commenters argued that there was no valid reason to treat these heavy duty vehicles any differently than vehicles with GVWR's of 10,000 pounds or less. Since the lighter vehicles are allowed to deactivate automatic brake adjusters during testing, heavier vehicles should be offered the same option, according to these commenters.

NHTSA agreed with the implicit point of these comments that the reasons for and against permitting deactivation of automatic brake adjusters apply equally to all vehicles equipped with such devices, regardless of vehicle weight, size, or type. Since this rulemaking addresses only the question or heavy duty vehicles and the agency did not think it appropriate to address the deactivation of automatic brake adjusters in a piecemeal fashion, the SNPRM announced that the issue would be addressed in a separate rulemaking. Hence, this rulemaking no longer addresses the issue of deactivation of automatic brake adjusters.

In response to the SNPRM, 16 comments were submitted by 13 different commenters. All these comments were considered in connection with this final rule, and the most significant are discussed below.

Final Rule

Burnish Procedures

The SNPRM asked for comments on four alternative burnish procedures. In the SNPRM, the agency explained that

its desired goal was to establish burnish procedures which represent driving conditions that would be encountered in normal use and which are fair for both types of brake systems (i.e., disc and drum brakes) while favoring neither. 50 FR 21315. Each of the four alternative procedures set forth in the SNPRM were evaluated to see how well they achieved this goal.

The approach suggested by Motion Control in its comments on the NPRM was to eliminate the maximum temperature requirements during burnish, and simply run the snubs as specified in Table IV of Standards No. 105 and 121. None of the commenters to the SNPRM supported this approach. Lucas Industries Inc. (Lucas) stated that this approach would cause drum brakes to exceed 550 °F in some circumstances during the burnish. Such temperatures would, according to Lucas, degrade the brakes' performance in subsequent tests. Chrysler agreed with Lucas, stating that an overly severe burnish can create excessive brake temperatures that substantially degrade or destroy the friction characteristics of the brake lining material. Accordingly, Chrysler urged that this approach not be adopted. The Bendix Division of Allied Automotive (Bendix) comment was substantially similar to Chrysler's on this alternative. Ford, IH, and General Motors commented that this alternative should not be adopted because it would not be representative of normal conditioning.

Motion Control itself stated that its suggested alternative would not be representative of normal brake conditioning and should not be adopted. However, Motion Control commented that the alternative would be acceptable if modified to require four 40–20 mph snubs followed by one 60–20 mph snub, repeated one hundred times for a total of 500 snubs. In support of this position, Motion Control tested a vehicle with front disc brakes and rear drum brakes according to this proposed modification. The testing showed that the front disc brakes would experience temperatures of 820 °F during such burnish, while the rear drum brakes would be heated to 560 °F at the end of this testing.

The agency agrees with the commenters that stated that the Motion Control approach as set forth in the SNPRM could potentially damage drum brakes. Accordingly, such an approach would not satisfy the goal of establishing burnish procedures that are fair for both disc and drum brakes, nor would it be representative of the conditions encountered in normal driving. Therefore, this approach was not adopted in this final rule.

The Ford approach received some support in the comments. As noted above, the Ford approach set forth in the SNPRM would retain the 550 °F temperature limitation for drum brakes during the burnish, but would eliminate temperature restrictions for disc brakes. Lucas supported this alternative, contending that it would burnish drum brakes on disc-drum combination vehicles under the same conditions as drum brakes would be burnished on vehicles using only drum brakes. Motion Control also stated that this alternative was the best for vehicles that used disc and drum brakes. Abex Corporation (Abex) stated that they supported the Ford approach, if the agency were going to amend the burnish procedures. Flxible Corporation (Flxible) stated that brake temperatures in excess of 500 °F cooks the lining resin in drum brakes and reduces their performance. Because of this, Flxible stated that any alternative that retained such a limit for drum brake burnish was acceptable, including the Ford approach.

On the other hand, Chrysler, IH, Bendix, GM, and the Motor Vehicle Manufacturers Association (MVMA) opposed the Ford approach. These commenters believed that no temperature limits during the burnish of vehicles using only disc brake systems would potentially damage the disc brakes. Additionally, these commenters did not believe that this burnish procedure would be representative of normal driving. Ford itself agreed that some temperature limits should be added for disc bakes during the burnish, and suggested that its approach be adopted with an upper limit of 800 °F for disc brakes. Both Bendix and MVMA commented that they would support the Ford approach, if a temperature limitation for disc brakes were added.

The approach suggested in the NPRM also received some support in the comments. Under this approach, vehicles would be burnished according to the schedule specified in Table IV, with a temperature limitation of 550 °F for the hottest brake. However, if this temperature limitation were exceeded during the 40 to 20 mph snubs, all the remaining snubs would be run from 40 to 20 mph without regard to temperature. Chrysler stated that there was no need to change the burnish procedures, but if they were to be changed, the approach suggested in the NPRM was the best of the four alternatives listed in the SNPRM. IH commented that the NPRM's approach was the only acceptable alternative offered in the SNPRM. This belief was based on that approach giving the higher temperatures necessary to properly condition truck brakes and preserving the data history from compliance testing for the past 12 years.

However, Lucas opposed this approach, because rear drum brakes on a disc/drum vehicle would not be sufficiently conditioned when the front disc brakes reached a temperature of 550 °F. Motion Control raised the same objection, and also stated that this approach would not be representative of normal conditioning, since it would not allow 60–20 mph snubs on disc/drum vehicles. Bendix opposed this approach, arguing that it would not adequately condition the front disc brakes on a vehicle using only disc brakes.

This final rule does not adopt either the Ford approach (limiting drum brake temperatures to 550 °F) or the NPRM approach (limiting the hottest brake temperature to 550 °F), because the agency has concluded that the brake temperatures that would be generated under either of these approaches would not be representative of the brake temperatures generated during normal driving conditions in the case of drum brake systems.

NHTSA has conducted a series of brake temperature tests for both hydraulically braked vehicles (DOT HS 806 860) and air braked vehicles (DOT HS 806 738) with gross vehicle weight ratings in excess of 10,000 pounds. These vehicles were driven in downtown traffic through Columbus, Ohio, and on the highways around that city. During this testing, the maximum temperatures measured for drum brakes were 410 °F for one hydraulically braked vehicle and 350 °F for the other hydraulically braked vehicle. The maximum temperature measured for drum brakes on air braked vehicles was 418 °F. It should be noted that these maxima were measured for the rear axle of the tractor, and that the maximum temperatures measured for the other axles were significantly lower. Additionally, all of these maxima were recorded during the urban driving part of the testing. The brake temperatures measured on the highways were generally about 100 °F less than the brake temperatures measured on the streets and roads of Columbus. These findings indicate that a burnish procedure that allows drum brakes to be heated to 550 °F cannot be said to be representative of normal driving conditions.

Moreover, the findings in the NHTSA testing confirmed past research about brake temperatures. The University of

Michigan Transportation Research Institute prepared a 1982 report entitled "Retarders for Heavy Vehicles: Phase II Field Evaluations." This report measured the average brake temperature for the drive axle of the tractor on five axle tractor-semitrailer combinations. This axle experienced the highest brake temperatures in the aforementioned NHTSA testing in Columbus, Ohio. These brake temperatures were measured after the vehicles had made a descent of the fairly long grades on US 40 and US 48 in the western part of Maryland. Under these demanding conditions, the average brake temperature on the tractor drive axles was less than 350 °F.

Another 1982 report was prepared by Systems Technology Incorporated, entitled "The Development and Evaluation of a Prototype Grade Severity Rating System" (Report No. FHWA/RD-81/185). This report also measured brake temperatures for five axle tractor-semitrailer combinations descending a grade. In this case, the grade was "the Grapevine" south of Brakersfield, California on US 5. This is a well-known grade that features an average grade of 5.35 percent for 5.1 miles and presents heavy vehicle brakes with extremely demanding conditions. The brake temperatures of 25 vehicles were measured at the bottom of this grade. Even including the one vehicle that was a "runaway" because its brakes overheated, the average brake temperature for these vehicles was about 400 °F.

Given these consistent research findings about the temperatures to which drum brakes are subjected during normal driving, the agency concludes that a burnish that subjects drum brakes to significantly higher temperatures cannot be said to be representative of normal driving conditions. By allowing the drum brakes to be heated to temperatures well in excess of those encountered during normal driving, the burnish procedures would ideally condition the drum brakes. However, the agency is more interested in the braking capability of vehicles when the brakes are in the condition they are most likely to be when used on the roads than in the maximum braking capability of a braking system if the brakes are ideally conditioned. Since neither the Ford approach nor the approach set forth in the NPRM would be representative of normal brake conditioning, neither approach has been adopted in this rule.

In the comments, only Ford submitted data to support its contention that drum brakes would experience temperatures near 550 °F under normal driving conditions. Ford tested a fully loaded vehicle through the traffic of downtown Detroit, Michigan. This vehicle was hydraulically braked with a disc system on the front axle and drum brakes on the rear. Ford stated that the maximum temperature measured for the drum brakes was 495 °F. Ford also submitted data measuring the brake temperatures for air braked vehicles driving through the mountainous part of Arizona. The maximum temperature measured for the drum brakes over this road was 507 °F. However, Ford did not provide measurements of the initial brake temperatures or average brake temperatures or any other information that would allow the agency to further analyze the Arizona test data.

After considering the data submitted by Ford, NHTSA concludes that those data support the agency's conclusion that burnish procedures that allow drum brakes to be heated to 550 °F do *not* represent conditions that will normally be encountered by vehicles in use. The Detroit testing showed what the prior research and the agency research had shown; i.e., drum brakes do not experience temperatures of 550 °F under normal driving. With respect to the temperatures measured in the Arizona mountains, NHTSA does not doubt that it is possible to find grades long enough and severe enough to heat drum brakes to 500 °F. However, the point of the burnish procedure is not to simulate every conceivable condition that the vehicle might experience while in use. Instead, the burnish procedure is intended to simulate a normal break-in for the vehicle's brakes. While such conditioning would improve the performance of the vehicle's brakes, the agency has no evidence that most, or even a significant number of, new vehicles are broken in by driving through rugged mountainous terrain. Accordingly, a burnish procedure that is intended to be representative of normal driving conditions should not be based on these abnormally high temperatures.

The approach suggested by the NHTSA research, i.e., making 500 snubs from 40–20 mph, is the final approach about which the SNPRM sought comments. After considering the intended function of the burnish procedures and all the comments received during this rulemaking action, NHTSA has selected this approach as the burnish procedure to be used for vehicles with a GVWR greater than 10,000 pounds. By making a series of braking applications from speeds encountered by every vehicle, this procedure will be most representative of normal driving conditions. Further, this procedure allows the brakes to reach whatever temperatures they are designed to reach when driven in typical stop-and-go driving. Thus, any braking system design will be conditioned fairly under this approach.

Among the commenters to the SNPRM, only Rockwell International (Rockwell) completely endorsed this approach. Rockwell cited three factors that favored this approach. These were:

1. It would give a constant rate of energy input to the brakes throughout the burnish, thus reducing variability associated with the original burnish procedure;

2. The schedule of energy input to the brakes would be in the center of most vehicle application duty cycles, as desired, thus producing a typical, real world vehicle brake burnish and a correspondingly realistic brake performance test; and

3. It would give all brakes the same burnish schedule, regardless of brake design or type, and should give an adequate burnish to each type of brake. Thus, all brakes would be on an equal footing before starting the performance testing.

Renault USA Inc. (Renault) stated that it was "not sure" if this approach would give a sufficient burnish to brakes, especially when considering all of the vehicles to which this burnish procedure would apply. However, Renault asserted that the available data not exhaustive, and recommended that the final rule give manfacturers the option of burnishing their brakes either under this approach or the approach set forth in the NPRM.

Bendix stated that its air braked disc system reach the 550 °F temperature limitations under the current procedures, so all 500 snubs are run from 40 to 20 mph for these vehicles. Flexible made a similar comment for its air braked drum brake systems on buses. These comments suggest that, at least for these manufacturers' braking systems, the new burnish procedures would not change the burnish from that which is specified under the current procedures.

NHTSA believes that another advantage of this approach is that it would not favor or disfavor any type of brake design. Whenever the burnish procedures include a maximum temperature limitation, brakes that are designed to operate nearest that temperature get a more extensive burnish than do brakes that are designed to operate at either a higher or lower temperature. For example, this rulemaking proceeding was initiated because the 550 °F temperature

limitation results in an unrealistic burnish for vehicles with disc brakes or both disc and drum brakes. That is because disc brakes are designed to operate safely at significantly higher temperature than are drum brakes. Thus, it is necessary to amend this temperature limitation to account for the higher temperatures generated by disc brakes.

Additionally, Eaton Corporation (Eaton) noted in its comments that the air brake industry is in the process of converting from asbestos based brake linings to non-asbestos brake linings on drum brake systems. These non-asbestos linings will generate different normal and safe maximum temperatures during brake applications than the asbestos-based linings currently offered. If a temperature limitation for the burnish procedure were specified in this rule, that limitation might need to be adjusted for various new brake linings and new brake system, to account for changing characteristics.

Such repetitive rulemaking should be avoided. It continually diverts agency time and resources from more productive use. More importantly, it denies the public the early introduction of new technology, not because of any safety-related issues, but because it takes significant periods of time to amend the Federal motor vehicle safety standards.

For example, it is possible that a new design for braking systems would not be adequately or representatively conditioned by burnish at some specified maximum temperature, as a result of which the braking system would not satisfy the performance requirements of Standard Nos. 105 or 121. However, such braking system would fully comply with those requirements if it were burnished in a manner that represented the break-in it would get during normal driving. Until the burnish procedures were amended, this braking system could not be installed on these heavy vehicles. Its introduction would be delayed solely because the temperature-restricted burnish procedures did not allow for the development of newer designs. NHTSA wants to avoid imposing such unnecessary impediments to the introduction of innovative systems.

A burnish procedure that requires 500 snubs from 40–20 mph avoids this pitfall. Under such a procedure, any new design will be burnished to whatever temperatures it is designed to experience during normal city driving. No additional rulemaking is required to ensure that the new design receives as effective and representative a burnish as do existing designs. Such a burnish procedure allows manufacturers to test and introduce innovative technologies without unnecessary and unintended delays.

However, the vast majority of commenters to the SNPRM objected to this approach. NHTSA stated in the SNPRM that preliminary examination of the results of 500 snubs from 40 to 20 mph indicated that such a burnish would expose all types of brake designs to the temperatures they would encounter in normal service without favoring any type of brake design. A number of commenters at least indirectly questioned this statement.

Lucas commented that this burnish procedure would not adequately burnish drum brakes on some vehicles with low gross axle weight ratings. However, Lucas did not submit any data to substantiate this claim. Motion Control stated that when it burnished a vehicle with disc/drum brakes under this approach, the rear drum brake temperature was only 400 °F. Motion Control asserted that this did not approach the necessary 500–550 °F for adequate burnish of these brakes. GM likewise stated that a vehicle with disc/drum brakes would not experience sufficiently high temperatures to adequately burnish either the front dics brakes or the rear drum brakes. GM also commented that this procedure would not adequately burnish certain all drum brake systems. Ford stated that its testing showed that burnish under this approach does not expose the brake linings of vehicles with disc/drum brakes to temperatures they would encounter in normal service.

NHTSA is not persuaded by these comments. Contrary to the implicit assertions of these comments, the purpose of the burnish procedure is not to guarantee that the vehicle's brakes will be exposed to a certain temperature. The agency concedes that this new burnish procedure may not expose current designs of drum brakes to temperatures of 500 °F. The fact that drum brakes will not be exposed to temperatures as high as they were under the old burnish procedure does not, however, show that this burnish procedure is not an adequate burnish. As noted above, the burnish procedure is only intended to simulate the break-in of the brakes under normal driving conditions. The burnish is not intended to ensure that brakes will be ideally conditioned as a result of being exposed to unusually high temperatures they will rarely encounter while in service on the roads. The agency's testing indicated that a burnish consisting of 500 snubs from 40 to 20 mph will in fact expose the vehicle brakes to the temperatures those brakes would experience during stop and go urban driving. This finding leads the agency to conclude that such a burnish procedure would fairly represent the condition of brakes on vehicles that are in use on the nation's roads.

Only Ford submitted data to substantiate its assertion that this burnish procedure would not expose the brakes on vehicles with front disc brake systems and rear drum brake systems to the temperatures such brakes would experience in normal driving. These data were obtained from the aforementioned driving around the Detroit area. However, the agency does not agree with Ford's comment that its Detroit test shows that brakes would not be exposed to normal driving temperatures, and therefore would not be properly conditioned, during this burnish procedure. For the single vehicle that was used in the Detroit test, the rear drum brakes experienced average temperature while driving around Detroit that were slightly less than the average temperatures measured during the burnish procedure. This fact supports the agency's conclusion that the burnish procedures set forth in this rule will expose the vehicle brakes to temperatures that are representative of the temperatures those brakes will experience in normal driving.

The front disc brakes on this vehicle did experience somewhat higher temperatures in the test than during the burnish procedure. However, disc brakes are often not as sensitive to burnish temperature as drum brakes. This is because the burnish temperature for disc brakes appears to have little effect on the torque output of the brakes after burnish, provided that the burnish temperature reaches at least 500 °F. In Appendices B, C, and F to NHTSA's research on hydraulically braked vehicles (DOT HS 806 860–864), disc brakes on three different vehicles reached temperatures of 500, 600, and 700 °F during burnish, but all showed comparable performance improvements after the burnish. Hence, even if the front disc brakes did not experience quite as high an average temperature during burnish as they did during urban driving, they did experience sufficiently high temperatures during burnish to simulate the "break-in" process.

Other commenters asserted a position which was somewhat contradictory to the above comments. Chrysler and Bendix were opposed to this burnish procedure, because it did not specify any maximum temperature to which the brakes could be exposed during burnish. These commenters stated that the

burnish procedure had to specify some reasonable maximum temperature requirement to avoid damaging the brakes. The agency would like to note that any brakes that are designed so that they will be damaged while making 40 to 20 mph snubs probably should not be installed on new vehicles regardless of any applicable regulatory provisions. Regardless of the brake type, this burnish procedure will ensure that all brakes are exposed to whatever temperatures they will be exposed during normal break-in when operated on the public roads.

Ford, IH, and MVMA all stated in their comments that NHTSA's testing of a limited sample of vehicles over a single route does not adequately duplicate the range of brake lining temperatures experienced by the large variety of vehicles with GVWR's over 10,000 pounds operating over all possible driving cycles. The agency disagrees with the suggestion that the sample of vehicles for the Columbus, Ohio tests was not representative. This sample included vehicles with widely varying GWR's and with all current combinations of brake systems. None of these commenters pointed to a particular vehicle weight class or braking system that was not included in this sample, and the agency believes that its sample was broad enough to adequately represent these vehicles.

NHTSA agrees that there are driving cycles such as frequent driving on grades that would generate higher brake temperatures than city driving. However, the agency was not seeking to establish a burnish procedure to simulate the most demanding conditions these vehicles would face in the real world or a burnish procedure that ideally conditions all brake designs. Instead, the agency wants to establish a burnish procedure that simulates normal "break-in" for vehicle brakes. Stop and go city driving generates significantly higher brake temperatures than highway driving, primarily because of more frequent brake applications. This type of driving was chosen as the one the burnish should simulate, becuse it is a demanding type of driving for all braking systems, and it is likely to be generally and frequently experienced by the braking systems on heavy vehicles. NHTSA concluded that a burnish procedure based on city driving would expose vehicle brakes to temperatures they will encounter in the real world and represent the break-in for those brakes in the real world. A more demanding driving cycle would not be representative of normal break-in for the vast majority of vehicles on the road. A less demanding driving cycle would not expose the vehicle brakes to the conditions those brakes will encounter when in service. Therefore, the urban driving cycle was selected as the one the burnish should represent.

Abex commented that this burnish procedure would pose an additional problem. According to this commenter, without brake temperature data, it will be difficult to ensure any consistency of burnish conditioning from one test to another. First, nothing about the new burnish procedure prevents manufacturers from recording brake temperature data if they wish to do so. Second, this procedure will yield a constant rate of energy input to the brakes throughout the test, because all of the braking applications will be from 40 to 20 mph. That will ensure greater consistency of burnish conditioning from one test to another than the old burnish procedure. This is because the old burnish procedure was based on brake temperature. As noted in the comments of GM, IH, MVMA, and others, the brake termperature fluctuates greatly during the burnish, rising as much as 300 °F during a brake application. This sharp temperature rises make it very difficult to ensure consistent conditioning from one burnish to another, if maximum temperature is the controlling factor.

Abex also commented that Standard No. 105 includes 60 mph stopping distance requirements. Since the brakes will be tested for performance from 60 mph, Abex urged that the brakes should also be burnished from this speed. Motion Control made a similar comment. These comments are not persuasive. In both the perburnish and postburnish tests, Standard No. 105 specifies that vehicles with a GVWR greater than 10,000 pounds must stop from 60 mph in 386 feet. NHTSA notes that the service brake stopping distance requirements of Standard No. 105, to which both these commenters referred, are not currently in effect for vehicles with a GVWR greater than 10,000 pounds. Even if the service brake stopping distance requirements were in effect for these vehicles, the braking performance is *not* required to improve after burnish. Since Standard No. 105 only requires that the brakes on these vehicles retain the effectiveness they had before burnish, there is no reason to subject the vehicles to repeated 60 mph snubs during the burnish. Given the current requirements of the standard, the result of permitting 60 mph snubs would appear to be to raise the brake temperatures to unrealistically high levels.

Ford, GM, MVMA, and IH all commented to the effect that this new burnish procedure would lower the brake temperatures experienced by drum brakes during the burnish. According to these commenters, the lower temperatures would affect the static and dynamic performance of the brakes on the vehicles, which, in turn, would require a redesign of the brake systems on certain vehicles.

Since this new burnish procedure more effectively simulates normal break-in of these vehicles' brakes while in service on the roads, the braking performance measured for those vehicles in the performance tests for Standards No. 105 and 121 should now more accurately reflect the vehicles' braking performance while in service. The agency has no reason to believe that any vehicles currently being produced will not comply with Standards No. 105 or 121 after being burnished in accordance with these new procedures. Moreover, none of these commenters submitted data that supports their assertions.

MVMA simply stated that certain vehicles' braking systems would have to be redesigned as a result of this new burnish procedure. Without some data and examples of specific vehicles, NHTSA was unable to analyze this comment further. GM stated that its analysis of Standard No. 121 compliance data for some of its air brake transit buses with drum brake systems would be insufficiently burnished under this new procedure. As a result, GM stated that the buses' postburnish stopping distance would be increased to a level unacceptable to GM. It should first be noted that the stopping distance requirements of Standard No. 121 applicable to air braked buses have been suspended. Hence, there are *no* stopping distance requirements currently in effect for air braked buses. Even if there were stopping distance requirements in effect for air braked buses, GM did not asset that its transit buses would not comply with those requirements of Standard No. 121. Presumably GM meant to say that the performance of its buses would exceed the minimum performance requirements by a margin that was too small to be acceptable to GM. If a more representative burnish procedure results in GM's products not meeting GM's own product standards for the amount by which the product's performance should exceed the requirements of Standard No. 121, any redesign of the buses' braking system would be a result of the GM product standards, not Standard No. 121. To the extent that this new burnish

procedure more accurately represents the break-in those buses' brakes actually receive while in service, it would also give GM a more accurate representation of how well those will perform while in service. If vehicle manufacturers are not getting an accurate representation of how their vehicle braking systems perform when used by the public from the current burnish procedure, that is yet another reason to adopt the new burnish procedure.

Ford submitted data purporting to show that one of its vehicles with hydraulic disc and drum brakes would no longer comply with the requirements of section § 7.9 of Standard No. 105, if it were burnished according to this new procedure. That section of Standard No. 105 requires the vehicle to stop from 60 mph in a specified distance even if the vehicle experiences a partial service brake failure. With respect to vehicles with a GVWR greater than 10,000 pounds, Table II of Standard No. 105 specifies that such vehicles must stop in 613 feet from 60 mph with a partial service brake failure. Ford submitted data showing that the longest stopping distance for its vehicle was 737.5 feet and the average stopping distance was 626.3 feet.

However, Ford did not note that § 7.9 requires only that the vehicle stop in 613 feet in one of four required stops with a partial service brake failure. Since Ford's longest stopping distance for this condition was 737.5 feet and the average stopping distance for the four stops was 626.3 feet, the average of the other three stopping distances was 589.23 feet. This average is well within the required 613 feet maximum distance. Therefore, NHTSA does not believe that Ford's data support its asserted compliance problems.

To the extent that Ford's data were intended to show a reduction in the after burnish performance capabilities of the truck to a level unacceptable to Ford, the agency responds in the same way as it did to GM's comment on this point. That is, the data show that the vehicle complies with Standard No. 105. If the amount by which the vehicle exceeds that minimum performance requirement is unacceptable to Ford, any redesign of the braking system is a result of Ford's product standards, not Standard No. 105. Further, if the new burnish procedure gives Ford a more accurate representation of how well its baking system performs when in service on the public roads, that fact supports the agency's decision to implement the new burnish procedures.

IH commented that the changed burnish procedure would cause it to have compliance problems with section § 5.6.1 of Standard No. 121. That section requires that the static retardation force produced by the parking brake alone shall be such that the quotient of the static retardation force-GVWR is not less than 0.14. According to IH, under the current burnish procedure, this requirement means that it can use parking brakes on just one axle of a truck tractor unless the GVWR of the tractor is greater than 56,000 pounds. For tractors with a GVWR over 56,000 pounds, International Harvester must use parking brakes on two axles. However, International Harvester stated that under the new burnish procedure, it would have to install parking brakes on two axles of tractors with a GVWR over 46,000 pounds. According to the commenter, this will add costs and system complexity to tractors with GVWR's between 46,000 and 56,000 pounds.

International Harvester did not provide enough information for the agency to fully evaluate this comment. Most notably, the comment does not indicate whether the entire Standard No. 121 test sequence was run prior to the parking brake force measurements. Agency compliance testing of the parking brakes is conducted only after conducting service brake testing. If the 60 mph loaded vehicle service brake tests, which help condition the brakes, were not run to the parking brake force measurements, the parking brake force measurements are probably lower than they would have been had the complete Standard No. 121 compliance testing been conducted.

Assuming that International Harvester did conduct the full Standard No. 121 testing for this vehicle, the agency has no reason to believe that parking brakes should not be required on two axles of tractors with a GVWR of more than 46,000 pounds. If the International Harvester data are correct, the parking brakes on one axle of such tractors cannot provide a retarding force of 0.14 even when properly adjusted, if the brake linings are conditioned as they most likely would be when in service. A retarding force of 0.14 is roughly the equivalent of a 14 percent grade. If NHTSA accepts the commenter's conclusion that the new burnish procedure results in a 17 percent reduction in parking brake force, and the new burnish procedure more accurately represents the normal condition of brake linings in use on the roads, the parking brakes of some tractors with a GVWR of 55,000 pounds now being used on the public roads are only capable of holding on an 11.7 percent grade. If true, this comment raises concerns as to how well the parking brakes perform for vehicles currently in service. It also lends support to the agency's decision to implement burnish procedures that are more representative of the conditioning brakes get while in service.

Eaton, IH, and MVMA commented that a change to the burnish procedures should be be adopted, because any change would make obsolete 12 years of accumulated test data. These comments do not directly challenge the agency's conclusion that the new burnish procedures will be far more representative of the break-in that most brakes get while in service on the highways. Neither does this reasoning challenge the agency's conclusion that this new burnish procedure will not favor any new or future brake system designs. Instead, these comments urge the agency to retain a temperature-restricted burnish procedure because that is what the agency has used in the past. NHTSA does not agree that it should continue to require a burnish procedure that favors older brake designs and is not representative of real-world conditioning of brakes, simply because it has done so in the past. Indeed, it appears to be a far more responsible course of action to acknowledge the problems of the old burnish procedure and try to correct those problems in a new burnish procedure at a time when there are *no* service brake stopping distance requirements in effect for hydraulically braked heavy trucks subject to Standard No. 105, and when there are *no* service or emergency brake stopping distance requirements in effect for air braked vehicles subject to Standard No. 121.

Notwithstanding the agency's disagreement with the direct point of these comments, NHTSA believes that the implicit point of these comments is convincing. The agency reads these comments to imply that NHTSA ought to allow the manufacturers sufficient time to develop a new data bank using the new burnish procedures before mandating that vehicles be certified as complying with braking standards that incorporate these new burnish procedures. NHTSA believes that this is a legitimate concern that must be addressed in this rulemaking. The same point was indirectly raised in the International Harvester and MVMA comments that these new burnish procedures will require retesting of some vehicles's braking capabilities to ensure continuing compliance with the applicable standard.

The agency agrees that it must fully consider the economic impacts of a new burnish procedure, and should minimize

those impacts when that is possible. This is particularly true in this rulemaking. This new burnish procedure is not intended to impose additional performance requirements for heavy vehicles in response to a demonstrated safety problem. Rather, the new burnish procedure is intended to ensure that vehicles are tested for compliance with the existing performance requirements when the brakes are conditioned to the same extent that brakes are typically conditioned when used by the public on our nation's roads, and to eliminate the current disfavoring of new brake designs from the burnish procedures. Given these purposes, the agency can and should minimize the economic impacts associated with the transition to a new burnish procedure.

Accordingly, this rule includes a transition period until September 1, 1993. During this period, heavy vehicles may be burnished under the old or new burnish procedures, at the manufacturer's option, before compliance testing. For this transition period, the old burnish procedures have been modified in accordance with the approach taken in the NPRM for this rulemaking. That is, vehicles will be subjected to 500 snubs for the burnish according to the schedule set forth in Table IV. However, if the temperature of the hottest brake exceeds 550 °F, the snubs shall be adjusted to a lower speed as necessary to maintain a hottest brake temperature of 550 °F. If the hottest brake temperature exceeds 550 °F at the lowest snub condition set forth in Table IV (40 to 20 mph), the remainder of the snubs shall be run from 40 to 20 mph without regard to brake temperature. This change has been made to accommodate disc brake systems, which are designed to operate safely at temperatures in excess of 550 °F. Since this problem was the issue this rulemaking was initiated to address, it is appropriate for the agency to address this problem now instead of waiting for the end of the transition period.

The agency believes that this transition period will effectively minimize any adverse economic impacts associated with the change to a new burnish procedure. It will allow manufacturers to specifically identify any vehicle whose braking system would not comply with the performance requirements of Standard Nos. 105 and 121 using the new burnish procedures. If only a few isolated vehicles are affected, the transition period will give the manufacturers sufficient time to make appropriate design changes to those vehicles. If, on the other hand, the new burnish procedures will necessitate major design changes to almost all vehicles now in production, or result in some other adverse economic consequences of which the agency is now unaware, the transition period would allow the agency time to make appropriate regulatory changes to avert such unintended economic impacts. Further, this transition period would enable the manufacturers to gather a data bank of testing under the new burnish procedures before those procedures are mandated, as urged in the Eaton, IH, and MVMA comments.

Tractor-Trailer Loading During Burnish

As noted above, the SNPRM proposed that the unbraked trailer used to test the braking performance of truck tractors would be loaded so that the combined weight of the tractor-trailer combination is equal to the GVWR of the tractor. Abex supported this proposal.

However, Ford, IH, Bendix, and MVMA opposed this proposal in their comments. They explained that their objection was based on the fact that the proposed change appears to *require* the use of a trailer during the testing of a truck tractor's brakes. These commenters stated that most tractor manufacturers use load racks, instead of trailers, during such testing. These load racks simulate the weight that a trailer would place on the tractor. The commenters stated that a new requirement that tractor manufacturers use actual trailers during testing was unnecessary. Since the commenters believed that the agency's intent was to prevent overloading of trailers *if* trailers were used for testing, they suggested that the language of the rule be amended to more accurately reflect such intent.

NHTSA believes that these comments reflect a misunderstanding of the compliance test procedures set forth in the Federal motor vehicle safety standards. The use of the word "shall" in the compliance test procedures means that the agency, *and no other party*, is required to use an unbraked flatbed semitrailer during its compliance testing for truck tractors. When specifying its compliance testing procedures in any of the safety standards, the agency is required by the National Traffic and Motor Vehicle Safety Act ("the Safety Act"; U.S.C. *1381 et seq.*) to specify those procedures in "objective terms." 15 U.S.C. 1392(a). One aspect of the requirement that a compliance test procedure be stated in objective terms is that the procedures must, to the maximum extent possible, eliminate potential sources of variability in test results.

In this particular case, the agency has no reason to believe that load racks do not provide an accurate simulation of the loading imposed on a truck tractor by a trailer during the burnish procedures, because it is the total load that affects the burnish and not the load distribution (provided that each axle is loaded sufficiently to protect against wheel lock and the vehicle is not equipped with a load proportioning valve). However, the agency also has no data to support its belief that load racks would yield burnish results identical to those that are obtained with an unloaded trailer. Hence, a provision that the agency could use load racks in its compliance testing *might* introduce variability into these standards. The only way to learn whether the use of load racks during the burnish procedures *would* introduce variability into the standards would be for the agency to spend a substantial amount of its research time and dollars investigating this subject. NHTSA believes that such an expenditure of its research efforts for a project that would have no obvious safety benefits would be unjustified. Therefore, the agency has chosen to draft this final rule so that it does not introduce any potential source of variability, by simply specifying that an unbraked flatbed semitrailer will be used by NHTSA in its compliance testing.

This decision need *not* increase testing costs for the manufacturers. It is worth noting that manufacturers are not even required to conduct testing before certifying that their vehicles comply with these standards, provided that they exercise "due care" in making such certifications, as provided in section 108(a)(1)(C) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(a)(1)(C)). If manufacturers choose to conduct testing in accordance with the compliance test procedures, they are free to simulate any or all parts of the test procedures. If the agency tests reveal a noncompliance, the agency's consideration of the appropriateness of a civil penalty will necessarily include the issue of whether such simulations are reasonable enough to satisfy the "due care" standard.

In this particular case, let us assume that a truck tractor manufacturer has chosen to conduct testing prior to certifying compliance and has employed a load rack during the burnish procedure. Let us also assume that the manufacturer's testing showed that the tractor complied with the standard and the manufacturer so certified. If NHTSA should subsequently conduct compliance testing for the tractor, the agency would burnish the tractor using a trailer. Finally, let us assume that the

testing showed that the individual tractor being tested did *not* comply with the braking standards.

In these circumstances, NHTSA would follow its longstanding and well known enforcement policy of notifying the manufacturer of the agency's test results and asking the manufacturer for further information. In response, the manufacturer would provide the results of its compliance testing to the agency, together with its reasons for concluding that a load rack is a reasonable simulation for a trailer during burnish. To support an argument that its own tests actually demonstrate compliance or to show that it exercised due care in its substitution of a load rack for a trailer during burnish, the manufacturer would also submit the bases for its conclusion that a load rack is a reasonable simulation of a trailer for the purposes of the burnish.

At this point, the agency would carefully analyze the manufacturer's response. If the agency concludes that the difference in test results can be explained to the agency's satisfaction, that the agency's results do not indicate an unreasonable risk to safety, and that the manufacturer's tests were reasonably conducted and were in general conformity with the standard, the agency would consider whether its own test results would support a determination of noncompliance. These enforcement practices have long been a matter of public record.

Of course, a manufacturer that can show that it exercised due care in making its certification would still be subject to the statutory obligation to recall and remedy its vehicles that do not conform to the requirements of Standard Nos. 105 or 121, assuming that the agency or the manufacturer makes a determination that the vehicles did not comply with the applicable standard. However, this same obligation would apply even if the manufacturer had conducted full compliance testing, and used a flatbed semitrailer to burnish its tractors.

Thus, the agency does not believe that the amendment requiring NHTSA to burnish tractors using flatbed semitrailers necessarily puts manufacturers at risk of a civil penalty solely because they chose to use load racks during tractor burnish, *unless* the manufacturer had no reason to believe that a load rack was an adequate simulation of a trailer. If this were the case, the manufacturers' comments that they should be allowed to continue using load racks during burnish would have no merit. However, NHTSA does not understand the commenters to be making such an assertion, and has no reason to question the representativeness of load racks during the burnish procedures. Therefore, this rule adopts the tractor loading requirements during burnish that were proposed in the SNPRM.

In this same vein, the agency would like to point out that this final rule does not adopt a proposed change to section S6 of Standard No. 121. That proposed change would have allowed final stage manufacturers to "demonstrate compliance" with Standard No. 121, if the final stage manufacturer adhered to the instructions provided with the vehicle by the incomplete vehicle manufacturer and any intermediate stage manufacturer of the vehicle. The proposed language erroneously conveys the impression that the statutory and regulatory requirements for notification and remedy of noncomplying vehicles would not be applicable if a final stage manufacturer could show that it had adhered to the instructions provided with the incomplete vehicle by the incomplete vehicle manufacturer and any intermediate stage manufacturers.

What the proposed language was intended to do was to make clear that a final stage manufacturer can demonstrate compliance with the statutory requirement that it exercise due care in making certifications of compliance with Standard No. 121, if the final stage manufacturer can show that it adhered to the instructions provided with the incomplete vehicle by the incomplete vehicle manufacturer and any intermediate stage manufacturers. However, such a provision is redundant. 49 CFR 567.5 and 49 CFR 568.6 already permit the final stage manufacturer that has adhered to the instructions provided with the incomplete vehicle to so state, and rely on its adherence to the instructions provided with the incomplete vehicle as the basis for its certification of the vehicle. Since these regulatory requirements make clear that any final stage manufacturers satisfy their "due care" responsibilities for certification when they adhere to the instructions furnished with the incomplete vehicle, it is unnecessary to add a similar requirement to Standard No. 121. Therefore, this proposed change is not incorporated in this final rule.

Brake Adjustments During Burnish

The SNPRM proposed that the brakes shall be adjusted in accordance with the manufacturer's recommendations at specified intervals during the burnish procedure. As explained in the SNPRM, if a manufacturer recommends that brakes be inspected first and adjusted only if necessary, that recommendation would be followed. If the inspection were to show that no adjustment was necessary, none would be performed.

This change was proposed because past interpretations and preambles have repeatedly stated that brake adjustments are permitted during burnish. Since these adjustments are permitted, it is necessary that the compliance test procedures specify how often and when the adjustments will be made. Otherwise, the standards would incorporate a potential source of variability, and would give rise to the problems described above in the *Tractor-Trailer Loading During Burnish* section.

Ford commented that it had no objections to the brake adjustment provisions proposed in the SNPRM. MVMA commented that it agreed with the proposed brake adjustment provisions.

However, Lucas disagreed with the proposal. It commented that brake adjustments should only be required during burnish if such adjustments are necessary to obtain the specified rate of deceleration during the burnish. The agency did not propose or intend to *require* brake adjustments unless the manufacturer recommends them at that time. If the vehicle manufacturer recommends that the brakes be inspected and adjusted only if certain conditions exist, the brakes will *not* be adjusted unless those conditions exist. Therefore, it Lucas desires that its brakes not be adjusted unless certain conditions exist, it should recommend that the brakes be inspected and adjusted only if those conditions exist. Such a recommendation would accomplish Lucas's goal without making any change to the proposed requirement. Hence, no change to the proposed language has been made in response to this comment.

Abex also objected to this proposed requirement in its comments. Abex stated that regulating adjustments during burnish was, in its opinion, "unwarranted." The comment went on to state that, "We are not aware of any problems that have been encountered with the current procedure which does not control either the number of adjustments that can be made or the specific points during burnish where they can be made." As explained above and in the SNPRM, the reason for

proposing this requirement was to establish uniformity and specificity for the agency's compliance test procedures. The need for uniformity and specificity are sufficiently compelling in the agency's judgment to warrant these provisions.

Abex continued by stating that many dynamometers have automatic controls, which means the manufacturers can conduct the burnish procedures "essentially unattended." The commenter stated that this feature allows manufacturers to frequently conduct the dynamometer burnish through the night or during weekends. According to Abex, if the agency requires manufacturers to make adjustments at specified times and intervals, the requirement will slow up the burnish, increase labor costs, or both.

As discussed above in the section on tractor-trailer loading during burnish, NHTSA is *not* requiring the manufacturers to follow these procedures for any testing they choose to conduct. These are the procedures the agency will follow during its compliance testing. As long as the manufacturer exercises due care in connection with the testing it conducts, it would satisfy its statutory obligations in connection with certifications. Abex apparently has reason to believe that brake adjustments are not necessary during dynamometer burnish, since it does not make such adjustments at present. Assuming that Abex's reasons are sufficient to establish that it exercised due care before certifying that its brakes complied with this requirement, *or* if Abex recommends no brake adjustments during burnish, Abex will not have to change its current testing practices under this new regulatory provision. If, on the other hand, Abex has an insufficient reasons for concluding that no brake adjustment is necessary during dynamometer testing, Abex should change its practice irrespective of any changes to the compliance test procedures. Therefore, the agency has concluded that the establishment of timing and frequency requirements for brake adjustment during burnish in the agency's compliance tests need not increase the costs or time required for any testing manufacturers choose to conduct. These requirements adopted as proposed.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The main impact of this rule will be to provide burnish procedures that are more representative of the actual "break-in" that vehicles' brakes typically receive while in use on the nation's roads, without favoring any particular braking system design. As noted above, there are no stopping distance requirements currently in effect for service brakes on hydraulically braked vehicles, and no stopping distance requirements in effect for either service brakes or emergency brakes on air braked vehicles. Hence, these new burnish procedures will not affect certifications of compliance by manufacturers of those brake systems.

It is possible that the new burnish procedures could affect certifications of compliance with applicable stopping distance requirements for parking brake systems. The extent to which the changed burnish procedures will affect those certifications is uncertain. No commenter submitted evidence that any complying parking brake systems will no longer comply as a result of the change in burnish procedures. To address this possibility, however, this rule provides for a five year transition period to the new burnish procedures. During this transition period, manufacturers may continue to certify vehicles using the old burnish procedures. At the same time, the manufacturers can gain experience with the effects of the new burnish procedure's effect on the performance of their braking systems. The transition period will allow time for the manufacturers to make appropriate changes to their braking systems in an orderly fashion, and at minimal cost. Because the agency anticipates that this rule will have only minimal economic impacts, it has not prepared a full regulatory evaluation.

B. Small Business Impacts

The agency has also considered the impacts of this rule as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Few of the truck tractor manufacturers affected by this burnish procedure are small entities. Many of the trailer manufacturers may qualify as small entities. However, this rule will not significantly increase the production or certification costs for those manufacturers that do qualify as small entities. There are currently no stoppi g distance requirements applicable to trailers. Thus, these new burnish procedures will not make it more difficult for small manufacturers of trailers to certify compliance with service brake stopping distance requirements. Standard 121 specifies parking brake requirements for air braked trailers, but trailer manufacturers, except possibly the largest trailer manufacturer who also makes brakes, usually depend on their brake manufacturer to provide the information necessary for certification to the parking brake requirements. Accordingly, any increased certification burden for parking brake systems that might be associated with this new burnish procedure would be borne by brake manufacturers (which generally do not qualify as small entities) and the large trailer manufacturers. Small organizations and governmental jurisdictions will be affected as purchasers of these vehicles. However, the cost impacts of this rule will be minimal, as described above. Accordingly, a regulatory flexibility analysis has not been performed.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly an environmental impact statement has not been prepared.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR 571.105, *Hydraulic Brake Systems*, and 49 CFR 571.121, *Air Brake Systems*, are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

The authority citation for Part 571 continues to read as follows:

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

§ 571.105 Standard No. 105; Hydraulic brake systems.

1. S7.4.2 of § 571.105 is amended by revising S7.4.2.1 and S7.4.2.2 to read as follows:

* * * * *

S7.4.2 *Vehicles with GVWR greater than 10,000 pounds.*

S7.4.2.1 *Burnish.* Vehicles manufactured before September 1, 1993

may be burnished according to the procedures set forth in S7.4.2.1(a) or S7.4.2.1(b) of this section, at the manufacturers option. Vehicles manufactured on or after September 1, 1993 shall be burnished according to the procedures set forth in S7.4.2.1(b) of this section.

(a) Burnish the brakes by making 500 snubs at 10 fsps in the sequence specified in Table IV and within the speed ranges indicated. Except where an adjustment is specified, after each brake application accelerate to the next speed specified and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If a vehicle cannot attain any speed specified in 1 mile, continue to accelerate until the specified speed is reached or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. If during any of the brake applications specified in Table IV the hottest brake reaches 550 °F ± 50 °F, make the remainder of the 500 brake applications from that snub condition, except that a higher or lower snub condition shall be followed (up to the 60 mph initial speed) as necessary to maintain a hottest brake temperature of 500 °F ± 50 °F. However, if at a snub condition of 40 to 20 mph, the temperature of the hottest brake exceeds 500 °F, make the remainder of the 500 brake applications from that snub condition, without regard to brake temperature. The brakes shall be adjusted three times during the burnish procedure, in accordance with the manufacturer's recommendations, after 125, 250, and 375 snubs.

TABLE IV

Series	Snubs	Snub conditions (highest speed indicated, miles per hour)
1	175	40-20
2	25	45-20
3	25	50-20
4	25	55-20
5	250	60-20

(b) Burnish the brakes by making 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 fsps. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mile, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. The brakes shall be adjusted three times during the burnish procedure, in accordance with the manufacturer's recommendations, after 125, 250, and 375 snubs.

S7.4.2.2 *Brake adjustment—post burnish.* After burnishing, adjust the brakes in accordance with the manufacturer's recommendations.

* * * * *

2. S7.6 of § 571.105 is revised to read as follows:

S7.6 *First reburnish.* Repeat S7.4, except make 35 burnish stops or snubs. In the case of vehicles burnished in accordance with S7.4.2.1(a) of this section, reburnish the vehicle by making 35 snubs from 60 to 20 mph, but if the hottest brake temperature reaches 500 °F ± 50 °F, make the remainder of the brake applications from the highest snub condition listed in Table IV that will maintain the hottest brake temperature at 500 °F ± 50 °F. If at a snub condition of 40 to 20 mph, the temperature of the hottest brake exceeds 550 °F, make the remainder of the 35 brake applications from that snub condition without regard to brake temparture.

§ 571.121 Standard No. 121; Air brake systems.

3. S6 of § 571.121 is revised to read as follows:

S6 *Conditions.* The requirements of S5 shall be met by a vehicle when it is tested according to the conditions set forth below, without replacing any brake system part or making any adjustments to the brake system except as specified. Except as otherwise specified, where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

4. S6.1 of § 571.121 is amended by revising S6.1.1 and S6.1.8.1 to read as follows:

S6.1 *Road test conditions.*

S6.1.1. Except as otherwise specified, the vehicle is loaded to its gross vehicle weight rating, distributed proportionally to its gross axle weight ratings. During the burnish procedure specified in S6.1.8, truck tractors shall be loaded to their GVWR, by coupling them to an unbraked flatbed semitrailer, which semitrailer shall be loaded so that the weight of the tractor-trailer combination equals the GVWR of the truck tractor. The load on the unbraked flatbed semitrailer shall be located so that the truck tractor's wheels do not lock during burnish.

* * * * *

S6.1.8 * * *

S6.1.8.1 Vehicles manufactured before September 1, 1993 may be burnished according to the procedures set forth in S6.1.8.1(a) or S6.1.8.1(b) of this section, at the manufacturers option. Vehicles manufactured on or after September 1, 1993 shall be burnished according to the procedures set forth in S6.1.8.1(b) of this section.

(a) With the transmission in the highest gear appropriate for the series given in Table IV, make 500 brake applications at a decleration rate of 10 fsps, or at the vehicles maximum deceleration rate if less than 10 fsps, in the sequence specified. Except where an adjustment is specified, after each brake application accelerate to the next speed specified and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If a vehicle cannot attain any speed specified in 1 mile, continue to accelerate until the specified speed is reached or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. If during any of the brake applications specified in Table IV the hottest brake reaches 550° F, make the remainder of the 500 brake applications from that snub condition, except that a higher or lower snub condition shall be used as necessary to maintain an after-stop temperature of 500° F ± 50° F. However, if at a snub condition of 40 to 20 mph, the temperature of the hottest brake exceeds 550° F, make the remainder of the 500 brake applications from that snub condition, without regard to brake temperature. The brakes shall be adjusted three times during the burnish procedure, after 125, 250, and 375 snubs and after completing this burnish, with each adjustment made in accordance with the manufacturer's recommendations. Any automatic pressure limiting valve is in use to limit pressure as designed, except that any automatic front axle pressure limiting valve is bypassed if the temperature of the hottest brake on a rear axle exceeds the temperature of the hottest brake on a front axle by more than 125° F. A bypassed valve is reconnected if the temperature of the hottest brake on a front axle exceeds the temperature of the hottest brake on a rear axle by 100° F or more.

TABLE IV

Series	Snubs	Snub conditions (highest speed indicated, miles per hour)
1	175	40-20
2	25	45-20
3	25	50-20
4	25	55-20
5	250	60-20

(b) With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 fsps, or at the vehicle's maximum deceleration rate if less than 10 fsps. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mile, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. Any automatic pressure limiting valve is in use to limit pressure as designed. The brakes shall be adjusted three times during the burnish procedure, in accordance with the manufacturer's recommendations, after 125, 250, and 375 snubs, and shall be adjusted after burnish in accordance with the manufacturer's recommendations.

* * * * *

5. S6.2.6 of § 571.121 is revised to read as follows:

S6.2 *Dynamometer test conditions.*

* * * * *

S6.2.6. Brakes are burnished before testing as follows: Place the brake assembly on an inertia dynamometer and adjust the brake as recommended by the brake manufacturer. Make 200 stops from 40 m.p.h. at a deceleration of 10 f.s.p.s., with an initial brake temperature on each stop of not less than 315° F and not more than 385° F. Make 200 additional stops from 40 m.p.h. at a deceleration of 10 f.s.p.s. with an initial brake temperature on each stop of not less than 450° F and not more than 550° F. The brakes shall be adjusted three times during the burnish procedure, after 100, 200, and 300 stops, and at the conclusion of the burnishing, in accordance with the manufacturer's recommendations.

* * * * *

Issued on March 9, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-5537 Filed 3-9-88; 4:34 pm]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 88-01, Notice 01]

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Technical amendment; final rule.

SUMMARY: This notice makes a technical amendment to Figure 2 of Standard No. 301 to correct the ground clearance dimension specified in the figure for the moving contoured barrier used in testing the fuel system integrity of school buses. Currently, Figure 2 specifies the ground clearance to the lower edge of the contoured impact surface as 12.25 inches (311 mm.). The text of the standard refers to the same dimension as 5.25 ± 0.5 inches. This amendment corrects Figure 2 to reflect the agency's intent that the ground clearance to the lower edge of the contoured impact surface is 5.25 inches (133 mm.).

FOR FURTHER INFORMATION CONTACT: Mr. Guy Hunter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone (202) 366-4915.

EFFECTIVE DATE: April 13, 1988.

SUPPLEMENTARY INFORMATION: The Blue Bird Body Company (Blue Bird), a school bus manufacturer, has brought to the agency's attention that corrective action should be taken to remedy a discrepancy in the moving contoured barrier specifications in Standard No. 301. Blue Bird informed the agency that there appeared to be a conflict in the standard about the correct ground clearance of the contoured impact surface used in the school bus impact test of the standard. Paragraph S7.5.1 of the standard refers to the dimension between the ground to the lower edge of the impact surface as 5.25 ± 0.5 inches, while Figure 2 of the standard shows the ground clearance to be 12.25.

This amendment corrects Figure 2 to reflect the agency's intent that the ground clearance to the lower edge of the contoured impact surface is 5.25 inches (133 mm.). NHTSA adopted the use of the contoured barrier in a final rule issued on October 15, 1975 (40 FR 48352). In the April 16, 1975 proposal to the rule (40 FR 17036), NHTSA stated that:

> The contoured barrier would incorporate the moving barrier specifications of SAE Recommended Practice J972a (March 1973). However, the impact surface of the barrier would be at a height 30 inches above the ground level, rather than 37 inches as specified in the SAE provision. Studies have shown that a 30-inch test height is more representative of actual collisions. This would be a typical engine height of vehicles that might impact a school bus.

Thus, in S7.5.1 of the standard, the agency adopted the ground clearance as 5.25 inches ± 0.5 inches to ensure that the top of the barrier would be 30 inches from the ground. In Figure 2, the agency apparently inadvertently incorporated the barrier dimensions directly from the SAE Recommended Practice J972a, without making the necessary 7 inch adjustment in the ground clearance dimension.

The agency has therefore concluded that a technical correction to Figure 2 is required to reflect NHTSA's true intent. The agency is amending the table marked "Dimensions" in the figure by changing the "12.25" inch and "311" mm. dimensions for letter "D" (referring to the distance between the ground to the lower edge of the impact surface) to "5.25" inches, and "133" mm., respectively.

Because the amendment is corrective in nature and imposes no additional burden upon any person, it is hereby found that notice and comment thereon are not necessary, and that for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest. The amendment is effective upon 30 days after publication in the **Federal Register**.

NHTSA has considered this amendment and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a regulatory evaluation is required. The amendment imposes no additional requirements nor alters the cost impacts of requirements already adopted.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will have no effect on the human environment since it clarifies an existing requirement.

The agency has also considered the impact of this amendment under the Regulatory Flexibility Act. I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those businesses affected by the amendment, generally are not small businesses within the meaning of the Regulatory Flexibility Act. Any manufacturer who is a small business within the meaning of the Act will not be significantly affected since this corrective amendment only clarifies a previously adopted requirement and imposes no additional requirements. Finally, small organizations and governmental jurisdictions will not be affected by this amendment since prices will not be impacted.

In consideration of the foregoing, Part 571 is amended to read as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

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

§ 571.301 [AMENDED]

2. In § 571.301, Figure 2 is revised as follows:

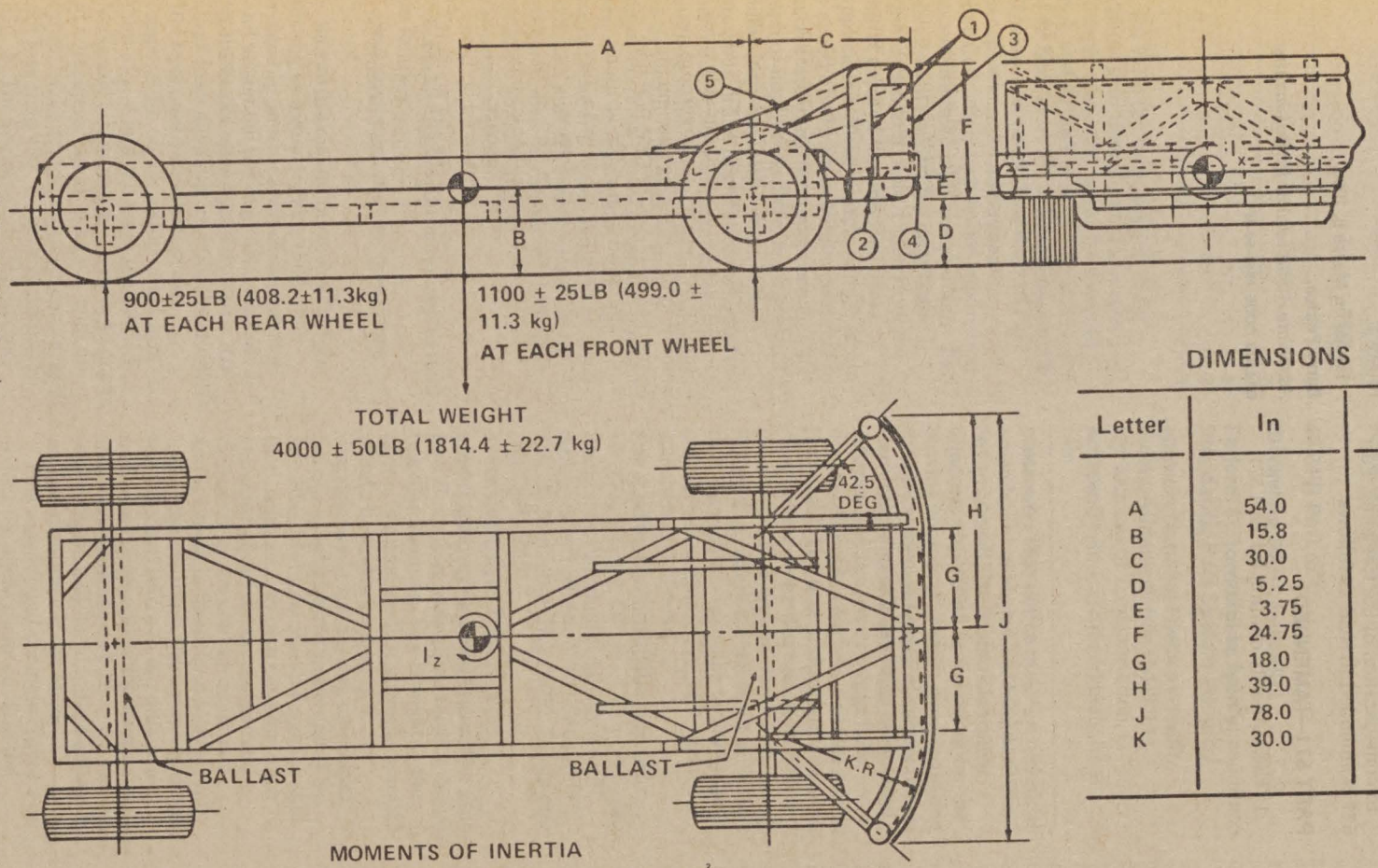
Issued on March 8, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

BILLING CODE 4910-59-M

[FR Doc. 88-5440 Filed 3-11-88; 8:45 am]
BILLING CODE 4910-59-C



DIMENSIONS

Letter	In	mm
A	54.0	1372
B	15.8	401
C	30.0	762
D	5.25	133
E	3.75	95
F	24.75	629
G	18.0	457
H	39.0	991
J	78.0	1981
K	30.0	762

MOMENTS OF INERTIA

$I_x = 271 \pm 13.6$ SLUG • FT^2 (367 ± 18.4 kg • m^2)

$I_z = 3475 \pm 174$ SLUG • FT^2 (4711 ± 236 kg • m^2)

NOTES:

1. UPPER FRAME 4.0 IN DIA X 0.25 IN WALL (102 mm DIA X 6 mm WALL) STEEL TUBING (THREE SIDES).
2. LOWER FRAME 6.0 IN DIA X 0.50 IN WALL (152 mm DIA X 13 mm WALL) STEEL TUBING.
3. FACE PLATE 0.75 IN (19 mm) THICK COLD ROLLED STEEL.
4. LEADING EDGE 1.0 X 4.0 IN (25 X 102 mm) STEEL BAND, SHARP EDGES BROKEN.
5. ALL INNER REINFORCEMENTS 4.0 X 2.0 X 0.19 IN (102 X 51 X 5 mm) STEEL TUBING.

FIG. 2–COMMON CARRIAGE WITH CONTOURED IMPACT SURFACE ATTACHED

Proposed Rules

Federal Register
Vol. 53, No. 49
Monday, March 14, 1988

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

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A25]

Milk in the Chicago Regional Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that provisions of the Chicago order authorizing the market administrator to require reserve supply plants to ship milk to bottling plants, when called upon to do so, be eliminated. Such provisions would be replaced with minimal supply plant shipping requirements of three percent for the months of August and January, and five percent for each month of September through December. If these requirements are met, the supply plants generally would be pool plants during February through July without making any shipments. Handlers would be permitted to form units of their own plants, or to form units with other handlers, in order to meet the shipping requirements by shipping milk from the plant or plants best situated to make the shipments. However, units would have to ship twice the percentage of milk required to be shipped from individual plants. Both the market administrator and the Director of the Dairy Division would have limited authority to temporarily change the shipping requirements, if necessary.

Other changes would reduce the touch-base requirements, eliminate percentage limits on diversions, eliminate storage requirements for supply plants, and add two location adjustment zones for adjusting Class I and uniform prices to reflect distance from Chicago.

The recommended actions are based on a record developed at a public hearing held in Madison, Wisconsin, on June 2–4, 1987, to consider industry proposals to amend the marketing order. The hearing was requested by a group of 11 dairy farmer cooperatives and by four proprietary handlers.

DATE: Comments are due on or before April 4, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

Much of the economic impact of certain recommendations incorporated in this decision will fall on smaller milk manufacturing operations or supply plants that would have to ship a small portion of their supplies to the market for fluid use. However, other provisions recommended would mitigate the effects by allowing handlers to combine their operations into units so that the required shipments could be made in an efficient manner from plants better situated. Also, the shipping requirements adopted are smaller than proposed by proponents of the amendments. Additionally, other actions would lessen, in minor ways, the burden of regulation for all pool handlers. As a result, the actions taken here are not expected to have a significant economic impact on a substantial number of small entities.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

Emergency Partial Decision: Issued October 8, 1987; published October 15, 1987 (52 FR 38235).

Order Amending Order: Issued October 20, 1987; published October 23, 1987 (52 FR 39611).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 21st day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Madison, Wisconsin, on June 2–4, pursuant to a notice of hearing issued May 15, 1987 (52 FR 18894).

The material issues on the record of hearing relate to:

1. Marketwide service payments.
2. Performance standards for pool plants.
3. Definition of supply plant and reserve supply plant.
4. Definition of producer milk.
5. Location adjustments.
6. Omission of a recommended decision and the opportunity to file written exceptions thereto with respect to material issue number 1.

This decision considers issues 2 through 5. A prior decision dealt with issues 1 and 6.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

2. *Performance standards for pool plants.* The order should be amended to require that supply plants must ship 3 percent of their receipts of milk in August and January, and 5 percent in each month of September through December, subject to temporary revision by the Director of the Dairy Division. Also, the market administrator should have limited authority to increase or decrease the shipping requirements for up to three months, and to require minimal shipments in other months. Handlers could form shipping "units" to make shipments at twice the level required for individual plants, once a monthly minimum shipping requirement from each plant has been satisfied. However, each plant in a unit would have to ship at least 47,000 pounds of milk, or 3 percent of its receipts of milk from producers, whichever is less, to a distributing plant(s) in each of five months during the six-month period of August through January.

a. *Minimum shipping requirements for supply plants.* The order currently defines two types of milk-supplying plants. One is a supply plant, from which must be shipped each month to distributing plants a percentage of milk receipts at least equal to the marketwide Class I utilization percentage for the same month the previous year. In December 1986 only five out of 107 supply-type plants fit into this category. The other 102 plants were reserve supply plants. Such plants are required to ship only one 47,000-pound load of milk each year, unless included in a call for shipments issued by the market administrator.

The current performance provisions for supply plants and reserve supply plants were adopted in 1984 in order to provide a mechanism to assure adequate shipments for the market's fluid (Class I) needs, while at the same time not requiring unneeded (and therefore inefficient and costly) shipments. Under this system about 40 percent of the market's supply-type plants have been associated with the market without shipping any more than a fraction of their milk supplies during the last two years. At the same time, some handlers complain that they are unable to get all the milk they want for fluid milk uses, while cooperatives maintain that the present system for pooling supply plants results in inequities.

Four proprietary handlers; namely, Dean Foods Company, Cedarburg Dairy, Inc., Certified grocers Midwest, Inc., and Hawthorn-Mellody, Inc. (Dean et al.), proposed monthly shipping percentages for all supply plants during the months of August through January. The required minimum shipment during August and January would be five percent of Grade A milk received at the plants from producers, and during September through December it would be 10 percent. Qualifying shipments would not include those made to distributing plants fully regulated under other Federal orders.

In addition, the proposal would provide the Director of the Dairy Division the authority to increase or decrease the shipping percentages by up to the full shipping percentage applicable that month. Also, the proposal would eliminate the reserve supply plant and call provisions.

Central Milk Producers Cooperative (CMPC), a federation of 11 dairy-farmer cooperatives, also offered a proposal to establish shipping requirements for all supply plants during the August-January period. CMPC's proposal, however, is basically a modification of Dean et al.'s proposal for supply plant shipping requirements. As such, CMPC proposed that two or more cooperatives may form a unit of their plants for the purpose of meeting the shipping percentages of the order and that these plants must be located within the State of Wisconsin or within the portion of the State of Illinois which lies in the marketing area. CMPC further proposed that the shipping percentages for units of cooperatives be double that for single plants in all months. However, the Director of Dairy Division should only be given the authority to increase or decrease shipping percentages up to the maximum percentage for a single plant during a certain month. For example, during the month of August, the director would be able to increase the shipping percentage for a single plant or a unit a maximum of 5 percentage points, making the effective shipping obligation 10 percent for single plants and 15 percent for units; the maximum decrease allowable would yield effective shipping percentages for single plants and units of zero percent and 5 percent, respectively.

Under CMPC's proposal, the director's authority would be effective during the months of August through January. For the remaining months of February through July, the call provision, already in the order, would apply. However, CMPC's proposal would eliminate the reserve supply plant provision, leaving each supply plant subject to a call. Any plant that fails to meet a call would lose its eligibility to pool for one year.

CMPC would include as qualifying shipments those made to other order plants for Class I use. If a plant does not earn the "free-ride" for the months of February through July or if a plant is new on the market, then CMPC proposed that it should ship a minimum of 5 percent during those months.

At the hearing, Kraft, Inc. (Kraft); the Trade Association of Proprietary Plants (TAPP); Wisconsin Cheesemakers Association (WCMA); and two farmer organizations, namely, National Farmers Organization (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC) opposed proposals to restore minimum shipping requirements. However, should the shipping requirements be adopted, then Kraft, NFO, and FUMMC would support the unit pooling concept.

Dean et al. collectively operate six distributing plants, three supply plants, and three reserve supply plants regulated under the Chicago Regional order. In support of the proposal for reinsertion of specific supply plant shipping percentages for certain months of the year, the spokesman for Dean et al. claimed that presently only more money moves milk for fluid uses when supplies become tight. The Chicago order, he said, has not been effective in moving milk to bottlers since the "call" and reserve supply plant provisions, which virtually eliminated shipping requirements, became effective. His belief is that without the CMPC over-order pricing program, the bottlers could not have received enough milk without going out into the open market for it, causing disruptive action.

Proponent introduced exhibits into the record to show the increase in over-order charges administered by CMPC starting in the fall of 1984. He attributed the 79 cents per hundredweight increase between August and December 1984 to a combination of short supplies and high demand for manufacturing milk. He further pointed out that similar circumstances in the fall of 1986 contributed to over-order charges ranging from $1.20 to $2.50 per hundredweight. Although they did not relish the idea of high over-order premiums, Dean et al. were glad to be assured of a steady supply of milk. However, the spokesman added that there were times when even the high over-order charges could not guarantee a full supply of milk. As a result, he said, plant schedules were disrupted and in extreme cases bottling lines were temporarily shut down. He claimed that

milk could not be pried loose from cheese plants; therefore, CMPC had to go to other markets such as Upper Midwest, Southern Michigan, and Eastern Ohio-Western Pennsylvania, for milk supplies. His belief is that such circumstances should not arise in a market that has an average Class I utilization of 20 percent.

It is Dean, et al.'s belief that the manufacturers should share the milk with the fluid handlers who under the order share the Class I differential with them. Because manufacturers will not voluntarily ship milk even when high over-order charges are paid, he said, then the order, for equity's sake, should stipulate that for any supply plant to share in the market's pooled funds, such plant must perform. He contends that although in 1984 it may have been thought that efficiency would be served if shipping standards were eliminated, it is apparent now (1987) that equity among handlers has suffered and the market cannot function in an orderly fashion. The spokesman added that the shipping requirements of 5 percent in August and January and 10 percent in September through December, which amounts to 17 percent of the monthly Class I needs, is a step in the right direction toward equity.

Proponent claimed that the "call" provision cannot be effectively used in the Chicago Regional market because most distributing plants use significant amounts of milk in Class II and Class III uses and thus do not qualify to petition the market administrator to implement a call for shipments from reserve supply plants to distributing plants for Class I use. He added that other markets have shipping requirements which simply state that supply plants must ship a specified percentage of their supplies to distributing plants. Such provisions do not specify how the distributing plants must use the milk but simply require supply plants to perform in order to participate in the pool.

Although proponent did not espouse the idea of allowing "units" to meet the requirements of the order, Dean et al. implied it would not object to units if they were legitimate ones. He further explained that each plant in a unit would have to be operated by the owner. He firmly stated that he did not want a return to the days of "sham" leasing whereby a plant became part of a unit by virtue of a lessee paying one dollar to the lessor who in turn would pay the lessee a qualifying fee in order for the plant to be part of the lessee's unit. Under such a scheme, the lessor's plant would not have to ship any milk, but would have the benefit of the uniform price to help pay producers a competitive price for their milk.

A spokesman for Hawthorn-Mellody, Inc., testified in support of the positions taken by the Dean et al. witness at the hearing.

CMPC is composed of the following 11 dairy cooperatives: Alto-Golden Guernsey Cooperative, Associated Milk Producers Incorporated-Morning Glory Farms Region, Independent Milk Producers Cooperative, Lake-to-Lake Division of Land O'Lakes Dairy Cooperative, Manitowoc Milk Producers Cooperative, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers, Outagamie Milk Producers Cooperative, Southern Milk Sales, Wisconsin Dairies Cooperative, and Woodstock Progressive Milk Producers Association. CMPC members account, in the aggregate, for approximately 80 percent of the milk delivered monthly to Order 30 pool plants. CMPC member plants (29 reserve supply plants and two supply plants) receive approximately 46 percent of Order 30 producerr milk and ship approximately 38 percent of such receipts to Order 30 distributing plants.

CMPC's spokesman claimed that shipping standards are needed because the CMPC membership alone cannot supply all the needs of the fluid plants and still operate their own plants in a stable and economic manner. Although CMPC originally stated that they would make sure that the fluid needs of the market were satisfied when the call and reserve supply plant provisions were first made part of the order, CMPC now, after a few years' experience, states that they cannot guarantee a full supply by themselves. The spokesman pointed out that the CMPC program of over-order charges, in general, assures that fluid orders are filled with CMPC and other handler milk. However, when milk supplies are tight, such as was the case in the fall of 1986 and early 1987, no matter what the over-order charges are, the requested milk cannot be obtained from pool plants outside of CMPC. Furthermore, he stated that when such circumstances occurred in the past, CMPC was forced to look outside the order to get the necessary milk supplies. The spokesman concluded that if a handler is willing to draw from the pool the proceeds generated by Class I, then such handler should also be willing to assist in supplying the needs of the Class I handlers.

CMPC proposed adoption of unit pooling because the market as well as CMPC would not benefit if each plant were forced to ship. In fact, CMPC's spokesman stated that they would not be interested in shipping standards if unit pooling for cooperatives is not permitted.

CMPC's spokesman claimed that the formation of units would prevent uneconomic movements of milk from distant supply plants and would promote the supply of close-in milk. However CMPC would only permit plants of cooperatives to form such units. CMPC's spokesman did point out that one handler with two or more plants should be permitted to form a unit of such plants for shipping purposes.

CMPC supported giving the director discretionary authority to increase or decrease the shipping standards, stating that it lends flexibility to the shipping requirements which in turn leads to a stability of supply for Class I handlers. The spokesman cited how useful such a provision was in the past under the Chicago Regional order, being utilized 39 months (37 decreases and two increases) from 1968 to September 1984. And, for similar reasons, CMPC wishes to keep the call provision in place for the months when the shipping requirements and director's authority would not apply. Furthermore, the spokesman pointed out that all supply plants or units of such would be subject to a call since the reserve supply plant provisions would be eliminated.

Kraft, a proprietary handler, operates five reserve supply plants regulated under Order 30. Kraft's witness revealed that during the fall-winter period of 1986, Kraft pooled approximately 45 million pounds of milk per month and shipped between 8 and 10 percent of this to Order 30 distributing plants.

Kraft's witness put forth several arguments against monthly minimum shipping requirements for supply plants. One was that marketing conditions have not changed to a degree necessary to warrant a change in the pool plant requirements since 1984, when a prior hearing was held to consider shipping requirements. To bolster his argument, he referred to an exhibit which could be used to compare statistics for the first four months of 1985 with corresponding months of 1987 to show that Class I producer milk increased to a lesser extent than the total amount of milk in the pool increased (i.e., increases of 2.3 percent and 3.7 percent, respectively).

Kraft's witness also claimed that since a call has not been invoked since its inception, one can assume that the Class I needs of the market have been satisfied. Furthermore, he said the real issue does not concern the fluid needs of the market, but rather it concerns the Class II needs of the distributing plants.

Kraft's witness also pointed out that the disruptive situation which proponents fear would come about if fluid handlers should have to go out into the marketplace and bid up the price of milk, is anything but disruptive to the producers themselves who would be the beneficiaries of the increased competion. Rather, it is Kraft's belief that mandatory shipping requirements could have a negative impact on producers' returns because the increase in the amount of milk searching for a fluid recipient would most likely weaken the over-order pricing system.

However, Kraft's witness stated that should the Secretary adopt shipping standards, then these must include unit pooling provisions which would be extended to both proprietaries and cooperatives. Kraft suggested that such provision should be modeled after that of the Southern Michigan order. The witness said that the Southern Michigan unit provision allows for two or more proprietary handlers to join into a marketing agreement, which is certified by the market administrator, for the purpose of meeting pool plant shipping requirements. Kraft believes that because these agreements have the market administrator's approval there should be no concern about so-called "sham" lease arrangements.

Kraft's witness further stipulated that a unit's shipping requirement should be the same as an individual plant's shipping requirement. He also suggested that plants in a unit should be located within the marketing area or in the State of Wisconsin.

In addition, the witness suggested that qualifying shipments include those made to other order distributing plants. Kraft believes that such inclusion maintains the efficiency of the order, as demonstrated by an incident whereby Associated Milk Producers Incorporated (AMPI), asked Kraft to ship milk to distributing plants regulated under the Central Illinois order because of Kraft's closer location to those plants, in order to free-up AMPI milk for a Chicago customer.

A spokesman for WCMA voiced the association's opposition to mandatory monthly shipping requirements saying that the present order's call and reserve supply plant provisions are sufficient for assuring that the fluid needs of the market are satisfied. He pointed out that since the call provision was made part of the Chicago order, only on two occasions did the market administrator have reason to investigate whether conditions warranted its use. He added that, in both cases, the initial investigation was all that was needed to cause some plants to make milk available to distributing plants.

He further stated that proponents are only interested in fulfilling their Class I needs at favorable prices. However, he said, there are several reasons why manufacturers should not have to ship for Class II uses, one being that it is not the Federal order's responsibility to make milk available for Class II uses. This opinion, he said, is backed by a 1985 decision in which the Secretary turned down a similar request for shipping requirements. That decision stated that the Department would not force shipments for Class II uses. Furthermore, the spokesman said that Class II adds virtually nothing to the blend price.

The spokesman noted that the levels of proposed shipping percentage are not sufficient to bring about enough milk to cover the market's Class I needs. He expressed WCMA's views that if those who presently ship greater amounts of milk than that which would be required of them, adjust such shipments down to the required levels, then the market's Class I needs would be short. Nonetheless, WCMA's major concern involves unnecessary and uneconomic shipments that could ensue because of the shipping requirements.

TAPP held a view similar to that of WCMA, stating that the present order's call and reserve supply plant provisions assure the availability of adequate supplies of milk for fluid uses. TAPP's representative further stated that the real problem is that fluid handlers may not have enough milk available, at a favorable price, to fill their Class II needs. TAPP's witness claimed that unfavorable prices, or high over-order charges, are the result of heavy out-of-state shipments to the Southeast due to the "whole-herd-buyout" program. However, it is TAPP's belief that shortly after the supply-reduction program ends, then the excessive out-of-state shipments will also end, and the Chicago market will once again have abundant supplies of milk.

TAPP's witness presented the group's belief that it is not the responsibility of the Federal order to assure a full supply of milk for Class II uses. In addition, he stated TAPP's view that shipping requirements would depress handling charges which, he claimed, would be better set by the cooperatives outside of the Federal order program, following the dictates of supply and demand, and other competitive factors. It is adequate over-order charges, he said, that insure sufficient milk supplies and solve equity problems that exist between supply plants that ship to distributing plants and those that do not ship.

Both NFO and FUMMC opposed the reinstitution of shipping requirements in Order 30 because, their spokesmen claimed, to do so would have a negative impact on producer returns. FUMMC's representative added that comparative marketing facts for March-April 1983 and 1987 show that in 1987 there was more producer milk available, but less of it used in Class I. Thus, the FUMMC representative stated that if the market changes reveal anything, they show that the market needs the call and reserve supply plant provisions more today than it did back in 1983. However, both agree that should the Department put in shipping requirements, then, for reasons of efficient milk movement, handlers should be able to form units to meet such requirements.

The issue of shipping standards for supply plants involves two key questions: (1) Are fluid milk plants receiving adequate supplies of milk for Class I use? and (2) Would shipping requirements improve equity among market participants?

The question of adequate supplies of milk for Class I use has different answers, depending on who answers the question. The proponents of shipping standards (Dean, et al.) did not claim that in the last three years they were unable at any time to supply the packaged fluid milk products that their customers wanted. On the other hand, representatives for two handlers, Hawthorn-Mellody and Dean Foods both testified that they experienced some problems with specific plant operations because they were unable to get all the milk they wanted when they wanted it. Accordingly, bottling schedules sometimes had to be changed, and, in some cases, specific plant operations or even the entire plant was shut down for a few hours. However, both handler spokesman knew of no cases in the fall of 1986 when consumers were unable to obtain Class I or Class II products when and where they wanted them. These handlers maintain, nevertheless, that supplies were not adequate for their needs and that the order is not serving fully the purpose of assuring adequate Class I milk for bottling plants.

Another point of testimony was that in rather isolated instances in the fall of 1986 milk was obtained from sources outside the usual Chicago milkshed. Two examples noted were milk obtained from a plant in Pennsylvania and from plants in the Wisconsin portion of the Upper Midwest order. Milk also was obtained from other non-

Order 30 sources. The total non-Order 30 milk obtained by CMPC for its customers during August 1986 through January 1987 was about 4.3 million pounds. However, it must be noted that, according to one CMPC witness, this represented a very unusual situation and involved the largest amount of milk so obtained since 1968.

Opponents of the proposals to increase shipping requirements for supply plants maintained that the order does not need to be changed, pointing to the fact that the market administrator had not issued any calls for milk shipments since the call provisions were adopted in 1984.

The evidence leads to the conclusion that in the August 1986 through January 1987 period, the market's Class I milk needs were met, but just barely; and, that if more milk is needed from supply plants, it would represent only a small increase.

The question of equity is more difficult to quantify. Nevertheless, the fact is that since 1984 many reserve supply plants have maintained pool status and thus the benefit of the blend price, but have shipped very little milk to distributing plants. This is not surprising because the order has not required any more than this. Moreover, the location adjustment provisions have not facilitated movements of milk from more distant supply plants.

The decision to adopt the call provisions pointed out that it is difficult to achieve a balance between efficiency and equity. Based on the record of that proceeding, widespread support was indicated for the efficiencies of allowing milk supplies to be held in reserve, and thus pooled with shipments to be required only if the market administrator found it necessary to issue a call. Now, CMPC has concluded that such provisions lead to inequities in the marketplace. We find that the record supports this conclusion.

One of the exhibits introduced at the hearing shows that in September 1986 through January 1987 there were 102 plants that qualified as reserve supply plants. Fifty-six of those plants, which pooled milk equal to 41 percent of all milk pooled by reserve supply plants, shipped to distributing plants an average of only 1.1 percent of their producer milk receipts during the same months in which bulk milk was being imported from other order plants. At the same time, CMPC member cooperatives that operated supply plants shipped 38 percent of their milk supplies to distributing plants, and even then could not supply all the milk requested by their customers.

It is recognized that CMPC's definition of "distributing plants" includes some cottage cheese operations. However, it was estimated that about 85 percent of the CMPC shipments were Class I milk. Thus it is clear that CMPC members have shipped to bottling plants about one-third of their supply plant milk while more than 50 percent of reserve supply plants shipped an average of slightly more than one percent. In fact, 40 of those plants averaged shipments of only 0.2 percent of their receipts.

The proponent cooperatives now take the view, based on experience, that the reserve supply plant and call provisions have resulted in an inequitable situation for CMPC members. This occurs because the cooperatives cannot provide the level of supplies needed by the fluid market and at the same time operate their own facilities in a stable, economic manner. On the other hand, some manufacturing plant operators have been able to keep virtually all of their milk, as demonstrated by the low level of shipments for the group of 40 plants. Clearly, there is a lack of equity in performance between CMPC members and many other supply plant operators. Accordingly, equity among the market's supplying handlers will be improved if increased shipments are required. The next question, then, is how much should shipping requirements be increased?

Both proponents of shipping requirements proposed 5 percent in August and January, and 10 percent in September-December. Based on an exhibit prepared by the market administrator, adoption of this proposal would have brought forth additional shipments of milk averaging about 35 million pounds per month during the August-January periods beginning in August 1985 and ending in January 1987. This estimate assumes that other handlers would have maintained their same level of shipments. There is no way to evaluate the correctness of such an assumption based on information contained in the record. On the other hand, since the evidence indicates adequate supplies for Class I use during those periods, there is no justification for requiring supply plants to ship an additional 35 million pounds per month. Instead, the order should specify shipping requirements at 3 percent of receipts for August and January, and 5 percent for September through December.

It is not possible, given the data contained in the record, to estimate how much additional milk will be shipped as a result of adopting the lower requirements. All that can be said is that the lower requirements would be expected to bring forth less milk than the proposed requirements. This will improve somewhat the equity among supply plant operators, yet minimize any shipments above the level needed to assure adequate supplies for Class I use. Moreover, if the supply plant operators in CMPC were to cut back on their shipments to bottling plants, it is possible that there would not be adequate supplies for Class I use, absent a mechanism to require additional shipments.

Both Dean et al. and CMPC proposed eliminating the call provision in the fall months, and Dean et al. proposed eliminating the call provision entirely. Both proponents argued that the call provision would not function as they had expected it would when adopted. In its place, both proponents advocating providing the Director of the Dairy Division the authority to increase or decrease shipments in the fall months as a corollary provision to requiring all supply plants to ship more milk. The Director could increase or decrease the shipping requirments as necessary to either obtain additional supplies for Class I use or to prevent unneeded and therefore uneconomic shipments. A similar provision was in the order prior to adoption of the reserve supply plant and call provisions.

The proposal should be adopted in order to provide continued flexibility in attempting to balance shipments with Class I needs. However, the authority to temporarily increase or decrease shipping requirements should reside with both the market administrator and the Director. Thus, the market administrator could revise the shipping percentages by up to two percentage points for a maximum of three months. This provision will allow fine-tuning the shipping requirements on a timely basis. If a greater adjustment appeared to be necessary, the Director could, either on his own initiative or at the request of industry, temporarily increase or decrease the shipping requirements by up to 5 percentage points from those specified in the order for a long as the entire August-January performance period. In another discussion, it is concluded that handlers should be allowed to form units so that the shipping requirements might be met in the most economic fashion. Any increase or decrease specified under authority of either the market administrator or the Director of the Dairy Division would be applicable also to units in the same manner and in the same amount as for individual supply plants. Moreover, the authorities to increase or decrease shipping

requirements should remain in effect throughout the year. Thus, even in months when there is no shipping requirement, if an analysis of market conditions convinced either the market administrator or the Director of the Dairy Division that shipments were needed, requirements could be imposed up to the limits authorized. This dual authority to make temporary adjustments should help the market operate in an orderly fashion.

Any supply plant that meets the shipping standards specified (or as otherwise temporarily revised) in each month of August through January should have automatic pool plant status in each of the following months of February through July, unless shipping requirements are imposed by either the market administrator or the Director of the Dairy Division. Any supply plant that fails to meet the August-January performance standards would be required to ship each month of February through July at least 3 percent of its receipts, unless otherwise increased by either the market administrator or the Director. The same requirement would apply to a new plant or a plant that had closed and later was reopened. The provisions just described will essentially replace the call provisions adopted in 1984, and will remove the need for defining a "reserve supply plant."

Opponents of shipping requirements argued that the call provision had functioned properly as demonstrated by the fact that no call has been implemented. They were also concerned that the imposition of shipping requirements would reduce producer returns, lower the level of over-order charges, and cause milk to move inefficiently and unnecessarily.

The lower level of shipments adopted in conjunction with the provisions for forming shipping units will tend to minimize the impact of providing greater equity through increased performance standards. The critical need, however, is to achieve better equity. Thus, manufacturing plant operators who use the pool monies contributed by bottling plant operators to help attract and maintain Grade A milk supplies will be required, in turn, to make available to bottling plants a small portion of those supplies.

CMPC's proposal to leave the call provisions in place during February through July, and to make all supply plants subject to a call for shipments should not be adopted. Rather, the provisions for temporary revisions by the market administrator and the Director of the Dairy Division should function to serve essentially the same purpose without the added complexity of order language necessary to leave the call provisions in the order, but applicable to only half of the year.

Similarly, if a plant that qualified for automatic pool status during February through July should fail to meet any shipping requirement imposed during that period by either party having authority to do so, such plant would then lose its "free ride" status for the remainder of the six-month period. Again, this differs from CMPC's proposal to deny pool status for one year to any supply plant that failed to make shipments required under a call. However, since all supply plants will be pooled on the basis of performance, and not merely a promise to perform if a call is issued, such a provision would be inconsistent with the other provisions adopted in this decision. If a pool supply plant failed to meet a temporarily imposed shipping requirement in only one month, but had shipped throughout the fall months, producers regularly associated with the market would be denied pool status for their milk for one year. Such a provision would not be acceptable.

Currently, supply plant and reserve supply plant shipments (other than agreed Class II or Class III) to distributing plants regulated under other Federal orders are considered to be qualifying shipments up to an amount equal to shipments to pool distributing plants during the month. Dean et al. proposed that this provision not apply under new shipping standards, while CMPC and others urged its continuance.

We conclude that this provision should continue, but with one modification, as follows: If a temporary revision is imposed (by either the market administrator or the Director of the Dairy Division), the additional shipments required under the temporary revision should go only to pool distributing plants. Put another way, if a determination is made that additional supplies are needed for Class I use at Order 30 distributing plants, then the additional shipments resulting from increased shipping requirements should be addressed to those needs.

Also, it should be noted that determination of the need for temporarily revising shipping standards will be based only on the Class I needs of the market. To reiterate what has been said in previous decisions, given the level of difference between Class II and Class III prices, the order will not force milk to be delivered to the market for a Class II use. However, it also should be pointed out that none of the proposals submitted for this hearing involved any exploration of how much milk must be received at a distributing plant in order to be able to package and distribute 100 pounds of fluid milk products. Although it was intimated throughout testimony that the 10 percent long provided in the order to cover such things as shrinkage, and cream separation is inadequate, this record cannot evaluate that number.

In any event, and contrary to the contention of opponents of adopting revised shipping percentages, it can be presumed that supplemental milk supplies needed by distributing plants in the low production months are for Class I use rather than Class II use. The volume of Class II use in the Chicago Regional market tends to vary seasonally in the same direction and essentially the same magnitude as the seasonal variation in the producer receipts. For example, during August 1986 through January 1987 the volume of Class II use was 6.9 percent lower than in the prior six-month period of February through July 1986, compared to a decline of 8.7 percent for receipts. By comparison, class I use was up 9.6 percent. Similarly, for the six-month period August 1985 through January 1986 compared to the prior February through July 1985 period, Class II use was down 3.1 percent and producer receipts were down 3.6 percent, while Class I use was up 6.2 percent.

b. *Formation of supply plant units.* Handlers should be allowed to make required supply plant shipments from any plant or plants that they operate, and which are located in the State of Wisconsin or in the portion of the State of Illinois that is included in the Chicago Regional order market area. Also, handlers should be allowed to jointly form shipping units. Such a provision will complement the shipping requirements being adopted so that the required shipments may be made in an efficient manner. However, each supply plant in a unit should be required to ship to distributing plants at least 3 percent of its receipts of milk from producers or 47,000 pounds of milk, whichever is less, in each of five months during the period of August through January. The shipping requirement for units should be double the requirement for individual plants; i.e., 6 percent in August and January, and 10 percent in September through December.

CMPC stated that units were an essential component of shipping requirements for supply plants. In fact, CMPC (a proponent of shipping requirements for supply plants) also stated that shipping requirements should not be adopted unless a unit provision also is adopted. Others, including several who opposed shipping

requirements, said that if shipping requirements nevertheless were adopted, then provisions for units should also be adopted. CMPC urged that only cooperatives be allowed to jointly form units. The spokesman did indicate that a proprietary handler with a multi-plant operation should be allowed to form a unit of its own plants.

CMPC's basis for allowing only two or more cooperatives to jointly form a unit is the reblending privilege granted cooperatives by the Agricultural Marketing Agreement Act of 1937. CMPC also believes that the abuses of selling pool qualification will return if multi-handler units are allowed. This later concern was often expressed at the hearing by others as well, including, Dean et al., who would support units only if they are legitimate units.

The basic reason for requiring shipments by supply plants, as stated earlier, is to achieve an improvement in equity by pool handlers through increased responsibility for supplying milk to meet the market's Class I needs. Equity is achieved at the handler level; it is not primarily a matter of equity among plants. Thus, beyond establishing basic criteria for plants to be pool plants, there is no clear cut need to require that a handler make the required shipments from each supply plant that the handler operates. The Class I needs of the market would appear to be as well served if the required amount of milk is shipped without regard to which particular plant or plants make the shipments.

Nevertheless, it is feasible to require each plant in a unit to ship at least 3 percent of its receipts of milk from producers or 47,000 pounds of milk, whichever is less, in each of five months during the period of August through January. This will demonstrate that the plant actually can make shipments. However, in order to allow smaller operations maximum flexibility, the monthly standard is not expressed as one load. Also, to avoid requiring a small plant to ship a disproportionately large percentage of its supplies in meeting the 47,000 pound requirement, a 3 percent of receipts alternative shipping requirement is provided.

The order will require, as CMPC proposed, that the shipping requirement for any unit, whether operated by a cooperative or proprietary organization(s), be double that required for the operator of an individual supply plant. Temporary revisions to increase shipping requirements would apply to units at the same rate specified for individual supply plants, not at twice the rate. The double-shipping requirement for units is one way to discourage abuse of the unit pooling privilege through leased plants or other arrangements that tend to accommodate the selling of pool qualification standards. Since the shipping requirements adopted are at low levels (3–5 percent), a unit would still be required to give up a relatively small portion of its milk supply in return for the privilege of pool participation.

It is necessary, as proposed, to specify that all plants included in a unit must be located in the State of Wisconsin or in that portion of the State of Illinois that is within the marketing area of the Chicago Regional order. Absent this restriction, plants in distant areas could become pool supply plants under the Chicago order by shipping just one load per month. Such is not the intent of the unit pooling provision. The geographic restriction is appropriate.

A major concern expressed at the hearing centered around the practice of handlers leasing plants to be included in a unit. Strong sentiments were expressed that any leased plants included in a unit must be controlled and operated by the handler. Various lease criteria were suggested as necessary to prevent a "sham" lease, such as where the pooling handlers pay one dollar per year and then receive a fee from the plant operator for pooling the milk. It was suggested for example, that the pooling handler must be held responsible for paying producers who deliver milk to the leased plant. Another suggestion was that the pooling handler must control the leased operation in order for it to be considered a bona-fide lease. Finally, there was a question about whether the operation of the leased plant should be accounted for in the books and records of the pool handler. The response was affirmative.

Because of the concern about sham leases and selling pool qualification, measures to prevent or at least minimize such practices should be adopted. Accordingly, it will be necessary to demonstrate that a leased plant meets the following conditions in order to be a pool plant in a unit:

1. The unit operator is responsible for paying producers who ship to the leased plant.

2. The unit operator controls and manages (either directly or indirectly) the leased plant;

3. The books and records of the unit operator reflect the on-going activities of the leased plant by including at least employee payroll records and the gross value of all producer milk pooled by the handler that operates the leased plant.

These requirements should serve to prevent, or at least inhibit the pooling of sham leases, especially when coupled with the doubled shipping requirements for units, and should satisfy the market administrator that the handlers involved have established a bona fide lease. These measures are adopted in direct response to industry concerns over past abuses of a unit pooling provision.

Any handler, or any two or more handlers should be allowed to form a unit of plants. The unit could include, for example, supply plants of two cooperatives, a cooperative and a proprietary handler, or two proprietary handlers. An agreement certified to the market administrator by all parties to the agreement will notify the market administrator as to which plants will be in a unit and which handler is responsible under the agreement for meeting the performance requirements. The market administrator should receive such certification and list of plants to be included in each unit by July 15 for the following August-July period. Changes in unit makeup may be made after advance notice in writing to the market administrator. If a unit does not meet its shipping requirement, the handler responsible under the order for the unit shall inform the market administrator which plant or plants shall be depooled. If the handler fails to do so, the market administrator shall determine which plant(s) will lose pool status by first eliminating the last plant on the list, then the next, and so on until deliveries are adequate to qualify the remaining plants in the unit. Inclusion of this provision will remove any uncertainty as to how the order will apply in the event a unit fails to meet the performance requirements. Each plant included in a unit during the months of February through July must have been qualified as a pool plant, either individually or as a member of a unit, during the previous August through January.

The order also should recognize that a handler in a unit may sell the business or close down because of failure of the business. In such an event, language is provided in the order to allow the unit to reorganize to reflect the changed status of unit participants. Failure to include such a provision would leave the order unclear as to the status of a unit if such a change occurs.

Under a unit pooling provision, all supply plant handlers have an opportunity to fulfill their responsibilities to the fluid sector. At the same time, the order will allow flexibility so that efficiencies and economies may be realized in meeting those responsibilities.

If these provisions were not adopted, then it would be expected that milk would often move in an inefficient and costly manner, which would be contrary

to the intent of the Act to foster stable and orderly marketing conditions.

3. *Definition of supply plant and reserve supply plant.* The definition of a supply plant should no longer include a minimum storage capacity. Also, this order should no longer define a reserve supply plant.

CMPC proposed eliminating the storage capacity requirement for supply plants under the Chicago Regional order. In support of its proposal, the spokesman claimed that constant improvments in dairy technology have made it difficult for handlers to know the precise sizes of milk trucks and tankers that go in and out of their milk plants. He state that without such knowledge, a handler's plant might not qualify as a supply plant simply because its storage capacity did not equal or exceed the largest shipment in or out.

Currently, a supply plant (other than a reload) regulated under Order 30 must maintain storage capacity sufficient to hold the largest single quantity of milk either received at or shipped from the plant as a single load. Such provision was found to be necessary to demonstrate that the supply function (i.e., assembling milk from farms at a location near such farms for efficient shipment to distant distributing plants) is performed with respect to milk received at or shipped from the plant. (Official Notice is taken of the Assistant Secretary's decision of August 6, 1971 (36 FR 14745).) The issue at that time concerned the pooling of milk that never was intended for Class I purposes. It was decided that if a supply plant at least had storage capacity equal to the largest shipment of milk in or out of the plant, then it would be able to hold reserve milk and thus give the appearance of Class I readiness.

Proponent pointed out that the order's reserve supply plant definition does not set specific requirements in regard to storage capacity. This double standard in storage capacity, he asserted, should not continue. The fact that the lack of storage capacity at ten reserve supply plants has not caused the market administrator any problem speaks in favor of its demise, he added.

At the hearing, only WCMA spoke out against the proposal. WCMA's witness questioned whether the order's supply plant definition should be so liberal.

Thirteen years after the storage capacity requirement became effective, reserve supply plant provisions were installed and most of the then supply plants chose to be regulated as reserve supply plants. Reserve supply plants were not required to maintain storage capacity because at the time of that hearing, the industry did not make a case for such a requirement.

Presently, there are 102 reserve supply plants and only five supply plants regulated under Order 30. However, as a result of this proceeding there will no longer be reserve supply plants; instead, the 107 plants will all be supply plants if they choose to meet the supply plant standards of the order which would include, if not changed herein, the minimum storage capacity requirement. However, as stated previously, the reload plants do not have to maintain storage capacity. Out of all 107 plants, 97 have some storage capacity, yet only 75 have storage capacity in excess of 55,000 pounds.

As stated, the 102 reserve supply plants have been exempt from any storage capacity requirement since September 1, 1984. Although these plants would now be supply plants, they should continue to be exempt from the storage capacity requirement, as should all supply plants. Otherwise, a plant which for three years has not had to consider such matters, could lose its spool status if a tank load in or out of the plant turned out to be larger than the supply plant's storage capacity. The supply plant would not be a pool plant because its storage capacity was inadequate. However, as proponent pointed out, this inadequacy may be due to technological improvements in the size of tank trucks. Plants should not be depooled simply because they cannot keep pace with such improvements. Accordingly, the supply plant storage capacity requirement should be removed. Furthermore, in establishing a plant's association with the fluid market, the pool supply plant shipping requirement will have to be met. Such performance should be enough to demonstrate that a plant is fulfilling its supply function.

To accommodate the removal of storage requirements, conforming changes must be made in the definition of a "plant" under the Chicago order. Since the supply plant definition will no longer make any distinction between a supply plant with storage capacity and one without it, (i.e. reloads) then the plant definition should likewise make no distinction between such plants. Accordingly, the plant definition has been revised to broadly include milk plants that may qualify as pool plants. However, a reference to unloading milk into a tank truck in a plant is included to make it clear that producer milk so handled will be considered as physically received at a supply plant.

In light of other changes made herein concerning pool plant requirements, there is no longer a need to define reserve supply plants. Accordingly, such definition and any references to such throughout the order should be removed.

4. *Definition of producer milk*—(a) *Producer delivery requirement.* The producer delivery requirement (i.e., the "touch-base" requirement) of Order 30 should be relaxed. In this regard, only during the six months of August through January should one day's milk production of an individual producer be physically received at a pool plant to qualify such producer's milk for diversion to nonpool plants. However, throughout the year, the milk of a dairy farmer who was not a producer during the previous month would not be eligible for diversion unless one day's production is received at the pool plant reporting the milk during the month. The order now provides that the touch-base requirement apply for each month and requires a dairy farmer who was not a producer during the previous month to touch-base before any of such producer's milk can be eligible for diversion.

CMPC proposed replacing the monthly touch-base requirement with a requirement whereby the milk of a dairy farmer who was not a producer during the previous month would not be eligible for diversion unless one day's production is received at the pool plant reporting the milk during the succeeding two calendar months. There was no opposition to this proposal at the hearing or in post-hearing briefs.

Proponent's witness claimed that requiring one day's milk production of each producer to be delivered to a pool plant each month causes under pumping and hauling of milk. This, he said, is done solely to insure that the milk of these producers is eligible to be shipped directly to nonpool manufacturing outlets and remain pooled.

The purpose of requiring individual producers to touch-base is to insure that they are genuinely associated with the fluid market. Thus, it is known that the producers with milk pooled on this market are capable of delivering approved Grade A milk to pool plants. It is desirable that this practice be carried out without interfering with efficient marketing while maintaining the integrity of the order. It is unnecessary to require the milk of each producer to touch-base each month to achieve this goal.

Accordingly, the order should require that at least one day's production of a producer be physically received at a pool plant during each of the months of August through January in order for any of that producer's milk to be eligible to be diverted to nonpool plants and

remain pool milk. One day's production during each of the milk-short months is sufficient to demonstrate an association between producers and the market.

Nonetheless, throughout the year, at least one day's production of a dairy farmer who was not a producer during the previous month should be physically delivered to a pool plant during the month in order for any of that milk to be eligible for diversion. Although this means that initial deliveries would be made during the flush as well as the milk-short months, an association of the milk of new producers with the Chicago market must be established, even if such shipments interfere with efficient marketing. However, the change made herein to the initial touch-base requirement should provide handlers a greater flexibility in making these deliveries.

(b) *Limitation on diversions to nonpool plants.* there should not be a limit on the amount of a handler's producer milk that may be delivered to nonpool plants and still be pool milk. Currently, the percentage limitation is equal to the market's combined Class II and III utilization percentage in the same month of the preceding year.

CMPC proposed eliminating the diversion limit. This proposal also was unopposed. Proponent said that the limit on the amount of milk that a pool plant can divert, like the touch-base requirement, causes unnecessary and uneconomic shipments of milk simply for pooling purposes. CMPC believes that handlers should not be subject to such costly obstacles when they are carrying out a basic precept of the order program in Chicago, that being to pool all the Grade A milk of producers. CMPC also believes that the elimination of both the touch-base requirement and the diversion limit provision, in conjunction with the implementation of unit pooling (i.e., per CMPC's proposal No. 6, issue No. 2 herein), should enable handlers to serve the market from the closest plants, thereby reducing hauling and associated costs.

In the Chicago market, the amount of milk that has been allowed to be delivered directly to nonpool manufacturing plants and still remain pool milk has been the reciprocal of the market's Class I use during that month of the previous year. This has been complementary to the order's supply plant shipping requirement. However, as adopted herein, pool supply plants will be required to deliver only 3 or 5 percent of their producer milk supplies, and this may be decreased to zero or increased to 10 percent. With such low shipping requirements, it is not reasonable to keep a diversion limitation that on the average in 1986 would have limited diversions to nonpool plants to 80 percent of a handler's milk supply. This limit couple with the new shipping requirements would most likely result in unnecessary and costly movements of milk. In addition, the accompanying unnecessary pumping of milk would result in reduced milk quality.

Proponent did not suggest a limit that corresponds with the new shipping requirements. Rather, CMPC proposed the complete removal of diversion limits. Given the "smallness" of the shipping requirements adopted herein, and the fact that this requirement may be decreased all the way to zero if conditions warrant such, we concur with proponent that the diversion limit should be removed. Such a change promotes the efficient handling of milk and better milk quality.

It should be noted that the removal of the diversion limits should not cause milk to be "loaded" into the Chicago market. Virtualy all of the Grade A milk supply in the Order 30 procurement area is pooled under Federal orders. Accordingly, Grade A producers in the area are presently sharing in the proceeds of the fluid market that generally affords them the most favorable returns. Therefore, there is little likelihood of reserve supplies of other markets being shifted to the Chicago market pool.

In light of the foregoing, corresponding provisions which deal with over-diverted milk should also be removed from the order.

5. *Location adjustments.* The plant location adjustments for handlers and for producers should be computed by the market administrator based on a revised location adjustment schedule which extends out to the 18th zone. Zone extension involves adjusting the present Zone 16 adjustment and adding two new Zones 17 and 18. The rate of adjustment from Zone 16 to Zone 18 would be minus 2.3 cents per hundredweight per 15 miles, the rate presently used in all adjustments for Zone 5 to Zone 15. Therefore, the revised Zone 16 location adjustment would be minus 37.3 cents per hundredweight and the new Zone 17 and Zone 18 adjustments would be minus 39.6 cents and minus 41.9 cents, respectively. The new Zone 18 would be the outermost zone and would include all plants located 281 miles or more from the city hall in Chicago. No adjustment should result in a price less than the Class III price for the month.

As modified at the hearing, Dean et al. proposed expanding the minus location adjustment schedule for locations beyond 250 miles from the Chicago city hall at a rate of 2.3 cents per 15 miles. However, the Minnesota-Wisconsin (M-W) price would be the lower bound of any such adjustment. This change would apply to plant location adjustments for both handlers and producers. As originally published in the Notice of Hearing (52 FR 18894), Dean et al. proposed eliminating the "snubber" that prevents the Class I price from being reduced below the Class III price.

In support of its modified proposal, Dean et al.'s spokesman claimed that such change is needed in order to more nearly reflect the value of milk 250 miles beyond the city hall of Chicago. He stated that it is unrealistic to draw a line and assume a constant cost of hauling beyond such point.

Proponent utilized an exhibit already in the record to show that the average hauling cost to Chicago from plants in the present Zone 16 was $1.27 per hundredweight. This, he stated, far exceeds the order's 36-cent adjustment for that zone. Although the Dean et al. proposal would not fully cover the hauling cost, proponent believed that it would be a step in the right direction to aid in the transportation of milk from the distant locations.

Dean et al.'s spokesman also stated that the present order's treatment of zone pricing beyond 250 miles from the city hall in Chicago is inequitable. He pointed out that because the order draws a line beyond which all milk is subject to the same adjustment, a significant amount of producer milk is being priced differently than most of the producer milk on the market. Proponent holds that greater equity could be achieved if the order would price each handler's milk on an identical basis, which can only come about if the price is adjusted beyond Zone 15 at the constant rate of minus 2.3 cents per 15 miles.

CMPC supported the Dean et al. modified proposal for zone extension in spite of the fact that CMPC members operate five plants located in the present Zone 16 that would be affected by such a change. CMPC's spokesman stated that the order must recognize that it costs money to move milk. Establishing Zone 16 as an endless zone for the Chicago Regional order, he said, has caused an overvaluation of milk in that zone. He added that such a change in the order should cause present Zone 16 plant operators to re-evaluate their economic situations. He speculated that those plant handlers who would be able to receive more money for their producers from another order's pooled funds would choose to become regulated under that other order. However, he did

not foresee milk being depooled as a result of zone extension.

Kraft, which operates two plants in present Zone 16, did not favor the proposed changes. Moreover, Kraft believes that the ruling of the Administrative Law Judge which allowed a revision or substitution of Dean et al.'s location adjustment proposal (proposal No. 10 in the Notice of Hearing) should be reversed. At the hearing and in its post-hearing brief, Kraft argued that proponent's modification of the original proposal went beyond the scope of the hearing. Because, in general, Dean et al.'s original proposal would not have affected Zone 16 producers due to the fact that the Zone 1 blend price usually exceeds the Class III price by more than 36 cents, Kraft holds the view that many producers and handlers would be affected by the modified proposal (lost monies estimated to exceed one million dollars annually) did not attend the hearing and those that did attend were unable to adequately prepare their cases.

Notwithstanding the legality of the modification, Kraft believes that there should be no further adjustment to the Class I and producer prices at locations more than 250 miles beyond the Chicago city hall because within Zone 16 milk at various locations is of relatively uniform value. In fact, Kraft's spokesman revealed that identical premiums are paid at both of Kraft's plants even though the proposal would place one plant in Zone 18 whle the other would remain in Zone 16. Therefore, it is Kraft's view that the order should not create distinctions in the price of Class I and producer milk where no differences can be justified by the marketplace.

A brief filed on behalf of both NFO and FUMMC also contended that the modification of proposal No. 10 was not within the scope of the Notice of Hearing. In the brief, it was pointed out that the present "snubber" only comes into play when the M–W price increases substantially, causing the difference between the Class III price and the Zone 1 blend price to be less than 36 cents; an infrequent occurrence. Consequently, very few persons in the industry would likely have considered the published proposal to have been of great and immediate concern. However, the modified proposal No. 10, it was asserted, would have a distinct and immediate impact on the 28 pool plants located in present Zone 16 and on certain Order 68 handlers as well. The brief added that several experienced witnesses who did attend the hearing were not able at that time to adequately prepare testimony on the modified proposal; most notable, the witnesses for Kraft and TAPP.

Nevertheless, should the Secretary decide this issue on its merits, both producer groups believe that the proposal should be denied because of the hardship such would cause on their membership and on the Zone 16 plants, many of whom would be at the Class III price most of the time. Furthermore, they questioned the purpose behind a provision which could cause handlers to become regulated under another order and added that such would lead to market disorder.

In this particular situation, Dean et al.'s proposal as published was to remove the Class III snubber as the lower limit of the adjusted Class I price. Dean et al. modified its proposal by retailing the Class III snubber, and instead, eliminating the Zone 16 snubber on adjustments. In the first case, the minus zone adjustments on Class I milk, which extend out to a minus 36 cents in Zone 16, could have applied even if at some point the Class I price would have had a lesser value than the Class III price. In the second case, the minus zone adjustments on Class I and producer milk would continue on beyond the present Zone 16 snubber at a rate of minus 2.3 cents per 15 miles, but not to drop below the Class III price. As described, the original and modified proposals both involve amending the same order provision by removing one of the "snubbers".

Although Dean et al. did modify its proposal at the hearing, doing so is not unusual. Provided a provision is open for discussion, there is no reason why an interested party cannot modify a proposal by altering the particular order provision in some manner. Also, most interested parties were at the hearing to discuss the other major issues of the hearing regardless if they did or did not believe that a change in the location adjustment provision would have serious implications for them. In fact, the representative of over 80 percent of the market's producers, CMPC, was at the hearing and gave testimony on the modified proposal. FUMMC, who represents another 14 percent of producers, also was there and had three days to prepare some kind of response to the modification. Handlers were well represented by TAPP and WCMA. Kraft, one of the objectors, not only was at the hearing but presumably had some idea that proponent was going to modify its proposal because prior to the start of the hearing it was privy to two key exhibits which clearly showed the effects of zone expansion. Finally, all interested parties, whether or not they attended the hearing, could have filed post-hearing briefs. We note that the briefs received concerning the zone extension proposal came only from some of those present at the hearing.

For all the foregoing reasons, we concur with the ruling of the presiding Administrative Law Judge.

Both WCMA and TAPP in their briefs opposed the modified zone extension proposal on the basis that such would send producers and plants into disarrary, not knowing which market, if any, to be pooled under from month to month. They contended that stablitiy in the marketplace is a higher priority item than equity. Furthermore, they stressed that the modified proposal, if adopted, would significantly cost the present Zone 16 producers while it would benefit the rest a mere penny a hundredweight.

Presently, the Class I price at plants located in what is known as Zone 16 is the Zone 1 Class I price with the $1.40 differential reduced by 36 cents. Producers who deliver milk to the Zone 16 plants receive the Zone 1 blend price less 36 cents. Zone 16 encompasses all plants located more than 250 miles from the city hall in Chicago.

The flat pricing in present Zone 16 fails to reflect the true value of milk as it is received at plants further and further from the market's center. It also introduces an element of inequity in that up to Zone 16 the value of milk declines and from thereon it takes on a false, steady value. Consequently, it is concluded that the minus location adjustment schedule should be expanded. However, this can only be done out to the 18th zone due to Class I price alignment with Order 68, the Upper Midwest marketing area.

Although Dean et al. proposed a continous expansion of the location adjustment schedule, which to include the present 28 plants in Zone 16 would have to go out 23 zones (minus 53.4 cents), expansion should only go as far as that zone which would restore an alignment which existed earlier. The zone limit which most nearly accomplishes this is Zone 18. Where Class I price is concerned, handlers will not be in much different position than they were in prior to the mandated changes which took effect May 1, 1986. (Official Notice is taken of the Deputy Assistant Secretary's decision of April 10, 1986 (51 FR 12830).)

Prior to the mandated differential increases, the alignment of Order 30 s Class I price with Order 68's Class I price was satisfactory. The mandated increases brought these prices even

more in line. The changes adopted herein will increase the spread between the Class I prices not quite to the point where pre-mandated differences are restored. This can be done due to the mandated six-cents greater increase in the Chicago Regional differential relative to the increase in the Class I differential of the Upper Midwest order. Changing the Zone 16 location adjustment and adding two new zones accomplishes this. To go beyond that point could disrupt orderly marketing between handlers regulated under Order 30 and handlers regulated under Order 68. Since pool supply plants and pool distributing plants under each order are located in close proximity to each other in this area of Wisconsin, it is necessary that Class I prices be kept in alignment to assure an orderly and competitive market situation.

Especially of interest is the alignment of Class I prices at three distributing plants located in present Zone 16; namely, Alto-Golden Guernsey Dairy Cooperative (AGG), Kwik Trip Dairy (KT), and Seeger's Dairy, Inc. (Seeger's). Presently, AGG is located in Order 30's Zone 16 and Order 68's Zone 4, as is Seeger's. Also at this time, KT is located in Order 30's Zone 16 and Order 68's Zone 3. As shown on Table 1, before the mandated changes the Class I price at AGG and Seeger's under Order 30 was 6 cents less than that location's price under Order 68, while KT's price under Order 30 was 12 cents less. Presently there is no difference between the Order 30 and Order 68 Class I prices at AGG and Seeger's (i.e., the Zone 16-Zone 4 location). There is a 6 cent less Class I price at KT (i.e., the Zone 16-Zone 3 location). The changes adopted herein, which would place AGG and KT in Order 30's Zone 17 and Seeger's into Zone 18, would once again spread the difference between the Class I prices at these locations; however, the spread would not be greater than that which existed previously. Accordingly, the Class I price at AGG under Order 30 would be 3.6 cents less and that at Seeger's and KT would be 5.9 cents and 9.6 cents less respectively.

TABLE 1. CLASS I PRICE UNDER ORDER 30 RELATIVE TO UNDER ORDER 68 AT THREE ZONE 16 DISTRIBUTING PLANTS

Plant	Before May 1, 1986 (¢/cwt)	Presently (¢/cwt)	Change adopted herein (¢/cwt)
AGG	−6	0	−3.6
KT	−12	−6	−9.6
Seeger's	−6	0	−5.9

The changes adopted would reduce the blend price received by producers who ship milk to the 28 plants located in present Zone 16 relative to the blend price they would receive if such changes were not made. However, because the blend price is readily changed by placing producers on and off the market, an analysis of the blend price does not necessarily reveal future events. Nevertheless, utilizing September through December 1986 data, it is found that the Zone 1 blend price would have increased in two of the four months, and would have stayed the same in the other two months as a result of the proposed zone extension, irrespective of any pricing impacts that result from other changes made during the course of this proceeding. Because the handler adjustment for present Zone 16 handlers on Class I milk would have been greater, pool funds would have been reduced. Simultaneously, the adjustment on all producer milk also would have been greater, adding money to the Zone 1 blend price computation. Collectively the addition would have outweighed the subtraction, thus increasing the Zone 1 blend price. However, such increase in two of the four months would have only been a penny. The bottom line is that money would have been taken from the Zone 16 producers, to be spread out rather thinly to all Order 30 producers.

Expansion of the location adjustment schedule out to Zone 18 would affect all 28 plants which are in the current Zone 16. As Table 2 shows, four plants will be in the new Zone 16, 11 will be in Zone 17, and the remaining 13 plants will be in Zone 18. It must be noted that the increase in the minus adjustments in Zone 16 and beyond will not necessarily decrease the blend price by that full extent due to the possibility that the Zone 1 blend price during a month may increase slightly due to these changes. However, one can assume that as the adjustment gets larger, producers get less.

TABLE 2. ADDITIONS OF THE LOCATION ADJUSTMENT SCHEDULE

Zone	Distance in miles from city hall in Chicago	No. of plants within zone	Present loc. adj. (¢/cwt.)	New loc. adj. (¢/cwt.)	Difference (¢/cwt.)
16	251–265	4	−36	−37.3	−1.3
17	266–280	11	−36	−39.6	−3.6
18	Beyond 280	13	−36	−41.9	−5.9

The value of milk at any location in a marketing area is determined by its location in relation to the market's center. Usually as the milk is received at locations further from the center, its value decreases. However, in the Chicago marketing area milk's value decreases to a point (Zones 2 through 15), then it continues at a lower but steady value (Zone 16). This has two implications, one being that the milk in present Zone 16 is overvalued. The second, that inequitable pricing of milk is taking place due to the fact that from Zone 2 to Zone 5 and then from Zone 5 to Zone 15 the price of milk is reduced at rates of 3.0 and 2.3 cents per 15 miles and beyond such point the reduction is one cent for unlimited miles. The question posed by proponents is why should some producers get more than the location value for their milk.

Excluding producer milk received at plants in Zone 1 (i.e., within 40 miles of the Chicago city hall), about 87 percent of the market's milk is priced at a decreasing rate of 3.0 or 2.3 cents per hundredweight per 15 miles. The remaining 13 percent is priced at the steady Zone 16 rate of minus 36 cents without regard to a plant's location, be it 251 miles or 351 miles from the city hall in Chicago. Proponents are correct in saying that the price of milk in present Zone 16 should be reduced at the same rate used from Zone 5 to Zone 15. However, as pointed out, reflecting the proper location value of milk to producers cannot be achieved at the expense of Class I price alignment. The limit of a 41.9-cent location adjustment is necessary to maintain proper alignment of Chicago Regional order Class I prices with Class I prices at nearby plant locations under the Upper

Midwest order. If no limit were provided and the 2.3-cent rate per 15-mile zone were extended, it would reduce the Class I price differential at Conrath, for example, from 98.1 cents (as adopted herein) to 88.9 cents. Such price would then be 21.1 cents lower than the Upper Midwest order Class I price at Hayward which is only 50 miles north of Conrath. This could provide a substantial incentive for the distributing plant located at Hayward that is now regulated under the Upper Midwest order to purchase supplies of milk from nearby Chicago Regional order supply plants. (Official notice is taken of the List of Handlers, Plants and Cooperative Associations, December 1986, for the Upper Midwest marketing area, published by the market administrator). Such practice could result in the buying handler realizing an undue competitive advantage in competition with other Upper Midwest order distributing plants. Thus, what is adopted herein should improve the economic reality of adjusting producer's prices for plant location while not disrupting an inter-order Class I price alignment situation that existed prior to May 1, 1986, when mandated differential increases became effective.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Chicago Regional marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

PART 1030—[AMENDED]

1. The authority citation for 7 CFR Part 1030 continues to read as follows:

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

2. Section 1030.4 is revised to read as follows:

§ 1030.4 Plant.

"Plant" means a building together with its facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment that has facilities adequate for cleaning tank trucks, is approved by an appropriate health authority, at which milk is received from dairy farmers or other plants, and at which milk is processed and-or shipped to another plant.

3. Section 1030.6 is revised to read as follows:

§ 1030.6 Supply plant.

"Supply plant" means a plant at which Grade A milk is physically unloaded into the plant or a tank truck in the plant and is either processed and-or shipped during the month to another milk processing plant, except that any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

4. Section 1030.7 is revised to read as follows:

§ 1030.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44(a)(8)(i)(*a*) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route dispositon or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distribution plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant or unit of supply plants discribed in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped and received and physically unloaded into plants described in paragraph (b)(2) of this section as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dariy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 3 percent for the months of January through August, and 5 percent for the months of September through December for individuals plants and 6 percent and 10 percent, respectively, for any unit of plants, subject to the following conditions:

(1) A plant that was a pool plant pursuant to this paragraph during each of the months of August through January shall be a pool plant for each of the following months of February through July.

(2) Qualifying shipments pursuant to this paragraph may be made to the following plants, except as provided in paragraph (b)(2)(v) of this section:

(i) Pool plants described in paragraph (a) of this section;

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk which receives a Class I classification at the transferee plant;

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization; and

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

(3) The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(4) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants to each pool plant described in paragraph (a) or (c) of this section shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro-rata to supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants the following:

(i) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(A) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(B) Transfers or diversion on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(5) The shipping requirements of this paragraph may be increased or decreased if found necessary to obtain needed shipments or to prevent uneconomic shipments as follows, subject in either case to the conditions specified in paragraph (b)(5)(iii) of this section.

(i) The market administrator may, for a period of up to three months, increase or decrease the shipping requirements by up to two percentage points;

(ii) The Director of the Dairy Division may increase or decrease the shipping requirements by up to five percentage points;

(iii) The maximum revision under this paragraph shall be five percentage points. Before making a finding that a change is necessary for the purposes set forth in this section, the market administrator or the Director of the Dairy Division shall investigate the need for revision, either on such person's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that revision is being considered and inviting data, views, and arguments. If a plant that would not otherwise qualify as a pool plant during the month does qualify as a pool plant because of a reduction in shipping requirements pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool status with the market administrator on or before the first day of the following month. If an increase is required in any month of February through July, the increase shall also apply to any supply plant that has pool status for the month pursuant to paragraph (b)(1) of this section.

(6) Two or more plants shall be considered a unit for the purpose of meeting the requirements of this paragraph if the following conditions are met:

(i) The plants are located within the State of Wisconsin or within that portion of the State of Illinois within the marketing area;

(ii) The plants included in the unit are owned or fully leased and operated by the handler establishing the unit and such plants were pool plants during the month prior to being included in a unit. Two or more handlers may establish a unit of designated plants by certifying to the market administrator a marketing agreement specifying the plants to be considered as a unit, and specifying which handler will be responsible for qualification of the unit. With regard to any leased plants included in a unit, the handler that leases a plant(s) and is a party to a marketing agreement with respect to plants included in a unit, shall satisfy the market administrator that such handler:

(A) Is responsible pursuant to § 1030.73 for payments to producers

whose milk is delivered to the leased plant or diverted therefrom by the handler;

(B) Controls and operates the leased plant; and

(C) Maintains in its books and records the accounts of the leased plant(s), including, but not limited to, employee payroll records, and the gross value of the payrolls for all producer milk pooled by the handler opeating the leased plant.

(iii) The handler or handlers establishing the unit submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a unit for the period of August July of the following year. In the months of February through July, a unit shall not include any plant that was not a pool plant each month of the preceding period of August through January. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following July unless the plant subsequently fails to qualify for pooling or the handler or handlers establishing the unit submits a writtten request to the market administrator that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from a unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through July. The handler or handlers that establish a unit may add a plant operated by such handler or handlers to a unit, if such plant has been a pool plant each prior month of the current unit-operating period (August through July) and would otherwise be eligible to be in a unit, upon submission of a written request to the market administrator. Such plant will remain in the unit through the following July. Written requests to the market administrator to either delete a plant from the unit or to add a plant to the unit shall be submitted to the market administrator on or before the 15th day of the month preceding the month that such change will be effective. In the event of an ownership change or business failure of a handler that is a participant in a unit, the unit may be reorganized to reflect such changes by submitting a writtten request to file a new marketing agreement with the market administrator.

(iv) If a unit fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the unit shall notify the market administrator which plant or plants will be deleted from the unit so that the remaining plants may be pooled as a unit. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the unit and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the unit; and

(v) Each plant in a unit shall ship to a plant or plants pursuant to paragraph (a) or (c) of this section not less than 3 percent of the plant's receipts of milk from producers or 47,000 pounds, whichever is less, of condensed skim milk or fluid milk products in each of five months during the period of August through January, subject to the provisions of paragraph (b)(4) of this section.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

5. Section 1030.13 is amended by removing in paragraph (a) the words ", in the case of a reload facility,", by removing paragraphs (d)(3) and (d)(6), redesignating (d)(4), (d)(5), and (d)(7) as (d)(3), (d)(4), and (d)(5), and revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) * * *

(1) During each of the months of August through January, milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

* * * * *

6. Section 1030.30 is amended by removing in the indroductory text of paragraph (a) the words "and/or reserve supply plants", and revising paragraph (a)(3) to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable, including a separate statement of the net receipts from each supply plant, computed pursuant to § 1030.7(b)(4);

* * * * *

7. In § 1030.52, in the table of location adjustments of paragraph (a), Zone 16 and footnote 3 are revised and Zones 17 and 18 are added at the end of the table to read as follows:

§ 1030.52 Plant location adjustments for handlers.

* * * * *

(a) * * *

Zone	Distance in miles from city hall in Chicago	Location adjustment rate (cents per hundred-weight)
*	*	*
16	251-265	−37.3
17	266-280	−39.6
18	([3])	−41.9
*	*	*

[3] Beyond 280.

* * * * *

Signed at Washington, DC, on March 8, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-5406 Filed 3-11-88; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345–186, REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications by issuing a new Bulletin 345–186, REA Design Specifications for Digital Lighwave Transmission Systems, REA Form 397h. The new specification applies to the design of lightwave transmission systems which employ optical fibers as the transmission medium. This includes opto-electronic terminal equipment, such as transmitters and receivers, and electronic terminal equipment, such as digital multiplexers. The specification may be used in purchasing a complete, installed system, a major component of a system or for incremental additions of equipment to already existing systems. This action permits REA telephone borrowers to utilize lightwave technology in bringing modern, cost-effective telecommunications to rural America. All REA telephone borrowers lightwave equipment, their consulting firms and manufacturers of lightwave transmission equipment would be impacted by the action.

DATE: Public comments must be received by REA no later than May 13, 1988.

ADDRESS: Submit written comments to M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

FOR FURTHER INFORMATION CONTACT: T. Lamar Moore, Chief, Transmission Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, telephone (202) 382–8665. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq*), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a new Bulletin 345–186, REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h, REA will request approval for Incorporation by Reference from the Director of the Federal Register. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect of the economy of $100 million or more; (2) result in a major increase in costs of prices for consumers, individual industries, Federal, State of local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment of productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976) and, therefore, does not require an environmental impact statement or an evironmental assessment. This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. For the reasons to set in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Copies of the document are available upon request from the address indicated above. Interested persons are invited to submit comments on this action. Written comments must be sent to the address stated above. All written submissions made pursuant to this action will be available for public inspection during regular business hours at the above address.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is proposing to issue a new Bulletin 345–186, REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h.

There is a steadily increasing demand for digital lightwave tranmission by REA telephone borrowers to expand and upgrade telecommunications service in rural America. This borrower demand has resulted in the need to provide a uniform and systematic means of specifying lightwave transmission needs and equipment purchases. Form 397h (Bulletin 345–186) is being proposed as the means to accomplish this purpose. REA borrower would use the REA Form 397h with REA Special Equipment Contracts, Forms 397 and 398, to purchase lightwave transmission systems for their individual telecommunications system needs. Form 397h provides a uniform generic specification format with the flexibility to specify the particular needs of a borrower.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR Part 1772 by issuing a new Bulletin 345–186.

PART 1772—[AMENDED]

1. The authority citation for Part 1772 is revised to read as follows, and all authorities following the sections are removed:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

2. The table in § 1772.97 would be amended by adding the entry 345–186 to read as follows:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications.

* * * * *

345–186 . . . Form 397h . . . . REA Design Specifications for Digital Lightwave Transmission Systems.

* * * * *

Dated: March 8, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88–5448 Filed 3–11–88; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-61]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) Model BK-117A-1, BK-117A-3, and BK-117A-4 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require a change to the flight manual procedures on Messerschmitt-Bolkow-Blohm (MBB) Model BK-117A-1, BK-117A-3, and BK-117A-4 helicopters. The proposed AD is needed to provide new procedures to the flightcrew for an emergency engine shutdown and/or a landing upon indication of an impending engine rotor burst which could be hazardous.

DATE: Comments must be received on or before April 13, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, Southwest Region, Office of the Regional Counsel, Attention: Rules Docket, Fort Worth, Texas 76193-0007, or delivered in duplicate to Office of the Regional Counsel, FAA, 4400 Blue Mound Rd., Room 158, Bldg. 3B, Fort Worth, TX 76193-0007. Comments must be marked with Docket No. 87-ASW-61. Comments may be inspected at the above location between 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

The applicable flight manual changes may be obtained from MBB Helicopter Corporation, 900 Airport Road, Post Office Box 2349, West Chester, Pennsylvania 19380, or may be examined in the Office of the Regional Counsel, Southwest Region.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Southwest Region, Aircraft Certification Division, Fort Worth, Texas 76193-0111, telephone (817) 624-5123.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of Regional Counsel, Southwest Region, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 87-ASW-61." The postcard will be date/time stamped and returned to the commenter.

The FAA has received reports that failure of certain bearings in the engines installed in MBB BK-117A-1, BK-117A-3 and BK-117A-4 helicopters may result in a sequential pattern of turbine wheel aft movement and contact with engine afterbody components resulting in a hazardous turbine wheel burst. It has been established that this event will be preceded by simultaneous illumination of the engine metal chip detector light and fluctuation or loss of engine power turbine speed (N_2) indication. MBB has issued a flight manual revision which instructs the flightcrew to immediately shut down the engine and land the helicopter when these events are observed, thus enabling the flightcrew to avoid this hazardous rotor burst condition.

Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require these safety related flight manual revisions to be properly adopted in the applicable flight manual on MBB Model BK-117A-1, BK-117A-3, and BK-117A-4 helicopters.

The FAA has determined that this proposed regulation only involves 92 aircraft at an approximate cost to each aircraft of $32. The total economic impact to any one operator would not exceed $960. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Messerschmitt-Bolkow-Blohm (MBB): Applies to model BK-117A-1, BK-117A-3, and BK-117A-4 helicopters, all serial numbers, certificated in all categories, equipped with Lycoming Model LTS-101 series engines.

Compliance required within the next 50 hours' time in service after the effective date of this AD, unless already accomplished.

To provide the flight crew with emergency engine shut down instructions to be followed in event of an impending engine turbine burst, insert the following updates (or the forthcoming permanent equivalent revisions) into the applicable Flight Manual.

(a) For the Model BK-117A-1 and BK-117A-3 helicopters insert into the applicable Rotorcraft Flight Manual MBB Temporary Revision 5, dated July 27, 1987.

(b) For the Model BK-117A-4 helicopter, insert into the applicable Rotorcraft Flight Manual: MBB Temporary Revision 1, dated July 27, 1987.

(c) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the manager, FAA, Southwest Region, Aircraft Certification Division, ASW-100, Fort Worth, Texas 76193-0100.

Issued in Fort Worth, Texas, on March 3, 1988.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88-5450 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 71283-7283]

Export Control Policy Forum on Technical Data Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Report on Technical Data Public Forum.

SUMMARY: On February 11, 1988, the Department of Commerce hosted a public forum on Technical Data Export Controls. The purpose of the forum was to obtain industry's comments regarding Part 379 ("Technical Data") of the Export Administration Regulations (EAR), concerning the export of technical data controlled by the Department of Commerce. Over 300 representatives from the private sector and government attended. Twenty-eight participants presented statements before a panel of Commerce officials, and several written comments were submitted.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Cutshaw, Office of the Deputy Assistant Secretary for Export Administration, Room 3888, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20230; (Telephone: (202) 377-5711).

SUPPLEMENTARY INFORMATION: The Department of Commerce is currently reviewing its regulations governing exports of technical data. The comments obtained as a result of the public forum provide a wide range of perspectives on revising EAR Part 379. They will help us clarify the regulatory provisions, further U.S. export control objectives, and better serve the needs of the business community.

Comment papers and the forum transcript are available for public inspection and copying in the Bureau of Export Administration Freedom of Information Office, Room 4886, Herbert C. Hoover Building, 14th Street and Pennsylvania Avenue, NW. For information on how to obtain copies, contact Margaret Cornejo at 377-2593.

The Bureau of Export Administration has analyzed the comments received in response to the public forum. The following summarizes the predominant issues addressed:

A. The MITAC Proposal

The forum began with a presentation of the proposal by the Militarily Critical Technologies List Implementation Technical Advisory Committee (MITAC) to revise the technical data controls. This proposal was mentioned in the January 7, 1988 **Federal Register** notice (53 FR 418) of the Technical Data Forum. Copies of the proposal were made available prior to the forum, and comments were invited.

The MITAC proposal attempts to establish a framework of standards for applying control measures to national security controlled technical data in three ways. First the proposal recommends a new definition of technical data to exclude data that is not necessary to achieving critical performance thresholds. Second, the proposal recommends that controls be imposed only on technical data identified as militarily critical. Third, the MITAC proposal establishes three data classes to distinguish between levels of national security risk and controllability of the technical data.

Several participants agreed with the MITAC's proposal to improve the definition of controlled technical data. Other comments applauded the intent of the proposal to decontrol technical data that are not related to national security controlled items, or that are not strategic. While many speakers expressed concern that the proposed definitions for supercritical and critical technology categories would rely on subjective judgments and would be difficult to implement, there was general acknowledgment that applied policy standards for determining military criticality and for establishing licensing requirements are needed.

A number of speakers commenting on the MITAC proposal urged that it not be adopted unless accompanied by a "comprehensive operations license." Such a license would authorize exports and reexports of technology and related goods, including items from the militarily critical technologies list, from a domestic concern to and among affiliated enterprises that have long-term contractual relations with the exporter.

B. Other Issues Addressed by the Participants

Some of the presenters were of the opinion that, while clarification of several aspects of the regulations would be desirable, major revisions to Part 379 were unnecessary. Comments expressed concern about cross-references in the regulations that were often inconsistent. One of the most repeated concerns was the need to clarify the definition of, and requirements for the export of, operation and sales technical data. Several speakers proposed adjustments to General License GTDR, particularly in clarifying when written assurance is required, and in providing guidance on how such assurances should be prepared. Some participants stressed the importance of making Export Administration and International Traffic in Arms technical data regulations as consistent as possible in form and substance. Others recommended the creation of a technical data control list or integration of technical data into the current Commodity Control List.

Many of the presenters felt that only multilateral controls can be effective, and that unilateral controls should be avoided. A few participants supported the elimination of reexport requirements and controls on foreign direct products of U.S. origin data. We were urged by several speakers to explore the reduction of validated license requirements for West-West exports.

Two participants discussed the "commingling rule" contained in Supplement 1 to Part 379 ("Technical Data Interpretations"), which states that U.S.-origin technical data do not lose their U.S.-origin when commingled abroad with other technical data of any other origin. These participants felt that this interpretation was overreaching and largely unenforceable, but acknowledged the difficulty of defining what degree of U.S. data involvement would warrant U.S. control of commingled data.

Many comments centered on export controls for software. There was significant support for the decontrol of low-level software. The speakers advocated the inclusion of more software under General License GTDA, GLV, GCOM, or other general licenses. Some of the areas specifically addressed were the eligibility of mass marketed software for personal computers under General License GTDA, the eligibility of 1355A system software for General License GTDR, and the refinement of characteristics for software controlled under Supplement 3 to Part 379 ("Computer Software").

C. Technical Data Information Service

Several forum participants expressed concern regarding the difficulty of obtaining quick answers to questions about technical data export controls. This is due to the fact that a large percentage of the questions received must be referred for technical or policy review. Therefore, in response to suggestions made at the forum, and in conjunction with the Commerce Department's efforts to provide better service to the exporting community, we are considering methods to improve the provision of technical data information

to the exporting community and to enhance our responsiveness to inquiries.

D. Continuation of Technical Data Review

The Department of Commerce is continuing its review of the technical data export controls contained in Part 379 of the EAR, and will consider the comments made by the forum participants as well as other written comments submitted. We will keep the public informed of the progress of this review through periodic notices in the **Federal Register.** The Department of Commerce appreciates the enthusiastic participation received thus far and invites industry's continuing input.

Dated: March 9, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-5498 Filed 3-11-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Louisiana Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a proposed amendment submitted by the State of Louisiana as a modification to its permanent regulatory program (hereinafter referred to as the Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revised regulations that would partially replace those now implementing the Louisiana program.

This notice sets forth the times and locations that the Louisiana program and the proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and information pertinent to the public hearing.

DATES: Written comments from the public not received by 4:00 p.m., c.s.t. on April 13, 1988, will not necessarily be considered in the decision process.

If requested, a public hearing on the proposed amendment will be held at 10:00 a.m on April 8, 1988, at the location shown below under "ADDRESSES".

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: Mr. James Moncrief, Director, Tulsa Field office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581-6430.

Copies of the Louisiana program, the proposed modifications to the program, and the administrative record of the Louisiana program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581-6430

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240; Telephone: (202) 343-5492

Department of Natural Resources, Office of Conservation, 625 N. 4th Street, Baton Rouge, Louisiana 70804; Telephone: (504) 342-5515

If a public hearing is held, its location will be: State Land and Natural Resources Building, Office of Conservation, Public Hearing Auditorium, 625 N. 4th Street, Baton Rouge, Louisiana 70804.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Public Hearing

Any person interested in making an oral or written presentation at the hearing should contact Mr. James Moncrief at the OSMRE Tulsa Field office by 4:00 p.m. on March 29, 1988. If no one expresses an interest in participating in the hearing by this date, a hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting, rather than a hearing may be held; the results of the meeting will be included in the Louisiana Administrative Record.

II. Background

The Secretary of the Interior conditionally approved the Louisiana program effective October 10, 1980. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submissions, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Louisiana program can be found in the October 10, 1980 **Federal Register** (45 FR 67340). Subsequent actions concerning the approval and program amendments are identified at 30 CFR 918.10, 918.16, and 918.20.

III. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17 (d) through (f), on July 9, 1985 [Administrative Record No. LA-265], OSMRE notified Louisiana of the changes necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations, as revised since October 10, 1980, when the program was originally approved. To comply with this letter, the Louisiana Department of Natural Resources completed a partial rewrite of the Louisiana Surface Mining Regulations governing its permanent regulatory program.

By letter of January 25, 1988, Louisiana submitted these regulations to OSMRE as a program amendment [Administrative Record No. LA-263]. The proposed regulations, in Subchapter A, General, parts 100, 101, 105, and 107; Subchapter F, Areas Unsuitable for Mining, Parts 160, 161, 162, and 164; Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration and Development Procedures Systems, Parts 170, 171, 176, 178, 179, 180, 185, 186, 187, 188, and 195; Subchapter J, Bond and Insurance Requirements For Surface Coal Mining and Reclamation Operations, Parts 200, 205, 206, 207, and 208; Subchapter K, Permanent Program Performance Standards, Parts 210, 215, 216, 223, 226, 227, 228, 242, 243, 244, 245, and 246 would replace the currently approved regulations.

In accordance with the provision of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. If the amendments are found to be as stringent as SMCRA and no less effective than the Federal regulations, they will be approved and the

amendment will become part of the Louisiana permanent regulatory program.

List of Subjects in 30 CFR Part 918

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

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: March 3, 1988.

[FR Doc. 88-5439 Filed 3-11-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-3340-2]

National Oil and Hazardous Substances Contingency Plan; The National Priorities Lists; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete two sites from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

DATE: Comments concerning the sites may be submitted until April 13, 1988.

ADDRESSES: Comments may be mailed to J. Sam Vance, Site Project Manager, Waste Division, Superfund Branch, South Site Management Section, South Florida Unit, Environmental Protection Agency, 345 Courtland Street, Atlanta, GA 30365. The Comprehensive information on each site is available through the EPA Regional Docket clerks.

Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is:

For background information on both Tri-City Oil Conservationist Corporation site and the Varsol Spill site: J. Sam Vance, Region IV, US. EPA, 345 Courtland St., NE., Atlanta, Georgia 30365, 404/347-2643.

FOR FURTHER INFORMATION CONTACT: J. Sam Vance, Site Project Manager Waste Division, Superfund Branch, Southern Site Management Section, Environmental Protection Agency, 345 Courtland Street, Atlanta, GA 30365. Phone (404) 347-2643.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete two sites from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on these deletions. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Trust Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The two sites EPA intends to delete from the NPL are:

1. Tri-City Oil Conservationist Corporation, Temple Terrace, Florida.
2. The Varsol Spill Site, Miami, Florida.

The EPA will accept comments on these two sites for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those that the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912), § 300.66(c)(7) on the NCP provides that sites:

* * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985, (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this group of two sites, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of these two sites. The Agency is considering using similar procedures in the future with the exception that the notice and comment period would be

conducted concurrently at the local level and through the **Federal Register**.

The procedures used were:

1. EPA Regional Offices recommended deletion and prepared relevant documents.

2. EPA Regional Office provided a 30-day public comment period on the deletion package. The notification was provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories.

3. The comments received during the notice and comment period would be evaluated before the tentative decision to delete was made.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**, and the NPL will reflect any deletions in the next final update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletions

The following summaries provide the Agency's rationale for intending to delete these sites from the NPL.

Varsol Spill Site, Miami, Florida

The Varsol Spill site is located in the northeast section of the Miami International Airport (MIA). The airport is located less than one-half mile south of the lower Miami Springs municipal well field. The Miami Canal runs adjacent to the northeast corner of the airport, the Tamiami Canal runs immediately south of the airport, and two other canals are located near the western edge of the airport.

Industrial operations associated with the miami International Airport have resulted in hydrocarbon contamination of the surface and groundwater in this vicinity. Since 1966, approximately 15 hydrocarbon spills and leaks have been recorded totalling nearly 2 million gallons. In 1970 Eastern Airlines maintenance base recorded a loss of approximately 1.5 million gallons of varsol in the northeast section of the airport. During 1970 a jet fuel spill of approximately 66,000 gallons was discovered near the west central area of Eastern Airline properties. In 1970, National Airlines accidentally spilled an unknown amount of jet fuels into drainage canals which discharged into the Tamiami Canal. At this time they were ordered to stop discharging cleaning solvents and degreasers into an airport drainage canal. In 1981, Braniff Airlines was discovered using the same practice and was ordered to stop. Several other small spills and discharges of jet oil, aviation fuel, cleaning solvents, and degreasers have also occurred at the airport. Several areas within MIA had heavy accumulations of oil lying on the ground. This was the result of airline maintenance personnel discharging oily wastes onto the ground and into storm sewers. In 1983, another major jet fuel spill was discovered near Concourse E during construction in the area. In 1971 Hydrocarbon Decontamination Separator Trenches were installed by Eastern Airlines to remove the 1.5 million gallons of varsol which had spilled underground. In August 1973 this operation was ceased due to slime build-up in the trenches and extremely slow natural migration of hydrocarbons into the trenches. Actual recovered volumes of hydrocarbons were less than 10% of the estimated spill. Other recovery procedures at the airport were conducted during dewatering operations at construction sites within the airport and were unsuccessful in removing substantial quantities of hydrocarbons. In April 1981, construction at the Eastern Airlines maintenance base revealed a thick hydrocarbon layer floating on the water table in the excavated trench. During the early 1970's Eastern Airlines installed 54 shallow observation wells at their maintenance base near the Varsol spill area. Measurements of water-table depth and hydrocarbon thickness on the upper layer of the water table were taken twice a year during both the wet and dry seasons from 1975 to 1981. According to these data, hydrocarbon layer thickness shows a declining trend with time. In some wells, the hydrocarbon layer could not be detected in the second year. In the Concourse E area, Dade County installed 43 monitoring wells to determine the extent and magnitude of jet fuel spilled. In 1983, Dade County also installed three recovery wells in the Concourse E area and began recovery operations. Through May 1984, over 102,000 gallons of jet fuel had been recovered from this area.

While no varsol was found in and around the airport, the spill did occur. Several factors could contribute to the fact that no varsol is detectable at this time; some of the solvent was recovered. Biodegradation is believe to have destroyed some more, but the hydrology of the aquifer system strongly suggests some of the solvent contributed to and has become a part of the "background" contamination in the aquifer.

EPA, with the concurrence of the Florida Department of Environmental Regulations, has determined all appropriate Fund-financed response under CERCLA at the Varsol Spill site has been completed. The decision is detailed in the Record of Decision for this site.

Tri-City Oil Conservationist Site, Temple Terrace, Florida

The Tri-City Oil Conservationist site is approximately one-fourth acre in a light industrial commercial area of Temple Terrace, Florida. The TriCity property was used for a heating oil service business from the early 1960's to 1975. From 1978 to 1983 Tri-City Oil Conservationist Corporation was a waste oil collection and distribution center. In 1982, a waste oil spill occurred during transfer operations. Failure to clean up this spill, in combination with poor surface drainage, caused accumulation of liquid wastes at the site. In response to the problem, the Hillsborough County Environmental Protection Commission and the Florida Department of Environmental Regulation investigated the site. This November 1982 investigation included the analysis of spoils and sludges for priority pollutant metals and hydrocarbons. In September 1983, the Tri-City site was proposed for inclusion on the National Priorities List (NPL) and appeared as final on the NPL in September 1984. In January 1984 additional sampling by FDER revealed metals contamination in surface soils and in soils 1 to 2 feet beneath the surface. Analysis of these samples indicated the presence of heavy metals, benzene, toulene, xylene, and chlorinated hydrocarbons. Analysis of the groundwater samples collected both on-site and adjacent to it showed no detectable contamination. In February 1984, the EPA issued an Administrative order to the responsible parties ordering them to clean up the site. They did not take any cleanup actions. The EPA conducted an immediate removal at the Tri-City site removing liquids and sludges from below ground tanks and the top six inches of soils from the site. These materials were then disposed of at an EPA approved hazardous waste landfill. DER followed this removal with a contamination assessment which revealed VOC's and heavy metals were present in the top one to three feet of soil on the site. In April 1985 DER began source removal of contaminated soils to protect groundwater supplies on and off site. Organic liquids and sludges were removed. When the work was completed the soils were sampled. Two areas of the site contained low levels of contamination. Further soil removal was conducted by FDER to remove remaining contaminants. The site was

then resampled to verify removal was complete. Upon completion, clean fill was used to bring the site back to its original grade in May 1985. In August 1985, the Tri-City monitor wells and nearby drinking water wells were sampled by DER personnel. Analysis indicated metals concentrations for cadmium, chromium, and led to be slightly above drinking water standards in two of the monitor wells. In January 1986 the Tri-City wells were again sampled; analysis revealed all samples to be within drinking water standards. A June 1986 sampling of all monitoring wells indicated these wells were below state and federal drinking water standards. A local public comment period was held from August 30, 1987 through September 10, 1987. No public comments were received.

EPA, with the concurrence of the Florida Department of Environmental Regulations, has determined all appropriate Fund-financed response under CERCLA at the Tri-City site has been completed. This decision is detailed in the Record of Decision for this site.

Date: February 23, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88-5471 Filed 3-11-88; 8:45 am]

BILLING CODE 6560-50-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51-7

Public Availability of Agency Materials; Extension of Comment Period

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the comment period on the proposed rule appearing on pages 1379—1383 of FR Doc. 88-778 in the issue of Tuesday, January 19, 1988 until March 21, 1988, to provide a period of 60 days to submit comments.

DATES: Comments due on or before March 21, 1988.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

C.W. Fletcher,

Executive Director.

[FR Doc. 88-5495 Filed 3-11-88; 8:45 am]

BILLING CODE 6820-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket 87-14]

Amendment of Part 2 of the Commission's Rules Regarding the Allocation of the 216-225 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Order accepting late-filed comments.

SUMMARY: This action accepts late-filed comments filed by the United Parcel Service of America, Inc. (UPS) to the *Notice of Proposed Rulemaking* concerning allocation of the 216-225 MHz. Further it provides for reply comments to the UPS comments to be filed until March 31, 1988. This action is in response to a Motion for Acceptance of Late-Filed Comments filed by UPS. UPS requested the comments be accepted as they provide knowledge of network and equipment plans that will assist the Commission in reaching its decision in this proceeding.

DATE: Reply comments due March 31, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, telephone (202) 632-8112.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on February 27, 1987, 52 FR 6024.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 88-5484 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-185; Rm-5606]

Radio Broadcasting Services; Pine, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Thomas Renteria seeking the allotment of FM Channel 291A to Pine, Arizona, for failure to express a continuing interest in the proposal, as required by Commission policy. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-185, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5486 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-73, RM-6244]

Radio Broadcasting Services; Ouray, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ouray Broadcasting Co., Inc., proposing the substitution of FM Channel 289C2 for Channel 285A at Ouray, Colorado, and modification of its license for Station KURA(FM), accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's consultant, as follows: Timothy C. Cutforth, PE, Vir James P.C., 3137 W. Kentucky Ave., Denver, CO 80219.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–73, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5487 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88–66, RM–6143; RM–6183]

Radio Broadcasting Services; Malone and Owls Head, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by North Country Broadcast Co., Inc. proposing the allocation of Channel 243A to Malone, New York, as the community's first local FM service. Channel 243A can be allocated to Malone in compliance with the Commission's minimum distance separation requirements to all domestic allotments without the imposition of a site restriction. The allotment would be approximately 6 kilometers short-spaced to Station CKOI–FM, Channel 245C1, Verdun, Quebec, and approximately 24 kilometers short-spaced to unused and unapplied for Channel 243C1 at Trois Rivieres, Quebec, Canada. However, our review of the proposal shows that the use of Channel 243A at Malone will comply with the interference criteria to the two Canadian allotments as set forth in the U.S.-Canada Working Agreement. We are, therefore, requesting Canadian concurrence in the allotment of Channel 243A to Malone as a specially negotiated short-spaced allocation. The Commission also requests comments on a mutually exclusive petition filed by Timothy D. Martz to allocate Channel 242A to Owls Head, New York, as the community's first local FM service. Petitioner is requested to furnish information demonstrating that Owls Head is a community for allotment purposes since it is not listed in the U.S. Census. Channel 242A can be allocated to Owls Head in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.0 kilometer (0.6 mile) southwest to avoid a short-spacing to Station CJFM–FM, Channel 240C1, Montreal, Quebec, Canada. While this site restriction does not negate the short-spacing to Station CFMK–FM, Channel 242B, Kingston, Ontario, Canada, a staff study shows that there would be no prohibited signal overlap within the 60 dBu service contour of Channel 242A at Owls Head. Therefore, we shall also request Canadian concurrence in this allotment as a specially negotiated short-spaced allotment.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mitchell C. Tackley, President and General Manager, North County Broadcast Co., Inc., Porter Road, Malone, New York 12953 (Petitioner for Malone) and James R. Bayes, Esq., Jerry V. Haines, Esq., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC 20006 (Counsel to Martz).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–66, adopted January 29, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5488 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88–67, RM–6178]

Radio Broadcasting Services; Ogdensburg, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Timothy D. Martz to allocate Channel 254A to Ogdensburg, New York, as the community's second local FM service. Channel 254A can be allocated to Ogdensburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) northeast. Canadian concurrence in the allotment is required since Ogdensburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Esq.; Jerry V. Haines, Esq., Wiley, Rein & Fielding, 1776 K Street NW., Washington DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of proposed Rule Making, MM Docket No. 88–67, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5489 Filed 3–4–88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88–71, RM–6165]

Radio Broadcasting Services; Manchester, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Ohio Kentucky Radio Company proposing the allocation Channel 267A to Manchester, Ohio, as the community's first local FM services. Channel 267A can be allocated to Manchester in compliance with the Commission's minimum distance separation requirements without a site restriction.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James Wagner, President, Ohio Kentucky Radio Company, P.O. Box 14083, Covington, Kentucky 41014 (Petitioner.)

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–71, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5490 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88–70, RM–6163]

Radio Broadcasting Services; Lincoln City, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Matrix Media, Inc. requesting the substitution of Channel 244C2 for Channel 244A at Lincoln City, Oregon, and the modification of its license for Station KCRF to specify operation on the higher powered channel. Channel 244C2 can be allocated to Lincoln City in compliance with the Commission's minimum distance separation requirements and can be used at Station KCRF's present transmitter site. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in Channel 244C2 at Lincoln City will not be accepted.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roger J. Metzler, Farrand, Cooper, Metzler & Bruiniers, P.O. Box 7329, San Francisco, California 94120 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–70, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5491 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-68, RM-6187]

Radio Broadcasting Services; Riverside, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Victor A. Michael, Jr. proposing the allocation of Channel 222A to Riverside, Pennsyvania, as the community's first local FM service. Channel 222A can be allocated to Riverside in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.5 miles) west to avoid a short-spacing to Station WMGS, Channel 225B, Wilkes-Barre, Pennsylvania. Canadian concurrence in the allotment is required since Riverside is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., R.D. 1 Box 59, Benton, Pennsylvania 17814 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-68, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5492 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-72, RM-6157]

Radio Broadcasting Services; Brookings, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Dakota Broadcasting Inc. to substitute Channel 229C2 for channel 232A at Brookings, South Dakota, and the modification of its license for Station KGKG to specify operation on the higher powered channel. Channel 229C2 can be allocated in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.9 kilometers (13.6 miles) northwest to avoid a short-spacing to Station KKRC-FM, Channel 228A, Sioux Falls, South Dakota. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 229C2 at Brookings will not be accepted.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ross A. Johnson, Vice President, Dakota Broadcasting, Inc., 51 Broadway, P.O. Box 8310, Fargo, North Dakota 58109-8310 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-72, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC.The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5493 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

[FHWA Docket No. MC-130]

Driver's Record of Duty Status; Automatic On-Board Recording Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed changes to the driver's record of duty status requirements contained in Part 395 of the Federal Motor Carrier Safety Regulations (FMCSR). The FHWA has denied the petition for reconsideration filed by the Insurance Institute for Highway Safety (IIHS) on February 25, 1987, to require the installation and use of on-board automatic recordkeeping systems to record vehicle operation. However, the FHWA believes that automatic on-board recording devices may be an effective alternative to the current recordkeeping requirement. Accordingly, this rulemaking proposes to allow, at the motor carrier's option, the use of automatic on-board recording devices in lieu of the handwritten driver's record of duty status. The proposal would replace the current case-by-case review of petitions to permit such devices in lieu of the handwritten record.

DATE: Written comments must be received on or before April 13, 1988.

ADDRESS: All written comments must be signed and should refer to the docket number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:40 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 395.8, Driver's record of duty status, currently requires drivers to record their duty status and over vital information in duplicate, in their own handwriting, on a graph grid. An exception is provided for drivers operating within a 100 air-mile radius of the normal work reporting location (49 CFR 395.8(k)).

Since 1982, the FHWA has also allowed drivers to use a grid to record duty status (49 CFR 395.8(g)). The grid may be incorporated into any motor carrier form, provided all information required by § 395.8(d) is also contained on that form. Drivers must record their duty status as follows:

1. "Off duty" or "OFF";
2. "Sleeper berth" or "SB" (only if sleeper berth used);
3. "Driving" or "D"; and
4. "On-duty not driving" or "ND".

The IIHS submitted a petition to the FHWA on October 1, 1986, requesting regulations, "* * * to require the installation and use of on-board automatic recordkeeping systems to record vehicle operations." Research conducted by the FHWA in 1978 showed the automatic record, principally the recording tachograph, while very accurate, was unable to provide a driver's record of duty status sufficient to enforce the FMCSR in team-driver operations, and automatically producing duplicate copies of the charts (i.e., logs). Research conducted about the same time by the American Trucking Associations, Inc. (ATA), to evaluate the accident experience of motor carriers using recording tachographs versus motor carriers not using the devices, indicated that the good safety performance of carriers using the devices may have been due to other factors than the use of on-board recording devices. Accordingly, the FHWA denied the petition on December 22, 1986.

The IIHS submitted a petition to reconsider on February 25, 1987. The FHWA, in response to this petition, published an Advance Notice of Proposed Rulemaking (ANPRM) on July 13, 1987 (52 FR 26289). IIHS requested in this petition, as in the earlier one, for FHWA to commence rulemaking to require the use of automatic on-board recording devices for recording the driver's hours of service in lieu of the handwritten record.

The FHWA published a notice in the **Federal Register** on April 17, 1985 (50 FR 15269), that it granted an exemption from the record of duty status recordkeeping requirement to permit Frito-Lay, Inc., to use an on-board computer in lieu of the hand completed record of duty status. On April 2 (52 FR 10664), July 13 (52 FR 26292), July 31 (52 FR 28633), and October 27, 1987 (52 FR 41380), the FHWA published notices in the **Federal Register** either providing notice of and opportunity to comment on similar requests for exemptions, or providing notice that such exemptions had been granted.

The FHWA has granted exemptions to ten motor carriers to permit their drivers to operate their vehicles with on-board computers for recording drivers' record of duty status in lieu of the handwritten record. The FHWA is also considering three additional requests from motor carriers for exemptions.

The FHWA is currently monitoring field tests of two different on-board computer systems being used by ten different fleets. Field testing is necessary to continue to document the reliability and accuracy of the on-board recorder systems, the driver's adaptability ot these devices, and the effectiveness of such systems in assisting in the enforcement of the hours-of-service regulations.

The FHWA's July 1987 compliance/safety reviews of 460 Frito-Lay, Inc., drivers operating with automatic on-board recorders revealed no degradation in the areas of interest to enforcement personnel, i.e., monitoring hours of service and safety. The failure rate for the automatic on-board recorders experienced at that time by Frito-Lay, Inc., was one percent. The field testing process has permitted the discovery of a number of problems with the computer software controlling the recording of sleeper-berth time and the production of records. All of these have been corrected.

Information available to the FHWA at this time indicates that there are at least nine manufacturers currently marketing on-board recorders for fleet operation. The FHWA requests documentation of the operation and features of the devices from the manufacturers.

The FHWA believes that hours of service of drivers is an important element to safety and that monitoring the hours of service of drivers should be a high priority for motor carriers, and that enforcement of the hours of service should be and is a high priority for Federal, State, and local agencies concerned with commercial motor vehicle safety.

Docket Comments

The FHWA received a total of 22 comments to the ANPRM docket, Docket No. MC–130, which closed on October 13, 1987. The commenters included:

8 from motor carrier industry associations;

3 from manufacturers of on-board computers;

2 from tachograph manufacturers;

2 from insurance industry members;

4 from commercial companies, all of which operate private motor carrier fleets;

1 each from a labor union, a State highway patrol, and a State public service commission.

Only three comments contained detailed responses to the questions asked in the ANPRM. Also, commenters, with the exception of two tachograph manufacturers, commented only on the on-board computer systems. However,

analysis of the 22 comments submitted to the docket established five major issues of concern to the companies and individuals who responded to the ANPRM. The five issues will be discussed in detail in the following sections.

Issue No. 1: Should regulations be issued that would mandate the use of on-board recorders in commercial motor vehicles used in interstate commerce?

Fourteen of the 22 commenters opposed a mandatory requirement, while five favored such a requirement. Two others recommended that tachographs be given serious consideration for recording drivers' hours-of-service information. One commenter did not take a position on the issue.

Four commenters (including the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (IBT), the American Trucking Associations, Inc. (ATA), and the Owner-Operators Independent Drivers Association of America, Inc. (Owner-Operators)) contend that there is no meaningful evidence at this time as to the effectiveness of onboard recorders in improving highway safety. CECOS International, Inc. (CECOS), a private motor carrier from Williamsburg, Ohio, submitted accident data for property damage frequency rates that ranged from 0.24 to 0.41 per million miles for recent periods. CECOS stated, "The data show that safe driving records can be maintained with a good transportation/drive management program without the use of on-board recording systems."

The National Private Trucking Association summarized its views on the safety issue, stating, "* * * the on-board computer does not, in and of itself, result in greater safety. Management must make a daily commitment to analyze the data and accept the responsibility to act to correct safety problems." Cadec Systems, Inc. (Cadec), a manufacturer of on-board computers, Frito-Lay, and the IBT made similar comments on the impact of on-board computers on safety.

IIHS, the American Automobile Association (AAA), and Argo Instruments, Inc. (Argo), a tachograph manufacturer, support a mandatory on-board recorder regulation. The AAA stated, "AAA supports the development of a performance standard under which motor carriers would be required to install such devices to monitor driver and equipment performance." The AAA cited a recent 2-year study of large truck accidents in Washington State, "Effects of Driver Hours of Service on Tractor-Trailer Crash Involvement" (IIHS, Sept., 1987, Ian S. Jones and Howard S. Stein), which found a substantial correlation between crashes and fatigue due to long driving hours as a basis for their position. IIHS determined that driving excessive hours was the probable cause in 41 percent of the accidents studied and a contributing factor in 18 percent of the other accidents.

Argo provided accident statistics from the Federal Republic of Germany and claimed that accidents are reduced where automatic on-board recorders are required in commercial motor vehicles. Tachographs have been required on most commercial motor vehicles operated in the Federal Republic of Germany since 1953. Argo stated, "On the basis of the transport volume, the accident involvement of goods vehicles was cut down by almost 75% during the last 20 years."

The AAA stated that fatigue would be reduced by controlling hours of driving and thereby lead to fewer accidents. The IBT, the Petroleum Marketers Association of America (PMAA), and CECOS comments indicated, however, that it would not be realistic to require on-board recorders for certain segments of the motor carrier industry. They indicated that those motor cariers that do not practice good safety programs would likely circumvent any automatic recording system.

After consideration of the information now available to the FHWA, public comments, and the possible purchasing, financing, and servicing disruption resulting from a mandate to use on-board recorders, the FHWA denies the IIHS petition for reconsideration to require motor carriers to install and use automatic on-board recording devices in lieu of the handwritten record. The FHWA believes, however, that the devices have merit, and as discussed in Issue No. 3, should be allowed for use by the motor carrier industry as an alternative to handwritten driver records.

Issue No. 2: The expense of automatic on-board recorders.

Twelve commenters indicated that they were concerned about the expense related to mandating on-board recorders in interstate motor vehicles. The PMAA stated, on behalf of the petroleum distributors, "The expense of on-board computer systems would be prohibitive for most of their marketers." Other commenters stated that the costs were not justified and a mandatory requirement for on-board computers would cost the industry billions of dollars plus millions of dollars annually in maintenance costs. Cadec indicated that the current onboard computer systems are not designed for, and are not cost effective for most small carriers. The FHWA estimates that the cost of the on-board computer, at current unit prices ($1,750), for every truck tractor operating in interstate commerce would amount to over $1.5 billion.

Information provided by Cadec indicates that a complete on-board computer system, for a 10 vehicle fleet, could have a first-year cost to a motor carrier of nearly $35,000 as follows:

Components	Costs
On-board computers (at $1,750 each)	$17,500
Installation	1,000
Computer and printer	4,500
Data link	2,970
Office computer software	3,960
Training/start up costs	3,000
Maintenance for 1 year	2,000
Total	34,930

The FHWA estimates that the vast majority of interstate motor carriers (current estimate is 180,000 of 220,000 fleets) have less than a ten vehicle fleet. Based on the manufacturer's assessment, there is reason to question the cost effectiveness of on-board recorders versus the handwritten record for this group of motor carriers.

Training for drivers, clerks and management, in the operation of the devices and computer system, start up costs encountered in debugging the overall system, plus nonproductive vehicle time needed for installation of the devices would add to the overall cost of an on-board computer system. These costs could realistically be estimated at 10 percent of the total equipment cost or $3,000 for a ten truck fleet.

The FHWA believes that the cost of the on-board computer systems will gradually fall as more companies enter the electronic recorder market and sale volume increases. At this time, however, the cost of an on-board computer system may militate against requiring automatic on-board recorders.

Issue No. 3: Should the FHWA allow motor carriers to voluntarily use the on-board recorder for recording drivers' records of duty status in lieu of the handwritten record?

Nine responses favored allowing the use of the on-board computer. Of these nine, four further stated that they were opposed to any plan in which the FHWA would approve the use of on-board recorders in lieu of the handwritten record on a case-by-case basis. They indicated that this type of approval system has proven to take too much time. Only one respondent, the

American Bus Association (ABA), recommended that the case-by-case approval system continue to be used. The IBT stated, "* * * further exemptions should not be granted until the extent is determined to which on-board computers lend themselves to enforcement of hours-of-service regulations at roadside inspections."

The FHWA proposes to allow the use of on-board computers to record drivers' records of duty status in lieu of the handwritten record as long as they meet the performance requirements contained in § 395.15. This decision is based on the information available to the FHWA, public comments, and the need to identify new means of promoting motor carrier safety. The FHWA's exemption programs currently being conducted in ten motor carrier fleets will help to develop additional data regarding the use of automatic on-board recorders. The information gathered to date, however, indicates that such systems can improve driver control, aside from the issue of maintaining hours of service compliance records. Furthermore, the automatic on-board recording devices appear no less effective than handwritten driver logs. Use of such equipment will also promote increased management control of fleet operations. The FHWA believes that greater management control relates, in a positive way, to increased productivity, better maintenance, and improved safety.

Technological advances in the designs of tachograph records have made these devices capable of driver-interactive hours-of-service recordkeeping. They are also highly accurate, easily read by enforcement personnel, and considerably less expensive than the current on-board computer systems. For these reasons, the FHWA has determined that these devices should also be allowed in lieu of the handwritten record, provided they meet the proposed performance requirements for using such devices as contained in § 395.15.

Issue No. 4: To what extent are on-board recorder systems tamperproof?

Eight comments to the docket specifically mentioned a concern about possible tampering to alter data. The IBT indicated considerable concern that the on-board recorder would lead to driver harassment and increased work related stress, both of which might lead to tampering. Cadec stated that up to 5 percent of the devices returned to their factory for the first-time for repairs had failed due to tampering. However, Cadec noted that the level of this type of repair quickly fell to one percent or less once the motor carrier management was notified of the problem.

The FHWA believes that the level of compliance, while unacceptable, is better than the current practices using the handwritten record. Manufacturers may also react to tampering with improved devices which will further curtail tampering attempts.

In considering information available to the FHWA at this time, plus the positive reports received from the FHWA's Office of Motor Carriers' Safety Specialists investigating on-board computer users who have been granted waivers, there does not appear to be a serious problem with tampering of on-board computers.

Issue No. 5: Standardization.

Two on-board computer manufacturers and one motor carrier that uses such a device recommend standardization of the printed data and visual communications format. Standardization was cited as a means of reducing the burden for enforcement officials as the number of different on-board computer systems grows.

Section 395.8 of the FMCSR, Driver's record of duty status, specifies the items of hours-of-service information to be recorded. Currently, § 395.8 also specifies the use of a grid to depict the driver's status. The manufacturers of on-board computers currently being tested under FHWA exemptions have designed their software to provide all of the information required in § 395.8(d). In addition, drivers may activate the instrument's electronic display by striking coded keys to show the duty status information sequentially. In this way, drivers may meet the duty status record requirements for the current day. Reports from the Office of Motor Carriers' Safety Specialists indicate that enforcement personnel find this method of checking drivers' hours-of-service easy and fast, thereby minimizing the time a vehicle and driver are detained for inspection. For these reasons, the FHWA does not propose to require additional or special information formats beyond that currently required in § 395.8.

The current software is able to reconstruct the mandated grid when used with office computer equipment. The grid is needed for compliance/safety reviews of motor carriers and motor carriers would be required to generate such a grid upon demand. The FHWA is interested in the use of computer stored information files, including hours-of-service records, as an alternative method to store and retrieve this data.

Information Requested

The FHWA requests comment on the proposed rule. The FHWA is especially interested in receiving comments and information on the following questions:

1. Are techniques available that permit drivers to certify the authenticity of the hours-of-service records stored in the memory of the motor carrier terminal or home office computer?
2. Would a personal driver-record identifier guarantee the evidentiary value of the driver's computer stored record of duty status?
3. What software and hardware security measures or other protection are available to reduce the possibility of tampering by drivers or motor carriers to an acceptable level and to verify a driver's acknowledgment of the record of duty status with an acceptable level of confidence that the verifying person was the driver?
4. What are the acceptable levels of confidence for tamperproofing and verification of identity?
5. Is technology available that will permit drivers' hours-of-service records to be stored by a computer, following verification by the driver, and thereafter be unalterable?
6. Under what circumstances should hard copies be required?
7. What type and method of training should State enforcement agents receive in order to become familiar with the workings of automatic on-board recorders?
8. Should motor carriers be required to notify FHWA of their intention to use on-board recording devices?
9. Should the design of the on-board recording device by required to warn the driver when it is malfunctioning?
10. Should the final rule require a uniform format (i.e., type of data and order in which it is presented) for the visual displays on the on-board recording devices? Is this or other uniformity needed for enforcement purposes? Would any specific design requirements, such as uniformity of data presentation, unnecessarily restrict device design and associated costs of the devices?
11. Should the final rule contain maximum failure rates for the devices which would make the devices unacceptable for use? If so, what should these rates be?

Discussion and Regulatory Impact

The FHWA has determined that the technology available at this time has reached a level of development that permits the FHWA to accept driver-interactive, automatic on-board

recorders for recording drivers' hours of service. The promulgation of rules to allow the use of these devices in lieu of the handwritten record will not diminish safety and will likely have positive benefits for the industry, enforcement agencies, and safety. The FHWA expects the introduction and acceptance of automatic on-board recorders to greatly reduce the paperwork burdens for motor carriers as a result of savings of the time and expense in handling, evaluating, filing, and storing records.

Motor carriers could also gain considerably from increased information of their operations. Increased productivity is reported by certain motor carriers using automatic on-board recorders. This increase is due to the more accurate calculation of mileage driven and the time available for actual driving. Enforcement personnel have also found that time can be saved in roadside inspections where automatic display of driver hours of service records are possible. As a result, vehicles are detained for shorter periods during inspections.

The FHWA believes that the benefits gained from permitting the use of automatic on-board recorders will outweigh any negative societal or operating costs that might exist. The extensive operational experience by carriers already provided an exemption to use the recorders, particularly Frito-Lay, Inc., appears to support this claim. If future compliance/safety reviews reveal, however, that drivers and/or motor carriers are abusing the intent of the automatic systems, the FHWA is prepared to initiate rulemaking to strengthen the regulations associated with the use of automatic on-board recorders.

The FHWA is proposing to amend 49 CFR 395.8 to permit motor carriers to use automatic on-board recording devices an an alternative to the handwritten record of duty status. The FHWA is proposing to issue a new § 395.15 specifying the requirements which an automatic on-board recording device must meet in order to be acceptable as an alternative to the handwritten record of duty status.

The proposed rule would add a definition of automatic on-board recording device to § 395.2. The definition would be broad enough to include a variety of devices, including computers and tachographs, provided the devices meet the requirements specified in the proposed rule. The device must also be able to record the time and synchronized vehicle operations which are related to vehicle motion (i.e., speed, axle revolutions). Section 395.8 of the FMCSR would also be revised to allow automatic on-board devices in lieu of the handwritten records of a driver's duty status.

The proposed § 395.15 would contain a number of paragraphs. Section 395.15(a) would contain the authority for the motor carrier to use the devices, at its discretion, and the requirement that the driver use the device if the motor carrier so decides. Section 395.15(b) would contain the requirements for use of the on-board devices and support systems. These include the requirement for the device to immediately generate information needed by enforcement personnel and for home terminal support systems to generate summaries of the hours of service information. This paragraph also requires that the driver have available, either in the device or hard copy, a record of the full 6 or 7 days of previous driver status required in Part 395.

While this NPRM does not propose to require that "hard copies", i.e., paper copies, be created, if such copies are made, it is proposed that they be signed by the driver. The driver's signature certifies that all entries on these documents, required by this section, are true and correct.

Section 395.15 would require that instruction information on how the device operates be carried on board the vehicle. If the device fails, the rule would require that the driver immediately reconstruct his or her duty status for the previous 7 days, less whatever time for which the driver has a hard copy of the duty status. The rule would require that the driver carry sufficient blank duty status grids to reconstruct, in case of a device failure, past days and future days to complete the trip.

The proposal would also establish minimum performance standards for the devices. These standards are considered important to ensure that the devices have low failure rates and drivers are not faced with major reconstruction of past travel. The standards are also needed to ensure that the devices provide information in a uniform and adequate manner for Federal, State, and local enforcement personnel. The FHWA proposes that the motor carrier obtain a certification from the device manufacturer that the device meets certain standards. The FHWA also proposes that the device permits update of duty status only when the vehicle is at rest. This requirement is necessary in recognition of the importance of the driver maintaining eye contact with the other vehicles in the traffic stream while driving. The FHWA is interested in comment on the appropriateness and adequacy of these requirements.

The proposed alternative method of recording drivers' hours of service is intended to provide relief to motor carriers and drivers from the burdensome requirements of completing these records by hand and of handling, processing, and retaining numerous pieces of paper. The FHWA believes, however, that its hours of service recordkeeping requirements are needed to effectively monitor drivers' hours of service and to enforce the hours of service regulations so as to minimize the problem of driver fatigue. The FHWA is reluctant to take any step which would reduce compliance with the hours of service requirements of Part 395. The FHWA intends to closely monitor the use of on-board recording devices for recording and monitoring drivers' hours of service. In this proposal (§ 395.15(k)), the FHWA would reserve the right to order motor carriers to require drivers to prepare driver's records of duty status by hand if the FHWA assigns a motor carrier a conditional or unsatisfactory safety rating, or if the FHWA determines that drivers are exceeding the hours of service limitations of Part 395, failing to accurately and completely record their hours, or tampering with the devices. The alternative provided by § 395.15 would no longer be available to this motor carrier.

The FHWA believes the proposed rule has the potential to substantially reduce the paperwork burden now imposed on the motor carrier industry. It is conservatively estimated that the driver who begins to use an on-board electronic recording device in lieu of the currently required driver's record of duty status would have the paperwork burden reduced by at least 80 per cent. A motor carrier must now review each driver's record of duty status, which is prepared daily. Again, it is conservatively estimated that a motor carrier who makes use of on-board electronic recording devices and the computers used in conjunction with such devices would realize a burden reduction of at least 80 per cent. The FHWA seeks comments concerning paperwork burdens. It is particularly interested in receiving:

1. Information indicating how many motor carriers could be expected to use the on-board electronic recording devices.

2. Estimates on the amount of time drivers and motor carriers expend on the "driver's records of duty status."

3. Estimates on the percentage of reduction drivers and motor carriers could expect if on-board electronic recording devices were used.

4. Information or suggestions for modifications of this proposal that could result in further reductions.

It is further anticipated that any economic impact upon the motor carrier industry will be outweighed by the economic benefits derived in the utilization of better operational data produced by the automatic on-board recorder. The motor carrier will have a choice whether to use the recorder, so any increase in costs is at the carrier's discretion. Furthermore, there are safety benefits expected as a result of increasing numbers of companies using these devices. State enforcement officials will experience increasing productivity in roadside inspection programs as the total number of vehicles equipped with on-board recorders grows. For these reasons and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities.

Information collection requirements contained in this regulation are being submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, because of the public interest in commercial motor vehicle safety, this proposed rule is considered significant under the regulatory policies and procedures of the Department of Transportation. For this reason and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impact anticipated as a result of this rulemaking action will be minimal, since this proposal merely affords motor carriers an alternative method of complying with an existing safety requirement.

Due to the number of occasions the public has had an opportunity to comment on this specific issue, the FHWA has determined that a 30-day public comment period is adequate for this proposal. In addition, because this proposal is not mandatory, and no degradation in safety will result, the FHWA believes that good cause exists for expedited action and in this case such action will serve the public interest.

List of Subjects in 49 CFR Part 395

Highway and roads, Highway safety, Motor Carriers, Driver's hours of service, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on March 8, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Part 395 as follows:

PART 395—HOURS OF SERVICE OF DRIVERS

1. The authority citation for 49 CFR Part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48 and 301.60.

2. Section 395.2 is amended by adding a definition of "automatic on-board recording device" as new paragraph (k) to read as follows:

§ 395.2 Definitions.

* * * * *

(k) *Automatic on-board recording device.* An electric, electronic, or electro/mechanical device capable of recording driver's duty status information accurately and automatically as required in § 395.15. The device must be connected with the vehicle to record vehicle operations.

3. In § 395.8, paragraph (e) is amended by adding, "of this section or § 395.15" between "activities," and "failure" and by removing, "as prescribed herein".

4. In § 395.8, paragraph (l) is amended by adding paragraph (4) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(l) * * *

(4) The requirements of this section, except paragraph (e) and paragraphs (k) (1) and (2) of this section, shall not apply to a motor carrier and its drivers who use automatic on-board recording devices and who comply with all of the requirements of § 395.15 of this part.

§ 395.13 [Amended]

5. In § 395.13, paragraph (b)(2) is amended by adding, "or 395.15" between "395.8" and "shall".

6. Part 395 is amended by adding a new § 395.15 to read as follows:

§ 395.15 Automatic on-board recording devices.

(a) *Authority to use automatic on-board recording device.* (1) A motor carrier may require a driver used by the motor carrier to use an automatic on-board recording device to record the driver's hours of service in lieu of complying with the requirements of § 395.8 of this part.

(2) Every driver required by a motor carrier to use an automatic on-board recording device shall use such device to record the driver's hours of service.

(b) *Information requirements.* (1) Automatic on-board recording devices shall produce, upon demand, a driver's record of duty status grid, chart, electronic display, or printout showing the time and sequence of duty status changes.

(2) The device shall provide a means whereby authorized Federal, State, or local officials can immediately check the status of a driver's hours of service, when used in conjunction with handwritten or printed records of duty status, for the previous 7 days.

(3) Support systems used on conjunction with on-board recorders at the home terminals or principal places of business must be capable of providing authorized Federal, State, or local officials with summaries of an individual driver's hours of service records, including the information specified in paragraph 395.8(d). Such support systems should meet the information interchange requirements of the American National Standard Code for Information Interchange (ANSCII) (EIARS–232/CCITT V.24 port (National Bureau of Standards "Code for Information Interchange," FIPS PUB 1–1)).

(4) The driver shall have in his/her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records shall consist of information stored in and retrievable from the automatic on-board recording device, handwritten or computer generated records, or any combination thereof.

(5) All hard copies of the driver's record of duty status must be signed by the driver. The driver's signature certifies that the information contained therein is true and correct.

(c) The duty status shall be recorded as follows:

(1) "Off duty" or "OFF", or by identifiable code or character;

(2) "Sleeper berth" or "SB", or by identifiable code or character (only if the sleeper berth is used);

(3) "Driving" or "D", or by identifiable code or character; and

(4) "On-duty not driving" or "ON", or by identifiable code or character.

(d) *Additional information.* The following information shall also be included:

(1) Date;

(2) Truck or tractor and trailer number;

(3) Name of carrier;
(4) Main office address;
(5) Name of co-driver; and
(6) Shipping document number(s), or name of shipper and commodity

(e) *Location of duty status change.* (1) For each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

(2) Motor carriers are permitted to use location codes in lieu of the requirements of subparagraph (e)(1). A list of such codes showing all possible location identifiers shall be carried in the vehicle cab and motor carrier's principal place of business and made available to an enforcement official on request.

(f) *Entries made by driver only.* If a driver is required to make written entries relating to the driver's duty status, such entries must be legible and in the driver's own handwriting.

(g) *Reconstruction of records of duty status.* Drivers are required to note any failure of automatic on-board recording devices, and to reconstruct immediately the driver's record of duty status for the current day, and the past 7 days, less any days for which the drivers has records, and to continue to prepare a handwritten record of all further duty status until the device is operational.

(h) *On-board information.* Each vehicle must have on-board an information packet containing the following items:

(1) An instruction sheet describing in detail how data may be stored and retrieved from an automatic on-board recording system; and

(2) A supply of blank driver's record of duty status grids sufficient to record the driver's duty status and other related information for the duration of the current trip.

(i) *Filing driver's record of duty status.* The driver shall submit or forward, electronically or by mail to the regular employing motor carrier the record of the driver's duty status for a day within 13 days following the completion of that day.

(j) *Performance of recorders.* Motor carriers that use automatic on-board recording devices for recording their drivers' records of duty status in lieu of the handwritten record shall ensure:

(1) That the automatic device design has been sufficiently tested to meet the requirements of this section and under the conditions it will be used;

(2) That the automatic on-board recording device permits duty status to be updated only when the vehicle is at rest;

(3) That the automatic on-board recording device and associated support systems are, to the maximum extent practicable, tamperproof and do not alter the information collected on the driver's hours of service;

(4) That automatic on-board recording devices with electronic displays shall have the capability of displaying the following:

(i) Driver's total hours of driving today;
(ii) The total hours on duty today;
(iii) Total miles driving today;
(iv) Total hours on duty for the 7 consecutive day period, including today;
(v) Total hours on duty for 8 consecutive day period, including today; and
(vi) The device shall have the capabiilty of displaying the sequential changes in duty status and the times the changes occurred, for the number of days which the driver would be recording his/her duty status;

(5) That the on-board recorder is capable of recording separately each driver's duty status when there is a two-driver operation;

(6) That the on-board recording device is maintained and recalibrated in accordance with the manufacturer's specifications; and

(7) That the motor carrier's drivers are adequately trained regarding the proper operation of the device.

(k) *Rescission of authority.* (1) The FHWA may, after notice and opportunity to reply, order any motor carrier or driver to comply with the requirements § 395.8 of this part, so that an automatic on-board recording device is not the sole method to record a driver's hours of service for purposes of this part.

(2) The FHWA may issue such an order if the FHWA has determined that—

(i) The motor carrier has been issued a conditional or unsatisfactory safety rating by the FHWA;

(ii) The motor carrier has required or permitted a driver to establish, or the driver has established, a pattern of exceeding the hours of service limitations of section 395.3 of this part;

(iii) The motor carrier has required or permitted a driver to fail, or the driver has failed, to accurately and completely record the driver's hours of service as required in this section; or

(iv) The motor carrier or driver has tampered with or otherwise abused the automatic on-board recording device on any vehicle.

[FR Doc. 88-5507 Filed 3-10-88; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80334-8034]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Proposed rule with request for a short-term comment period.

SUMMARY: In response to a request by the Pacific Fishery Management Council (Council) NOAA proposes regulations (1) to alter the schedule in the framework 1984 amendment to the Fishery Management Plan for the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP) which allocates coho and chinook salmon between non-Indian commercial and recreational ocean fisheries north of Cape Falcon, Oregon, and (2) to increase in-season management flexibility in 1988 to allow the total ocean quotas to be harvested. The regulations are necessary to utilize more fully the allowable ocean salmon harvest and to lessen depressed economic conditions in the salmon fishing industry and in businesses associated with it. The regulations are intended to provide management flexibility to maximize the opportunity for ocean harvest of salmon that are surplus to inside fishery and spawning needs.

DATE: Comments will be received until March 23, 1988.

ADDRESS: Comments on this proposed rule may be submitted to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115. Copies of the environmental assessment and the draft regulatory impact review/initial regulatory flexibility analysis (RIR/RFA) prepared for this rule are available upon request from the Council.

Additional assessments of regulatory impacts of this action will be available from the Council as follows. A document entitled "Preseason Report II: Analysis of Proposed Regulatory Options for 1988 Ocean Salmon Fisheries" will be available March 22. A second publication entitled "Preseason Report III: Analysis of Council Adopted Measures for 1988 Ocean Salmon Fisheries" will analyze the impacts of this rule and final management measures adopted by the Council and will be available on or about April 25, 1988. The Council's office address is as

follows: Lawrence D. Six, Executive Director, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations implementing the framework amendment to the FMP were published on October 31, 1984 (49 FR 43679), and are codified at 50 CFR Part 661. The framework regulations include a sliding scale for allocating coho and chinook salmon between non-Indian ocean recreational and commercial fisheries north of Cape Falcon, Oregon, based on predicted abundance of coho salmon (Appendix II.B.2.a). At the request of the Council, and emergency rule was implemented in 1986 to increase the recreational share of the ocean coho salmon harvest (51 FR 18451, May 20, 1986). The emergency rule lapsed prior to the 1987 season.

This proposed rule, during a limited period of time, would:

(1) Alter the framework sliding scale by allocating (a) an increased share of the ocean coho and chinook salmon harvest to the recreational fishery during periods of low stock abundance, (b) an increased share of the ocean coho salmon harvest to the recreational fishery during periods of high coho abundance, and (c) an increased share of the ocean chinook salmon harvest to the commercial fishery during periods of high chinook abundance; and

(2) Increase in-season management flexibility to achieve the total ocean harvest quotas for the 1988 season.

The proposed action would be taken under emergency authority of the Magnuson Fishery Conservation and Management Act, section 305(e), 16 U.S.C. 1855(e). Thus, it will be effective for 90 days, and may be extended for one additional period not exceeding 90 days. An FMP amendment is being prepared to consider a similar allocation issues for 1989 and beyond.

The Allocation Review Process

In April 1987, the Council asked the States of Oregon and Washington to conduct a review of the harvest allocation schedule north of Cape Falcon, Oregon. The review was precipitated by dissatisfaction of both commercial and recreational ocean fishermen over the reduced harvests and short ocean salmon seasons of recent years. In addition, fishermen expressed concern that some coho and/or chinook salmon allocated to ocean fisheries always remained unharvested at the end of the season. Each ocean user group had initiated action in hope of increasing its share of ocean harvests.

Commercial interests pursued legal remedies. Two associations representing commercial trollers filed a suit against the Secretary of Commerce (Secretary), challenging the exclusion from the FMP's ocean allocation plan of an escalating recreational fishery just inside the Columbia River mouth (the so-called "Buoy 10" fishery). The plaintiffs in *Pacific Trollers et al. v. Baldrige et al.* requested that harvests from the fishery be treated as if caught in the ocean. This would result in larger ocean quotas for the troll fishery. The Court ordered the parties to resolve the issues in the case through the Council process by the 1988 fishing season.

Recreational advocates pursued legislative remedies. A bill (HB 223) was introduced in the Washington legislature directing the Department of Fisheries, among other things, to "represent sport fishing interests to regional fish allocation bodies as the highest priority." The legislature tabled action on the bill and funded a study to evaluate the economic value and impact of Washington non-Indian salmon and sturgeon fisheries. The economic study will be completed in early March 1988.

The Council adopted a schedule for review of its non-Indian allocation plan north of Cape Falcon, which involved numerous meetings and extensive discussions among fishery representatives and managers during the summer and fall of 1987. Participants in the process became known as the North of Cape Falcon Allocation Work Group (Work Group).

Allocation Alternatives

Allocation alternatives drafted by the Work Group were presented to the Council during its November 1987 meeting. The alternatives addressed three separate aspects of allocation: (A) Objectives and flexibility of the allocation plan; (B) a sliding scale to allocate coho and chinook salmon between non-Indian commercial and recreational ocean fisheries at various levels of stock abundance; and (C) accounting of salmon harvests in the Buoy 10 fishery. The alternatives are described below.

A. Allocation Objectives and Management Flexibility

Work Group participants unanimously agreed that additional management flexibility was needed in the allocation plan to allow trades of chinook and coho between non-Indian ocean fisheries and transfers of salmon from one fishery to the other which could not otherwise be harvested in the ocean. The Work Group also agreed on an allocation objective for each fishery. These recommendations were adopted by the Council for public comment purposes as an alternative to the status quo.

B. Allocation Schedule

Three alternative allocation schedules were proposed for public review: The status quo, an option developed by troll representatives, and an option developed by recreational representatives. The three options are described in the following table:

COMPARISON OF ALTERNATIVE ALLOCATION SCHEDULES FOR NORTH OF CAPE FALCON NON-INDIAN OCEAN CATCHES (DEVELOPED NOVEMBER 1987)

Coho			Chinook		
Percentage	Harvest (thousands of fish)		Percentage	Harvest (thousands of fish)	
	Troll	Recreational		Troll	Recreational
Alternative 1—Status quo (current framework fmp) [1]					
0–600	31–49	69–51	0–600	63–54	37–46
600–1,300	49–69	51–31	600–1,300	54	46
>1,300	69	31	>1,300	54	46
Alternative 2—(Developed by commercial advisors) [2]					
0–100	25	75	0–80	50	50
200	30	70	100	54	46
300	35	65	120	58	42

COMPARISON OF ALTERNATIVE ALLOCATION SCHEDULES FOR NORTH OF CAPE FALCON NON-INDIAN OCEAN CATCHES (DEVELOPED NOVEMBER 1987)—Continued

Coho			Chinook		
Percentage	Harvest (thousands of fish)		Percentage	Harvest (thousands of fish)	
	Troll	Recreational		Troll	Recreational
400	40	60	140	58.5	41.5
500	45	55	160	59	41
600	50	50	180	59.9	40.5
700	55	45	200	60	40
800	60	40	220	60.5	39.5
900	63	37	240	61	39
1,000	66	34	260	61.5	38.5
>1,100	69	31	280	62	38
			300	62.5	37.5
Alternative 3—(Developed by recreational advisors) [3]					
0–300	25	75	0–100	50	50
>300	60	40	100–150	60	40
			>150	70	30

[1] This is a shortened version of the existing framework table in the FMP. In the existing framework allocation schedule, the chinook percentages are tied to total allowable coho harvest.

[2] For allowable chinook harvests between the numbers shown, the allocation would be interpolated linearly. If the ocean recreational chinook quota determined from this allocation schedule exceeds 25 percent of the ocean recreational coho quota, the recreational chinook allocation would be 25 percent of the recreational coho quota with the balance of the chinook being allocated to the troll fishery.

[3] In this schedule, the percentage allocation is additive depending on stock abundance. For example, for a total coho harvest of 350,000, the recreational allocation would be equal to 75 percent of 300,000 coho plus 40 percent of 50,000 coho or 225,000 + 20,000 = 245,000.

C. Buoy 10 Accounting

In the suit filed by commercial trollers questioning the exclusion of the Buoy 10 recreational fishery from the ocean allocation schedule, the Court ordered the parties to schedule resolution of the issues presented in the case through the Council process by the 1988 fishing season. Pursuant to the Court's directive, four alternatives proposed by the Work Group were approved by the Council at its November meeting for public review:

1. Status Quo

The impacts of the Buoy 10 fishery upon stocks of concern are considered pre-season in the determination of the allowable ocean harvest. None of the Buoy 10 harvest, nor impact on stocks of concern, count toward achievement of ocean quotas.

2A. Impact on Stocks of Concern

Impacts of the Buoy 10 recreational fishery on the weakest stocks of ocean management concern would be calculated as if the harvest were in the ocean. Any resulting change in allowable ocean harvest of all stocks would be divided between ocean fisheries according to an allocation schedule.

2B. Impact on Stocks of Concern, Including Any Inside Commercial Impacts

This alternative is similar to Alternative 2A except that any impacts on critical stocks from the non-Indian gillnet fishery inside the Columbia River mouth also would be calculated as if harvested in the ocean. As in Alterntive 2A, the resulting change in allowable ocean harvest of all stocks would be divided between ocean fisheries according to an allocation schedule.

3. Entire Buoy 10 Catch

Ocean salmon quotas would reflect consideration of the entire Buoy 10 catch as if it were taken in the ocean.

Council Solicits Public Review

Public comment periods were held at the July, September, and November meetings in 1987, and the January 1988 meeting. In addition, public comments were invited on the allocation alternatives adopted by the Council from December 17, 1987 until the January 1988 Council meeting. The Work Group continued to meet to discuss compromise positions. Public hearings were held in Seattle, Washington, on January 6, and in Astoria, Oregon, on January 7. A large volume of letters was received and reviewed by Council members and staff. The majority of comments received supported refining allocation goals, increasing management flexibility, allocating more salmon to the ocean recreational fishery during periods of low stock abundance, and excluding Buoy 10 catches from the ocean allocation schedule.

Proposed Allocation Plan for 1988

The allocation alternatives were reviewed by Council advisors prior to the January 13–14, 1988, meeting of the Council. Following extensive comment at that meeting, the Council, by majority vote, recommended implementation of an interim allocation plan in 1988 for non-Indian commercial and recreational salmon fisheries north of Cape Falcon, Oregon. It also recommended increasing the in-season management flexibility in 1988 to facilitate attainment of the total ocean quota.

A. Allocation objectives and Management Flexibility

The following allocation ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the objectives for the commercial and recreational fisheries, as follows:

The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the objectives for the commercial and recreational fisheries, as follows:

1. Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily closures, gear, bag, and particularly area restrictions.

2. Maximize the value of the commercial harvest, while providing fisheries of reasonable duration.

Allocation will be expressed in terms of quotas based on the following schedule, which is presumed to best achieve the allocation goal. However, these quotas are neither guaranteed catches nor inflexible

ceilings. Only the total ocean harvest quota is a maximum allowable catch. Additional flexibility in-season may be utilized to adjust individual quotas if the in-season adjustment will increase the degree to which the allocation goal is achieved, e.g., if it is apparent that the harvest of an individual quota by one fishery will not be achieved and that the other fishery can pursue the harvestable fish.

B. Allocation Schedule

The following allocation schedule would replace the current framework allocation schedule:

PERCENTAGE OF TOTAL OCEAN HARVEST TO BE ALLOCATED TO NORTH OF CAPE FALCON NON-INDIAN OCEAN FISHERIES IN 1988 [1]

Coho salmon			Chinook salmon		
Ocean harvest (numbers of fish)	Commercial	Recreational	Ocean harvest (numbers of fish)	Commercial	Recreational
>300,000	25	75	<100,000	50	50
>150,000	60	40	100–150,000	60	40
			>150,000	70	30

[1] In this schedule, the percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the intial tier. For example, the recreational allocation for a total allowable ocean harvest of 350,000 coho would be composed of two parts. The first part would be calculated by multiplying 300,000 coho by 75 percent. The result of this calculation would be added to the product of multiplying 50,000 coho by 40 percent, i.e, 225,000 + 20,000 = 245,000 coho or 70 percent of the total allowable ocean harvest.

C. Buoy 10 Accounting

The Council proposes no change from the status quo. The impacts of the Buoy 10 fishery upon the weakest stocks of ocean management concern will be taken into consideration in calculating preseason allowable ocean harvests, but Buoy 10 catches do not count toward achievement of ocean quotas as if those catches occur in the ocean.

Rationale for Proposed 1988 Allocation Plan

The Council's adoption of the proposed 1988 allocation plan and continued exclusion of the Buoy 10 fishery from the ocean allocation schedule is based on consideration of comments, testimony and analyses in the administrative record which is summarized as follows:

1. Representatives of both commercial and recreational ocean fisheries support the Council-adopted allocation objectives and increased management flexibility.

2. Increased management flexibility will help ensure that the total allowable non-Indian ocean salmon harvest is taken in the ocean.

3. The current framework schedule allocates chinook based on coho abundance. At the low coho abundance of recent years, it causes severe instability in both commercial and recreational fisheries.

4. The proposed allocation schedule will bring stability and economic benefits to the recreational fishery and related businesses, which outweigh any loss to the commercial industry.

5. A commercial all-species-except-coho fishery in May is maintained under the Council's proposal, which contributes to meeting the objective of the Council to maximize the value of the catch for the commercial fishery.

6. Management of ocean fisheries under the current framework schedule has required an excessive number of in-season management adjustments, which cause an unacceptable level of instability, particularly in the recreational fishery. During the 1987 season, nine adjustments to recreational management measures north of Cape Falcon were implemented, including modification of area closures and bag limits. The proposed allocation schedule should reduce the need for inseason changes to recreational management measures.

7. There is currently potential for a Memorial Day to Labor Day recreational fishery in all ocean areas south of Cape Falcon. The proposed allocation schedule increases the possibility of a similar recreational season off Washington and northern Oregon.

8. There is no precedent that would justify managing Buoy 10 as an ocean fishery and there is no historic evidence that Buoy 10 was ever managed as an ocean fishery. The historic insignificance of the fishery led managers to aggregate the landing data from Buoy 10 and the ocean for convenience. When Buoy 10 catches became significant, data were segregated to account separately for the ocean and in-river recreational fisheries.

9. Buoy 10 has a different stock composition than the adjacent ocean waters, so there is no biological reason to treat Buoy 10 as an ocean fishery.

10. There is no distinction between Buoy 10 and any other fishery in internal waters for ocean allocation purposes. Modification of ocean allocations to account for one internal water fishery would establish management inconsistency between that fishery and other fisheries in internal waters.

11. The Buoy 10 fishery is an historic fishery whose growth has been caused by the same factors which benefitted inside commercial fisheries. If Buoy 10 recreational catches were to count toward ocean quotas, it would be necessary to count the in-river commercial catch in the ocean quota to preserve equity between the two user groups.

12. It is considered technically impractical to transfer impacts on weak stocks from Buoy 10 to the ocean fisheries e.g., to treat Buoy 10 harvests as if taken in the ocean. One alternative considered by the Council was counting, as if caught in the ocean, only those Buoy 10 fish identified as being from the weakest stocks of ocean management concern. The additional allowable harvest of all stocks would be divided between ocean fisheries according to the allocation schedule, with the Buoy 10 fishery counted against the ocean recreational share. During the January Council meeting, the Chairman of the Council's Salmon Plan Development Team expressed concern over the technical difficulty of determining how many Buoy 10 fish to count as if caught in the ocean, because the number of fish from the weakest stock caught in the ocean varies with the geographical area of the fishery, type of gear, and origin of the fish from the weakest stock.

Timing of Implementation

The Court's order of July 22, 1987, in the *Pacific Trollers et al. v. Baldrige et al.* mandated the resolution of issues in the case by the 1988 season. The schedule submitted to the Court for review of issues raised by the troller plaintiffs culminated in the Council's decision at its January meeting. Because the Council considered the Buoy 10 accounting issue as not separable from

the broader issue of allocating salmon between ocean fisheries, the decision on the allocation schedule also was made at the January Council meeting.

There is insufficient time to amend the FMP between the January 1988 Council meeting and the beginning of the 1988 fishing season. Under the existing FMP framework regulations, the Council must adopt recommendations to the Secretary for 1988 management measures no later than its April 1988 meeting. If the allocation plan is to be useful for the 1988 season, it is necessary for it to be implemented under the Magnuson Act emergency provisions of section 305(e), 16 U.S.C. 1855(e), for two consecutive 90-day periods, beginning in early May 1988. Therefore, comments are solicited on whether the rule should be promulgated under the emergency authority of the Magnuson Act to apply during the 1988 fishing season or whether the full fishery management plan amendment process should be followed, thereby delaying implementation of the measures at least until the 1989 season.

Classification

This rule as proposed would be implemented under the emergency authority of section 305(e) of the Magnuson Act, 16 U.S.C. 1855(e), as amended, because there is insufficient time between now and the beginning of the 1988 season to amend the FMP. However, there is sufficient time between now and the proposed implementation date of April 29, 1988, to meet the requirements of the Administrative Procedure Act (APA). Thus, this rule is being proposed with a short-term comment period and, if approved, will be implemented by an interim final rule with a shortened cooling-off period.

A draft environmental assessment (EA) has been prepared by the Council and is available at the address above. The proposed rule is not expected to alter the total allowable harvest of salmon in the ocean. Thus, the draft EA indicates that this action is not expected to alter the nature nor the intensity of environmental impacts that were addressed in the supplemental environmental impact statement (SEIS) prepared by the Council for the 1984 framework amendment to the FMP. A notice of availability of the SEIS was published on September 23, 1984; 49 FR 38355. A final EA will be prepared by the Council as a basis for consideration of environmental impacts by the Assistant Administrator for Fisheries before implementation of any interim final rule.

The Acting Under Secretary, NOAA, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, because it will not result in (1) an annual effect on the economy of $100 million or more; (2) major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This determination is based on a draft regulatory impact review/initial regulatory flexibility analysis (RIR/RFA) prepared by the Council which indicates total increases in net economic value (NEV) arising from changes in recreational activities in the salmon fishery at between $850,000 and $1,100,000. Similarly, total decreases in NEV arising from changes in the commercial fishery are expected to be between $500,000 and $700,000. The draft RIR/RFA is available at the address listed above. A final assessment by the Council will be prepared and published in a document entitled, "Preseason Report II: Analysis of Proposed Regulatory Options for 1988 Ocean Salmon Fisheries." Copies of this document will be available on or about March 22, 1988. Another Council publication, "Preseason Report III: Analysis of Council Adopted Management Measures for 1988 Ocean Salmon Fisheries," will analyze the impacts of this rule and final management measures adopted by the Council. It will be available on or about April 25, 1988. Both documents can be obtained from the Council office at the address listed above.

The draft RIR/RFA also concludes that this proposed rule, if adopted, would have significant effects on small entities. The results of the analysis indicated adverse impacts for the commercial sector consisting of a maximum average decrease of between 12 and 25 percent for gross receipts for firms fully reliant on salmon catching and processing activities north of Cape Falcon. For firms similarly reliant on the recreational salmon fishery, the gains might be between 8 and 13 percent. A copy of this analysis may be obtained from the Council office at the address listed above.

This rule contains no collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Council has determined that this rule is consistent to the maximum extent practicable with the coastal zone programs of Washington and Oregon. This determination has been submitted for review by the responsible agencies of Washington and Oregon under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Indians.

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

Dated: March 9, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 661 is proposed to be amended as follows:

PART 661—[AMENDED]

1. The authority citation for 50 CFR Part 661 continues to read as follows:

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

Appendix—[Amended]

2. Appendix II.B.2 is amended for 90 days by suspending paragraphs (a) (i), (ii), (iii), and (iv) and adding paragraphs (a) (v), (vi), and (vii) to read as follows:

II. * * *

B. * * *

* * * * *

2. * * *

(a) *Coho and chinook from the U.S.-Canada border to Cape Falcon.*

* * * * *

(v) *Allocation goal.* The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the objectives for the commercial and recreational fisheries, as follows:

(A) Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily closures, gear, bag, and particularly area restrictions, and

(B) Maximize the value of the commercial harvest while providing fisheries of reasonable duration.

(vi) *Allocation flexibility.* Allocation will be expressed in terms of quotas based on the schedule in paragraph (vii), which is presumed to best achieve the allocation goal. However, these quotas are neither guaranteed catches nor inflexible ceilings. Only the total ocean harvest quota is a maximum allowable catch. Additional flexibility in-season may be utilized to adjust individual quotas if the in-season adjustment will increase the degree to which the allocation goal is achieved, e.g., if it is apparent that the harvest of an individual quota by one fishery will not be achieved and

that the other fishery can pursue the harvestable fish.

(vii) *Allocation schedule.*

(A) Allocation of coho and chinook salmon north of Cape Falcon, Oregon will be based on the following schedule:

Coho slamon			Chinook salmon		
Ocean harvest (numbers of fish)	Commercial [1]	Recreational [1]	Ocean harvest (numbers of fish)	Commercial [1]	Recreational [1]
<300,000	25	75	<100,000	50	50
>300,000	60	40	100–150,000	60	40
			>150,000	70	30

[1] Percentage.

(B) In the allocation schedule, the percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, the recreational allocation for a total allowable ocean harvest of 350,000 coho would be composed of two parts. The first part would be calculated by multiplying 300,000 coho by 75 percent. The result of this calculation would be added to the product of multiplying 50,000 coho by 40 percent, i.e., 225,000 + 20,000 = 245,000 coho or 70 percent of the total allowable ocean harvest.

* * * * *

[FR Doc. 88–5457 Filed 3–9–88; 1:16 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 49
Monday, March 14, 1988

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

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: May 12–13–1988.

Time:

8:30 a.m.-5 p.m., May 12

8:30 a.m.-Noon, May 13

Place: Room 104–A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–1560.

Done at Beltsville, Maryland, this 29th day of February 1988.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 88–5538 Filed 3–11–88; 8:45 am]

BILLING CODE 3410-03-M

Office of International Cooperation and Development

Cooperative Agreements; University of Arizona

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into a Cooperative Agreement with the University of Arizona for the Identification of Results of Farming Systems Research and Extension Activities.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with the University of Arizona. The objective of this agreement is to review, analyze and document the results of a number of farming systems research and extension (FSR/E) projects which have been implemented worldwide.

Assistance will be provided only to the University which will utilize funds to produce an FSR/E inventory report, providing detailed information on 20–25 projects to document the performance of past and on-going projects; identify the key factors influencing performance with emphasis on lessons learned; identify potential for incorporating these lessons learned into future applications; specify desirable indicators for assessing FSR/E performance; and assess the overall contribution of FSR/E to technology generation and transfer, and to economic development.

Based on the above, this is not a formal request for application. An estimated $88,000 will be available in FY1988 as partial support this work. It is anticipated that the agreement will be funded over a budget period of one year. Information on proposed Agreement #58–319R–8–014 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: March 8, 1988.

Allen Wilder,

Contracting Officer.

[FR Doc. 88–5445 Filed 3–11–88; 8:45 am]

BILLING CODE 3410-DP-M

Forest Service

Loon Mountain Ski Area Expansion; White Mountain National Forest; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The forest Service will prepare an environmental impact statement for Loon Mountain's proposed expansion of their winter sports site on the Pemigewasset Ranger District, White Mountain National Forest, Grafton County, Hew Hampshire. The Fish and Wildlife Service, Department of Interior, will participate as a cooperating agency. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by May 30, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Michael B. Hathaway, Forest Supervisor, White Mountain National Forest, Laconia, New Hampshire 03247.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Geoffrey Chandler, Loon Mountain EIS Coordinator, White Mountain National Forest, Laconia, New Hampshire 03247, phone 603–524–6450.

SUPPLEMENTARY INFORMATION: The White Mountain National Forest Land and Resource Management Plan was completed in April 1986. The management direction in the Plan called for further study of whether to expand an alpine winter sports site on Loon Mountain.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this site. One of these will be no development of the site. Other alternatives will consider development designs with varying capacities.

Michael B. Hathaway, Forest Supervisor, White Mountain National Forest, Laconia, New Hampshire, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, and the United States Environmental Protection Agency will be invited to participate as a cooperating agency to evaluate potential impacts on aquatic resources. In addition, the State of New Hampshire, the North Country Council, and the Town of Lincoln will participate with the Forest Service in a joint review process to assess the impacts of the proposed project.

Public scoping meetings were held in 1987. Additional meetings will be held in May or June of 1988. Meeting dates will be advertised in the local media.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1988. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Loon Mountain participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by March 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Michael B. Hathaway,

Forest Supervisor.

Date: March 7, 1988.

[FR Doc. 88-5464 Filed 3-11-88; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Catfish and Trout Survey

Notice is hereby given that the National Agricultural Statistics Service (NASS) will conduct a survey of commercial catfish and trout producers in July 1988. The survey will be similar to those surveys discontinued in 1982. Data will be collected on number of operations, water area, production sales, and inventory. Results will be published by the Agricultural Statistics Board on August 31, 1988. States to be included in the survey are:

Catfish—Alabama, Arkansas, California, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

Trout—California, Colorado, Georgia, Idaho, Michigan, Missouri, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, and Wisconsin.

In surveys conducted in 1989, data may be collected on additional aquacultural commodities and additional items for catfish and trout.

Comments from interested persons regarding this action should be addressed to William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division, NASS/USDA, Room 5906-S, Washington, DC 20250-2000.

Dated: March 9, 1988.

Charles E. Caudill,

Administrator.

[FR Doc. 88-5449 Filed 3-11-88; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Transmittal No. 06-10-88017-01; Project I.D. No. 06-10-88017-01]

Shreveport Minority Business Development Center (MBDC); Solicitation of Competitive Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of September 1, 1988 to August 31, 1989. The MBDC will operate in the Shreveport Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-federal	Total
Shreveport SMSA	$165,000	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of application is April 22, 1988.

ADDRESS: MEDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Acting Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on March 25, 1988 at 1:00 p.m. Conference site information may be obtained by contacting the individual designed above.

Addtional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: *11.800 Minority Business Development.*

Project Name: *Shreveport MBDC* (Geographic Area or SMSA).

Project Identification Number: *06–10–88017–01.*

Project Start and End Dates: *09/01/88 to 08/31/89.*

Project Duration: *12 months.*

Total *Federal Funding* (85%): *$165,000.*

Minimum *Non-Federal Share* (15%): *$29,118.*

Total Project Cost (100%): *$194,118.*

Closing Date for Submission of this Application: *April 22, 1988.*

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Shreveport, Louisiana.*

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum level of effort:

Financial packages *$2,747,000.*
Billable M&TA *$84,000.*
Number of Professional Staff *3.*
Procurements *$5,493,000.*
M&TA Hours *1,680.*
Number of Clients *76.*

[FR Doc. 88–5441 Filed 3–11–88; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the Dominican Republic

March 9, 1988.

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 March 15, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current import restraint limit for cotton textile products in Categories 347/348, produced or manufactured in the Dominican Republic.

Background

On January 29, 1988 a notice was published in the **Federal Register** (53 FR 2619), which announced, among other things, an import restraint limit for cotton textile products in Categories 347/348, produced or manufactured in the Dominican Republic and exported during the period which began on January 1, 1988 and extends through May 31, 1988. The Bilateral Textile Agreement of December 18, 1986, as amended, between the Governments of the United States and the Dominican Republic, under the terms of which this limit was established, also includes provisions for the carryover of shortfalls from the previous agreement period in certain categories (carryover).

Under the foregoing provisions of the bilateral agreement and at the request of the Government of the Dominican Republic, the limit established for Categories 347/348 is being increased for carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile

and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 9, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 26, 1988 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in the Dominican Republic and exported during the period which began on January 1, 1988 and extends through May 31, 1988.

Effective on March 15, 1988, the directive of January 26, 1988 is hereby amended to adjust the previously established limit for cotton textile products in Categories 347/348 to a level of 277,500 dozen,[1] as provided under the terms of the bilateral agreement of December 18, 1986.[2]

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5496 Filed 3-11-88; 8:45 am]

BILLING CODE 3510-DR-M

Increasing an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

March 9, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 15, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Texiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse of cotton and man-made fiber textile products in Categories 226/613/614/615 during the designated period in excess of the new agreed limit.

Background

A CITA directive published in the **Federal Register** on January 4, 1988 (53 FR 60) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 226/613/614/615, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

During consultations held on February 19, 1988 between the Governments of the United States and Thailand, agreement was reached to increase the specific limit for Categories 226/613/614/615.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commission of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 9, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, *Department of Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cooton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on March 15, 1988, the directive of December 29, 1987 is amended to include a new limit of 19,169,063 square yards [1] for Categories 226/613/614/615.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5497 Filed 3-11-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

[2] The provisions of the agreement provide, in part, that: (1) Specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits also may be increased for carryover and carryforward.

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 10, 1988.

The USAF Scientific Advisory Board Airlift Panel will meet on 29-30 March 1988, from 8:00 a.m. to 5:00 p.m., at Scott, AFB, IL.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force Military Airlift Command efforts to upgrade their command and control systems. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4948.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-5580 Filed 3-11-88; 8:45 am]

BILLING CODE 3910-01-M

Department of The Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 30 March 1988.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

Time of Meeting: 1500–1700 hours.
Place: The Pentagon, Washington, DC.
Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet. The objective of this meeting is to work with SARD personnel and help them identify costs of systems and technologies that have been identified in the panel's efforts on Competitive Strategies.

Due to the classification of the report and ensuing discussions, this meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 88–5429 Filed 3–11–88; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet March 16–17, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of the meeting is to discuss key issues related to the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

The unexpected availability of recently acquired new information critical to the Weapon Effectiveness Task Force's study does not accord an opportunity to provide 15 days prior notice of the meeting. Exceptional circumstances require that this information be discussed prior to the Task Force's targeted final report date in April 1988. The only opportunity during March to discuss this information is during March 16–17, 1988.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: March 10, 1988.

W.R. Babington, Jr.,
Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 88–5608 Filed 3–11–88; 8:45 am]
BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Latin America Task Force will meet March 23–24, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: May 10, 1988.

W.R. Babington, Jr.,
Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 88–5606 Filed 3–11–88; 8:45 am]
BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting; Correction

In **Federal Register** Doc. 88–4959, page 7388, Tuesday, March 8, 1988, appeared a notice of Closed Meeting to be held on March 16, 1988.

The following justification for not meeting the requirement of a 15 day notice in the **Federal Register** did not appear in the above mentioned document: "This Notice is being published late because of administrative problems."

Dated: March 9, 1988.

W.R. Babington, Jr.,
Commander, U.S. Navy, Federal Register Liaison.
[FR Doc. 88–5607 Filed 3–11–88; 8:45 am]
BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.199A]

Notice Inviting Applications for New Awards under the Cooperative Demonstration Program for Fiscal Year 1988

Purpose: To provide financial assistance through cooperative agreements to project that demonstrate collaborative vocational educational programs between State educational agencies, local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies, organizations, and institutions.

Deadline for Transmittal of Applications: June 20, 1988.

Deadline for Intergovernmental Review Comments: August 20, 1988.

Applications Available: April 1, 1988.

Available Funds Anticipated: $9,574,000.

Estimated Range of Awards: $125,000–$475,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 38.

Project Period: Up to 18 months.

Applicable Regulations: (a) The regulations in 34 CFR Parts 400 and 412 and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 78 (Educational Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

Criteria for Evaluating Applications: The Secretary assigns the 15 points, reserved in 34 CFR 412.30(b), as follows:

10 points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 412.31(b) for a total of 30 points for that criterion; and five points to the Selection Criterion (g)—Private Sector Involvement— in 34 CFR 412.31(g) for a total of 10 points for that criterion.

Absolute and Invitational Priorities: (a) In accordance with 34 CFR 75.105(b)(2)(ii) and 75.105(c)(3), the Secretary will give absolute preference in this competition only to applications proposing projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, and building trade councils) and public agencies in vocational education, including State boards and eligible recipients, as described in 34 CFR 412.10(a)(2).

(b) Under 34 CFR 75.105(c)(1), the Secretary also invites applications for projects that are designed to train skilled workers and technicians in high-technology occupations (including programs providing related instruction to apprentices), or to train skilled workers needed to produce, install, operate, and maintain high technology equipment, systems, and processes. Applications that meet this invitational priority will not receive a competitive or absolute preference over other applications that do not meet this priority.

(c) To be eligible for funding in this competition, an application must meet the absolute priority stated in paragraph (a). Applicants, however, should note that the Secretary intends to announce in a subsequent **Federal Register** notice, a separate competition under this program for projects related to dropout prevention. Applications under both competitions will be carefully reviewed to ensure that no grantee receives duplicate Federal funding.

Other Information: (a) Potential applicants are reminded that 34 CFR 412.10(b) requires that all projects must be (1) of direct service to the individuals enrolled and (2) capable of wide replication by service providers.

(b) Potential applicants are reminded that 34 CFR 412.40(a) requires that 25 percent of the cost of a project be provided by the recipient in accordance with 34 CFR Part 74, Subpart G.

(c) Due to the limited funds available, the Secretary strongly urges applicants not to propose purchasing equipment with Federal grant funds. The Secretary suggests that any equipment necessary be provided as part of the recipient's share of the project costs, as described in paragraph (b) above.

(d) Information on the evaluation processes the Department uses in determining whether projects are worthy of replication may be secured by requesting a copy of the Department's "Guidelines for Program Effectiveness" from Dr. James Avea, Recognition Division, 555 New Jersey Avenue, NW., U.S. Department of Education, Washington, DC 20202–5516. Dr. Avea can also identify the appropriate State Facilitator working with this program for a potential applicant. While applications will not be evaluated against this higher standard of worthiness, applicants may find this information useful in planning projects that are capable of replication.

For Applications or Information Contact: Richard F. DiCola, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 519, Reporters Building), Washington, DC 20202–5516. Telephone (202) 732–2362.

Program Authority: 20 U.S.C. 2411.

Dated: March 2, 1988.

Bonnie Guiton,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 88–5548 Filed 3–11–88; 8:45 am]

BILLING CODE 4000–01–M

Office of Education Research and Improvement

Research and Development Center on the Study of the Education of Disadvantaged Children; Solicitation of Public Comments

ACTION: Notice to Solicit Public Comments on a Planning Paper for a Research and Development Center on the Study of the Education of Disadvantaged Students.

Purpose: The Secretary invites public comments on a planning paper for a research and development center on the study of the education of disadvantaged students. The Office of Educational Research and Improvement intends to establish this center in fiscal year 1989.

Deadline for Transmittal of Comments: All comments should be received on or before April 4, 1988.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs, 34 CFR Parts 706 and 708. (b) The Notice of Proposed Biennial Research Priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625).

Description of Planning Paper: The Office of Educational Research and Improvement (OERI) has prepared and will make available upon request a planning paper that focuses on developing recommendations for a research and development center which addresses the research priority on the improvement of educational outcomes for students-at-risk. This priority involves the identification of educational strategies successful in lowering dropout rates and raising achievement levels of those students having the greatest difficulty in terms of learning and motivation.

Requests for Planning Paper or Information: To receive a copy of the planning paper or for additional information call or write Dr. John Ralph, U.S. Department of Education, OERI, Office of Research, Room 617, 555 New Jersey Avenue, NW., Washington, DC 20208–1606, 202/357–6223.

Invitation To Comment: All interested parties are invited to review and comment on the planning paper. Written comments received on or before the date specified above will be considered in preparing a final statement which describes the Department's recommendations for the research and related activities and objectives of a center on the study of disadvantaged students.

Program Authority: 20 U.S.C. 1221e.

Dated: March 8, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–5546 Filed 3–11–88; 8:45 am]

BILLING CODE 4000–01–M

Office of Elementary and Secondary Education

Intent to Repay to the Hawaii State Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Hawaii State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of final audit determinations. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before April 13, 1988.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, MS-6276), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732-4692.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1986, the Department recovered $1,829,781.30 from the Hawaii SEA in satisfaction of claims arising from two audits covering fiscal years (FY) 1973 through 1977. The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the SEA used Title I funds during FY 1973 through 1976 to supplant State and local funds in violation of 20 U.S.C. 241e(a)(3)(B)(1976) and 45 CFR 116.17(h). The statute and regulations required that Title I funds supplement, not supplant State or local funds and be expended to meet needs left unmet by funds available from those sources.

In the second audit, the auditors concluded that during FY 1974 through 1977, the SEA did not satisfy the Title I comparability requirements in 20 U.S.C. 241e(a)(3)(C)(1976) and 45 CFR 116.26(a). Those requirements provided that a local education agency (LEA) could receive Title I funds only if it used its State and local funds in each Title I area to provide services that taken as a whole, were at least comparable to services being provided in non-Title I areas.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement, which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $1,372,336 and has submitted a plan for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801 *et seq.* The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 has superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The SEA's plan proposes that the grantback funds will be used in the four administrative school districts in which the audit exceptions occurred. These are the Leeward, Windward, Honolulu, and Hawaii Districts.

The Leeward District proposes to use $888,185 in grantback funds to expand the math component provided with Chapter 1 funds to allow nine elementary schools to service children in grades 5 and 6. The district will also develop a pilot reading project for first graders. This project will be an early childhood computer-based reading component to enhance the concept of developmental services along with the remedial concept. Grantback funds will be used for salaries and fringe benefits for 15 teachers, 16 part-time teachers, substitute teachers, and educational supplies.

In the Windward District, $230,435 in grantback funds will be used to expand the services provided by regular Chapter 1 funds to additional eligible children. Children in the ninth and tenth grades in Kailu High School will participate in a diagnostic/prescriptive learning mathematics program that is designed as a supplement to the basal text. Six part-time teachers will be hired and supplies will be purchased for this program. A computer and software will be purchased for this program for use by Chapter 1 students.

Grantback funds in the amount of $234,805 will be used by the Honolulu District to augment the regular Chapter 1 Comprehensive Language Improvement Project. Nineteen part-time teachers will be hired. These funds will make it possible to raise the cutoff percentile scores for eligibility and thus serve more educationally disadvantaged children. Four elementary schools will also implement a pilot project to teach children to read better, write better, and reason better. For program evaluation, the Honolulu District will use grantback funds to make a transition to a new achievement test. This test was developed to provide reliable and verifiable information and to eliminate the penalizing effect other standardized tests have on traditionally low-scoring students. To supplement this test, reading diagnostic tests will be purchased to provide data that will result in more effective teaching.

Computers will be purchased with grantback funds by the Hawaii District. Computer-assisted instruction will be provided at 13 Chapter 1 schools to students most in need of remediating instruction. These computers will also provide technological aid for efficiency in meeting the operational and managerial requirements of Chapter 1. The cost of the computers and software will be $18,911.

Eligible children in private schools will receive services equitable to those provided to eligible children in public schools.

According to the proposed plan, the grantback funds will be used during school years 1987-88 and 1988-89. Any changes to this plan, including activities to be funded or the project period during which the school districts propose to use these funds, will be submitted to the Secretary for advance approval.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA and has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Hawaii SEA under a grantback arrangement. The grantback award would be in the amount of $1,372,336, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audits.

F. Terms and Conditions Under Which Payments Under A Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA will, not later than January 1, 1989 and January 1, 1990, submit reports to the Secretary which—

(a) Indicate that the funds awarded under the grantback were spent during the previous school year in accordance with the proposed plan and approved budget, and

(b) Describe the results and effectiveness of the projects for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: March 9, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 88-5544 Filed 3-11-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Remedial Order to Intercontinental Oil Co., Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Intercontinental Oil Company, Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the United States Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Intercontinental Oil Company, Inc. (IOC), 6363 Woodway, Suite 1100, Houston, Texas 77057. This Proposed Remedial Order alleges overcharges in the resale of crude oil in violation of 10 CFR 212.131, 212.183, 212.186, 120.62(c) and 205.202 of the petroleum price regulations during the period November 1975 through September 1978 in the amount of $1,576,305. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F-078, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, 500 Dallas Street, Houston, Texas 77002

and upon:

Diana D. Clark, Administrative Litigation Division, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-055, RG-43, 1000 Independence Avenue SW., Washington, DC 20585

Issued in Washington, DC, on March 3, 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88-5532 Filed 3-11-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL88-16-000 et al.]

Bridgeport Resco Co., L.P. et al.; Electric Rate and Corporate Regulation Filings

March 8, 1988.

Take notice that the following filings have been made with the Commission:

1. Bridgeport Resco Company, L.P.)

[Docket No. EL88-16-000]

Take notice that on March 2, 1988, Bridgeport Resco Company, L.P. (Bridgeport Resco) tendered for filing pursuant to 18 CFR 385.207(a) (2) a petition for Declaratory Order as follows:

(1) Authorizing a sale and leaseback financing of Bridgeport Resco's Bridgeport, Connecticut solid waste-fueled qualifying facility;

(2) Disclaiming Commission jurisdiction under the Federal Power Act over the beneficial owner of the facility (Owner Participant) and the trustee for such beneficial owner (Owner Trustee) as a consequence of their participation in the sale and leaseback financing;

(3) Determining that if the Owner Participant, the Owner Trustee or the trustee for the long-term lenders take over the operation of the Facility in the exercise of remedies against Bridgeport Resco following a Bridgeport Resco default, it will not solely as a conseqence thereof become an "electric utility" subject to the Commission's jurisdiction under the FPA if the Facility continues to satisfy all the requirements, including the ownership requirements, required for a "qualifying facility" under PURPA.

(4) Confirming the continued applicability of Bridgeport Resco Company, L.P./Rate Schedule FERC No. 1 to sales by Bridgeport Resco to United Illuminating Company of electricity generated by the facility after the

proposed financing transaction is consummated; and

(5) Determining that change in ownership of the facility effected by the sale/leasback financing will not result in a loss of QF status for the facility.

Comment date: March 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. ER88-188-000]

Take notice that on March 2, 1988, New England Power Company (NEP) tendered for filing an amendment filing to its original filing of January 12, 1988, in the above-referenced docket. That filing concerned an amendment to the Service Agreeement of the Town of Norwood, Massachusetts (Norwood) to facilitate Norwood's receipt of the benefits of its alllocation of power from the New York Power Authority (NYPA).

NEP states that the amended filing responds to Staff inquiries regarding cost support and explanation of the proposed five percent monthly administrative charge and billing data for the period July 1, 1985 through May 1, 1987.

Comment date: March 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Potomac Electric Power Company

[Docket No. ER88-279-000]

Take notice that on March 2, 1988, Potomac Electric Power Company (Pepco) tendered for filing under § 35.15 of the Commission's Regulations its notice of termination of services provided pursuant to paragraph 2 of Pepco FERC Rate Schedule No. 18, consisting of Pepco's providing, operating and maintaining a 60 Hertz to 25 Hertz frequency changer for Baltimore Gas and Electric Company located at Pepco's Benning Station in Washington, D.C. Termination effective May 1, 1988 is requested.

Comment date: March 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5509 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC88-13-000 et al.]

CP National Corp. et al.; Electric Rate and Corporate Regulation Filings

March 7, 1988.

Take notice that the following filings have been made with the Commission:

1. CP National Corporation

[Docket No. EC88-13-000]

Take notice that on February 29, 1988, CP National Corporation (CP National) tendered for filing an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b (1982), for Commission authorization to sell to the Lassen Municipal Utility District (LMU District) CP National's Lassen Electric System in the State of California.

CP National incorporated in the State of California, provides electric, telephone and natural gas distribution services in Arizona, California, Nevada, New Mexico, Oregon, Texas and Utah.

The LMU District is a municipal utility district duly organized and existing under the Laws of the State of California.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this document.

2. Arizona Public Service Company

[Docket No. ER88-272-000]

Take notice that on February 29, 1988, Arizona Public Service Company (APS) tendered for filing a Transmission Service Agreement (Transmission Agreement), and a Supplement and Agreement No. 1 to the Wholesale Power Supply Agreement (Supplement) between APS and the Papago Tribal Utility Authority (PTUA).

The tendered Agreements provide for the transmission of PTUA's recently acquired allotments of power from the Parker-Davis and Hoover Dams through the Arizona Power Authority and Western Area Power Administration and attendant changes in PTUA's Wholesale Power Supply Agreement as provided for in the Supplement. No new facilities or modifications to existing facilities are required to provide service hereunder.

The proposed transmission rates are the same as rates for similar service previously accepted for filing with the Federal Energy Regulatory Commission (FERC). No change in the Wholesale Power rate level is proposed herein.

APS, with the concurrence of PTUA, requests a waiver of the Commission's Notice Requirements, 18 CFR 35.11 so that service to PTUA may begin on March 1, 1988, as provided in the supplement and the Transmission Agreement.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Mississippi Power & Light Company.

[Docket No. ER88-271-000]

Take notice that on February 29, 1988, Mississippi Power & Light Company (MP&L) tendered for filing an extension of a letter agreement for sale of transmission service to Cajun Electric Power Cooperative, Inc.

MP&L requests an effective date of March 1, 1988 for the letter agreement. MP&L requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Regulations.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER88-273-000]

Take notice that on March 1, 1988, New England Power Pool (NEPOOL) Executive Committee tendered for filing an Amendment to NEPOOL Agreement, dated as of March 1, 1988 (*Amendment*), which modifies the provisions of the NEPOOL Agreement (NEPOOL FPC No. 2), dated as of September 1, 1971, as previously amended by twenty-three (23) amendments, the most recent of which was dated as of April 30, 1987.

The NEPOOL Executive Committee states that the *Amendment* has been submitted pursuant to the provisions of a settlement agreement filed with the Commission on June 1, 1987 in Commission Docket No. ER86-694-001 and the *Amendment* changes provisions of the NEPOOL Agreement to assign the effects on the pool's required reserves of certain new generating units to electric utilities with ownership or contractual interests in such new units. The NEPOOL Executive Committee has requested that the *Amendment* be permitted to become effective on the date specified therein, May 1, 1988.

Copies of the filing were served on all electric systems rendering or receiving service under the NEPOOL Agreement and on each of the parties to Docket No.

ER86–694–001, including the public utility regulatory commissions for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER88–275–000]

Take notice that on March 1, 1988, Public Service Company of New Mexico (PNM) tendered for filing a 100 MW System Power Agreement (Agreement) between PNM and San Diego Gas & Electric Company (SDG&E). Under the Agreement PNM will provide SDG&E up to 100 MW of system power from PNM's base load resources, deliverable at PNM and SDG&E's point of interconnection at the Arizona Nuclear Power Project (ANPP) High Voltage Switchyard. PNM will also provide interruptible transmission service to SDG&E. The date of initial service for deliveries of all power and energy, as well as provision of interruptible transmission service, is May 1, 1988.

Copies of the filing have been served upon SDG&E and the New Mexico Public Service Commission.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Sierra Pacific Power Company

[Docket No. ER88–101–000]

Take notice that on March 1, 1988, Sierra Pacific Power Company (Sierra) tendered for filing an amendment to its November 13, 1987 filing that proposed rate reductions to its wholesale firm power and firm wheeling customers pursuant to Order No. 475 in Docket No. RM87–4–000, Rate Changes Relating to Corporate Income Tax Rates for Public Utilities. The amendment—which is filed pursuant to a deficiency letter issued by the Commission—revises the rate reduction proposed for wholesale firm power service. Sierra requests July 1, 1987 as the effective date for all rate reductions proposed in this docket.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5510 Filed 3–11–88; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 6602–003 and 8958–000]

D.J. Pitman International Corp., Hydroelectric Development Inc.; Availability of Environmental Assessment and Request for Comments

March 7, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the competing applications for minor license for the proposed Macallen Dam Hydroelectric Project on the Lamprey River in Rockingham and Strafford Counties, New Hampshire, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has determined the potential adverse impacts of the proposed project. The staff is requesting comments on the EA and any additional information on the expected impacts of the project.

Interested persons and agencies are invited to identify and submit substantive evidence regarding study results, natural resource management policies, and reports from state and local resource agencies. The evidence should be limited to the Macallen Dam Hydroelectric Project and its expected environmental effects.

After evaluating the comments, the staff will determine if preparation of an Environmental Impact Statement is necessary.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed by the close of business, April 15, 1988, and should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 6602–003 or Project No. 8958–000, as appropriate, to all comments.

For further information please contact Dianne Rodman, Environmental Assessment Coordinator, at (202) 376–9045.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5511 Filed 3–11–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–164–000 et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings; Republication

[**Editorial Note**: The following document was originally published at page 3626 in the issue of Monday, February 8, 1988. In that publication, some paragraphs were printed out of order. The corrected document is republished below in its entirety.]

February 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP88–164–000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88–164–000 an application for authorization to construct certain replacement facilities and to operate such facilities at a higher maximum allowable operating pressure (MAOP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of approximately 27.6 miles of 20-inch pipeline in two segments, replacing a like amount of 20-inch pipeline, located in Lancaster and Chester Counties, Pennsylvania. The proposed replacement project has an estimated cost of $15,120,000, which would be financed with funds on hand. Applicant also proposes to increase the MAOP from 375 to 1,000 psig for this section of its pipeline system. Applicant asserts that the proposals herein are due to age and the deteriorated condition of the existing facilities. Applicant states that the existing pipeline proposed herein to be replaced will remain in service until the proposed replacement sections are constructed.

It is noted that the proposed increased in the MAOP is necessary in order for the Applicant to perform the firm sales

and firm transportation services for Providence Gas Company as proposed in its Docket No. CP88–164–000, also filed on January 14, 1988. It is further noted that Applicant filed this application within the timeframe of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP88–163–000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88–163–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of a firm sales service to a new wholesale customer and the construction and operation of facilities necessary to implement that service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm sales service to Providence Gas Company (Providence) of up to 10,000 dekatherms (dth) per day under Applicant's Rate Schedule CDS. Applicant further states that Providence has also requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 40,000 dth per day. Applicant asserts that the transportation would be self-implemented pursuant to Part 284 of the Commission's Regulations. In order to provide these services, Applicant proposes to construct 19.1 miles of 16-inch lateral and one interconnecting measuring facility for a total estimated cost of $14,870,000. This proposed lateral would be an extension of Applicant's proposed lateral currently pending in Docket No. CP88–129–000 [1] and would extend from Flanders, Morris County, New Jersey to its eastern terminus which would interconnect with Algonquin Gas Transmission Company's (Algonquin) pipeline system, just north of Algonquin's Hanover Compressor Station in Morris County, New Jersey. Applicant explains that Algonquin would redeliver the subject volumes to Providence on its behalf.

Applicant notes that its ability to provide the proposed services is contingent upon an increase in the maximum allowable operating pressure on a certain part of its upstream system which is part of replacement project proposed in Docket No. CP88–164–000.[2]

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP88–129–000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP88–129–001 an amendment to its pending application filed on December 15, 1987, in Docket No. CP88–129–000 pursuant to Section 7(c) of the Natural Gas Act to construct and operate natural gas facilities and to provide firm service to a new resale customer, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm sales service to New Jersey Natural Gas Company (NJN) of up to 10,000 dekatherms (dth) per day under Applicant's Rate Schedule CDS. Applicant states that Elizabethtown Gas Company (Elizabethtown) has requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 20,000 dth per day and an interruptible transportation service under Rate Schedule ITS of up to 2,200 Mdth annually. Applicant further states that in order to provide the requested service, it proposes to extend its main transmission system from a point located near Hellertown, Northampton County, Pennsylvania, to the vicinity of Flanders, Morris County, New Jersey. It is further stated that the proposed extension would consist of the construction of approximately 38.1 miles of 16-inch pipeline and three interconnecting measuring facilities at a total estimated cost of $23,723,000.

Applicant notes that the amended application supersedes the request of Applicant filed in Docket No. CP88–129–000 on December 15, 1987, in that it now proposes the construction and operation of a 16-inch pipeline instead of a 12-inch pipeline to provide additional throughput capacity. In addition a minor change from the initial route has been proposed in order to avoid three wetland areas and two stream crossings and would result in an increase in the total length of the facility from 37.9 miles to 38.1 miles, it is further explained.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88–171–000]

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee), a Division of Tenneco Inc., P.O. Box 2511, Houston, Texas 77252 filed an application pursuant to Section 7(c) of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission for a certificate of public convenience and necessity authorizing the transportation of the dekatherm equivalent of 200,000 Mcf per day of natural gas on a firm basis for National Fuel Gas Supply Corporation (National Fuel) and the construction and operation of new measurement facilities.

Tennessee would receive such quantities of gas at a point of receipt located at the existing interconnection between the facilities of Tennessee and TransCanada PipeLines Limited (TransCanada) on the international border between the United States and Canada near Niagara Falls, New York.

Tennessee would transport and deliver to National Fuel a thermally equivalent quantity of gas at a point to be located at the interconnection of a new pipeline to be constructed by National Fuel and new measurement facilities to be constructed by Tennessee at a mutually agreeable location on Tennessee's existing Niagara Spur Line near Lewistown, New York.

Tennessee seeks authority to construct and operate measurement facilities for approximately 302,100 dth per day of natural gas at the proposed delivery point near Lewistown, New York. It is stated that this represents the need for measurement of the quantities

[1] In Docket No. CP88–129–001 filed on January 14, 1988, Applicant proposes to construct 38.1 miles of a 16-inch lateral from Hellertown, Northampton County, Pennsylvania, to the vicinity of Flanders, Morris County, New Jersey. Applicant would utilize this facility to initiate a firm sales service to New Jersey Natural Gas Company and a firm transportation service to Elizabethtown Gas Company.

[2] Applicant filed Docket No. CP88–164–000 on January 14, 1988 requesting to replace 27.6 miles of 20-inch mainline pipe which would be located in Lancaster and Chester Counties, Pennsylvania.

proposed in this application as well as 93,148 dth per day of "Boundary" quantities which Tennessee proposes to deliver to Natural Fuel at Lewistown. It is further stated that of the 93,148 dth per day of "Boundary" quantities, 90,630 dth per day represents quantities to be transported by National Fuel for Tennessee and 2,518 dth per day represents quantities to be delivered to National Fuel by Tennessee. Tennessee states that Tennessee and National Fuel would individually file for the appropriate authorization for transportation of the "Boundary" quantities. The cost of these measurement facilities is estimated to be $1,497,000 of which one-third will be paid by Tennessee and the remainder by National Fuel.

Tennessee states that in consideration of certain transportation services to be performed by National Fuel for Tennessee at no cost to Tennessee, Tennessee would provide the transportation proposed in this application at no cost to National Fuel, with the exception that National Fuel would provide to Tennessee, at no cost to Tennessee, a daily quantity in dekatherms of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to one-half of one percent (0.5%) of the quantities received from National Fuel on any day.

It is noted that Tennessee filed this application within the time frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: Feberary 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88–176–000]

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee) a Division of Tenneco Inc., P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee (1) to provide firm natural gas transportation to six shippers in Massachusetts, Rhode Island and New Hampshire in an aggregate daily maximum quantity of 31,721 Dth; and (2) to construct and operate the facilities necessary to transport and deliver these quantities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The specific shippers, quantities, receipt and delivery points for which Tennessee seeks firm transportation authority are:

	Transportation quantity (Dth/Day)	Receipt point	Delivery point
(1) Colonial Gas Co	7,049	Niagara	Tewksbury and Mendon, MA.
(2) Essex County Gas Co	2,014	Niagara	Haverhill-Essex, MA.
(3) Boston Gas Co	17,119	Niagara	Beverly-Salem and Mendon, MA.
(4) Energy North, Inc	4,028	Niagara	Laconia, NH.
(5) Fitchburg Gas and Electric Light Company	504	Niagara	Fitchburg, MA.
(6) Valley Resources Incorporated	1,007	Niagara	Pawtucket, RI.

To provide the firm transportation service, Tennessee proposes to construct 40.79 miles of mainline loop, 14 miles of lateral line, and 1550 horsepower of compression. It is stated that all pipeline and compression facilities affected are located in Erie, Wyoming, Livingston, Ontario, Herriner, Otsego, Onardoga, and Columbia Counties, New York, Massachusetts; and Merrimack County, New Hampshire. The total project cost of Tennessee facilities is estimated to be $61,247,000.

Tennessee proposes to render the firm transportation service pursuant to proposed new Rate Schedule NET–LD, which provides for incremental rates to recover a portion of the transportation projects (NORTRAN ANE and NEP).

It is noted that Tennessee filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Texas Eastern Transmission Corporation

[Docket No. CP88–179–000]

Take notice that on January 15, 1988, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP88–179–000 an application pursuant to section 7(c) of the Natural Gas Act requesting a certificate of public convenience and necessity authorizing Texas Eastern to transport natural gas for CNG Transmission Corporation (CNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to transport on a firm basis for CNG a Maximum Daily Transportation Quantity (MDTQ) of 80,000 dekatherms of natural gas per day and such additional quantities on an interruptible basis as Texas Eastern and CNG may mutually agree upon.

Specifically, Texas Eastern would receive from CNG the above stated quantities of natural gas at the existing point of interconnection with CNG located at the Oakford Storage Field in Westmoreland County, Pennsylvania and would transport and redeliver equivalent quantities of gas, less applicable shrinkage, to CNG at the existing interconnection between CNG's pipeline PL–1 and Texas Eastern's compressor station located at Chambersburg, Pennsylvania. The agreement stipulates a primary term beginning upon commencement of service and would continue for twenty years.

The facilities required for the proposed transportation are found in an amended application in Docket No. CP87–92–002 (Capacity Restoration Program) filed by Texas Eastern on January 15, 1988. This amended application seeks authorization for the construction, replacement, and operation of a significant portion of its major pipeline facilities. Texas Eastern alleges that consolidation of the proposed transportation facilities with the major construction proposed in Docket No. CP87–92–002 would result in economies of scale and cost savings for both projects.

Based upon the annual cost of service of the required facilities included in Texas Eastern's amended application in Docket No. CP87–92–002, Texas Eastern

estimates an initial monthly demand charge of $3.348 per dekatherm and an excess charge of $0.1101 per dekatherm.

It is noted that Texas Eastern filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88–177–000]

Take notice that on January 15, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77252, filed in Docket No. CP88–177–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation of natural gas pipeline and related facilities and authorizing the transportation and storage of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco would provide firm transportation of up to the dekatherm equivalent of 125 MMcf of natural gas per day on behalf of potential customers from the United States/Canadian border to a point of delivery for injection into storage or to points of delivery for transportation on Transco's system. Transco states that it has already received nominations for transportation service substantially in excess of the 125 MMcf dekatherms per day which would be offered. Transco further states that it would transport the gas in accordance with the individual transportation agreements in substantially the same form as Transco's *pro forma* Gas Transportation Agreement, a copy of which is included in the complete application. Transco states that it would charge the modified fixed variable rate D–1, D–2 reservation rate and commodity rate.

Transco would also provide storage service for potential customers of up to 11 Bcf storage capacity with a maximum daily delivery capability of 100 MMcf at the facilities of Penn-York Energy Corporation in Wharton County, Pennsylvania. Transco states that it has already received nominations for storage demand that would require storage capacity in excess of the 11 Bcf that is being offered. Transco further states that although the proposed storage and transportation services are being offered as a joint project Transco would offer the storage and/or transportation service in an unbundled fashion. Transco would offer its potential customers the storage service under the proposed Rate Schedule SS–2.

Transco further states that it would construct 25.52 miles of pipeline loop in Monroe and Clinton Counties PA. and in Middlesex and Gloucester Counties NJ. Transco would also add 12,500 horse power of compression at its existing Compressor Station No. 520 in Lycoming County PA.

In addition, Transco would construct, install, and operate additional transportation facilities incremental ranging from 60 to 460 MMcf per day in excess of the above proposed 225 MMcf per day. The incremental service would supply the Northeast markets which are capable of receiving service through Transco's facilities to the extent that the Commission determined that the market need exists and that the public convenience and necessity would be served. Transco states that it has the capability to develop incremental transportation capacity to deliver a significant volume of natural gas from the Leidy Hub area to Northeast U.S. markets in a cost-effective manner. Transco submits therefore that, as an applicant and active participant in the Commission's "open season" proceeding, by its instant application Transco is proposing to expand its Leidy Line and market area facilities to provide additional transportation capacity to serve such markets.

It is noted that Transco filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2545 Filed 2–5–88; 8:45 am]

BILLING CODE 1505–01–D

[Docket Nos. CP88–242–000 et al.]

Florida Gas Transmission Co. et al.; Natural Gas Certificate Filings

March 8, 1988.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP88–242–000]

Take notice that on February 18, 1988, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–242–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Florida Gas to transport natural gas for Air Products and Chemicals, Inc. (Air Products), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that gas would be delivered to Florida Gas for the account of Air Products at the following existing points of interconnection between Florida Gas and the indicated entity:

(1) Acadian Gas Pipeline System in West Baton Rouge Parish, Louisiana.

(2) Matagorda Offshore Pipeline System in Refugio County, Texas.

(3) Exxon Company, U.S.A. in Pearl River County, Mississippi.

(4) Prosper Energy Corporation in Pearl River County, Mississippi.

Florida Gas proposes to transport on an interruptible basis up to 35 billion Btu equivalent of gas per day for Air Products to an existing point of interconnection between Florida Gas and Five Flags Pipeline Company (Five Flags) in Santa Rose County, Florida for ultimate delivery by Five Flags to Air Products' plant in Santa Rosa County.

Southern requests that the proposed transportation be authorized for a primary term of five years from the date of initial deliveries, and from year-to-year thereafter until terminated by either Florida Gas or Air Products.

Florida Gas states that its agreement with Air Products provides that Air Products shall pay Florida Gas each month a Facility Charge of 7.3 cents per million Btu equivalent delivered to Air Products, plus a Service Charge of 3.9 cents per million Btu equivalent per 100 miles of forward haul.

Additionally, Florida Gas indicates that it would collect from Air Products the GRI surcharge of 1.47 cents per million Btu equivalent and Florida Gas' ACA surcharge of 0.21 cents per million Btu equivalent.

Florida Gas states that the proposed transportation service would be conditioned upon the availability of capacity sufficient for Florida Gas to perform the proposed services without detriment or disadvantage to Florida Gas' existing customers.

Comment date: March 29, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88-249-000]

Take notice that on February 22, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-249-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205 and 157.212) for authorization to establish new delivery points to an existing firm sales customer, Midwestern Gas Transmission Company (Midwestern), under its blanket certificate issued in Docket No. CP82-413-000 on September 1, 1982, pursuant to section 7 of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it seeks to establish the new delivery points to Midwestern at the following existing points of interconnections on Midwestern's system.

Location	Delivery volume	Interconnecting pipeline
Downstream of Station 2118 in Vermillion County near Potomac, Illinois.	150,000 Mcf/d.	Trunkline Gas Co.
Upstream of Station 2112 in Knox County near Bicknell, Indiana.	50,600 Mcf/d.	Texas Gas Transmission Co.
Downstream of Station 2108 in Spencer County near Chrisney, Indiana.	154,600 Mcf/d.	ANR Pipeline Co.
Upstream of Station 2106 in Dariess County near Whitesville, Kentucky.	113,700 Mcf/d.	Texas Gas Transmission Co.
Upstream of Station 2110 in Pike County near Winslow, Indiana.	20,600 Mcf/d.	Texas Eastern.

It is stated that Tennessee currently provides natural gas service to Midwestern under Tennessee's CD-1 Rate Schedule pursuant to a gas sales contract between Tennessee and Midwestern dated February 24, 1982. According to Tennessee, the new delivery points are necesary to provide increased supply flexibility to Midwestern. Tennessee states that it does not propose to increase or decrease the total daily or annual quantities it is authorized to deliver to Midwestern which is currently 616,400 Dth and 224,986,000 Dth, respectively. Tennessee asserts that the establishment of the proposed new delivery points is not prohibited by its currently effective tariff and that it has sufficient capacity to accoomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Comment date: April 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intevene 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 selections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission's file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time alowed for filing a portest. If a protest is filed and not withdrawn within 30 days after the time alowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR. Doc. 88-5513 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-247-000 et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

March 7, 1988.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP88-247-000]

Take notice that on February 19, 1988, Williams Natural Gas Company (WNG) (1) applied, in abbreviated form, for temporary and permanent certificate authorization under section 7(c) of the Natural Gas Act (NGA) for WNG to place in effect a Gas Inventory Charge (GIC) mechanism to permit customers under WNG's partial requirements rate schedules to nominate sales gas volumes, and for WNG to charge for the carrying cost of holding gas supply to serve such nominated volumes, and pre-granted authorization under section 7(b) of the NGA for WNG to abandon sales service to partial requirements customers as to service above related contract demand reductions; and (2) submitted a related sections 4 and 5 tariff change to place in effect prospectively the tariff provisions and charges necessary to effectuate the GIC.

WNG requests that the Commission issue a temporary and permanent certificate, to be effective in conjunction with WNG's partial requirements Rate Schedules PR(A), PR(B), and P, to be implemented through a revised stipulation in Docket Nos. RP86-32, *et al.* and Rate Schedules GS and SGS to be implemented prospectively in Docket No. RP87-33, granting certificate authority for WNG to place in effect a mechanism to permit customers under WNG's partial requirements rate schedules to nominate sales gas volumes and for WNG to charge for the carrying costs of holding gas supply to serve such nominated volumes. WNG also requests that the Commission issue an order granting WNG pre-granted authority to abandon sales service to partial requirements customers in accord with their related reductions in contract demand.

WNG requests that the Commission take such other action, or issue any waivers, as may be appropriate and required to promptly grant the requested authorizations.

Comment date: April 1, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP87-458-001]

Take notice that on February 23, 1988, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87-458-001 an amendment to the application filed in Docket No CP87-458-000 pursuant to section 7 of the Natural Gas Act requesting authorization for certain changes in the facilities and services involved in Docket No. CP87-458-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In Docket No. CP87-458-000 AER requested authority granting authorization necessary for the continued operation and provision of certain facilities and services that are or may be jurisdictional under the Natural Gas Act. AER indicated in the initial application that the potential need for such additional authorization had come to light following new management's separation of Arkla's pipeline and distribution and operation into separate divisions. AER further asserted that this new management group has instituted stringent procedures to assure that in the future such regulatory oversight, do not occur and that appropriate authorizations are obtained in a timely manner.

AER, in Docket No. CP87-458-000, requested jurisdictional authority covering two exchanges involving reserved gas, two other exchanges, various facilities and other services in the northwest Arkansas area of its system, and certain other facilities and services at various locations throughout its system. Upon further review of its system and operations, AER finds it necessary to propose changes to the filing made in Docket No. CP87-458-000. AER proposes to make changes in the existing facilities and services for which authorization was sought initially in order to reflect the sale of certain production-area facilities, the revision of an existing exchange arrangement, the termination of certain services, and the proposed downsizing of a compressor station. AER further states that it has discovered relatively minor error in two previously submitted exhibits and is filing appropriate corrections with the amendment.

Comment date: March 28, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Sabine Pipe Line Company

[Docket No. CP88-253-000]

Take notice that on February 24, 1988, Sabine Pipe Line Company (Sabine), Post Office Box 52332, Houston, Texas 77052, filed in Docket No. CP88-253-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its gas measurement facilities and platform riser located on the West Cameron Block 547 production platform in offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Sabine states that by Commission order issued on July 26, 1984, in Docket No. CP84-96-000 (28 FERC ¶62,124) it was authorized to construct a 4.9 mile 12-inch pipeline from the platform at West Cameron Block 547 to an interconnect with a Stringray Pipeline Comapny 30-inch pipeline in West Cameron Block 565. Sabine alleges that production and transportation on the subject line began in October, 1984 and ended in November, 1986.

It is asserted that Texaco, as owner of the platform at West Carmeron Block 547, has informed Sabine that it will remove the production platform. As a result of Texaco's removal of the production platform, Sabine is requesting authority to abandon its gas measurement facility and platform riser on the subject platform so that Texaco can remove its platform. Sabine asserts that it does not wish to abandon the remainder of the line. Sabine further asserts that for accounting purposes, the line, in accordance with Part 201 of the Commission's regulations, would be placed in Account 105, gas plant held for future use. It is anticipated that an increase in gas and oil prices would cause an increase in drilling activities in adjacent underline blocks and thus make the line usable at some future time.

Comment date: March 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regualtory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, aa hearing will be held without futher notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5514 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-5177-001 et al.]

Sun Exploration & Production Co. et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

March 8, 1988.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 22, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-5177-001, D, Feb. 22, 1988.	Sun Exploration & Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Company, Jal Field, Lea County, New Mexico.	(3)
G-6841-000, E, Feb. 18, 1988.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	K N Energy, Inc., Hugoton Field, Kearny County, Kansas.	(6)
G-12548-002, D, Feb. 16, 1988.	Sun Exploration & Production Company	Northern Natural Gas Company, Division of Enron Corp., W. Perryton Field, Ochiltree County, Texas.	(4)
G-12902-001, D, Feb. 22, 1988.	.....do	El Paso Natural Gas Company, Blinebry Field, Lea County, New Mexico.	(2)
G-15199-001, D, Feb. 22, 1988.	.....do	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	(1)
CI88-309-000, B, Feb. 16, 1988.	Arlington Exploration Company, 137 Newbury Street Boston, MA 02116.	National Fuel Gas Supply Corporation, Adrian Field, Steuben County, New York.	(19)
CI88-312-000, F, Feb. 19, 1988.	Mobile Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston TX 77046-0957.	Transcontinental Gas Pipe Line Corporation, Pointe Au Fer Field, Terrebonne Parish, Louisiana.	(7)
CI88-315-000 (G-16020), B, Feb. 16, 1988.	ARCO Oil and Gas Company, Division of Atlantic, Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Northern Natural Gas Company, Division of Enron Corp., Spearman Field, Hansford County, Texas.	(18)
CI88-316-000 (CI65-329), B, Feb. 16, 1988.	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Company, Division of Enron Corp., Linscott North Field, Ellis County, Oklahoma.	(17)
CI88-317-000 (CI61-996), B, Feb. 16, 1988.	Sun Exploration & Production Company	ANR Pipeline Company, Cedardale Field, Woodward County, Oklahoma.	(9)
CI88-319-000 (CI62-965), B, Feb. 217, 1988.	Mesa Operating, Limited Partnership	United Gas Pipe Line Company, Block 273, High Island, Offshore Texas.	(13)
CI88-320-000 (CI69-592), B, Feb. 17, 1988.	.....do	Sec. 2-23N-24W, Ellis County, Oklahoma	(12)
CI88-321-000 (G-6211), B, Feb. 17, 1988.	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Natural Gas Pipeline Company of America, South La Gloria Unit, La Gloria Field, Brooks County, Texas.	(10)
CI88-322-000 (G-5889), B, Feb. 17, 1988.	.....do	Transcontinental Gas Pipe Line Corporation, South La Gloria Unit, La Gloria Field, Brooks County, Texas.	(10)
CI88-323-000 (CI67-119), B, Feb. 17, 1988.	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189-2009.	Panhandle Eastern Pipe Line Company, Peek South Field, Ellis County, Oklahoma.	(11)
CI88-324-000, B, Feb. 19, 1988.	Raw Hide Oil & Gas, Inc., P.O. Box 977, Pampa, TX 79065.	William Natural Gas Company, West Panhandle Field, Gray County, Texas.	(15)
CI88-325-000 (CI77-384), B, Feb. 19, 1988.	Amerada Hess Corporation, P.O. Box 2040, Tulsa, OK 74102.	Texas Eastern Transmission Corporation, West Cameron Block 522, Offshore Louisiana.	(14)
CI88-326-000 (CI84-474-000), B, Feb. 22, 1988.	Plains Petroleum Operating Company, P.O. Box 15278, Lakewood, CO 80215.	K N Energy, Inc., Sec. 10-T9S-R40W, Sherman County, Kansas.	(16)
CI88-327-000 (CI61-1425), B, Feb. 22, 1988.	Sun Exploration & Production Company	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	(8)

FOOTNOTES

[1] Effective 1-2-86, Sun assigned partial interest and retained a partial interest in Property No. 760242, Wimberly, to Doyle Hartman, James A. Davidson, Michael L. Klein and John H. Hendrix Corporation.

[2] Effective 1-2-86, Sun assigned partial interest an retained partial interest in each well in Property No. 595020, Langley Boren #1, Property No. 595023, Langley Griffin Comm., Property No. 595026 Langley Getty Com. #1, and Property No. 595027, Langley Green, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[3] Effective 1-2-86, Sun conveyed a partial interest and retained partial interest in Property No. 760420, Wimberly, to Doyle Hartman, James A. Davidson,. Michael L. Klein, and John H. Hendrix Corporation.

[4] Effective 1-2-86, Sun assigned its interest in Property No. 750532, W. Perryton Unit, to Doyle Hartman, James A. Davison, Michael L. Klein, and John H. Hendrix Corporation.

[5] Not used.

[6] On 8-2-85, Chevron U.S.A. Inc. filed an application to amend certificates held by Gulf Oil Corporation as successor in interest, to substitute Chevron as the certificate holder and to redesignate the related rate schedules in the name of Chevron. Chevron states this filing was inadvertently left off the prior application and Chevron requests that Docket No. G-6841 be redesignated in the namne of Chevron and that Gulf's FERC Gas Rate Schedule No. 145 be redesignated as a Chevron rate schedule and assigned a new rate schedule number.

[7] Effective 6-1-86, Maynard Oil Company assigned to MOEPSI a portion of its interest in the Pointe Au Fer Field, Terroborne Parish, Louisiana.

[8] Effective 1-2-86, Sun assgined its interest in Property No. 456685, Farnsworth 4, to Doylel Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[9] Effective 1-2-86, Sun assigned its interest in Property No. 475707, Gingrich Unit, and Property No. 513284, Garvie 2-23 Unit, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[10] Conoco Inc. assigned its interest in South La Gloria Unit to Mobil Producing Texas & New Mexico Inc. effective 8-1-87

[11] Applicant requests permanent abandonment of a sale of gas to Panhandle. Applicant states that by agreement dated 12-1-87, the Gas Purchase Contract dated 7-1-66, between Mesa and Panhandle, will terminate by mutual consent. The termination agreement is conditioned ot a permanet abandonment being granted.

[12] Applicant states production ceased and the well was plugged and abandoned.

[13] Applicant states production ceased and the leases expired.

[14] AHC has sold its interest in the property to Huffco Petroleum Corporation effective 8-31-87. AHC's gas purchaser has terminated the related gas purchase contract.

[15] Applicant states that this well has not produced since 1983, due to the wellhead pressure being less than the line pressure maintained by the gas gatherer. Applicant states that Williams will not allow compression equipment to be placed on the well to overcome the line pressure.

[16] Applicant requests permanent abandonment of a sale of gas to KN Energy. Applicant states that the production is noncommercial. Applicant states that no sales were ever made to KN Energy. The lease is to be released to the landowner.

[17] By Assignment effective 12-1-86, Tenneco assigned certain acreage to Bell and Kinley Company.

[18] By Assignment effective 1-1-87, ARCO assigned certain acreage to Hondo Oil and Gas Company.

[19] Applicant requests permanent abandonment to National Fuel of 6.25% of production from the Raish No. 1 well. Applicant states that the monthly volume is approximately 350 Mcf, which is too small to justify even the costs of accounting related to the National Fuel sale. Consolidated purchases the remainder of the gas. Applicant states it gave National Fuel a one-year notice of termination of the contract. Upon securing abandonment authorization Applicant states it intends to sell the entire production to Consolidated.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-5512 Filed 3-11-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF88-262-000, et al.]

Everett Energy Corp. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard paragraph E at the end of this notice.

March 8, 1988.

Take notice that the following filings have been made with the Commission.

1. Everett Energy Corp.

[Docket No. QF88-262-000]

On February 18, 1988, Everett Energy Corporation (Applicant) of 236 North Falmouth Highway, North Falmouth, Massachusetts 02556, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Everett, Middlesex County, Massachusetts. The facility will consist of a circulating fluidized bed combustion boiler, a three-section (HP, IP, LP) extraction/condensing steam turbine generator with reheat cycle, and related auxiliary equipment. The primary energy source of the facility will be bituminous coal. The useful thermal energy output of the facility, which will be in the form of process steam, will be sold to the Boston Edison Company, an electric utility, for various thermal uses at its Mystic Station and for use by its steam customers. The net electric power production capacity of the facility will be 80 megawatts.

2. Hopewell Cogeneration Limited Partnership

[Docket No. QF87-217-002]

On February 17, 1988, Hopewell Congeneration Limited Partnership (Applicant), of 1177 West Loop South, Suite 900, Houston, Texas 77027, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hopewell, Virginia. The facility as orginally proposed was to consist of two combustion turbine generators, two heat recovery steam generators, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used by the Aqualon Company in its manufacturing operations and for space heating. The primary energy source will be natural gas. The net electric power production capacity of the facility as originally proposed was to be 298.6 MW.

By orders issued on May 30, and December 9, 1987, the Commission granted certification and recertification of the facility as a qualifying cogeneration facility (38 FERC ¶62,326 and 41 FERC ¶62,221 respectively).

The current recertification is requested due to change of ownership from Hopewell Cogeneration, Inc., to Hopewell Cogeneration Limited Partnership. In addition the configuration of the facility changed from two combustion turbine generators with two heat recovery steam generators to three combustion turbine generators with three heat recovery steam generator. The net electric power production capacity of the facility will increase to 356.5 MW. Installation of the facility will begin in July 1988. All other facility's characteristics remain unchanged.

3. Kamine Natural Dam Cogen Co. Inc.

[Docket No. QF88-268-000]

On February 23, 1988, Kamine Natural Dam Cogen Co. Inc. of 1620 Route 22 East, Union, New Jersey 07083 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located at the James River Corporation's Natural Dam Division in Governeur, New York 13642. The facility will consist of a combustion turbine

generator, a supplementary fired heat recovery steam generator and an extraction/condensing steam turbine generator. The steam recovered from the facility will be used for hot water and for process applications at the host company's paper production facility. The net electric power production capacity of the facility will be 52,512 kW. The primary energy source will be natural gas. The installation of the facility is expected to commence in June 1989.

4. Oxbow Geothermal Corporation

[Docket No. QF84-256-002]

On February 23, 1988, Oxbow Geothermal Corporation (Applicant), of 333 Elm Street, Dedham, Massachusetts 02026, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The application for recertification requests that approximately 214 miles of 230 kV transmission line, to be constructed by Applicant, be determined to be part of the qualifying small power production facility. The proposed transmission line will interconnect the facility with the transmission system of Southern California Edison (SCE). The transmission line will only be utilized to transmit the qualifying facility's electric power output to SCE. The facility was previously recertified as a qualifying small power production facility on August 4, 1986, Oxbow Geothermal Corp., Docket No. QF84-256-001, 36 FERC ¶62,152 (1986). All other facility's characteristics remain unchanged.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5515 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-70-000]

Blue Dolphin Pipe Line Co.; Tariff Change

March 8, 1988.

Take notice that on March 1, 1988, Blue Dolphin Pipe Line Company (Blue Dolphin), tendered for filing with the Commission, to be effective in thirty days, the following tariff sheets to be included in Blue Dolphin's FERC Gas Tariff:

Original Volume No. 1

Second Revised Sheet No. 11
Original Sheet No. 11a
First Revised Sheet No. 22
Original Sheet No. 22a
First Revised Sheet No. 34
Original Sheet No. 34a
First Revised Sheet No. 40
First Revised Sheet No. 43
Second Revised Sheet No. 58
First Revised Sheet No. 71

Blue Dolphin states that the purpose of the revised tariff sheets is to adjust its jurisdictional natural gas transportation rates to include the Annual Charges Adjustment (ACA) unit charge, authorized by the Commission in Order No. 472, *et seq.* An ACA charge of $0.00198 per MMBtu will be added to each MMBtu of gas transported by Blue Dolphin. This rate is based on a conversion factor of 1060, derived from the average Btus per Mcf of gas transported by Blue Dolphin.

Blue Dolphin asks for whatever waivers are necessary for the Commission to approve the proposed tariff sheets, and for the tariff sheets to go into effect in thirty days on April 1, 1988.

Any persons desiring to be heard or to make any protest with reference to said filing should, on or before March 15, 1988, file with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5516 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-4-000]

Cavallo Pipeline Co.; Petition for Adjustment

March 8, 1988.

On January 11, 1988, Cavallo Pipeline Company (Cavallo) filed with the Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Cavallo seeks an amendment to the adjustment granted its predecessor, Seagull Energy Corp. (Seagull Energy), from § 284.123(b)(i)(B) of the Commission's regulations so that Cavallo can use an existing intrastate transportation rate as the applicable rate for transportation under section 311 of the NGPA. Cavallo states that the rate is a cost-based intrastate tariff on file with the Railroad Commission of Texas (RRC).

Cavallo, a general partnership comprised of Seagull Industrial Pipeline Company and Amoco Cavallo Investment Company, is an intrastate pipeline system in the Matagorda Island Area, offshore Texas. According to Cavallo, the original portion of the system was completed in October 1979 by Seagull Energy for the purpose of transporting gas intrastate, pursuant to section 311, on behalf of Valley Pipe Lines, Inc. (Valley). On March 23, 1984, Seagull Energy received an adjustment from the Commission allowing it to use an existing intrastate tariff rate as the transportation component for service to Valley under section 311.

On October 23, 1987, Seagull Energy transferred all of the system's assets to Cavallo, which recently expanded the intrastate system. According to Cavallo, the extension will allow it to provide section 311 transportation service to Amoco Gas Company (Amoco Gas) and other parties who desire to transport gas through the system. Cavallo states that it currently has a tariff for intrastate service on behalf of Amoco Gas on file with the RRC and a transportation agreement with Amoco Gas for service under section 311 on the extension. Cavallo requests the Commission to grant an amendment to the March 1984 adjustment so that Cavallo can use the existing cost-based intrastate transportation rate on the new portion of the system for service under section 311 of the NGPA. Cavallo states such an

amendment is warranted as the transportation service for Amoco Gas will be substantially the same as that provided for shippers on the original system.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. (18 CFR 385.1101 *et seq.* (1987)) Any person desiring to participate in this proceeding must file a motion to intervene in accordance with this provision of Subpart K within 15 days after publication of this notice in the **Federal Register**. Cavallo's petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secertary.

[FR Doc. 88-5517 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-294-000]

Colorado Interstate Gas Co., Application To Abandon Purchases and Sales of Gas

March 9, 1988.

Take notice that on February 1, 1988, as supplemented on February 26, 1988, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of purchases of natural gas from Ronald D. Thomas and Odis H. McClellan, Jr. (Thomas/McClellan), and on behalf of Thomas/McClellan, to abandon sales of such gas by Thomas/McClellan to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to abandon its purchases from Thomas/McClellan made pursuant to a gas purchase agreement dated May 11, 1954, as amended (Agreement), through the reliance upon a provision of the Agreement which allows for the termination of sales and purchases if the parties are unable to agree upon a price for the gas.

Applicant states that the term of the initial Agreement was 20 years from the date of initial delivery of gas and so long thereafter as gas was capable of being produced in commercial quantities from leases and rights dedicated or committeed under the Agreement. Accordingly, Applicant states that although the initial term of the Agreement expired in 1974, Applicant has continued to purchase gas produced under the Agreement.

Applicant states that on September 25, 1985, Applicant and Thomas/McClellan amended the Agreement to include new provisions dealing, *inter alia*, with the price Applicant paid for the gas. Pursuant to that amendment Applicant states that it paid Thomas/McClellan, effective October 1, 1985, a price of $2.50 per MMBtu, such price being effective until October 1, 1987, at which time either party was eligible to seek a redetermination of the price.

Applicant further states it notified Thomas/McClellan of its request for a price redetermination by letter dated August 10, 1987, but after numerous meetings and discussions, agreement on a new price has not occurred. As a result, Applicant states that the last price in effect of $2.50 per MMBtu has continued to be the price under the contract. Applicant states that because the gas is not marketable in Applicant's market area at this price, or at any price offered by Thomas/McClellan, it notified Thomas/McClellan by letter dated November 17, 1987, of its intentions to discontinue purchasing gas under the Agreement. In its latter notification to Thomas/McClellan, Applicant states it has relied upon the provisions contained in section 5.2(b) of the Agreement, as amended September 25, 1985, which states in part that:

> "(b) In the event representatives of Buyer and Seller are unable to agree upon a redetermined Full Price and the latest effective Full Price continues to be the price at which gas is sold pursuant to the Agreement, Buyer and Seller shall each have the right to discontinue sale or purchase of all or a portion of gas hereunder provided Buyer or Seller in its sole discretion and in good faith determines that such price is unacceptable. * * *

Applicant also states that the abandonment as proposed herein will not have any significant impact on its total reserves, as Applicant's present owned and contracted reserves are estimated to be 2.8 trillion cubic feet as of December 31, 1986, resulting in a reserve life index of approximately 19 years. Applicant states that the remaining recoverable reserves attributed to the Agreement are approximately 2.5 Bcf, which constitute less than one-tenth of one percent of Applicant's total reserves, and the loss of such reserves will therefore have no significant impact on Applicant's ability to serve its present and projected annual sales requirement. Applicant states that the deliverability is approximately 170 Mcf/d of NGPA section 108 gas. Applicant states that of the total reserves of 2.5 Bcf, a maximum of 340 MMcf are attributable to the NGA gas for which abandonment is sought.

Applicant states that the instant abandonment authority as requested herein is similiar to the authority to abandon purchases which the Commission has previously granted in *Mississippi River Transmission Corporation, et al.* (MRT), 39 FERC ¶ 61,113 (1987). Further, similar to the conditions prescribed in Paragraph (C) of the Commission's order issued in *MRT*, Applicant states that has expressed to Thomas/McClellan a willingness to provide compression, sweetening and transportation service, subject only to the terms of a mutually acceptable to the terms of a mutually acceptable agreement. Applicant states that an important aspect of acceptability to Applicant of such an agrement would be that it would not subject Applicant to a change of status under proceedings currently pending relative to the Commission's Order Nos. 436 and 500.

Finally, Applicant states that no facilities are to be abandoned as a result of the proposed abandonment of the purchases described hereinbefore, and no rate adjustments or tariff changes are proposed by Applicant in the instant application.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1988, file with the Federal Energy Regulation Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5518 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

El Paso Natural Gas Co.; Petition for Issuance of Commission Order

[Docket No. CI88-313-000]

March 9, 1988

Take notice that on February 11, 1988, El Paso Natural Gas Company (El Paso) filed a petition requesting issuance of a Commission order requiring the assignees of certain leasehold properties to seek and obtain certificates of public

convenience and necessity under section 7(c) of the Natural Gas Act (NGA) authorizing their sales of gas produced from the leasehold properties to the extent such sales are subject to the Commission's jurisdiction under section 1(b) of the NGA.

El Paso states that it is a party to certain gas lease-sale agreements pursuant to which natural gas producers transferred to it their interests in various properties and reserved a special overriding royalty or production payment interest. El Paso further states that two court decisions in connection with the lease-sale agreements and the pricing of pipeline production rendered El Paso's continued operation of the properties uneconomic. Accordingly, El Paso reassigned the properties in accordance with certain provisions in the lease-sale agreements and filed a lawsuit in state court seeking a declaration that it had properly exercised its right of reassignment. According to El Paso, the decision by the Texas Court of Appeals confirmed the assignment of the properties effective as of October 1, 1983.

El Paso asks that the Commission require the producers to comply with the Natural Gas Act since the producers are now jurisdictional sellers of gas.

Any person desiring to be heard or to make protest with reference to the petition should on or before 15 days after the date of publication of this notice in the **Federal Register** file petitions to intervene or protests with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 or 385.214 (1987)). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5519 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-33-000]

El Paso Natural Gas Co.; Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustment

March 7, 1988.

Take notice that on March 1, 1988, El Paso Natural Gas Company ("El Paso") filed a notice of change in rates for jurisdictional gas service rendered under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that by Order No. 483 issued November 10, 1987 at Docket No. RM86-14-000, the Federal Energy Regulatory Commission (Commission) amended its PGA Regulations to require companies to file comprehensive annual filings providing for 12-month surcharge deferral and amortization periods, with quarterly adjustments in projected gas costs, instead of semiannual filings. Included in Order No. 483 are interim procedures intended to provide an orderly transition from the existing 6-month deferral and amortization periods to the 12-month cycle under the amended Regulations. El Paso states that under the interim procedures, it would not be fully phased-in to the amended Regulations until July, 1990, and that during the transition period its customers will experience five surcharge rate adjustments. To provide for an earlier implementation of the 12-month cycle, El Paso requested waiver of the applicable provisions of its Tariff and the Commission's Regulations as necessary to permit effectuation of a surcharge rate for the period April, 1988 through June, 1989, to recover deferred gas costs accumulated during the period July, 1987 through February, 1988. El Paso submits that use of such a procedure will not only facilitate a more rapid transition to the amended Regulations (El Paso would be fully phased-in by July, 1989, one year earlier than under the transition rules), but would also provide more rate stability during the transition period by requiring only two, scheduled surcharge adjustments. Utilizing such procedure, the filing reflects an increase of $0.5918 per dth in the base purchased gas cost rate and an increase of $0.2160 per dth in the surcharge rate for a net increase in El Paso's currently effective rates of $0.8078 per dth attributable to the PGA.

El Paso states that to implement the notice of change in rates, El Paso tendered for filing and acceptance the following revised sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1.	Substitute Sixteenth Revised Sheet No. 100 Substitute Fourth Revised Sheet No. 100-A.
Original Volume No. 1-A	Substitute Eighth Revised Sheet No. 24.
Third Revised Volume No. 2.	Substitute Fortieth Revised Sheet No. 1-D.
Original Volume No. 2A	Substitute Forty-second Revised Sheet No. 1-C.

El Paso states that in the event the Commission does not grant the requested waivers, El Paso tendered alternate sheets, reflecting calculation of the surcharge adjustment in accordance with the applicable provisions of its FERC Gas Tariff, proposed to be made effective in lieu of their above-designated counterparts, as appropriate. The alternate sheets provide for a net increase in El Paso's currently effective rates of $1.0833 per dth.

El Paso states that in compliance with the commission's Order No. 478 issued July 27, 1987 at Docket No. RM87-28-000, *et al.*, requiring pipelines, in their first PGA filing in calendar year 1988, to remove from their tariff all incremental pricing provisions and references, El Paso also tendered the following sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet Nos. 352 through 354
Third Revised Sheet Nos. 355 and 356
First Revised Sheet Nos. 357 through 359
First Revised Sheet No. 500
Tenth Revised Sheet No. 540

In addition to the specific waivers requested above, El Paso requested that the Commission grant such other waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on April 1, 1988.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5520 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2327]

M. Dorothy Lyons; Filing

March 7, 1988.

Take notice that on February 8, 1988, M. Dorothy Lyons filed an application pursuant to § 45.9, Part 45 of the Commission's Regulations authorization to hold concurrently the following positions:

Position	Name of corporation
Assistant Secretary	Philadelphia Electric Co.
Assistant Secretary	Philadelphia Electric Power Co.
Assistant Secretary	Susquehanna Power Co.
Assistant Secretary	Susquehanna Electric Co.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5521 Filed 3-11-88; 8:45am]

BILLING CODE 6717-01-M

[Docket No. TA 88-6-5-000]

Midwestern Gas Transmission Co.; Tariff Filing and Rate Filing Pursuant To Tariff Rate Adjustment Provisions

March 8, 1988.

Take notice that on March 1, 1988, Midwestern Gas Transmission Company (Midwestern), tendered for filing ten copies of the following tariff sheets to its FERC Gas Tariff to be effective as proposed:

Original Volume No. 1:

Twenty-Ninth Revised Sheet No. 6
Fifth Revised Sheet No. 21
Third Revised Sheet No. 23
Second Revised Sheet No. 27
Third Revised Sheet No. 86A
Third Revised Sheet No. 88
Third Revised Sheet No. 90
Third Revised Sheet No. 92
Third Revised Sheet No. 94

Midwestern states that the purpose of this filing is to implement a Purchased Gas Adjustment (PGA) rate adjustment applicable to Midwestern's Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2 to be effective April 1, 1988. The remaining tariff sheets are being filed to correct inconsistent pagination on previously accepted tariff sheets.

Midwestern states that the Current Adjustments reflected on Twenty-Ninth Revised Sheet No. 6 consist of a positive adjustment of $.54 to the Demand Rate (D-1) for Rate Schedules CR-2 and CRL-2, a positive adjustment of $.0444 to the Commodity Rate for Rate Schedule SR-2, a positive adjustment of $.0178 to the Commodity Rate for Rate Schedule I-2, and a negative adjustment of $.07220 to the Gas Rate. Twenty-Ninth Revised Sheet No. 6 also reflects a Surcharge for Amortizing the Unrecovered Gas Cost Account for the Northern System, consisting of a demand surcharge of $.06 per Dkt and a gas surcharge of negative $.4628 per Dkt.

Midwestern states that copies of this filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5522 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-220-000]

John A. Newman and Foy Tomlinson; Application for Permanent Abandonment

March 9, 1988.

Take notice that on December 31, 1987, as supplemented on February 17 and 22, 1988, John A. Newman and Foy Tomlinson (Applicants), P.O. Box 405, Raywood, Texas, filed an application in Docket No. CI88-220-000 pursuant to Section 7(b) of the Natural Gas Act and § 2.77 [1] of the Commission's Regulations for permanent abandonment of a residue gas sale to El Paso Natural Gas Company (El Paso), from the John A. Newman Morris "30" No. 3-A Well in Zeno Field, Coleman County, Texas. John A. Newman is a small producer certificate holder in Docket No. CS74-270, and Foy Tomlinson is a small producer certificate holder in Docket No. CS74-175.

Applicants state in support of their application that marketing conditions have restricted the sale of this gas; that an alternative intrastate market is available, thus making this gas available to the public, as well as preserving the life of the well; that the subject well is presently shut in; and the that the new market is connected, and awaits only FERC approval of abandonment.

By letter agreement dated August 3, 1987, effective August 1, 1987, El Paso agreed to release the subject residue gas conditioned upon correction of any errors or discrepancies in charts or statements and conditioned upon correction of any liability on the part of Seller (Applicants) to make refunds for any overcollections of applicable governmental price ceilings.

Applicants state that the subject well was spudded on September 15, 1955. Applicants state that subsequently, a residue gas sales contract dated December 1, 1973, was entered into with El Paso for interstate sales, and a concurrent gas processing agreement was entered into with Union Texas Petroleum Corporation which processed

---

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applictions for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (40 FERC ¶ 61, 172 (1987)). These interim regulations became effective on September 15, 1987

the gas at its Perkins Plant for delivery to El Paso at the tailgate of the plant. Applicants state that on June 15, 1981, the subject well received an NGPA section 108 determination but was disqualified on September 30, 1984, due to lowering of the line pressure. Applicants state that the well requalified as a stripper well on January 1, 1985, and finally was disqualified on February 28, 1985. Applicants state the deliverability of the subject well is 200 Mcf/day at 40 psig line pressure.

Since Applicants have requested that their application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirments of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5523 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Dockect No. RP88-65-000]

Panhandle Eastern Pipe Line Co.; Petition For Declaratory Order Regarding Minimum Bill Liability and Motion For Summary Disposition

March 8, 1988.

Take notice that on February 29, 1988, Michigan Gas Storage Company (MGS) filed a petition for declaratory order regarding minimum bill liability and motion for summary disposition. MGS requests the Commission to resolve a controversy between it and Panhandle Eastern Pipe Line Company (Panhandle) over MGS's liability to Panhandle under Panhandle's Rate Schedule CS-1 annual minimum bill provision for commodity-related fixed costs during the 1987 calendar year. MGS also seeks summary disposition of this matter stating that the instant dispute involves only legal and policy considerations regarding the interpretation of the tariff provision and applicable Commission precedent.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5524 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-69-000]

Stingray Pipeline Co.; Change in Tariff

March 8, 1988.

Take notice that on March 1, 1988 Stingray Pipeline Company (Stingray) tendered for filing Fifteenth Revised Sheet No. 4, Second Revised Sheet No. 8, Third Revised Sheet No. 10, Second Revised Sheet No. 16, Second Revised Sheet No. 18, Second Revised Sheet No. 19, Second Revised Sheet No. 21, Second Revised Sheet No. 22, Second Revised Sheet No. 23, Second Revised Sheet No. 24, Second Revised Sheet No. 39, Second Revised Sheet No. 39.1, First Revised Sheet No. 49, First Revised Sheet No. 51, First Revised Sheet No. 52, First Revised Sheet No. 55, First Revised Sheet No. 56 and First Revised Sheet No. 57 to its FERC Gas Tariff Original Volume No. 1. An effective date of April 1, 1988 was proposed.

Stingray submits that these revised tariff sheets are being filed pursuant to Article VII of the Stipulation and Agreement dated April 16, 1985 in Docket No. RP85-16-000, and also reflect minor changes to its billing and measurement procedures. Stingray also states that it has proposed procedures in this filing to flowback to its customers excess deferred Federal income tax resulting from the Tax Reform Act of 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 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 March 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5525 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-8-000]

The Tekas Corp.; Petition for Adjustment

March 8, 1988.

On February 24, 1988, The Tekas Corporation (Tekas) filed with the Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Tekas seeks an adjustment from § 284.123(b)(1)(i)(B) of the Commission's regulations [1] so that the company can use an existing intrastate transportation rate as the applicable rate for transportation under section 311 of the NGPA. Tekas states that the rate was established using a cost-of-service methodology and is part of a tariff filed with the Kansas Corporation Commission (KCC).

Tekas is curently leasing and operating a fifty-four mile intrastate pipeline and compression facility owned by Sunflower Electric Cooperative, Inc. (Sunflower). Prior to leasing the pipeline to Tekas, Sunflower used the line to transport gas within Kansas for its own use and for transportation under NGPA section 311(a). Tekas has no cost-based sales rate that satisfies the requirements of § 284.123(b)(i)(B) of the Commission's regulations, and thus seeks an adjustment in order to use its existing intrastate transportation rate currently on file with the KCC. According to Tekas, the rate currently on file is calculated using a cost-of-service methodology. Tekas has requested the KCC to issue a determination that the rates are in fact cost based. Tekas states that the adjustment from the Commission's regulations is necessary to prevent special hardships and

[1] 18 CFR 284.123(b)(1)(i)(B) (1987).

inequities resulting from duplica' unnecessary filings.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. (18 CFR 385.1101 *et seq.* (1987)) Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of Subpart K within 15 days after publication of this notice in the **Federal Register.** Tekas' petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[[FR Doc. 88-5526 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-67-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 7, 1988.

Take notice that Texas Eastern Transmission Corporation ("Texas Eastern") on March 1, 1988, tendered for filing as part of its FERC Gas Tariff revised tariff sheets reflecting a rate change from currently effective rates and other changes in its tariff. This rate filing will increase the level of Texas Eastern's jurisdictional rates to provide an overall annual increase in revenues of approximately $127 million or approximately 14.30 cents per dekatherm based on 100% load factor of the Zone D DCQ rate. The rates reflected in the revised tariff sheets are designed to bring Texas Eastern's revenues to a level of its jurisdictional cost of service and reflect changes in the areas of rate of return, labor costs, operating and maintenance expenses, and plant facilities cost.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure set forth in Part 385 of 18 Code of Federal Regulations. All such motions or protests should be filed on or before March 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5527 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-68-000 and RP88-68-001]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

March 8, 1988

Take notice that on March 1, 1988, Transcontinental Gas Pipe Line Corporation (Transco) filed certain revised tariff sheets to be effective April 1, 1988.[1] Transco states that the purpose of the filing is to resolve buyout and buydown cost apportionment and recovery on its system as expeditiously as possible. Transco's filing, pursuant to Order No. 500, proposes a billing mechanism to recover 75 percent of (a) the amounts actually paid or contracted to be paid by Transco under producer settlements entered into through February 29, 1988 to buy out Transco's take-or-pay exposure under its contracts with those producers and/or to buy down contractual price or take levels; (b) the buyout and buydown costs which Transco expects to pay or obligate itself to pay under settlement agreements which it anticipates it will execute during the period March 1, 1988 through November 30, 1988; and (c) the carrying costs on such amounts (the sum of which are referred to as "the Producer Settlement Costs"). Pursuant to Order No. 500, Transco proposes to absorb 25 percent of such Producer Settlement Costs. Transco further states that no producer settlement payments to affiliates are included in the filing. In addition, Transco avers that the filing is without prejudice to a similar filing or filings which Transco may make under the current provisions of the Commission's regulations on or before December 31, 1988 for the purposes of recovering any additional producer settlement costs.

Transco states that the proposed tariff sheets establish a fixed charge (Fixed Monthly PSP Charge) designed to recover 25 percent of Transco's "Producer Settlement Costs" through a fixed monthly charge to be collected over a 5-year period and to be billed in addition to Transco's currently effective rates. In addition, the proposed tariff sheets establish charges designed to recover 50 percent of Transco's "Producer Settlement Costs" through a commodity surcharge (Commodity PSP Charge) to rates Transco will charge for all sales and transportation services during the 5-year collection period. Transco also proposes annual adjustments to the fixed and commodity charges to reflect actual interest rates and actual balances for the amounts to be recovered, as more fully explained in the filing.

Transco states that the amounts to be billed to customers and to be absorbed by Transco (inclusive of interest carrying charges to April 1, 1988) are: $232.9 million in the Fixed Monthly PSP Charge, $465.8 million in the Commodity PSP Charge, and $232.9 million to be absorbed by Transco.

Transco states that copies of the filing have been mailed, *inter alia*, to each of its customers and State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5528 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 8, 1988.

Take notice that Transwestern Pipeline Company (Transwestern) on March 1, 1988 tendered for filing 43rd Revised Sheet No. 5 as part of its FERC Gas Tariff, Second Revised Volume No 1, to be effective April 1, 1988.

43rd Revised Sheet No. 5

Transwestern states that the tariff

[1] On March 4, 1988, Transco filed Eighth Revised Sheet No. 404-A, Original Volume No. 2, which was not included in the March 1, 1988 filing.

sheet listed above is being filed pursuant to its Purchased Gas Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected herein represents an increase of $0.2915/dth as measured against Transwestern's Out-of-Cycle PGA filing in Docket No. TA88-3-42-000 (PGA88-3), which became effective on February 1, 1988.

Transwestern states that the rate change herein consists of:

1. An increase in the Cost of Gas Adjustment of $0.0042/dth as measured against Transwestern's Out-of-Cycle PGA filing. Docket No. TA88-3-42-000, which became effective on February 1, 1988;

2. An increase in the currently effective Surcharge Adjustment of $0.2873/dth due to an increase in the balance in the Gas Cost Adjustment Account as of December 31, 1987;

The proposed effective date for the tariff sheet listed above is April 1, 1988.

Transwestern has requested the Federal Energy Regulatory Commission to waive the Regulations set forth in Order No. 483, §§ 154.308 and 154.310, requiring the submission of a Quarterly PGA filing, to be effective June 1, 1988 and to allow Transwestern's semi-annual PGA filing of April 1, 1988 to remain in effect through June 30, 1988.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. In accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the approriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5529 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

Docket No. CI85-673-004, et al.

UER Marketing Co., et al; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

March 9, 1988.

Take notice that each Applicant listed herein has filed an application prsuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 24, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI85-673-004, 3-1-88.	UER Marketing Company, P.O. Box 1478, Houston, Texas 77251-1478.	3 years.
CI86-26-006, 2-25-88.	Access Energy Corporation (formerly Yankee Resources, Inc.), 655 Metro Place South, Suite 300, Dublin, Ohio 43017	Do.
CI87-559-001, 2-25-88.	The Resource Group, 601 Poydras Street, 27th Floor, New Orleans, Louisiana 77130.	Do.
CI87-786-001, 2-29-88.	Val Gas, L.P., c/o Val Gas Company, P.O. Box 1569, San Antonio, Texas 78296.	1 year

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 88-5530 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-2-001]

Western Gas Interstate Co.; Compliance Filing

March 7, 1988.

Take notice that on March 1, 1988, Western Gas Interstate Company (Western), in compliance with the Commission's Letter Order issued January 28, 1988, tendered for filing Substitute Eleventh Revised Sheet No. 10 and Substitute Third Revised Sheet No. 212 as part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1988.

Western states that Substitutes Eleventh Revised Sheet No. 10 reflects a change to the Purchase Gas Surcharge under its Rate Schedule G-N and reflects a change in the Base Tariff Rate under its Rate Schedule G-S and Average Cost of Purchased Gas. Western states that Substitute Third Revised Sheet No. 212 is being tendered because of typographical deletions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before March 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5531 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Withdrawal of Proposed Allocation Criteria, Allocations, and Rates for Interim Power From the Navajo Generating Station

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of withdrawal of proposed allocation criteria, allocations, and rates for interim power from the Navajo Generating Station.

SUMMARY: The Boulder City Area Office of the Western Area Power Administration (Western) initiated a public process on the interim allocations and rates for power from the Navajo Generating Station (Navajo) in the **Federal Register** (51 FR 30116, 30120) on August 22, 1986, and followed-up with additional notices in the **Federal Register** (52 FR 23764, 23770) on June 24, 1987. The power to be offered from Navajo was specified in the Interim Navajo Power Marketing Plan (Interim Plan) developed by the Bureau of Reclamation (Reclamation) pursuant to the Hoover Power Plant Act of 1984 (98 Stat. 1333). The Hoover Power Plant Act provides that Navajo power surplus to the needs of the Central Arizona Project and certain salinity control facilities (Navajo Surplus) would be offered for sale under a plan adopted by the Secretary of the Interior.

Interested parties were requested to submit applications for the interim Navajo Surplus identified in the Interim Plan and to submit comments on proposed interim allocation criteria and rates. Based on Western's analysis of the comments received on the proposed interim allocation criteria and the rates, Western has determined to withdraw the allocation criteria and the rates for the interim Navajo Surplus proposed in the June 24, 1987, **Federal Register** notice. Furthermore, based on Western's analysis of the applications received, Western has determined that no allocations will be made under the terms and conditions specified in the June 24, 1987, **Federal Register** notice. After consultation with Reclamation and the Central Arizona Water Conservation District (CAWCD), it has been decided that interim Navajo Surplus will be sold under the provisions provided for in section III.B.3 of the Interim Plan. Section III.B.3 provides that any Navajo Surplus not sold or exchanged under sections III.B.1 or 2 will be marketed by Western under short-term arrangements. Each applicant for interim Navajo Surplus will be contacted regarding the resource being offered under section III.B.3. Interim Navajo Surplus sold under section III.B.3 will be at rates, terms, and conditions agreed to by Western, Reclamation, CAWCD, and each contractor. The "Supplementary Information" section of this notice contains the discussion of Western's course of action, comments received on the proposed interim Navajo Surplus allocation criteria and rates, and Western's rationale for its determinations.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255.

SUPPLEMENTARY INFORMATION:

Contents

A. Background

The power to be marketed from Navajo was specified in the Interim Plan developed pursuant to the Hoover Power Plant Act. Section 107 of the Hoover Power Plant Act provides that capacity and energy associated with the United States interest in Navajo, which is in excess of the pumping requirements of the Central Arizona Project (CAP), and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, shall be marketed and exchanged by the Secretary of Energy, pursuant to a plan adopted by the Secretary of the Interior.

While work was ongoing on a long-term Navajo Power Marketing Plan, the Interim Plan was developed and adopted by the Commissioner of Reclamation on March 17, 1986, after consultation with Western, CAWCD, and the Arizona Governor's Office. The Interim Plan provides for marketing of the Navajo Surplus by Western during the initial delivery and pump testing period of the CAP and may continue through the pre-New Waddell period. New Waddell is a regulatory storage feature of CAP that will provide operational flexibility to increase winter season pumping and reduce summer season pumping, thereby providing an enhanced power resource during peakload periods. The Interim Plan will terminate upon termination of all contracts entered into under the Interim Plan. Interim Navajo Surplus contracts will terminate upon a 1-year notice given subsequent to September 30, 1989.

Section III of the Interim Plan provides the quantities and classes of service that are available under the Interim Plan. Applications were requested for the quantities and classes of service provided in section III.B of the Interim Plan.

Following the adoption of the Interim Plan, Western initiated the public process of a proposed ratemaking methodology and rates and requested applications in the August 22, 1986, **Federal Register** notice. The proposed ratemaking methodology for energy was based on a 3-year average of fuel replacement sale prices. The proposed energy rates using this methodology were 26.59 mills per kilowatthour in the summer season and 24.51 mills per kilowatthour in the winter season. A capacity rate of $10 per kilowatt-month was proposed for the summer season only.

Western analyzed the applications and comments on the proposed rates received pursuant to the August 22, 1986, notice, and elected to publish the revised proposed rates and reopen the period to submit comments and applications. A "Notice of Revised Proposed Rates and Reopening of Comment Period" and a "Notice of Proposed Allocation Criteria and Extension of Time for Submitting Applications for Power from the Navajo Generating Station" were published in the June 24, 1987, **Federal Register**. The June 24, 1987, notices provided that the proposed ratemaking methodology for energy would continue to be based on a 3-year average of fuel replacement sale prices; however, such sales were proposed to be limited to Arizona. Because Western had a third year of fuel replacement sales data available and had refined certain fuel replacement data and the rate calculation, the revised proposed energy rates were 24.09 mills per kilowatthour in the summer season and 23.69 mills per kilowatthour in the winter season. Based on the comments that the capacity charge was too high, the proposed capacity charge was changed to $5 per kilowatt-month for the summer season only.

In the June 24, 1987, notice, new and existing applicants were requested to provide a statement on the amount of desired interim Navajo Surplus by season, expressed as a percentage of the maximum capacity estimated to be available at the revised proposed rates.

The exhibit 1 Summary provided only an estimate of the monthly capacity and

energy amounts expected to be available for marketing by Western under the Interim Plan. Western indicated that the actual power available may be more or less than estimated. If the power available from Navajo was more than estimated in the exhibit 1 Summary, each contractor would be obligated to take up to a 10-percent increase in the power that was estimated to the available to such contractor. Energy deliveries were subject to CAP pumping requirements.

The June 24th notices also stated that a public information forum on the proposed allocation criteria was to be held on July 7, 1987, and that public comment forums on the proposed allocation criteria and revised proposed rates would be held on July 14, 1987. At the public information forum, Western provided information and answered questions on the interim Navajo resource and the proposed allocation criteria. Oral comments on the proposed allocation criteria, ratemaking methodology, and rates were received at the public comment forums. Written comments were received through the end of the comment period on July 24, 1987.

Western received 25 applications for the interim Navajo Surplus and several oral and written comments regarding the proposed allocation criteria and rates in response to the June 24, 1987, notices. After review and analysis of the applications and the comments, Western, in accordance with the Hoover Power Plant Act, consulted with representatives from Reclamation, CAWCD, and the Arizona Governor's Office. The conclusion derived from this process is that no allocations will be made under the terms and conditions described in the June 24, 1987, **Federal Register** notice. A discussion of the applications and the rationale for making no allocations is presented in section E of this notice. A decision was also made, based on the comments received, that no further action would be taken on the proposed rates and allocation criteria. Discussions of the comments received are presented in sections C and D of this notice. Consistent with the terms of the Interim Plan, interim Navajo Surplus will be made available under the provisions of section III.B.3 of the Interim Plan. A discussion of this course of action follows in section B.

B. Course of Action

A review of the interim Navajo Surplus applications and comments on the proposed allocation criteria and rates indicated that the interim Navajo resource, as it was presented in the June 24, 1987, **Federal Register** notice, could not be sold to eligible entities under terms that would satisfactorily meet all the provisions of the Hoover Power Plant Act. Western's analysis of the interim Navajo Surplus applications, as amended, indicated that none of the applications fully meet the requirements set out in the June 24th notice. The comments received implied that the nature of the Navajo resource was not clearly defined, particularly the amount of power that would be available, and the revised proposed rates were too high. A group of Arizona entities indicated that Western's proposed ratemaking methodology did not satisfy the "appropriate saving" requirement of the Hoover Power Plant Act. This group proposed an interim Navajo Surplus ratemaking methodology based on 85 percent of a contractor's avoided cost. Applications received from the Arizona entities were subject to satisfactory settlement of the rate issue.

The alternative interim Navajo Surplus ratemaking methodology proposed by the Arizona entities was reviewed, and Western concluded that the methodology was not appropriate for the interim Navajo Surplus rates. A discussion of the reasons for not adopting this methodology is presented in section C of this notice. Subsequently, after review of the comments received relative to the interim Navajo Surplus, Western has concluded that no satisfactory sales could be made pursuant to the terms specified in the June 24th notices. Therefore, Western will sell interim Navajo Surplus under section III.B.3 of the Interim Plan. Interim Navajo Surplus not sold under the terms and conditions specified for the resource under section III.B.1 or 2 will be sold on a short-term basis pursuant to negotiated terms, conditions, and rates. Western has been asked to work with the interim Navajo applicants to determine if a sale could be negotiated pursuant to the provisions of section III.B.3.

It is Western's intent to market the interim Navajo Surplus in a manner that will optimize revenues to provide financial assistance in the timely construction of authorized features of CAP and to make repayment or establish reserves for the repayment of such construction costs. Consequently, Western will enter into interim Navajo Surplus contracts with eligible entities as necessary to optimize the revenues from interim Navajo Surplus sales. Each of these contracts may be under different terms, conditions, and rates. Preference Arizona entities will be given the first opportunity to purchase interim Navajo Surplus under the same terms, conditions, and rates as offered to non-Arizona or nonpreference entities.

C. Discussion of Comments on Proposed Ratemaking Methodology and Rates

The comments received on the ratemaking methodology and rates were primarily that the rates were too high and the ratemaking methodology did not satisfy the provisions of the Hoover Power Plant Act requiring an "appropriate saving for the contractor." The Arizona commentors supported an alternative ratemaking methodology submitted by the Salt River Project, the Arizona Power Authority, the Arizona Power Pooling Association, and the Arizona Irrigation and Electrical Districts Association, which will be referred to as the Arizona rate proposal.

Commentors indicated that fuel replacement sales during the period of October 1983 to September 1986 are not representative of the current energy market. One commentor indicated that Navajo short-term energy sales by Western and Western Systems Power Pool sales made during the 1987 summer season are representative of the market. Using average fuel replacement settlement prices during this period mitigates the effect of the sharp change in natural gas prices which occurred in 1986. The market shows that scheduled energy sales are presently in the 22 to 23 mills per kilowatthour range during onpeak hours. According to the commentor, this illustrates that Western is not only pricing above a level of appropriate saving, but above the prevailing market. Furthermore, the commentor stated that the alternative resources available at the lower price range offer scheduling flexibility. Navajo has no flexibility and has other characteristics which reduce the value of the resource.

The comments on the characteristics of the resource are addressed in section D of this notice. Western respond to the Arizona rate proposal in the June 24, 1987, **Federal Register** notice on page 23771, under the "Discussion" section. Western does not believe that a ratemaking method based on each contractor paying 85 percent of its projected avoided costs for the upcoming season is appropriate for the interim Navajo Surplus presented in the June 24, 1987, **Federal Register**. Western agrees that this method would provide a contractor with an "appropriate saving;" however, the method submitted would not assure that the rates from interim Navajo Surplus would yield sufficient revenues to provide the financial assistance necessary for the timely

construction and repayment of construction costs of authorized features of CAP. The Hoover Power Plant Act entrusts the United States with the responsibility to optimize revenues to provide financial assistance in the timely construction of authorized features of CAP and to make repayment or establish reserves for the repayment of such construction costs; provided, however, that rates shall not exceed levels that allow for an appropriate saving for the contractor. Western does not believe that a ratemaking methodology that does not fulfill all the requirements of section 107 of the Hoover Power Plan Act is appropriate; therefore Western is not adopting the Arizona rate proposal.

Western's explanation for its decision to use fuel replacement sales to provide an appropriate saving to the contractor is addressed on page 23772 of the June 24th **Federal Register.** The commentor indicated that a 3-year average of fuel replacement sale prices does not reflect sharp declines in market prices. Western agrees that using a 3-year average would temper any sharp declines or increases; that is the purpose of using a 3-year average. As explained in the June 24th notice, the 3-year average was selected to provide revenue stability to CAP, thereby providing the necessary financial assistance to CAP. Furthermore, Western proposed to limit any changes in the Navajo energy rates not to exceed a 3-mill increase or decrease from the prior year. The limitation was proposed to provide financial stability as well as rate stability. Using a 3-year average with a limitation on the amount of change mitigates any sharp increases or decreases in fuel prices.

One commentor pointed out that the Navajo rates should be in the range of 22 to 23 mills. Western's revised proposed energy rates were only slightly over this range; however, when the proposed capacity rate is added to the energy rate, the composite rate is somewhat higher in the summer. Western's rationale for including a capacity charge was explained in the June 24th notice on page 23772. Western believes that the large amount of assured capacity available with the energy in the summer season makes the Navajo resource more available than fuel replacement sales and other nonfirm energy sales.

After review of the above-noted comments received on Western's revised proposed ratemaking methodology and rates, and the decision not to make an allocation, Western has determined to withdraw its rate proposal. The Navajo interim rates under section III.B.3 will be established by the Administrator of Western and will be appropriate for the type of resource, terms, and conditions of the sale. The method, terms, and conditions for marketing of any power under the Interim Plan shall not set a precedent for any other sales and exchanges of Navajo Surplus, including the sales and exchanges to be made pursuant to the Navajo Power Marketing Plan, adopted by the Commissioner of Reclamation, on behalf of the Secretary of the Interior, on December 1, 1987.

D. Discussion of Comments on Proposed Resource and Allocation Criteria

The major comments on the resource offer were primarily concerning the offered price. One commentor indicated that the offered price was too high, and several applicants indicated that their applications were conditioned on the settlement of the rate issue.

An additional comment regarding the rate was that the capacity charge for a summer month should be based on the highest hourly, integrated rate of delivery during an onpeak period and that no capacity charge should be assessed if interim Navajo Surplus is not made available during onpeak hours, at least during the lesser of 25 percent of the hours during the month or the total number of hours in that month multiplied by the monthly capacity factor as calculated from the then current exhibit 1. As discussed in section C of this notice, Western has elected to market and develop rates under section III.B.3 of the Interim Plan. No rate will be set for the resources marketed under section III.B.1. of the Interim Plan.

Comments on the nature of the Navajo resource were also received. One commentor indicated that a definition of the product was needed since the **Federal Register** notice identified the product in different locations, in table 1 and in exhibit 1. The same commentor noted that Western indicated that exhibit 1 was subject to modification and the commentor recommended that the exhibit 1 in the **Federal Register** notice be the measure of the resource if the June 24th criteria were adopted. Western agrees with the commentor that exhibit 1 in the **Federal Register** notice should be the measure of the resource. For the short-term interim contracts, Western, Reclamation, and CAWCD are working together to revise exhibit 1.

Another commentor suggested that the obligation to take up to 10 percent additional available capacity and energy be deleted. The commentor indicated that applying this requirement on a monthly basis may force a contractor to take the additional energy in the last 2 or 3 days of the month if the additional energy is not made available until late in the month. Western does not agree with the commentor. Under the terms provided in the June 24th notice, the contractors were being allocated a percentage of the available output from Navajo. In order to alleviate the possibility of requiring a contractor to take an unusually large delivery, Western proposed a 10-percent limitation. We believe this was a reasonable approach considering the nature of the allocation. Under any short-term sales, the 10-percent limitation provision will be subject to negotiation and will be dependent on how a contractor's power is scheduled.

Commentors also questioned the exhibit 1 capacity and energy estimates. One commentor noted that in some instances the estimated energy reflected a load factor in excess of 100 percent. The commentor recommended that any excess energy be made available to the Navajo contractor in the same percentage as its percentage allocation. Western agrees with the recommendation. Another commentor stated that in the years 1989 and 1990, the exhibit 1 summer season monthly quantities reflected little diversity, which is contrary to Western's statements that efforts would be made to maximize the value of the resource by load shaping. The exhibit 1 quantities were developed from estimated CAP pumping requirements. As stated earlier, Western is working with Reclamation and CAWCD to develop a resource that will maximize the value of the resource by load shaping and still meet CAP pumping requirements.

The comments regarding the proposed allocation criteria were concerned with the requirement for utility status and the requirement to have the ability to receive the power by dynamic signal at a Navajo designated point of delivery. Several commentors questioned what factors would be considered in the determination of utility status. One commentor recommended that cities without utility status should be considered as a lower priority preference entity since section 9(c) of the Reclamation Project Act of 1939 does not require that a city be a utility in order to be a preference entity. The commentor requested that the allocation criteria be clarified to indicate that cities buying power for municipal purposes are preference entities. Another commentor stated that the interests of the United States and the Arizona preference entities are better

protected by adherence to the preference provisions stated in the Hoover Power Plant Act. This commentor stated that the creation of a separate, superior class of nonpreference cities for Navajo involved legal ramifications and potential impacts on Plan 6 and the successful completion of the Central Arizona Project. This same commentor also stated that any entity in Arizona that currently has a contract with Western for the purchase of any Federal preference resource should be classified as an entity having "utility status."

In the June 24th notice, on page 23765, the reader is referred to 48 FR 20878 for a discussion of "utility status." The primary consideration of "utility status" is that an entity must control and operate its own distribution system. Since Western has not taken action on the proposed allocation criteria, and the interim Navajo Surplus will be sold under the provisions of section III.B.3 of the Interim Plan, this factor will only be considered if a conflict arises over contracting with a utility or a nonutility. Western will first contract with the entity considered to have "utility status."

Several comments regarding the requirement to receive the Navajo power by dynamic signal at a Navajo point of delivery were also made. One commentor stated that the nature of the resource being marketed by Western does not lend itself to use of a dynamic signal. The commentor recommends that Western take the signal and parcel the resource out to CAWCD and the other purchasers on a prescheduled basis. Other commentors questioned the nature of the dynamic signal and what was required of a contractor to meet this requirement. A commentor also requested that the Navajo Switchyard be added as a designated point of delivery. Western believes that the issue of the use of a dynamic signal and the delivery point will depend on the terms and conditions of delivery worked out with a contractor for sales under section III.B.3 of the Interim Plan.

Additional comments were received regarding the contract period and short-term sales and exchanges. One commentor stated that inconsistencies exist between the Interim Plan and the application notice regarding the termination of the power sales contract subsequent to September 30, 1990. Western agrees with this statement. Subsequent to the publication of the application notice, Western published the proposed long-term Navajo Power Marketing Plan. The long-term plan provides that the Interim Plan contracts shall expire upon a 1-year notice given by Western subsequent to September 30, 1989, but in any event after such notice as Western deems appropriate upon the date of initial operation of New Waddell. The Interim Plan shall terminate upon expiration of all contracts entered into pursuant to the Interim Plan. Western believes that the provision in the long-term plan eliminates the inconsistency regarding the contract terms and will adhere to the provision of the long-term plan.

Comments were received recommending that Western consider the use of exchanges as provided in the Interim Plan and short-term sales in the event that all the available Navajo power is not sold pursuant to the application notice. Western agrees with this comment. Interim Navajo Surplus will be made available under section III.B.3 of the Interim Plan. Western also will explore the options of using exchanges under section III.B.2 of the Interim Plan.

E. Allocations

Twenty-five applications for interim Navajo Surplus were received and reviewed. After consultation with representatives from Reclamation, CAWCD, and the Arizona Governor's Office, Western concluded that only one of the applications submitted fully met the requirements in the June 24, 1987, **Federal Register** notice. As a result of Western's analysis of the applications received, no allocations will be made pursuant to the June 24, 1987, **Federal Register** notice. A discussion of the reasons for not selecting any entity follows.

The Colorado River Commission (CRC) applied for the interim Navajo Surplus at the revised proposed rates and fully met the requirements stated in the June 24, 1987, **Federal Register** notice. Subsequently, CRC withdrew their original application.

The following entities were not selected because they did not apply for the interim Navajo Surplus at the offered rates specified in the June 24, 1987, notice:

Aguila Irrigation District, Arizona
Arizona Power Authority, Arizona
Arizona Public Service Company, Arizona
Electrical District No. 1, Arizona
Electrical District No. 3, Arizona
Electrical District No. 4, Arizona
Electrical District No. 5, (Pinal County), Arizona
Electrical District No. 6, Arizona
Electrical District No. 7, Arizona
Electrical District No. 8, Arizona
Harquahala Valley Power District, Arizona
Maricopa County Municipal Water Conservation District No. 1, Arizona
McMullen Valley Water Conservation and Drainage District, Arizona
Papago Tribal Utility Authority, Arizona
Roosevelt Irrigation District, Arizona
Roosevelt Water Conservation District, Arizona
San Diego Gas and Electric, California
Tonopah Irrigation District, Arizona
Salt River Project, Arizona

The following applicants were not selected because they did not provide information to support eligibility under the allocation criteria set forth in the June 24, 1987, **Federal Register** notice. The entities did not provide information that they had utility status as of the date of the June 24, 1987, **Federal Register** notice and have the ability to receive the power by dynamic signal at a Navajo designated point of delivery.

Kern County Water Agency, California
Town of Paradise Valley, Arizona
City of Phoenix, Arizona

The following applicants were not selected because they did not apply for the interim Navajo Surplus as offered in the June 24, 1987, **Federal Register** notice, but desired the resource only under different terms and conditions:

Nevada Power Company, Nevada,
United States Army, Yuma Proving Ground, Arizona

F. Regulatory Procedural Requirements

Executive Order 12291: The Department of Energy has determined that an allocation is not a major rule because an allocation does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193) dated February 17, 1981. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291. Moreover, Western has decided not to allocate power on a long-term basis.

Regulatory Flexibility Act: Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a notice of public rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the proposed allocation criteria and proposed rates relate to electric services provided by Western. Under section 601(b) of the Regulatory Flexibility Act of 1980, services are not considered "rules" within the meaning of the Act; therefore, Western believes that no flexibility analysis is required.

National Environmental Policy Act: Pursuant to the National Policy Act of 1969 and the Department of Energy regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), as amended, Western prepared an environmental assessment of the

potential impacts of the marketing of interim Navajo Surplus and has determined that Western's actions pursuant to this **Federal Register** notice will not lead to any significant environmental impacts.

Paperwork Reduction Act of 1980: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the Office of Management and Budget before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity was provided for the interested public to participate in the development of the allocation criteria and rates for power from Navajo. Nevertheless, this was at their sole election. There is no requirement that members of the public participating in the development of the allocation criteria and rates for power from Navajo supply information about themselves to the Government. It follows that the proposed allocation criteria and rates for power from Navajo are exempt from the Paperwork Reduction Act.

G. Additional Information

The following materials relative to the proposed allocation of Interim Navajo Surplus are available for inspection at the Boulder City Area Office:

1. Applications received requesting Navajo Power pursuant to the June 24, 1987, **Federal Register** notice (52 FR 23764).

2. **Federal Register** notice (52 FR 23764) dated June 24, 1987, publishing the "Proposed Allocation Criteria and Extension of Time for Submitting Applications for Power from the Navajo Generating Station."

3. **Federal Register** notice (52 FR 23770) dated June 24, 1987, publishing the "Proposed Interim Navajo Power Rate; Navajo Generating Station, Arizona."

4. **Federal Register** notice (51 FR 30120) dated August 22, 1986, publishing "Proposed Interim Navajo Power Rate; Navajo Generating Station, Arizona."

5. **Federal Register** notice (51 FR 30116) dated August 22, 1986, publishing the "Request for Applications for Power from the Navajo Generating Station."

6. **Federal Register** notice (51 FR 35557) dated October 6, 1986, publishing "Notice of Public Comment Forum on Proposed Navajo Interim Power Rate."

7. **Federal Register** notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

8. **Federal Register** notice (49 FR 11873) dated March 28, 1984, publishing the "Request for Appliations for Short-Term Power from the Navajo Generating Station."

9. Environmental Assessment of General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects, Western Area Power Administration, April 1983.

10. Environmental Assessment.

Issued at Golden, Colorado, February 29, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88–5534 Filed 3–11–88; 8:45 am]

BILLING CODE 6450–01–M

Central Valley Project, CA; Power and Transmission Rates

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of a rate order; Central Valley Project power and transmission rates.

SUMMARY: Notice is hereby given of the confirmation and approval, by the Under Secretary of the Department of Energy, of Rate Order No. WAPA–38 for placing power and transmission rates in effect, on an interim basis, for the marketing of firm power from the Central Valley Project (CVP) and the transmission of power over the transmission system of the CVP.

The schedule of rates for firm power service to CVP commercial power customers (Rate Schedule CV–F6) will consist of three step adjustments:

	Capacity charge ($/kW=month)	Energy charge (mills/kWh)
May 1, 1988, through Sept. 30, 1989	6.86	14.43
Oct. 1, 1989, through Sept. 30, 1991	7.49	15.76
Oct. 1, 1991, through Apr. 30, 1993	7.74	16.30

The initial power rate step effectively represents approximately a 17.5 percent composite rate decrease for CVP customers at average system load factor from the current CVP power rate.

In addition to the CVP power rates, a firm transmission rate of $0.481/kW-month (Rate Schedule CV–FT1) and a nonfirm transmission rate of 1.022 mills/kWh (Rate Schedule CV–NFT1) for the transmission of non-CVP resources over the CVP transmission systems have been developed. In addition, a transmission rate schedule (Rate Schedule CV–TPT2) that directly passes through all third-party transmission costs incurred by the Western Area Power Administration (Western) in delivery of CVP power to the CVP commercial power customers has been developed.

The rate order contains further explanation of the development of various rates, discussion of the principal factors supporting the decisions concerning the rates, and responses to the major comments and criticisms offered during the consultation and comment period.

EFFECTIVE DATE: The power and transmission rates will become effective on an interim basis on May 1, 1988, the first day of the May 1988 billing period. This effective date is approximately 1 month in advance of the expiration of the existing rates. Implementing the proposed rates in advance is considered appropriate because the rate proposal represents a rate reduction on an average system basis, and would meet the financial requirements of the CVP.

FOR FURTHER INFORMATION CONTACT:

Mr. David G. Coleman, Area Manager, Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 978–4418.

or

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1535

or

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated:

1. To the Administrator of Western on a non-exclusive basis the authority to develop power and transmission rates;

2. To the Under Secretary of the Department of Energy on a non-exclusive basis the authority to confirm, approve, and place such rates in effect on an interim basis; and

3. To the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates.

Two informal customer briefings were held, on March 24, 1987, and May 26, 1987, to solicit CVP customer input to the Sacramento Area Office staff's early development of the 1988 CVP rates. A formal 113-day public comment and consultation period was initiated on August 4, 1987, with a notice in the **Federal Register** at 52 FR 28864, and terminated November 25, 1987. The August 4, 1987, notice announced a public information forum on August 25, 1987, and a public comment forum on September 22, 1987. On August 25, 1987, a brochure with technical appendices was distributed to all CVP customers and interested parties. The brochure describes CVP operations, the rate development process, the proposed 1988 rates, and data supporting all the major assumptions behind the rate proposal. In addition to the public information and comment forums, Western held an evidentiary hearing on the merits of an automatic revenue adjustment clause proposed as part of the 1988 CVP power rates. The notice of the evidentiary hearing was published on October 7, 1987, in the **Federal Register** at 52 FR 37509. The hearing convened on November 10, 1987. This hearing was conducted in accordance with the requirements of the Public Utility Regulatory Policies Act, 16 U.S.C. 2612, *et seq.* Written comments on all aspects of the proposed power and transmission rate adjustments were accepted through November 25, 1987. Public comments received have been considered in the preparation of the rate order.

Rate Order No. WAPA–38 confirming and approving the power and transmission rates on an interim basis is hereby issued, and the rates will be promptly submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Washington, DC, March 2, 1988.

Joseph F. Salgado,

Under Secretary.

[Rate Order No. WAPA–38]

Order Confirming, Approving, and Placing Power and Transmission Rates in Effect on an Interim Basis

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101 *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Central Valley Project (CVP), were transferred to and vested in the Secretary of Energy. By Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated: (1) the authority on a non-exclusive basis to develop power and transmission rates to the Administrator of the Western Area Power Administration (Administrator); (2) the authority on a non-exclusive basis to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy (Under Secretary); and (3) the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate order is issued pursuant to such delegations to the Administrator and the Under Secretary, and the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration (Western) at 10 CFR Part 903, published at 50 FR 37835 on September 18, 1985, with corrections published at 50 FR 48075, November 21, 1985.

Background

Project History

Located in northern and central California, the CVP consists of eight powerplants, two pump-generation plants, and approximately 1,300 miles of transmission lines integrated with the Pacific Gas and Electric Company's (PGandE) electric power system.

The initial features of the CVP, authorized in 1935 for construction by Reclamation, included:

1. Shasta Dam on the Sacramento River and Friant Dam on the San Joaquin River;
2. Tracy Pumping Plant and the Delta-Mendota Canal;
3. Powerplants at Shasta Dam and at Keswick Dam below Shasta Dam with powerlines to bring the power generated to the Tracy pumps and to integrate that power into other electric systems;
4. The Contra Costa Canal, the Friant-Kern Canal, and the Madera Canal;
5. The Delta Cross Channel.

Shasta Dam began storing water in January 1944; by 1951 the project had become fully operational. To help meet the expanding needs in the Central Valley, in 1944 Congress authorized the American River Division to be constructed by the Corps of Engineers and in 1949 reauthorized it to be integrated with the Central Valley Project. This division included Folsom Dam and Powerplant, Nimbus Dam and Powerplant, and the Sly Park Unit. The Sacramento Canals Unit was authorized in 1950. The Grasslands Waterfowl Management Area in the San Joaquin Valley was authorized in 1954. The Trinity River Division, including Trinity Dam and Powerplant, Lewiston Dam and Powerplant, Lewiston Fish Facilities, Whiskeytown Dam, Judge Francis Carr Powerhouse, and Spring Creek Powerplant, was authorized in 1955. The San Luis Unit, including San Luis Dam and Reservoir, San Luis Canal, Pleasant Valley Canal, and the O'Neill and San Luis pump-generators, was authorized in 1960. The Auburn-Folsom South Unit was authorized in 1965. The only portions of this unit which have been constructed are the Foresthill Dam and Reservoir and the first reaches of the Folsom South Canal. The San Felipe Division was authorized in 1967.

Another significant addition was the authorization, in 1964, of the 500-kV Pacific Northwest-Pacific Southwest Intertie (Intertie) of which the CVP has the right to use 400 MW of transmission capacity to import power from the Pacific Northwest.

The Corps of Engineers constructed the New Melones Dam, Reservoir, and Powerplant, completing the construction in 1980. In compliance with the 1962 authorization act, New Melones is now operationally and financially integrated into the CVP. Three additional projects, Hidden, Buchanan, and Black Butte, have been constructed by the Corps, then integrated in the CVP. These three projects serve mainly the water supply and flood control functions and have no Federally owned power facilities.

Power generated from the CVP system is dedicated first to meeting the power requirements of the project pumping facilities. The remaining capability of the project's power facilities is used to provide commercial power to various preference customers in northern California. These customers consist of military and Federal installations, irrigation and reclamation districts, cooperatives, utility districts, municipalities, and educational and penal institutions of the State of California.

The existing powerplants and two pump-generation plants, with a total maximum operating capability of about 2,025 MW, are integrated operationally with PGandE's power system.

The amount of commercial firm load which can be supplied at present by CVP generation alone is significantly less than the current customer load level. In 1951, Reclamation entered into a support contract with PGandE which greatly increased the commercial load serving ability of the project. In 1967, that contract was amended and consolidated with a transmission contract into the present Contract No. 14–06–200–2948A (Contract 2948A). This contract provides that energy and capacity generated by the CVP, along with power imported from the Pacific Northwest over the Intertie, in excess of CVP obligations to preference customers, may be sold to PGandE. The contract also provides Western the right to purchase an equivalent amount of capacity and energy from PGandE at times and in amounts required when the CVP's power supply is insufficient to meet the CVP obligations to the preference customers. The energy and capacity available under this "banking arrangement" permit the CVP to supply a much greater amount of customer load than would be possible without benefits of such coordination.

The contract provides that PGandE, with the Intertie arrangements, will provide support to enable the CVP to supply a simultaneous customer peak demand up to a maximum level of 1,152 MW through CY 2004.

Public Notice, Forums, and Hearings

The procedures for public participation for rate adjustments as set forth in 10 CFR Part 902 have been followed in the development of these rates. The following discussion summarizes the steps Western has taken to assure the involvement of interested parties in the rate process:

1. On January 30, 1987, Western issued an "Announcement of Central Valley Project Rate Adjustment" to all CVP customers. This announcement notified CVP customers of Western's desire to initiate informal customer meetings to discuss a proposed rate adjustment.

2. Western issued an "Announcement of the First Informal Customer Meeting Regarding the Central Valley Project Rate Adjustment" on February 26, 1987. This first informal customer meeting was held on March 24, 1987. The status of CVP repayment, general rate design, options, and CVP load and expense forecasts were discussed.

3. On May 6, 1987, Western issued a notice of its second informal customer meeting. At this meeting, held on May 26, 1987, the focus was onforecasted CVP revenue requirements, proposed alternative power rate designs, and proposed revenue and power factor adjustment clauses.

4. On June 30, 1987, a schedule of major events for the rate proceedings and Western's preliminary proposal for the transmission rate adjustments were issued.

5. A **Federal Register** notice (52 FR 28864, August 4, 1987) initiated the formal public proceedings, officially anounced the proposed power and transmission rate adjustments, and began the 113-day consultation and comment period.

6. On August 7, 1987, all parties were issued a notice containing the August 4, 1987, **Federal Register** notice and the schedule for the public comment and information forums.

7. A public information forum was held on August 25, 1987. Western representatives presented an overview of the proposed rates and the supporting assumptions, methods, forecasts, and potential impacts associated with the rate proposal. In addition, Western distributed a "Central Valley Project 1988 Proposed Power and Transmission Rate Adjustments" brochure that contained nine technical appendices including supporting demand forecasts, the revised power repayment study, and explanations of various rate design methodologies and calculations.

8. On September 8, 1987, a notice was issued informing all CVP and interested parties of the time, procedures, and agenda for the public comment forum.

9. The public comment forum was held on September 22, 1987. Only two participants commented at this forum. Responses to these comments, as well as those received in writing during the consultation and comment period, are presented in the "Discussion" section of this document.

10. On October 7, 1987, a **Federal Register** was issued (52 FR 37509) noticing the schedule and procedures for a pre-hearing conference and evidentiary hearing regarding the Revenue Adjustment Clause (RAC) proposed as part of the 1988 CVP power rates. This evidentiary hearing was scheduled in accordance with the Public Utility Regulatory Policies Act.

11. A copy of the October 7, 1987, **Federal Register** notice and the procedures for intervention or other participation in the RAC hearing were distributed (without cover letter) on October 9, 1987.

12. As an attachment to a notice issued by Western on October 14, 1987, Western distributed direct testimony regarding the design, application, and merits of the proposed RAC.

13. On November 4, 1987, a pre-hearing conference was held as noticed by the October 7, 1987 **Federal Register** notice.

14. On November 10, 1987, the RAC evidentiary hearing was held. Western staff issued supplemental testimony regarding the RAC at this hearing based on questions raised at the pre-hearing conference.

15. On November 25, 1987, Western issued a proposed schedule for completion of the 1988 CVP Rate Adjustment process as well as copies of the supplemental RAC testimony.

Certification of Rates

Western markets capacity and energy from the CVP and provides transmission services over the CVP transmission system at the lowest possible rates consistent with sound business principles. The Administrator has certified that the proposed CVP power and transmission rates are the lowest possible consistent with sound business principles and applicable law.

Discussion

This section addresses the issues presented by commentors and Western's responses to those comments. The issues are arranged by topic as follows:

A. Revenue Adjustment Clause Design and Application.

B. Power Factor Adjustment Clause (PFAC) Design and Application.

C. Power Rate Design.

D. Transmission Rate Design.

E. Treatment of Losses in Power Rate "Unbundling."

F. Timing of Rate Implementation and Step Increases.

G. Purchased Power Expense Assumptions.

A. Revenue Adjustment Clause Design and Application

Issue: Several comments were received on the RAC's design and application throughout the public consultation and comment period. However, at the evidentiary hearing regarding the merit of the proposed RAC that was held on November 10, 1987, only one comment was received. Western's direct testimony addressed previous comments and is contained as part of the Record of Decision. The one comment received requested that the RAC consider revenue from surplus power sales as part of its basic RAC formula.

Response: Western's response to the one comment raised in the RAC hearing is contained in the supplemental testimony question and response number 31, issued to all interested parties on November 25, 1987, which is

also part of the Record of Decision. As a result of Western's response to this issue in the supplemental testimony, the commentors (the Northern California Power Agency and the Sacramento Municipal Utility District) issued a letter to David G. Coleman dated December 16, 1987, stating:

> We are willing to accommodate the suggested rates using the RAC formula proposed by Western. However, it is our intention to monitor the working results of the RAC closely during the upcoming rate period.

B. Power Factor Adjustment Clause (PFAC) Design and Application

1. *Issue:* Western's PFAC originally proposed that a combination of two types of power factor measurements be used to measure a customer's monthly power factor performance. One of these measurements was the power factor at the time of the customer's system peak demand and the other was the customer's average monthly power factor. The measurement that has been used typically for power factor adjustment clauses has been the measurement at the time of the system peak. Certain customers commented that it would be burdensome to maintain a high average system power factor.

Response: Western has modified its original proposal to eliminate the requirement to consider the average monthly power factor measurement. However, Western recognizes that low power factors at times other than peak periods can contribute to system inefficiency and losses, and therefore may reconsider this decision based on future experience.

2. *Issue:* Some parties expressed concern that their points of delivery for CVP power are contractually defined and are not actual physically metered points, and therefore, it is not possible to measure power factor at those points.

Response: Western's power factor proposal, as defined to customers at the August 25, 1987, customer information forum, stated that the PFAC will not apply to points of measurement without continuous volt-amperes reactive metering.

3. *Issue:* Several commentors stated that either the 95-percent power factor standard was too high, or that revenue credits ought to be provided to CVP customers for power factors maintained above 95 percent.

Response: Western is required by Article 26 of its "Sale, Interchange, and Transmission Agreement" (Contract 2948A) with PGandE to maintain, and to require its customers to maintain, a 95-percent factor. Western based its power factor penalty on a study it performed on the average expense for power factor correction for CVP commercial power customers. The intent of the proposed PFAC is for Western to meet its contractual obligation to PGandE to improve the system efficiency and performance, and to reduce losses by encouraging its customers' compliance, using a penalty that represents a slightly higher cost to customers than if they were to install the actual corrective equipment. Western's intent is not to provide any economic advantage to customers that may make the decision to improve power factor above 95 percent. Western expects that such decision would be made based on each customer's internal cost-benefit analysis. In addition, because of the 1-year grace period proposed by Western prior to the implementation of the PFAC Penalty, Western has assumed no revenue from this program for ratemaking purposes. If revenue is realized (and all other assumptions remain the same), then such revenue would repay CVP investment beyond required levels in that year. Therefore, CVP customers that are in compliance could realize a future rate benefit (although it is likely to be small) if a customer is burdening the system with a poor power factor.

C. Power Rate Design

1. *Issue:* Western proposed two power rate designs for review and comment by CVP customers. Both of the proposed options differed from the current rate design. One rate design was developed to have all fixed annual costs recovered by the capacity rate component and variable annual costs recovered by the energy rate component. This rate design was referred to as the "fixed/variable" rate design option. The second rate design was established to recover 50 percent of the annual CVP costs by both the capacity and the energy rate components (referred to as the "50/50" design option). Ten comments were received on the power design option, five supported the fixed/variable design, four supported the 50/50 design, and one supported the current rate design. The comment in support of the current rate design was that Western had not met its "burden of proof" of demonstrating that the current rate design was inappropriate, and therefore should not change its present power rate design.

Response: The two rate design options were developed to consider conventional utility rate design (i.e., the fixed/variable option) and the typical design of Western power rates (i.e., the 50/50 option). In support of these rate design options, Western's staff produced an analysis that examined the fixed and variable expenses that are required to be recovered by the CVP commercial power rate. This study (see appendix F of the August 25, 1987, customer brochure) did not support the current rate design in that it indicated that the current capacity rate was not sufficient to cover projected CVP fixed annual costs. As a result, Western considered it inappropriate to consider the current rate design as an option.

Western has selected the 50/50 design option as its final rate design for confirmation and approval. This decision was made based upon the fact that the customer comments received on the rate design options did not offer a clear direction as to the preferred option. Only 10 customers commented on the rate design options. There were five customers that preferred the fixed/variable option, four preferred the 50/50 option, and one preferred the current rate design. The fixed/variable option requires the classification of costs as either fixed or variable. The decision on such classifications may be arbitrary and subject to debate. How these costs are classified can lead to very different allocations between energy and capacity rates. The 50/50 option is consistent with Western's historical practice and promotes equity.

2. *Issue:* An additional comment on power rate design was that it is discriminatory to require low-load factor customers to subsidize the purchase of higher cost purchased power for high-load factor customers.

Response: Western does not offer rates on a time-of-use basis. All resources necessary to supply the total commercial power obligation are considered in each kilowatthour and kilowatt of power sale. This results in a homogenous and nondiscriminatory rate structure. Secondly, the generalization that high-load factor customers cause the purchase of energy in excess of CVP generation, while low-load factor customers do not, is inaccurate. CVP generation follows a pattern of high generation in the spring and summer, and low generation in the fall and winter. If a low-load factor customer were to peak significantly and have high loads in a fall or winter month, then a substantial portion of the energy serving such load would likely be from purchased energy.

3. *Issue:* In Western's assessment of the fixed and variable expenses used as the basis for the fixed/variable power rate design proposal, Western considered operation and maintenance expense as a 100 percent variable expense. One commentor objected to this allocation.

Response: Since Western has determined to finalize the CVP power rates based on the 50/50 design option, the issue of the appropriate allocation of operation and maintenance (O&M) expenses between fixed and variable components does not exist. However, this issue was one factor that contributed to the adoption of the 50/50 design option in that Western did not have a clear basis for allocating O&M costs to either the fixed or variable rate components.

D. Transmission Rate Design

Issue: As part of the 1988 rate adjustment announced in the August 4, 1987, **Federal Register** notice, Western proposed two transmission rates for parties desiring to move non-CVP power over the CVP transmission system. These rates were: The CVP firm transmission rate of $0.597/kW-month per kilowatt of transmission capacity specified in the contract at the point of receipt, and the CVP nonfirm transmission rate of 1.27 mills/kWh for each kilowatthour delivered from the CVP transmission system.

One party made the following comments regarding the proposed CVP transmission rate methodology:

a. The amortized annual expense used to calculate the rate was based on a 50-year amortization of the total capital investment in the facilities considered, at a 3-percent interest rate. However, the repayment of the basic (3 percent) CVP investment is ahead of schedule and therefore, the amortized expense under this methodology ought to be reduced accordingly.

b. Some portion of the operation, maintenance, replacement, and capital investment is annually allocated to the project use power customers power and/or water rates and, as such, ought to be removed from the transmission rate culculation.

c. The energy and capacity amounts used to divide into the annual expenses in order to establish the proposed transmission rates should be the CVP commercial power load forecast, the same as are used to set the power rate.

Response: Western performed additional analyses assessing these comments. The point regarding the advance status of the repayment of the CVP basic investment is accurate, and Western has modified its proposed transmission rate design to proportionally reduce the amortized expenses for repayment of investment by considering only the remaining unpaid Federal investment at 3-percent interest through the mandatory repayment date of 2014. The adoption of this comment reduces the proposed CVP nonfirm and firm transmission rates to 1.022 mills/kWh and $0.481/kW-month, respectively.

No other modifications were made to the proposed transmission rate because: (1) The allocation of operation, maintenance, replacement, and investment to project use power customers and/or water rates would not have an impact on the proposed rates if the project use loads were also removed from the energy values used as the divisor to calculate the rates, and (2) the concept of using the CVP preference customer loads as the billing determinants to calculate the rates does not make sense from Western's perspective, since most of the power delivered to customers is not delivered over the CVP transmission system.

E. Treatment of Losses in Power Rate "Unbundling"

Issue: One party commented that although they strongly supported the unbundling of wheeling expenses from the CVP power rates, they felt that Western had failed to properly consider the unbundling of high voltage transmission losses from the capacity and energy rates. This comment is contrasted with another party's comment that all wheeling expenses should be melded with the CVP power rate, and no differentiation should be made for low or high voltage wheeling expenses.

Response: All forecasts of CVP power sales, which are the basis for determining the rates, were made at the points of delivery. Therefore, losses applicable to each customer are taken into consideration in establishing the projected amounts of generation and purchases which are required to serve the customer load. The 1.035 multiplier billing adjustment for low-voltage wheeled customers is consistent with the present practice of surcharging such customers, for the additional power required to meet their demand, due to the fact that low voltage wheeling contractually incurs 8.0-percent losses versus the 4.5-percent losses incurred by high voltage wheeling.

Western has unbundled the proposed rates and developed a separate passthrough of wheeling charges to ensure that no wheeling expenses for the delivery of CVP power are charged to direct-service customers. However, as one commentor has accurately pointed out, no credit has been provided to the direct-service customers for the difference in losses that Western may experience due to the fact that they are directly interconnected to the CVP transmission system. Western notes that not all directly interconnected customers cause lower system losses, and considers it more practical and equitable to meld or blend, in developing the basic power rate, the losses for all high voltage deliveries, whether direct service or not. Western believes that its position is more equitable because the opportunity to directly interconnect is largely a matter of geographic proximity to the CVP transmission system. Conversely, however, the low voltage surcharge is reasonable since the decision to take power at high or low voltage is available to each customer.

If Western were to give direct-service customers a credit for losses assessed by third parties, it would have to adjust that credit by the losses Western incurred for delivery to the direct-service customers over Western's system. This is presently difficult to determine and varies with the mix of resources which Western uses at a given time to supply Western's loads. Western's ratesetting method is more practicable, although it is less precise because it does not identify or allocate the losses which Western incurs to a customer or customer class except to the classes of high- or low-voltage wheeled customers.

F. Timing of Rate Implementation and Step Increases

Issue: Various customers commented on the timing of the power rate implementation and proposed step increases:

- The reduced CVP power rates should be implemented in January 1988.
- The rate step adjustments should be set to periodically change on July 1 rather than October 1 as proposed.
- It was requested that Western seek authority from FERC to delay the proposed rate step increases as Western's discretion in the event that surplus revenues were projected.

Response: Although it will not be possible to state the exact timing of the repayment of the existing CVP deficit in FY 1988 until the final FY 1988 financial statements are available and audited, Western's best estimate is that CVP power rates should not be reduced (as suggested by the proposed rates) until May 1, 1988, to ensure repayment of such deficit.

The issue of the initiation of the CVP power-rate steps on July 1 versus October 1 is a non-substantive issue since it would not significantly alter the proposed level of revenue recovery. Since Western is aware that CVP customers maintain various fiscal year definitions, it seems prudent to maintain

the proposed rate-step timing that is most logical to the Federal fiscal year.

Finally, Western has approached the issue of maintaining accurate revenue levels by proposing the RAC rather than requesting the discretion to shift the proposed rate steps. Also, in the previous CVP rate adjustment Western proposed to, under certain circumstances, either advance or delay the effective dates for one or both of the last two stages of that rate adjustment. The FERC denied that proposal.

G. Purchased Power Expense Assumptions

Issue: One entity stated that they felt that the forecast of revenue requirements "indicate(d) a strong bias toward inflated estimates of purchased power costs which had led to setting the rates at a higher level than necessary." Specifically, the entity questioned Western's use of the California Energy Commission's (CEC) oil and gas price forecast in estimating thermal power repurchase rates from PGandE and the fact that capacity credits for firm Pacific Northwest power purchases were not reflected in the cost estimates for capacity.

Response: The establishment of the RAC materially resolves the essence of this issue because it provides revenue credits to CVP customers if Western's projected purchased power expenses are higher than actual incurred expenses. In addition, Western concurred with the opinion that capacity credit ought to be considered in the CVP rate design by adding the second component of the RAC that will automatically adjust the capacity rate component for each megawatt of capacity credit received by Western.

Western considers the use of the CEC's oil and gas price forecast to represent the best available, albeit conservative, forecast for thermal fuel prices in northern California. The forecast is used for thermal-electric power planning evaluations by the CEC and represents a noninvested-interest forecast. The comment did not support the validity of any other forecast, but merely indicates the desire for Western to apply an alternative lower projection.

November 30, 1983, FERC Comments Contained in Order Confirming and Approving Rates

On November 30, 1983, FERC approved and confirmed the current CVP power rates for the period of May 25, 1983, through midnight of May 25, 1988. In that order, FERC raised two issues regarding Western's development of the supporting power repayment study. In the first issue, FERC states that Western failed to properly reflect all Interest During Construction (IDC) expenses prior to 1968, and in the second issue, FERC stated that Western had overstated its revenue from projected CVP capacity sales to PGandE based on Western assuming the most favorable outcome of a Project Dependable Capacity (PDC) dispute with PGandE. Even though FERC identified those issues as areas that FERC staff disagreed with Western, FERC confirmed and approved the CVP rates based on our determination that repayment of the CVP investment is currently ahead of schedule and could remain roughly on schedule during a 5-year rate approval period.

With the exception of the months of May through September of 1982, Western has resolved all PDC disputes with PGandE through CY 1987. The PDC levels assumed in the revised PRS supporting this CVP rate proposal are 912 MW in 1988 diminishing to 884 MW in 1992 due principally to increasing CVP project use loads over that same period. These assumed PDC levels are consistent with the actual agreed to PDC level in CY 1987 of 916 MW. Western has adopted these assumptions consistent with FERC's November 30, 1983, comments, even though Western anticipates higher PDC levels in the 1988 to 1993 time period, which will likely be disputed with PGandE.

With regard to the IDC issue, Western has included a letter dated June 17, 1955, from the Acting Assistant Commissioner of Reclamation to the Regional Director of Reclamation in Sacramento, California, in the Record of Decision. This letter requires Reclamation to exclude consideration of IDC for the payout studies of the present Central Valley Project, including Trinity and San Luis. The Trinity Division and San Luis Unit were placed in service in 1964 and 1967/68, respectively. The repayment of CV investment occurs from both power and water use revenues and, as such, the basis for calculation of the CVP investment should be consistent. Reclamation is responsible for providing the basic investment cost allocation data on an annual basis to Western. Since Reclamation has remained consistent with the policy stated in the aforementioned document, IDC will not be included for the period prior to 1968 under the revised power repayment study.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), the Council of Environmental Quality (CEQ) Regulations, and the DOE guidelines, Western issued a Determination Memorandum on December 22, 1987. This memorandum determined that neither an environmental assessment nor an environmental impact statement was required to document the promulgation of the proposed 1988 CVP transmission and power rates. This determination was based on the conclusion that the potential effects resulting from the implementation of the proposed action are limited to small beneficial economic effects from the reduction of the power rates, and the fact that the physical environment would not be impacted by the proposed action. Given the findings, Western determined that the proposed rate adjustments were not a major Federal action significantly affecting the quality of the human environment as defined by the NEPA and CEQ.

Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western has received an exception from section 3, 4, and 7 of that order, and therefore, will not prepare a regulatory impact statement.

Availability of Information

All studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the power rates are and will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, California 95825, (916) 978–4418.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective May 1, 1988, that being the first day of the May 1988 billing period, Rate Schedules CV–F6, CV–FT1, CV–NFT1, and CV–TPT2. These rates shall remain in effect on an interim basis pending the FERC confirmation and approval of them or substitute rates on a final basis, or until they are superseded.

Issued at Washington, DC, March 2, 1988.

Joseph F. Salgado,

Under Secretary.

[Schedule CV-F6 (Supersedes Schedule CV-F5)]

Schedule for Rates for Commercial Firm Power Service

Effective: May 1, 1988.

Available: In the area served by the Central Valley Project (CVP).

Applicable: To commerical firm power customers for general power service supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and point established by contract.

Monthly Rate: Demand Charge: The rates listed below shall be the charge per kilowatt of billing demand. The billing demand is the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Effective dates	Demand rate (per kilowatt-month)
May 1, 1988, through September 30, 1989	$6.86
October 1, 1989, through September 30, 1991	7.49
October 1, 1991, through April 30, 1993	7.74

Energy Charge: For all energy use up to, but not in excess of, the maximum kilowatthour obligation of the United States during the month as established under the power sales contract, the rates shall be:

Effective dates	Energy rate (mills per/hour)
May 1, 1988, through September 30, 1989	14.43
October 1, 1989, through September 30, 1991	15.76
October 1, 1991, through April 30, 1993	16.30

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractural obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above.

Transformer Loss Adjustment: If delivery is made at transmission voltage but metered on the low voltage side of the substation, the meter readings will be increased 2 percent to compensate for transformer losses, unless otherwise provided for by contract.

Power Factor Adjustment Clause: (a) A surcharge of 0.25 percent (0.0025) will be assessed against the total monthly capacity and energy charges at each Point of Delivery (POD), for each percent or major portion thereof (0.5 percent or greater), that a customer's power factor at such POD is below 95 percent lagging or 95 percent leading.

(b) Power factor will be measured on the average power factor recorded over the 30-minute interval in which the customer's maximum monthly peak demand at such POD occurs. In the event of multiple occurrences of the same maximum monthly peaks, the individual peak period with the worst power factor will be used for billing purposes.

(c) This provision will not apply to points of measurement without continuous volt-amperes reactive metering.

(d) The Contracting Officer may waive the power factor adjustment for good cause in whole or in part.

(e) No power factor surcharges will be assessed prior to the billing month of June 1989 to allow CVP customers time to implement power factor improvement programs.

Revenue Adjustment Clause: There are two components to the Revenue Adjustment Clause (RAC): the basic RAC provision and the Contract Dependable Capacity (CDC) charge adjustment provision.

(a) *Basic RAC Provision.* (i) By each November 1 and May 1, Western shall calculate net differences for the previous 6-month period (April 1 through September 30, and October 1 through March 31, respectively), between the estimated CVP power sales revenues and CVP purchased power expenses used to establish the CVP power rates, as compared to the actually incurred CVP power sales revenues and purchased power expenses. The net differences for each 6-month period shall be calculated based on the formula in subparagraph (a)(v). If the net difference is a positive value, then it shall be credited to CVP commercial power customers. If the net difference is a negative value, then it shall be surcharged to the CVP commercial power customers.

(ii) All credits or surcharges under this provision (a) shall occur over the 6-month period beginning 1 month after the period for which the net difference was calculated. The credit or surcharge shall be equally distributed over the 6 monthly billing periods and be specifically noted on each power billing statement.

(iii) The net difference used as the basis for any surcharge or credit for a 6-month adjustment period shall not exceed the absolute value of $15,000,000.

(iv) The net surcharge or credit shall be allocated to each CVP commercial power customer based on the proportion that such customer's billed obligation to Western for CVP capacity and energy represented, compared to the total billed obligation for all CVP commercial power customers for CVP capacity and energy, in the period in which the net surcharge or credit was incurred.

(v) The basic RAC adjustment provision formula is as follows:

(R act − R est) − (E est) = net surplus or deficit.

Where:

R act = Actual Revenue received from sale of capacity and energy to CVP commercial power customers. This figure will be based on actual CVP preference customer invoices to the extent available and estimated bills otherwise.

R est = Estimated Revenue expected to be realized from capacity and energy sales to CVP preference customers. This figure is recorded in table I.

E act = Actual purchased power obligations incurred by Western in support of CVP loan level and surplus sales to the Pacific Gas and Electric Company (PGandE) bank accounts. This figure will be based on actual invoices to the extent available.

E est = Estimated purchased power expenses. This figure is recorded in table I.

(b) *CDC Capacity Charge Adjustment Provision.* (i) For each megawatt of CDC credit received by Western pursuant to Western's "Sale, Interchange, and Transmission Contract No. 14-06-200-2948A" with PGandE, and CVP capacity charge component shall be reduced by the applicable incremental value shown on table II.

(ii) Similarly, for each megawatt of CDC credit rescinded or otherwise lost by Western, the CVP capacity charge shall be increased by the applicable incremental value shown on table II.

(c) *RAC Tables—(Attached).*

TABLE I.—REVENUE AND EXPENSE TARGET LEVELS FOR THE REVENUE ADJUSTMENT CLAUSE [1]

Fiscal year	Months	Estimated revenue [2] (dollars)	Estimated expense [3] (dollars)
1988	May 88 to Sep 88	84,301,400	73,714,400
1989	Oct 88 to Mar 89	105,824,600	88,690,200
1989	Apr 89 to Sep 89	104,969,200	89,498,800
1990	Oct 89 to Mar 90	115,852,500	104,323,000
1990	Apr 90 to Sep 90	114,920,600	96,866,000
1991	Oct 90 to Mar 91	116,570,500	107,571,000
1991	Apr 91 to Sep 91	115,634,100	91,255,000
1992	Oct 91 to Mar 92	120,795,100	112,843,900
1992	Apr 92 to Sep 92	119,827,300	98,288,100
1993	Oct 92 to Mar 93	121,034,000	112,998,100
1993	Apr 93 to May 93	40,476,000	33,820,000

[1] Please note that these figures will be adjusted to recognize any capacity rate adjustment implemented in response to Western's receipt or loss of CDC credits.
[2] Projected revenues are the estimated revenues Western will receive from the sale of capacity and energy to CVP preference customers.
[3] Projected expenses consist of the following purchased power costs: The delivered costs of capacity and energy purchased from PGandE, Pacific Northwest, power imports, and in-State power purchases.

TABLE II.—VALUE OF ONE MEGAWATT OF CAPACITY CREDIT TO CUSTOMERS

Fiscal year	Time period	Value of capacity credit ($/kW-Mo)	Months of period	MW credit for period dollars	Capacity sales during period (kw-mo)	Incremental [1] adjustments to CVP capacity charge (dollar/kW-Mo)
1988	May 88 to Sep 88	14.960	5	74,800	6,631,286	0.011280
1989	Oct 88 to Mar 89	15.335	6	92,010	7,508,602	.012254
1989	Apr 89 to Sep 89	15.710	6	94,260	7,973,052	.011822
1990	Oct 89 to Mar 90	15.846	6	95,076	7,533,588	.012620
1990	Apr 90 to Sep 90	16.500	6	99,000	7,999,584	.012376
1991	Oct 90 to Mar 91	16.814	6	100,884	7,590,270	.013291
1991	Apr 91 to Sep 91	17.330	6	103,980	8,059,771	.012901
1992	Oct 91 to Mar 92	17.733	6	106,398	7,608,737	.013984
1992	Apr 92 to Sep 92	18.190	6	109,140	8,079,380	.013508
1993	Oct 92 to Mar 93	18.616	6	111,696	7,629,042	.014641
1993	Apr 93 to May 93	19.100	2	38,200	2,658,367	.014370
			61	1,025,444	79,271,679	.012936

[1] Please note that once capacity credit is received, the capacity charge component must be adjusted at each time period indicated above to be consistent with the changing "Incremental Adjustment" values shown in the last column.

[Schedule CV-FT1 (Supersedes Schedule CV-T1)]

Schedule of Rates for Firm Transmission Service

Effective: May 1, 1988.

Available: In the area served by the Central Valley Project (CVP).

Applicable: To firm transmission service customers where power and energy are received into the CVP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery from the CVP system specified in the service contract.

Character and Conditions of Service: Transmission service for three-phase alternating current a 60 hertz, delivered and metered at the voltages and points specified in the service contract.

Monthly Rate: Transmission Service Charge: $0.481 per kilowatt of transmission capacity at the point of receipt into the CVP system, as specified in the applicable service contract, whether utilized or not.

Adjustments

For reactive power: None. There shall be no entitlement to the transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their authorized representatives.

For losses: Power and energy losses incurred in conneciton with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[Schedule CV-NFT1 (Supersedes Schedule CV-T2)]

Schedule of Rates for Nonfirm Transmission Service

Effective: May 1, 1988.

Available: In the area served by the Central Valley Project (CVP).

Applicable: To nonfirm transmission service customers where power and energy are received into the CVP system at points of interconnection with other systems and transmitted and delivered, subject to the availability of transmission capacity, less losses, to points of delivery from the CVP system specified in the service contract.

Character and Conditions of Service: Transmission service on an intermittent basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points specified in the service contract.

Montly Rate: Transmission Service Charge: 1.022 mills per kilowatthour delivered from the CVP system.

Adjustments

For reactive power: None. There shall be no entitlement to the transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by Contractor

and Contracting Officer or their authorized representatives.

For losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

(Schedule CV-TPT2) (Supersedes Schedule CV-TPT1)

Rate Schedule for Third Party Transmission

Effective: May 1, 1988.

Available: In the area served by the Central Valley Project (CVP).

Applicable: To customers of the CVP who require transmission service to receive power and energy sold by Western.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points specified in the service contract.

Monthly Rate: When the United States utilizes transmission facilities, other than its own, in providing service under a customer's power sales contract, and costs are incurred by the United States for the use of such facilities, the customer shall pay all costs, including transmission losses, incurred in the delivery of such power (including secondary and dump energy).

The transmission losses chargeable to the customer shall be those losses which are in excess of the "at or above 44/kV" transmission losses specified by Contract No. 14-06-200-2948A. For billing purposes, transmission losses will be added to the meter readings of the power and energy delivered to the customer under the customer's power sales contract with the United States.

[FR Doc. 88-5533 Filed 3-11-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3339-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Health and Safety Data Reporting; Submissions of Lists and Copies of Health and Safety Studies. (EPA ICR # 0575).

Abstract: Under this collection, chemical manufacturers and processors must submit health and safety studies pertaining to specified chemicals, accompanied by a list of those studies and the studies in progress. EPA will use the studies to assess the need for testing the chemicals under section 4(a) of TSCA or to weigh their health and environmental effects.

Respondents: Chemical manufacturers and processors.

Estimated Burden: 11,343 hours.

Frequency of Collection: On occasion.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 20460
and
Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503. (Telephone (202) 395-3084)

Dated: March 4, 1988.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-5472 Filed 3-11-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3339-8]

Management Advisory Group to the Construction Grant Program; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Management Advisory Group to the Construction Grant Program (MAG) will be held at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in the Washington Information Center (WIC) conference room #2. The meeting will begin at 9:00 a.m., on April 13 and end at about 1:00 p.m. on April 14, 1988.

The agenda will include a review and discussion of the Sector Study on Minicipal Financing, Implementation of the State Revolving Loan Fund program and Sludge Regulations. 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. Additional information on the meeting may be obtained from Ms. Vicki Gillispie at the Environmental Protection Agency, WH-547, 401 M Street SW., Washington, DC 20460, telephone number: (202) 382-5859.

Date: March 7, 1988.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 88-5473 Filed 3-11-88; 8:45am]

BILLING CODE 6560-50-M

[OPP-180763; FRL-3339-7]

Receipt of an Application for a Specific Exemption to Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") for use of avermectin B_1 (Agrimec 0.15 EC Miticide/Insecticide ™) to control leafminers (*Liriomyza trifolii* and *L. sativae*) on 53,550 acres of tomatoes in Florida. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing $\geq$ 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and $<$ 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 29, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180763" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Libby Pemberton, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as Agrimec 0.15 EC Miticide/Insecticide™, by MSD AGVET, a division of Merck & Co., Inc., on tomatoes in Florida. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 8 to 16 ounces of product per acre per application. A maximum of ten applications will be made per acre per crop season. Treatment would not be allowed 3 days prior to harvest. Applications would be made from March 1, 1988 through December 31, 1988.

The Applicant indicates that many factors have contributerd to the frequency and severity of this pest problem. Among these factors are the intensity of plantings within the producing areas, the climatic conditions during the growing season, the large number of alternate hosts surrounding the production areas, the complex pest management requirements of other pests of tomato and most importantly the increasing difficulty of control due to resistance of the pest to existing compounds. Leafminer control has been accomplished in the past by a variety of pesticides including: monocrotophos, diazinon, naled, methamidophos, dimethoate, azinphos-methyl, oxamyl, and permethrin. Even though some of these compounds are still being used, once populations exceed threshold level the effectiveness of any of these compounds is lost, according to the Applicant.

The Applicant indicates that without adequate control of the leafminers a potential loss of $25 to $50 million of income to Florida tomato producers could occur from this pest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 25, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–5474 Filed 3–11–88; 8:45 am]
BILLING CODE 6560–50–M

[OPP–180765; FRL–3339–6

Receipt of Application for an Emergency Exemption From Wisconsin to Use Metolachlor; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") to use the herbicide metolachlor (CAS 51218 45 2) to treat 5,000 acres of cabbage, a majority of which is grown for processing into sauerkraut, for pre-emergent control of certain broadleaf weeds and yellow nutsedge.

EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before March 29, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180765," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be desclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Jim Tompkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of metolachlor for preemergent control of certain broadleaf weeds and yellow nutsedge in transplanted cabbage.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. According to the Applicant, metolachlor is used for control of annual grasses, yellow nutsedge, and certain broadleaf weeds in corn, peanuts, pod crops, potatoes, safflower, grain or forage sorghum, soybeans, tree nuts, stone fruits, and woody ornamentals.

The Applicant states that during the 1970's cabbage growers used nitrofen (TOK herbicide) applied postemergent for broadleaf weed control in cabbage. Tok was withdrawn from the market in 1980. CDAA (Randox) was previously registered for preemergence application to cabbage in several states including Wisconsin. This product is no longer manufactured and all registrations have been cancelled. Previously, Vegadex was the primary preemergence herbicide used on cole crops on organic soils. The registrations for CDEC (Vegadex) were voluntarily cancelled in 1980. Cabbage requires relatively weed free conditions to reach marketable size and to produce a clean harvest for processing. Mechanical control is always used in cabbage production, however, "in row" weeds escape as do late season weeds. For this reason, mechanical control alone is insufficient.

The Applicant states the herbicides currently registered on cabbage are unsatisfactory for the following reasons: Dacthal is registered for preemergent application at the time of seeding or immediately after transplanting but before weed emergence. Field research indicated that plots treated only with DCPA showed poor weed control and reduced yields. Roundup (glyphosate) is registered for application before crop emergence. Although glyphosate could be used as a "clean up" herbicide prior to planting, it does not continue to control weeds, during the growing season. Treflan (trifluralin) is registered for preplant incorporated application to transplanted cabbage. Treflan controls annual grasses but provides only partial control of annual broadleaf weeds. Devrinol (napropamide) is registered for preplant incorporated application to cabbage. Devrinol will control some annual grasses and broadleaf weeds, but in years with late flushes of weeds, it will not provide economic weed control for transplanted cabbage. Devrinol does not control yellow nutsedge. Goal (oxyflurofen) received supplemental labeling in 1988 for pretransplant application to cabbage. Goal will provide control of carpet weed, redroot pigweed, common purslane, and Pennsylvania smartweed. Goal will not control yellow nutsledge.

The economic benefit of allowing this use of metolachlor, according to the Applicant, could most readily be attributed to reduce costs for mechanical cultivation and increased yields attributed to better weed control. The present system of Treflan application and mechanical cultivation requires the hand hoeing of 30% of the 550 acres at cost of $150 acre. The Applicant states that because of weather, availability of labor, and worker reliability it is extremely difficult to weed all the infested acres before weed competition reduces yields. The Applicant estimates that $884,000 is lost in yield in Wisconsin annually.

The Applicant proposes to make a single application of the product Dual 8E, EPA Reg. No. 100–597, with ground application equipment at a maximum rate of 2 pounds active ingredient per acre at the beginning of the growing season.

A specific exemption was granted for this use of metolachlor on cabbage to the Applicant in 1987 and to other states in at least two previous years. According to the Applicant, the registration of metolachlor on cole crops is an ongoing IR-4 project but several years of work remain before all data gaps are filled and a national registration is sought.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a chemical for which an emergency exemption has been requested or granted for the use in any previous three years, and a complete application for registration of that use and or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: February 25, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–5475 Filed 3–11–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180764; FRL–33395]

Minnesota Department of Agriculture; Receipt of Application for Emergency Exemption To Use (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit ™) to control Jerusalem artichoke on 25,000 acres of soybeans in Minnesota. Pursuit ™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this exemption.

DATE: Comments must be received on or before March 29, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180764 ," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted concrning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert Forrest, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a state agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of an unregistered herbicide, (±)-2-[4,5-dihydro-4-methyl-4-(1methylethyl)-5-oxo-1*H*-imidazol-2-yl)-5-ethyl-3-pyridinecarboxylic acid (CAS 81335–77–5), manufactured as Pursuit ™, by American Cyanamid Company, on soybeans in Minnesota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicated that Jerusalem artichoke poses a serious threat to the Minnesota soybean industry due to resultant reductions in yields. This weed, if not controlled produces numerous tubers which lie dormant over winter and produce plants the following spring. Only two herbicides (Paraquat and Roundup) are labelled for control of Jerusalem artichokes in Minnesota soybeans, according to the Applicant. Neither of these herbicides are satisfactory, according to the Applicant, due to required delays in planting or ineffective application techniques.

The Applicant indicates that without adequate control a 30 percent yield loss for soybeans due to this weed will result. This would amount to approximately 1.4 million dollars. Producers are reporting that infestations are increasing, and weed scientists are concerned that the week will become more widespread in the absence of effective control measures.

Pursuit ™ will be applied by ground postemergence to the crop at a rate of 0.06 pound active ingredient per acre.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 29, 1988 and should bear the identifying notation "OPP– 180764 ." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Minnesota Department of Agriculture.

Dated: February 29, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–5476 Filed 3–11–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3338–5]

Superfund Program; Mixed Funding Settlements

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Agency is publishing the guidance on "Evaluating Mixed Funding Settlements under CERCLA" today to inform the public and to solicit comment on these types of settlements. Mixed funding, as described, in part, under section 122(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (hereinafter referred to a "CERCLA") refers to three types of arrangements in which money from potentially responsible parties (PRPs) and the Hazardous Substances Superfund ("the Fund") is used to conduct a response action. This guidance first describes a process for determining whether a settlement involving mixed funding in any form is appropriate. It then describes issues related to each of the three types of mixed funding individually, as well as the procedure required for approval of mixed funding settlements.

DATE: Comments must be provided on or before May 13, 1988.

ADDRESS: Comments should be addressed to Kathy MacKinnon, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, Guidance and Oversight Branch (WH–527), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathy MacKinnon, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, Guidance and Oversight Branch, WH–527, 401 M Street SW., Washington, DC 20460, (202) 475–6770.

SUPPLEMENTARY INFORMATION: The term "mixed funding", as used in this document, refers to three types of arrangements in which the Government, at its discretion, agrees to conduct and/or pay for a portion of a response action. In one arrangement, as described in section 122(b)(1) of CERCLA, the PRPs agree to conduct the response action, and the Government agrees to allow these parties to bring a claim against the Fund for a portion of their costs. The process by which the Government agrees to allow a claim against the Fund is known as "preauthorization."

In a second type of mixed funding known as a "cash-out," the PRPs pay the Agency for a portion of the costs in lieu of conducting the response action. A third type of mixed funding, known as "mixed work," involves an agreement which addresses the entire response action, but the PRPs and the Agency agree to conduct and pay for discrete portions or segments of the response action.

The Agency supports the use of mixed funding to promote settlements and hazardous site cleanups. These settlements also may simplify the Government's litigation of cost recovery cases under section 107 by reducing the number of PRPs to be sued.

The process for evaluating mixed funding settlements is based, in part, on the Interim CERCLA Settlement Policy (50 FR 5034), which provides ten criteria to evaluate a PRP settlement offer for less than 100% of the cost of a cleanup at a site. For mixed funding settlements, criteria of particular importance include the strength of the liability case against settlors and any non-settlors, the size of the portion for which the Fund will be responsible, and other mitigating and equitable factors.

The use of mixed funding does not change EPA's established criteria for evaluating settlement offers. As stated in the Interim CERCLA Settlement Policy, liability under CERCLA is strict, joint and several unless the PRPs can clearly demonstrate that the harm at the site is divisible. Thus, approval of a mixed funding settlement will be a policy decision, made in the Government's discretion, based on an evaluation of the totality of the circumstances in each case.

Mixed funding settlements represent one portion of a comprehensive effort to facilitate settlements of enforcement actions under CERCLA. In particular, *de minimis* settlements (sections 122(g)),

covenants not to sue (sections 122(f)), and non-binding allocations of responsibility (NBARs) (sections 122(e)(3)) may be used in conjunction with mixed funding as a means of increasing the flexibility with which CERCLA cases may be settled in order to expedite cleanups.

The Agency encourages public comment on this guidance, especially related to particular types of mixed funding arrangements. The Agency will reevaluate this interim guidance in response to public comments.

The interim guidance follows.

Date: February 29, 1988.

J. W. McKeraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

Date: February 12, 1988.

Thomas L. Adams, Jr.,

Assistant Administrator for Enforcement and Compliance Monitoring.

October 20, 1987.

Memorandum

Subject: Evaluating Mixed Funding Settlements Under CERCLA

From: J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response
Thomas L. Adams, Jr., Assistant Administrator, Office of Enforcement and Compliance Monitoring

To: Regional Administrators, Regions I–X

I. Introduction

This document provides guidance for use when a party proposes, as part of a settlement negotiation, that both private and Fund resources be used at a site. This type of arrangement is generally referred to as a "mixed funding" settlement. Section 122(b) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereinafter cited as "CERCLA") provides explicit authority for the Government to enter into these types of arrangements.

The primary goals of this guidance are to:

(1) Encourage the Regions to consider mixed funding settlements, based on the statutory approval of these settlements in section 122(b) of CERCLA;

(2) Present a method for Regional enforcement personnel to analyze mixed funding in the context of a settlement offer, and

(3) Indicate broad Agency preferences by specifying acceptable and poor candidates for mixed funding in general.

Historically, the term "mixed funding" has been used to describe three types of arrangements. Section 122(b)(1) of CERCLA describes one mixed funding arrangement, in which one or more of the potentially responsible parties (PRPs) agree to perform a response activity and the Agency agrees to reimburse those PRPs for a portion of their response costs. In such cases, the statute provides that the cost incurred by the Fund be recovered from non-settlors when possible.

Settlement agreements involving cleanups by PRPs and reimbursement of their response costs require the Agency to "preauthorize" the claim against the Fund prior to the initiation of the response action. The term "preauthorization" refers to the approval that must be granted by the Agency prior to cleanup actions if a claim for response costs is to be considered against the Fund. If preauthorization is granted, it serves as an Agency commitment that, if response costs are conducted pursuant to the settlement agreement and the costs are reasonable and necessary, reimbursement will be available from the Fund as dictated by the agreement, subject to the availability of appropriated monies.

Two other kinds of settlement agreements also constitute forms of mixed funding, but do not require preauthorization. Section 122(b)(3) describes one type of arrangement, in which the Agency conducts the response action and the PRPs pay the Agency for a portion of the costs. This type of settlement is known as a settlement for cash, or "cash-out." A third type of mixed funding, known as "mixed work," involves an agreement which addresses the entire response action, but the PRPs and the Agency agree to conduct and pay for discrete portions or segments of the response action. The term "mixed funding", as used in this document, applies to any of the aforementioned types of settlements. It should be noted, however, that section 122(b)(4), concerning future obligation of the Fund for remedy failure, only applies to mixed funding in the form of preauthorization, as described in section 122(b)(1).

As noted above, the 1986 Amendments to CERCLA included an explicit statutory authorization of mixed funding settlements. Prior to these Amendments, the primary document which made reference to mixed funding was the Interim CERCLA Settlement Policy (50 FR 5034). This policy set out ten criteria to use when evaluating a settlement offer for less than 100% of the cost or cleanup at a site. In mixed funding settlements, the PRPs agree to pay for a portion of the response cost, and may conduct some or all of the response action.

A major portion of this guidance addresses the application of the Interim Settlement Policy to mixed funding settlements. Section II outlines the key principles underlying the Agency's Interim Settlement Policy, and the role of mixed funding within these general principles. Section III then provides an approach for applying the ten settlement criteria to mixed funding settlement offers in general (e.g., without regard to any specific funding arrangement.) This section first highlights factors of key importance to mixed funding settlements, and then suggests the Agency's preferences among various combinations of these factors.

Section IV identifies criteria to be used to determine if a particular type of mixed funding is appropriate for a site, and then lists secondary considerations related to all mixed funding settlements. Section V outlines the general procedure for review and approval of mixed funding.

II. The Role of Mixed Funding in the CERCLA Cleanup Program

The Interim CERCLA Settlement Policy identified negotiated private response actions as an essential component of the Agency's overall program for obtaining cleanup of the nation's hazardous waste sites. This program, to be effective, depends upon a balanced approach, which includes a mix of Fund-financed cleanups, enforceable settlement agreements reached through negotiations, and litigation. Expeditious cleanups reached through negotiated settlements are preferable to protracted litigation.

Section 122 of the 1986 Amendments, which is devoted entirely to settlement issues, indicates Congressional affirmation of the emphasis in the Interim Settlement Policy toward increased flexibility in settling CERCLA cases in order to expedite cleanups. Like the Interim Settlement Policy, section 122 covers a wide range of mechanisms designed to promote settlements. In particular, in section 122(b), Congress acknowledged the need to consider settlements for less than 100% of the costs of cleanups" * * * by using monies from the Fund on behalf of parties who are unknown, insolvent, similarly unavailable, or refuse to settle." (See the Conference Report on Superfund Amendments and Reauthorization Act of 1986, 99 Cong., 2d Sess. Report 99–962 pp. 183, 252 (1986)].

The Agency encourages the use of mixed funding to promote settlement and hazardous site cleanup. For example, preauthorization offers the

advantage of PRP performance of the response activity and funding of a substantial portion of the response costs, thus conserving Agency resources for use at other sites. In addition, section 122(b)(1) requires the Agency to make all reasonable efforts to recover these costs. The Agency will therefore pursue nonsettlors to make the Fund whole, unless it would be unwarranted to undertake such efforts. To the extent that mixed funding reduces the number of PRPs to be sued in such cost recovery cases, it will also reduce the Agency's costs for litigation.

Support of mixed funding as a settlement tool, however, does not imply that the standard and scope of liability under CERCLA has changed. As established by court decisions prior to the 1986 Amendments, PRP liability under CERCLA remains strict, joint and several, unless the PRPs can clearly demonstrate that the harm at the site is divisible. Thus, the Agency will assess mixed funding settlements in a manner consistent with the Interim Settlement Policy, where complete cleanup or collection of 100% of costs remains a primary goal.

For example, the Agency will not approve mixed funding simply on the basis that a share of wastes at a site may be attributable to an unknown or financially non-viable party. The Agency may conduct an allocation of liability among PRPs at a site, or may evaluate the PRP's allocation and allow volume to be considered as one factor used to assess the reasonableness of the PRPs' offer. However, the availability or the amount of any Fund-financing for a particular site will not be dependent solely on consistency with any volumetric or "fair-share" allocation. The Agency may, as a policy decision, determine that mixed funding is the best method to promote cleanup at a particular site, based on the totality of the circumstances. Mixed funding should be viewed as one tool, approved by Congress, to be used to promote settlements in the context of the existing Interim Settlement Policy.

Section 122 also contains settlement provisions related to: (a) *de minimis* settlements (section 122(g)), in which parties who are liable for only a minor portion of the hazard or cost of cleanup at a site may resolve their liability to the Government in an expedited process; (b) non-binding allocations of responsibility (NBARs), (section 122(e)(3)), which involve a discretionary EPA allocation of the total response costs among PRPs at a site; and (c) covenants not to sue, (section 122(f)), in which the Government agrees to certain releases from liability at a site.

These settlement mechanisms may influence the decision as to whether a settlement should include mixed funding. Thus, the use of mixed funding at a site should be evaluated both in the context of section 122 as a whole, which encourages settlement in general, as well as individual section 122 settlement provisions and their relevance to the proposed mixed funding settlement.

For further guidance on these settlement provisions, see "Interim Guidelines for Preparing Non-Binding Preliminary Allocations of Responsibility (NBAR)," 52 FR 19919; "Interim Guidelines on Settlements with *De Minimis* Waste Contributors under Section 122(g) of SARA," Adams/Porter, June 19, 1987; "Covenants Not to Sue Under SARA," Adams/Porter July 10, 1987.

III. Assessment of Mixed Funding Settlement Proposals Using the Interim Settlement Policy Criteria

In the evaluation of a proposed mixed funding settlement, Agency enforcement personnel should first focus on the quality of the overall settlement offer. Thus, the initial determination in each case will not be whether a particular type of mixed funding should be used, but whether the underlying offer for a mixed funding settlement is a good one. This determination should be made by applying the ten settlement criteria set out in the Interim Settlement Policy.

The factors and hypothetical examples set forth below provide guidance as to how to apply the ten settlement criteria to settlement offers in which PRPs have requested some form of mixed funding. The Agency does not intend to limit the availability of mixed funding to the fact patterns described below, but recommends the following approach as a means of focusing the analysis of the settlement. Regions must continue to consider the totality of the circumstances for each mixed funding settlement offer.

In settlement offers in which any form of mixed funding is proposed, factors of primary importance include:

- Strength of the liability case against settlors and any non-settlors. This factor includes:
  - —Litigative risks in proceeding to trial against settlors, and
  - —The nature of the case remaining against non-settlors after the settlement;
- Government's options in the event settlement negotiations fail (e.g., if a state cost-share will be available for a Fund-lead action);
- Size of the portion or operable unit for which the Fund will be responsible (or the amount of the PRP's offer);
- Good-faith negotiations and cooperation of settlors and other mitigating and equitable factors.

The following examples indicate the combinations of the above factors which may be considered acceptable candidates for any type of mixed funding, and those cases considered poor candidates for mixed funding:

Acceptable Candidates for Mixed Funding

The best candidates for mixed funding are cases in which the following features are present:

- The potential portion or operable unit to be covered by the Fund is small, or the settling PRPs offer a substantial portion of the total cost or cleanup. In this context, substantial portion may be defined as a commitment by the PRPs to undertake or finance a predominant portion of the total remedial action.[1]
- The Government has a strong case against financially viable non-settling PRPs, from which the Fund portion may be recovered.

While this combination of factors represents the optimum conditions under which mixed funding may be approved, cases will more typically involve one or more variations of this scenario. Thus, the Agency anticipates that a range of cases will be considered acceptable candidates for mixed funding. The following examples indicate the circumstances under which a mixed funding settlement may represent the Government's preferred alternative:

Example one: A strong case against potential settlors may initially weigh in favor of litigation, especially if the case against non-settlors is weak. However, a mixed funding settlement may still be acceptable upon evaluation of additional factors, such as:

- The settling PRPs offer to conduct or pay for a substantial portion of the response;
- Public interest considerations (e.g., if settlement would expedite cleanup and/or a section 104 Fund-financed action is not feasible);
- Whether settlors have negotiated in good-faith;
- The Government's time and resources saved by simplification or avoidance of litigation.

Example two: If a substantial portion of the waste at a site cannot be

[1] As noted later, the Agency's preference is for the PRPs to perform the response action, rather than finance a Governmental response action.

attributed to known and financially-viable parties, *as* determined, for example, by a preliminary nonbinding allocation of responsibility by the Government), the Agency may initially consider pursuing the recovery of all costs under joint and several liability. However, if the litigative risks appear substantial, a mixed funding settlement may represent more than the Government would recover in litigation, especially when the cost and time required for litigation is considered. Litigative risks which may weigh in favor of settlement include:

- Weak evidence against financially viable potential settlors;
- Equitable considerations which weigh against the imposition of joint and several liability.

In addition, if the hazard at the site is serious and no Fund-financed response is possible, a delay in the response action pending the conclusion of litigation might represent an unacceptable risk to the public and the environment.

Poor Candidates for Mixed Funding

Cases considered poor candidates for mixed funding have the following features:

- The case against settling parties is strong, and thus the potential for successful litigation is high;
- The potential Fund portion is large (e.g., the potentially settlors' offer is insufficient.)

These factors do not *automatically* preclude mixed funding for a case. However, for mixed funding to be seriously considered in such instances, other compensating factors must be present, such as the ability of the settlors to initiate the response action more quickly than the Government in a Fund-financed action.

IV. Selection of the Mixed Funding Technique

As noted in the above Introduction, the term mixed funding has been used to refer to three different types of settlement arrangements:

(1) Preauthorization, in which the PRPs conduct a response action and the Agency agrees to allow a claim against the Fund for a portion of the response costs;

(2) Cash-outs, in which the PRPS pay for a portion of the response costs up front, and the Agency conducts the response action;

(3) Mixed work, in which the PRPs and the Agency each agree to conduct discrete portions of the response activity.

Once Regional enforcement personnel have determined that a mixed funding settlement is appropriate, based on the settlement criteria as described in Section III and the Interim Settlement Policy, then the Agency must decide which type of mixed funding best suits the situation at hand. Among the three major types of mixed funding, the Agency generally prefers preauthorization, since the PRPs conduct the response action. However, as noted below, cashouts and mixed work may be appropriate under certain circumstances.

Preauthorization

The assessment and approval of preauthorization, once a mixed funding settlement is approved, is a two-part process. The first stage, as described below, is the determination by the Agency enforcement personnel that preauthorization is appropriate in the context of the settlement as a whole. The second stage represents the actual process of preauthorization of the claim against the Fund by the Office of Emergency and Remedial Response (OERR) (see Section V.) The Response Claims regulations, which are presently in draft form, will provide guidance on the preauthorization process itself.

(a) Technical and timing concerns related to preauthorization.

For the first stage of the review, the nature of the proposed remedy and the PRPs' ability to perform it in a timely manner are major factors to consider when assessing a settlement offer which contemplates preauthorization. In addition, the size of the PRPs' portion is important. When PRPs are responsible for a sufficiently high percentage, they will have a strong economic incentive to keep the actual response costs within or close to estimates. The nature and the severity of the threat posed by the site may also weigh in favor of settlement, if preauthorization would increase the speed at which the hazard could be addressed. For example, prompt initiation of the remedial action would be of particular importance for sites which are not currently scheduled for full Fund-financing.

On the other hand, Regional negotiators must also consider the time required for the preauthorization process itself when determining if preauthorization is appropriate for particular types of response actions. While the Agency has set a goal of completing review of individual preauthorization applications within a 45-day period, this timing limitation will vary on a case-by-case basis. The Agency is unlikely to have time to consider preauthorization requests when action is required to avert an immediate threat to the public health or the environment, therefore, no reimbursement would be possible. Regions should anticipate the processing time in managing negotiations.

(b) Availability of preauthorization for various response actions.

For agreements involving activities such as an RI/FS or a removal, preauthorization in general will not be warranted, because the process of preauthorization will prove too burdensome for the small amounts or short time-frames often encountered in these cases. Limited exceptions may be considered in unusual circumstances, as where preauthorization will facilitate a broader agreement (e.g., an area-wide RI/FS) which will be less resource intensive than several agreements of smaller scope. A large, extensive removal (e.g., greater then $2 million) may also qualify as an extraordinary circumstance justifying preauthorization. However, Headquarters approval must be obtained before preauthorization may be offered during negotiations for such activities.

(c) Covenants not to sue for preauthorization settlements.

For preauthorization of remedial design and remedial action (RD/RA) activities, the statute contains a specific provision related to remedy failure. Section 122(b)(4) of CERCLA states that for cases involving preauthorization, as described in section 122(b)(1), the Fund will be responsible for costs of remedy failure, up to a proportion equal to that contributed for the original remedial action. This section also states that the Fund portion may be met either through Fund expenditures or by recovering such costs from parties who were not signatories to the original agreement. However, it should be noted that remedy failure due to negligence of the PRP will not trigger any Fund obligation. In any case, a covenant not to sue granted in preauthorize settlements must comport with Agency guidance on covenants not to sue, as cited above.

(d) Settlement provisions needed to process claims.

Settlement agreements involving preauthorization should contain the following restrictions to facilitate the processing of claims:

- Settlement agreements should specify a percentage of the total estimated cost to be included in the preauthorization claim for PRP reimbursement, subject to a maximum dollar limit.
- Claims agaisnt the Fund are *not* subject to the section 104(c)(3) requirement that States contribute 10 percent of the cost of the remedial

action. However, prospective claimants are encouraged to file a letter of cooperation from the State along with their request for preauthorization. This letter should describe any agreements resulting from the claimants' consultation with the State, including any State assurance of cooperation with the remedial action. Further, all actions conducted pursuant to a preauthorized claim must be consistent with the NCP and the proposed draft Response Claim regulations, when promulgated.

• Claims may be filed only for costs incurred after the date of preauthorization. Parties will not be eligible to make a claim against the Fund until the entire cleanup or agreed-upon preauthorized phase (e.g., an operable unit) is completed according to specifications set out in the settlement agreement and the Preauthorization Decision Document.

• Applicants must demonstrate that their proposed response costs are reasonable. The applicant should justify any proposal to perform an activity in-house, or to contract it out. Applicants may look to Federal and State procurement practices for guidance on how to meet EPA's objectives in the area of contracting and subcontracting.

• PRPs must be financially and technically capable of implementing all of the agreed upon response action. Parties may be required to submit financial assurances or performance bonds to substantiate their financial capability for completing the response action.

Cash-outs

For settlement proposals involving a cash-out by some of the PRPs, the nature of the remedy and the public interest factors are generally not decisive, since the Government will be conducting the response action. Thus, of the criteria in the Interim Settlement Policy noted in Section III, the key issues in these agreements include:

• The percentage of the total costs to be paid by settlors (i.e., a substantial portion should be offered);

• The Agency's level of confidence in information related to liability and cost estimates at the time of settlement;

• Equitable considerations for both the settling and non-settling parties, including the nature of any covenants not to sue in the cash-out settlement.

In general, cash-out settlements may occur at any stage of the remedial process. Such offers should generally be assessed in light of the criteria in Part IV of the Interim CERCLA Settlement Policy. It is important to note that, once a Fund-lead response action is ongoing, the potential benefit of mixed funding as a means of expediting cleanup is largely eliminated. In addition, a cash-out of some of the PRPs during the response action may serve to fragment the Government's enforcement proceedings, since cost recovery will generally be pursued once the remedial action is completed. Other issues related to cash-outs include:

(a) Information needs related to cash-out settlements.

One example of the use of cash-out settlements could involve PRPs which have contributed a low percentage of the waste to a site, and are not technically or financially capable of conducting the entire response action (e.g., preauthorization is not an option.) In order for this type of settlement to be appropriate for both settling and non-settling responsible parties, the Agency should have sufficient information to determine a settlement amount for the settlors as a group. This amount should be based on the Settlement Policy, and should include their waste contribution and other relevant information. Thus, the Agency should have a fairly high level of confidence in the information concerning the liability at the site and the expected cost of the remedy in order to determine an appropriate cash-out settlement.

The settlement may include a risk premium which may partially offset the Government's risk due to uncertainties such as remedy failure or cost overruns, as well as uncertainties which may be present if the necessary information is less than complete.

(b) Covenants not to sue in cash-out settlements.

The sufficiency of the Agency's information related to PRP liability and the nature, stage of development and the cost of the potential remedy has particular bearing on the scope of any covenant not to sue in cash-out settlements. In general, if the Agency has only limited information in these areas (e.g., if the cash-out settlement entered into early in the remedial process), then covenants not to sue should contain appropriate reopeners to reflect this uncertainty. In reference to these reopeners, it is important to note that the obligation of the Fund to pay for a portion of any costs incurred due to remedy failure, under section 122(b)(4), is limited to mixed funding in the form of preauthorization under section 122(b)(1). Thus, for cash-outs, the statute does not limit the potential PRP liability for costs resulting from remedy failure. Any future obligations will be specified in the cash-out agreement, including the covenants not to sue. Further guidance concerning covenants not to sue is provided in the Agency guidance "Covenants Not to Sue Under SARA" cited above.

In addition, although cash-out settlements need not involve *de minimis* parties, as defined by section 122(g), similar analytical factors are important in both instances. Thus, Agency guidance entitled "Interim Guidelines on Settlements with *De Minimis* Waste Contributors under Section 122(g) of SARA", cited above, may also be helpful for cash-out settlements.

(c) State cost-Share requirements for cash-out settlements.

When the Federal government uses its response authority to conduct a remedial action, section 104(c)(3) of CERCLA requires that the State "pay(s) or will assure payment" of 10% of the remedial action, including all future maintenance, or 50% or greater for sites involving a state operated facility. Since cash-out settlements involve PRP payment toward a federally-conducted remedial action, the applicable cost share is required for these settlements. The cost-share will be calculated using the total remedial costs, rather than the percentage of the Fund share alone.

There are a variety of ways that the State can "pay or assure payment" of the appropriate cost-share. For example, the State, the Federal government and PRPs may enter into an agreement under State law and CERCLA in which the PRPs pay 10% to the State, and the State obligates the money for use at the site in question. The State may also use its own funds to pay for any portion of its share that cannot be paid for by PRPs. In general, cash-out settlements should only be considered when the litigation team is reasonably certain that the State is willing and able to pay for its 10% share, although the cost-share need not be part of the consent decree between the Federal government and the PRPs.

Mixed Work

Mixed funding in the form of mixed work may be appropriate for cases in which the Agency can identify discrete phases or operable units of the response action. One common example involves a settlement with the PRPs to conduct the RD/RA once the Agency has conducted the RI/FS.

A second, more complicated mixed work arrangement could involve an agreement in which the Agency and the PRPs agree to conduct separate portions of an area-wide RI. In this example, the Agency might agree to conduct soil testing if the PRPS conduct ground-water monitoring. Regional enforcement personnel should be reasonably assured of PRP cooperation and the ability to identify in detail the individual activities

for which each party will be responsible before entering into any mixed work settlement. In addition, any covenants not to sue in mixed work settlements should be clearly limited to the operable units addressed in the agreement. Mixed work should be avoided where there is a significant potential for delays in response actions as a result of inadequate coordination or potential conflicts. Thus, due to the high potential for technical and legal complications, mixed work in the form of mixed construction should generally not be considered.

Additional Considerations Regarding Mixed Funding

Operation and Maintenance: For preauthorized settlements, full responsibility for payment of operations and maintenance (O & M) activities remains with the PRPs. In some circumstances, a State may agree, as a party to the settlement, to manage O & M activities which are financed by PRPs. The Agency will generally resort to enforcement actions rather than committing Fund money for cleanup at the site when both the PRPs and the State refuse to be responsible for O & M.

Actions Against Non-settlors: It is the policy of the Department of Justice that the Federal government will not commit in a consent decree or other agreement to sue other non-settling parties. Consistent with this policy, mixed funding settlement agreements should not contain provisions which commit the Federal government to sue non-settling parties at a particular site. At most, the agreement may indicate that the Government has a "present intention" to sue non-settlors, subject to the exercise of the Government's enforcement discretion. Such provisions, however, must be approved by Headquarters and the Department of Justice (DOJ) on a case-by-case basis, and may not be offered in negotiations until such approval is obtained.

Reservation of Rights: Potential settlors occasionally will agree to allow the Government to reserve the right to bring an enforcement action against them, contingent upon a certain event, such as an unsuccessful enforcement action against non-settlors. Such an arrangement is not desirable, although it may be acceptable in limited circumstances. Such an offer should not be used by settlors as a means of reducing the amount offered up front. In addition, the negotiation team should consider the practical problems that might arise in implementing such an arrangement, including statute of limitation issues and fragmented enforcement actions involving successive suits covering similar issues. The Government generally prefers to settle for a substantial portion up front, rather than being required to bring a second enforcement action against settlors for an additional amount.

Documentation: For preauthorization and mixed workcases in which the Agency will take enforcement actions against non-settling parties, the Agency must assure that the settling PRPs agree to provide the necessary documentation and any other assistance required for support of the cost recovery cases. This assistance may include an agreement to provide witnesses to substantiate response costs. Government oversight will also be required, not only to assure that reimbursement by the Government is appropriate, but also that PRP documentation constitutes sufficient and admissible evidence for the cost recovery cases.

V. Procedural Considerations for Review of Settlements Involving Mixed Funding

As noted in Section I, consideration of a site for any type of mixed funding involves a two-stage process. The site first should be evaluated to determine if an offer for a mixed funding settlement in general (e.g., without regard to the particular funding arrangement) should be accepted. This analysis includes the settlement criteria, with the hypothetical examples in Section III indicating the Agency's preferences among various combinations of factors. Once the Regional enforcement personnel determines that a mixed funding settlement will be acceptable, then the factors noted in Section IV should be used to evaluate whether a particular type of mixed funding is appropriate.

The Agency has developed guidance on streamlining and improving the CERCLA settlement decision process, which, in part, highlights the need for improved preparation for negotiations and for a more systematic management review process. (See "Interim Guidance: Streamlining the CERCLA Settlement Decision Process", Porter/Adams, Feb. 12, 1987.) In keeping with the goals of this improved process, Regions should conduct both stages of the mixed funding analysis as early as possible (e.g., prior to the appropriate special notice.)

Timely Headquarters and DOJ notification is particularly important for cases involving preauthorization, since the use of preauthorization in settlements requires both the approval of the settlement for preauthorization, as described above, and the review by OERR of the request for preauthorization itself. Early DOJ involvement is necessary in mixed funding negotiations, as it is for other types of negotiations. While the preauthorization process need not be completed at the time of settlement, the settlement document must describe the major parameters of the proposed preauthorization agreement. Therefore, OERR should be contacted once the mixed funding analysis has been completed and the Region supports further consideration of preauthorization. For further information on the draft Response Claims regulations and the procedure for preauthorization with OERR, contact William O. Ross, Office of Emergency and Remedial Response (WH-548), (FTS) 382-4645.

Issues which cannot be resolved at the staff level may be raised to the Settlement Decision Committee (SDC), a Headquarters-based review panel. Like all consent decrees, mixed funding settlements will require final approval by the Assistant Administrator (AA) for the Office of Solid Waste and Emergency Response (OSWER), the AA-OECM, and the Assistant Attorney General for Lands and Natural Resources. If the amount to be paid by the Fund exceeds $750,000 or 10% of the total response cost (whichever is greater), approval by the Deputy Attorney General at DOJ will also be required. Regional enforcement personnel may, of course, decline to consider mixed funding at a particular site without prior Headquarters consultation.

VI. Conclusion

Settlement agreements incorporating mixed funding provisions, as described in part under section 122(b) of CERCLA, offer an alternative to either up front Fund financing of the total costs of response actions at a site, or possible delays in cleanup resulting from litigation required to force PRP action. Mixed funding represents one component of the Agency's comprehensive approach toward increased flexibility in settling CERCLA cases. This approach originates from the CERCLA Interim Settlement Policy as well as the codification of much of this Policy Section 122 of the 1986 Amendments.

The assessment of mixed funding for a particular site must always begin with the determination as to whether any type of mixed funding settlement is appropriate, based on the ten settlement criteria. At the broadest level, this evaluation will involve a determination as to the most effective means of promoting cleanup at a site while

insuring the most efficient use of the Agency's resources, including the Fund itself. Regions are encouraged to consider a mixed funding settlement when an assessment of the settlement criteria, including the strength of the evidence, the equities of the settlement, and the public interest, indicate that mixed funding is in the best interest of the Government, the public and the environment.

For further information or questions concerning this guidance, contact Kathy MacKinnon, OWPE (WH-527) at FTS: 475-6770.

Disclaimer

The policies and procedures established in this document are intended solely for the guidance of Government personnel. They are not intended and can not be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

[FR Doc. 88-5477 Filed 3-11-88; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee of the Export-Import Bank of the United States; Open Meeting

SUMMARY: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, March 29, 1988 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Summary of Hearings, Medium-Term Report to Congress and Competitiveness Report, Review of 1988 Issues for Advisory Committee, Briefing on FCIA Strategic Plan, State/City Update, and other topics.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871, not later than March 28, 1988. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to March 22, 1988 the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

Further Information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871.

Hart Fessenden,

General Counsel.

[FR Doc. 88-5557 Filed 3-11-88; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Specialized Mobile Radio Service Frequencies To Be Available for Reassignment

The following channels were recently recovered from licensees who failed to meet the Commission's loading or construction requirements and will be available for reassignment to trunked Specialized Mobile Radio (SMR) applicants. They were previously licensed at the coordinates indicated and are available at any location within the geographic area which will protect existing SMR systems pursuant to Rules 90.362 and 90.621.

856/860.1125 MHz
Rockford, IL
42-16-50 North
89-02-16 West

856/860.0375 MHz
Front Royal, VA
38-58-29 North
78-12-09 West

861/865.4875 MHz
Swanton, OH
41-35-00 North
83-50-59 West

856/860.5375 MHz
Morrison, CO
39-40-23 North
105-13-04 West

857/860.0625 MHz
Phoenix, AZ
33-33-33 North
112-33-20 West

856/860.5125 MHz
Baton Rouge, LA
30-25-56 North
91-11-06 West

856/860.5625 MHz
Woburn, MA
42-21-30 North
70-57-00 West

863.9875, 864.4375, 864.8875, 865.3375, 865.7875 MHz
Syracuse, NY
43-02-38 North
76-09-09 West

Pursuant to the Public Notice of January 6, 1986, Mimeo No. 1805, these channels will be available for reassignment on March 31, 1988. All applications received before March 31, 1988 will be dismissed. The first application received after the channels become available for reassignment opens the filing window. The window stays open only for the day on which the first application is received. *All applications MUST reference the date and DA number of this Public Notice in order to be considered for these frequencies.*

There is a $30.00 fee required for each application filed. All checks should be made payable to the FCC. Applications should be mailed to: Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251-6416. Applications may also be filed in person between 9:00 AM and 3:00 PM at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153-2713, Pittsburgh, PA 15259, Attention: (Wholesale Lockbox Shift Supervisor).

For further information, refer to Public Notice of January 6, 1986 or contact Riley Hollingsworth or Betty Woolford (202) 632-7125 of the Private Radio Bureau's Land Mobile and Microwave Division.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-5494 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Cheshire Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 30, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cheshire Financial Corporation*, Keene, New Hampshire; to acquire 100 percent of the voting shares of The Monadnock Bank, Jaffrey, New Hampshire. Comments on this application must be received by March 31, 1988.

2. *Eastland Financial Corp.*, Woonsocket, Rhode Island; to become a bank holding company by acquiring 100 percent of the voting shares of Eastland Savings Bank, Woonsocket, Rhode Island, and thereby indirectly acquire Woonsocket Institution Corporation, Woonsocket, Rhode Island, a bank holding company, and Eastland Bank, Woonsocket, Rhode Island. Comments on this application must be received by March 29, 1988.

3. *Eastland Savings Bank*, Woonsocket, Rhode Island; to become a bank holding company by converting from a mutual savings bank to a stock savings bank. Eastland Savings Bank owns 100 percent of Eastland Bank. Comments on this application must be received by March 29, 1988.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp*, Cincinnati, Ohio; to acquire Security Bank, Inc., Covington, Kentucky. Comments on this application must be received by March 31, 1988.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens National Bancorp, Inc.*, Athens, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Athens, Athens, Tennessee.

2. *First American Corporation*, to merge with Northern of Tennessee Corp., Clarksville, Tennessee, and thereby indirectly acquire Northern Bank of Tennessee, Clarksville, Tennessee; Central Bancorp, Inc., Murfreesboro, Tennessee; First Southern Bank of Rutherford County, Murfreesboro, Tennessee, formerly Citizens Central Bank; First Southern Bank, Mount Juliet, Tennessee; and Bedford County Bank, Shelbyville, Tennessee. Comments on this application must be received by March 31, 1988.

3. *FirstBancorp, Inc.*, Marathon, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of the Florida Keys, Marathon, Florida.

4. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares of Latta Bank & Trust Co., Latta, South Carolina.

5. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares of Metroplex Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Bent Tree National Bank, Dallas, Texas; Bank of Las Colinas, N.A., Irving, Texas; Gleneagles National Bank, Plano, Texas; and Stemmons Northwest Bank, N.A., Dallas, Texas. Comments on this application must be received by March 31, 1988.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Phelps County Bank Employee Stock Ownership Plan*, Rolla, Missouri; to become a bank holding company by acquiring 35 percent of the voting shares of Phelps County Bancshares, Inc., Rolla, Missouri, and thereby indirectly acquire Phelps County Bank, Rolla, Missouri. Comments on this application must be received by March 31, 1988.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dominion Bancshares, Inc.*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Dominion National Bank, Denver, Colorado.

2. *John Herbin, Inc.*, Jamestown, Kansas; to acquire 17 percent of the voting shares of The Jamestown State Bank, Jamestown, Kansas.

Board of Governors of the Federal Reserve System, March 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5430 Filed 3-11-88; 8:45 am]

BILLING CODE 6210-01-M

Landmark Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) (1) of the Board's Regulation Y (12 CFR 225.23(a) (1)) for the Board's approval under section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21 (a) of Regulation Y (12 CFR 225.21 (a)) to commence or to engage *de novo*, either directly or through a subsidiary, i a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "resonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the aplication must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice

President) 101 Market Street, San Francisco, California 94105:

1. *Landmark Bancorp*, La Habra, California; to engage *de novo* through its subsidiary, Excelmark Mortgage Services, Inc., La Habra, California, in making, acquiring, and servicing real estate loans pursuant to § 225.25(b) (1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5431 Filed 3-11-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 022288 AND 030488

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
1. BICC plc, Telefonaktiebolaget LM Ericsson, Continental Wire & Cable Division	88-0892	02/22/88
2. Legend Capital Group, L.P., Tele-Communications, Inc., Heritage Creative Outdoor Services, Inc	88-0955	02/22/88
3. J.H. Whitney & Co., Trust under the Will of Albert Orenstein, deceased, Home Curtain Corp	88-0964	02/22/88
4. Warner-Lambert Company, RJR Nabisco, Inc., Nabisco, Inc	88-0822	02/23/88
5. Burlington Northern Inc., David A. Sabey, Chemical Processors, Inc	88-0855	02/23/88
6. Granada Group PLC, Nicholas and Sally Wallner, Napcom Associates, Inc	88-0859	02/23/88
7. Metropolitan Life Insurance Company, Texas Life Insurance Company, Texas Life Insurance Company	88-0861	02/23/88
8. Granada Group PLC, Peter S. Redfield and Alice Daukas Redfield, Napcom Associates, Inc	88-0897	02/23/88
9. H Group Holding, Inc., Pacer Corporation, Pacer Corporation	88-0904	02/23/88
10. Mr. Summer M. Redstone, Orion Pictures Corporation, Orion Pictures Corporation	88-0918	02/23/88
11. Bunzl plc, Stanline, Inc., Stanline, Inc	88-0938	02/23/88
12. NACCO Industries, Inc., WearEver-ProctorSilex, Inc., WearEver-ProctorSilex, Inc	88-0953	02/23/88
13. The Horn & Hardart Company, International King's Table, Inc., International King's Table, Inc	88-0954	02/23/88
14. Chevron Corporation, PPG Industries, Inc., PPG Industries, Inc	88-0913	02/24/88
15. The Rochester Community Savings Bank, Investors Savings Bank, Investors Home Mortgage	88-0935	02/24/88
16. Takemoto Oil & Fat Co., Ltd., Benjamin Goulston, George A. Goulston Company & George A. Goulston Co., Inc	88-0874	02/25/88
17. Sentara Health System, Hampton Training School for Nurses, Inc., Hampton Gen. Hampton Training School for Nurses, Inc., Hampton Gen	88-0879	02/25/88
18. American Family Corporation, Guaranty Corporation, Guaranty Broadcasting Corporation	88-0911	02/25/88
19. Cencom Cable Associates, Inc., Cencom of Missouri, Cencom of Missouri	88-0977	02/25/88
20. Cencom Cable Associates, Inc., Cencom of Missouri II, Cencom of Missouri II	88-0978	02/25/88
21. Cencom Cable Associates, Inc., Cencom of Missouri III, Cencom of Missouri III	88-0979	02/25/88
22. Garden State Newspapers, Inc., c/o MediaNews Group, Inc., Kenneth R. Thomson, The Dispatch Publishing Co	88-0986	02/25/88
23. Kenneth R. Thomson, Garden State Newspapers, Inc., Sotex Newspapers, Inc., Del Rio Publishing Co., Inc	88-0987	02/25/88
24. Methodist Hospital of Indiana, Inc., Maxicare Health Plans, Inc., Maxicare Health Plans of the Midwest, Inc	88-0989	02/25/88
25. Kenneth R. Thomson, The John F. Young Trust & The John F. Young Test. Trust, The Dispatch Publishing Co	88-0992	02/25/88
26. Kenneth R. Thomson, c/o The Thomson Corporation Limited, The John F. Young Testament Trust, The Dispatch Publishing Co	88-0993	02/25/88
27. John W. Kluge, Orion Pictures Corporation, Orion Pictures Corporation	88-1004	02/25/88
28. Dominion Resources, Inc., Enron Corp., Enron Cogeneration Company	88-0890	02/26/88
29. Wilfred Uytengsu, American Brands, Inc., Sunshine Biscuits, Inc	88-0940	02/29/88
30. George F. Young, American Brands, Inc., Sunshine Biscuits, Inc	88-0942	02/29/88
31. The Rank Organisation PLC, Robert M. Ahnert, Fernwood, Inc	88-0969	02/29/88
32. The Rank Organisation Plc, Henry A. Ahnert, Fernwood, Inc	88-0970	02/29/88
33. The Rank Organisation Plc, Outdoor World Corporation, Outdoor World Corporation	88-0971	02/29/88
34. Pearson plc, Addison-Wesley Publishing Company, Inc., Addison-Wesley Publishing Company, Inc	88-0980	02/29/88
35. Pearson plc, Addison-Wesley Publishing Company, Inc., Addison-Wesley Publishing Company, Inc	88-0983	02/29/88
36. Amerada Hess Corporation, SB Special Investments Holding Company, SB Special Investments Holding Company	88-0990	02/29/88
37. Ralph J. Roberts, American Cellular Network Corp	88-1000	03/02/88
38. Ralph J. Roberts, American Cellular Network Corp	88-1001	03/02/88
39. Pacific Enterprises, Anne Burnett Windfohr, Burnett Ranches, Inc	88-1008	03/02/88
40. Stephen Adams, John P. McGoff, S E M Newspapers, Inc	88-0820	03/03/88
41. Mitsubishi Mining & Cement Co., Ltd., Hanson PLC, Kaiser Cement Corporation	88-0949	03/03/88
42. Sophus Berendsen A/S, Paul-Munroe Hydraulics, Inc., Paul-Munroe Hydraulics, Inc	88-0976	03/03/88
43. Mitsubishi Corporation, Mitsubishi Mining & Cement Co., Ltd., Mitsubishi Mining & Cement Co., Ltd	88-1038	03/03/88
44. Mitsubishi Corporation, Mitsubishi Mining & Cement Co., Ltd., Mitsubishi Mining & Cement Co., Ltd	88-1039	03/03/88
45. OII Associates, Limited Partnership, Southmark Corporation, Southmark Corporation	88-1043	03/03/88
46. Staley Continental, Inc., Bessemer Securities Corporation, American Foodservice Supply, Inc	88-0906	03/04/88
47. Marriott Corporation, Sun Company, Inc., Radnor Corporation	88-0961	03/04/88
48. Donald J. Trump, MCA Inc., MCA Inc	88-0967	03/04/88
49. Donald J. Trump, The Gillette Company, The Gillette Company	88-0968	03/04/88
50. Kizo Matsumoto, Russell J. Osterman, San Jose Plaza, Ltd. and San Jose Plaza, II, Ltd	88-0973	03/04/88
51. K mart Corporation, Stichting Administratiekantoor Lauwerecht, Makro, Inc	88-0984	03/04/88
52. Takata Corporation, Morgan Stanley Group, Inc., Burlington, Industries, Inc	88-1014	03/04/88
53. Charles H. and Margatet M. Dyson, Pentek Corporation, Pentek Corporation	88-1027	03/04/88
54. Rochester Telephone Corporation, C,C&S Systems, Inc., C,C&S Systems, Inc	88-1045	03/04/88
55. Kizo Matsumoto, Charles J. Pankow, San Jose Plaza, Ltd. and San Jose Plaza II, Ltd	88-1053	03/04/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-5444 Filed 3-11-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(ID-010-08-4333-12)

Closure of Public Lands; Idaho

AGENCY: Bureau of Land Management, Boise District Office, Interior.

ACTION: Closure of Hull's Gulch Interpretive Trail to bicycle use.

SUMMARY: Pursuant to 43 CFR 8364.1, notice is hereby given closing Hull's Gulch Interpretive Trail to bicycle use. Recent significant increases in mountain bicycle use on this trail have necessitated this action.

FOR FURTHER INFORMATION CONTACT: Geroge Farrow, Recreation Planner at BLM, Boise District, 3948 Development Avenue, Boise, Idaho 83705 or at (208) 334-1582.

Dated: March 7, 1988.

J. David Brunner,

District Manager.

[FR Doc. 88-5465 Filed 3-11-88; 8:45 am]

BILLING CODE 4310-GG-M

California Desert District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579, Title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Tuesday, April 19, 1988 from 10:00 a.m. to 12:00 p.m. in the Jade Room, Lake Shore Inn, 21330 Lake Shore Drive, California City, California 93505.

The agenda for the meeting will include:

—Wild Horse and Burro Management
—Rangeland Monitoring
—Rangeland Management Issues
—Desert Tortoise Populations

The meeting is open to the public, with time allocated for public comment after each subject has been presented. A field trip is planned for the afternoon of April 19 and for all day April 20. While visiting several allotments, resource concerns will be discussed and the District Manager will solicit recommendations from the Board.

Summary minutes of the meeting will be maintained in the California Desert District and will be available for public inspection during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, California Desert District Office, Larry Morgan, 1695 Spruce Street, Riverside, California 92507, (714) 351-6402.

Dated: March 8, 1988.

James L. Williams,

Acting District Manager.

[FR Doc. 88-5478 Filed 3-11-88; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Micro Enterprise Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Micro Enterprise Advisory Committee meeting on March 28, 1988 at the Decatur Carriage House, 1610 H Street, NW., Washington, DC. The Committee will discuss guidelines for the implementation of the Agency for International Development's Micro-Enterprise Program.

The meeting will begin at 9:00 am and adjourn at 5:00 pm on March 28. The meeting is open to the public. Any interested persons may attend, file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and the extent the time available for the meeting permits.

Dr. Michael Farbman, Chief, Employment and Enterprise Development Division, Office of Rural and Institutional Development, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. Dr. Ross E. Bigelow, of the same Division, may be deputized to act for Dr. Farbman during part or all of this meeting. It is suggested that those who wish more specific information concerning this meeting contact Dr. Bigelow, 1601 N. Kent Street, Arlington, Virginia 22209, or call 703-235-8964.

Dated: March 9, 1988.

Michael Farbman,

A.I.D. Representative, Micro-Enterprise Advisory Committee.

[FR Doc. 88-5549 Filed 3-11-88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 234X)]

CSX Transportation, Inc.; Abandonment Exemption; Cobb, Paulding, and Polk Counties, GA

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 24.68-mile line of railroad between milepost SG-593.72 near Power Springs and milepost SG-618.40 at Rockmart, located in Cobb, Paulding, and Polk Counties, GA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. district Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 13, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49

[1] *See* Ex Parte No. 274 (Sub-No. 16), *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, ——— I.C.C. 2d ——— served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

CFR 1152.27(c)(2) must be filed by March 24, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 3, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by March 19, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–5459 Filed 3–11–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–33 (Sub-No. 49X)]

Union Pacific Railroad Co.; Abandonment Exemption; Weld County, CO

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 20.6-mile line of railroad between milepost 22.2 near St. Vrains, and milepost 42.8 near Dent, in Weld County, CO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 13, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 24, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 3, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Room, 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by March 19, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–5458 Filed 3–11–88; 8:45 am]

BILLING CODE 7035–01–M

---

[1] See Ex Parte No. 274 (Sub-No. 16) *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, ——— I.C.C. 2d ———, serviced December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440—48446).

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-354]

Public Service Electric & Gas Co. and Atlantic City Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric & Gas Company and Atlantic City Electric Company, (the licensees), for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would:

(1) Increase the Minimum Critical Power Ratio (MCPR) safety limit in Technical Specifications (TS) 2.1.2 and 3/4.4.1 and in the Bases sections related to these TSs.

(2) Replace the curves in Figures 3.2.1–1 and 3.2.1–2 to provide Maximum Average Planar Heat Generation limit curves for two new fuel types that will replace two existing fuel types during the next operating cycle (Cycle 2).

(3) Change TS 3/4.2.3 to provide new MCPR limits for Cycle 2 operation providing limits for two exposure ranges rather than a single exposure range as in the existing TS. The two ranges are a) from Beginning-of-Cycle (BOC) to End-of-Cycle (EOC) minus 2000 MWD/ST and b) from EOC minus 2000 MWD/ST to EOC. The *Action* and *Surveillance Requirements* for TS 3/4.2.3 would also be revised to reflect this new option of using either of the two new exposure ranges and to delete the existing option of operating at 400°F or less.

(4) Revise existing Figure 3.2.3–1, MCPR vs Tau, by providing the MCPR vs Tau curves for the first exposure range discussed above and revise existing Figure 3.2.3–2, K_f Factor by deleting the K_f Factor curve and replacing it with the MCPR vs Tau curves for the second exposure range discussed above.

(5) Add a new Figure 3.2.3–3 with a new K_f Factor curve for Cycle 2 operation.

(6) Delete Table 3.2.3–1 which currently provides MCPR Feedwater Heating Capacity Adjustments for operation below 400°F.

(7) Revise the TSs to allow operation above the 100% Load Line and up to 105% Rated Core Flow by:

(a) Extending the K_f Factor curve up to 110% of Rated Core Flow (instead of the current 100%).

(b) Clamping the Upscale Setpoints for the Rod Block Monitor in TS Table 3.3.6–2 at the 100% recirculation flow value.

(c) Increasing the Motor Generator Set mechanical and electrical stops in TS 4.4.1.1.3 to physically allow for increased core flow.

The proposed action is in accordance with the licensee's application for amendment dated December 14, 1987.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide the license with appropriate safety limits for operation with the Cycle 2 reload core, greater operational flexibility during the initial portions of the operating cycle, improved power ascension capability to full power and additional ability to compensate for reactivity reduction due to fuel exposure during the operating cycle.

Environmental Impacts of the Proposed Action

The proposed revisions to the Technical Specification limits adequately compensate for the proposed changes in the fuel load and for operation with increased core flow and extended load line limits. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in Connection with this action was published in the **Federal Register** on January 14, 1988 (53 FR 972). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Hope Creek Generating Station, dated December, 1984.

Agencies and Persons Consulted:

The NRC staff reviewed the licensee's request and did not consult other agencies or persons

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 14, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, and at the Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Dated at Bethesda, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–5479 Filed 3–11–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on March 28, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, March 18, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will be briefed and review: (1) The Human Factors Research Program plan, (2) the Fitness for Duty Rule, and (3) Policy Statement on Training and Qualification (tentative).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–3297) between 7:30 a.m. and 4:30 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 7, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–5540 Filed 3–11–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Structural Engineering; Meeting

The ACRS Subcommittee on Structural Engineering will hold a meeting on March 30, 1988, at the Pacifica Hotel, 6161 Centinela Avenue, Culver City, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 30, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the Piping and Fitting Reliability Program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 9, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–5541 Filed 3–11–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to Washington Public Power Supply System (the licensee), for operation of Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated January 5, 1988 (Reference GOL–88–002).

The proposed amendment would allow the operation of WNP–2 with control of valve RHR–V–8 transferred to the Alternate Remote Shutdown Panel during normal operation. This action if approved would result in resolution of concern over potential consequences of a postulated control room fire.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George

Washington Way, Richland, Washington 99532, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a subsequent notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 5.092.

For further details with respect to this action, see the application for amendment dated January 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 7th day of March, 1988.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-5480 Filed 3-11-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-014]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; 5 U.S.C. App I) notice is hereby given a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, April 12, 1988, in the 29th Floor Boardroom of the World Trade Center, 2 Canel Street, New Orleans, LA., at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the 12 January 1988, meeting.
3. Request for recommendations of safety measures to offset closure of VTS New Orleans.
4. Barge lighting enforcement program by Coast Guard.
5. Announcement of transfer of committee directorate to Eighth District Aids to Navigation Branch. Introduction of new Executive Director, Executive Secretary, and Recording Secretary.
6. Update on recommendation concerning bridge safety made at meeting of 12 January 1988.
7. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander V. O. Eschenbureg, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard (md) Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: March 3, 1988.

Peter J. Rots,

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

[FR Doc. 88-5500 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-88-9]

Petition for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 1, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 7, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23907	Bolivar Aviation	14 CFR 141.65	To allow petitioner to recommend graduates of its approved certification courses for flight instructor and airline transport certificates and ratings without taking the FAA's written tests.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
24605	World Jet Corporation	14 CFR 91.191(a) and 135.165(b)	To extend and amend Exemption No. 4703, which allows operation of certain aircraft in extended overwater operations using one long-range navigation system and one high-frequency communications system. The amendment to the exemption would add an additional type of aircraft to operate under the exemption.
25345	National Business Aircraft Association, Inc.	14 CFR 91.191(a)(4) and 135.165(b)	To allow petitioner's members to conduct overwater operations with one long-range navigation receiver.
25442	Interturbine	14 CFR 145.71 and 145.73	To inspect, repair, modify, and overhaul, in accordance with the original equipment manufacturer, components used on U.S.-registered aircraft operated by Eastern and Continental Airlines.
25499	National Business Aircraft Association, Inc.	14 CFR 43.3(g)	To allow pilots employed by petitioner's member air carrier companies to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft operating under Part 135.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
20314	Flight Training Devices	14 CFR 61.63(d) (2) and (3); 61.157(d) (1) and (2); and Part 61, Appendix A.	To extend Exemption No. 3022, as amended, which allows students of petitioner to complete a portion of the practical test for the issuance of an airline transport pilot certificate or of a type rating to be added to any grade of pilot certificate, by substituting the flight test requirements of § 61.157 for those of § 61.63(d) (2) and (3). *Grant, February 29, 1988.*
25275	Northern Pacific Transport, Inc.	14 CFR 91.39(b) and 125.1(b)(2)	To allow petitioner to use restricted category aircraft under Part 125 for the carriage of outsize cargo between points in Alaska not served by any suitable form of surface transportation. *Denial, February 29, 1988.*
25516	Westair Commuter Airlines, Inc., dba United Express.	14 CFR 121.411(b)(2) and 121.413(b)	To allow petitioner to use British Aerospace (BAe) pilot simulator instructions for the purpose of training petitioner's initial cadre of pilots in the BAe 146 type airplane in Hatfield, United Kingdom, without those instructors meeting all of the applicable training requirements of Subpart N of Part 121. *Grant, March 2, 1988.*
25506	Capt. W.R. Alcorn, U.S. Navy	91.24	Petitioner seeks exemption from FAR § 91.24 in order to operate aircraft above 12,500 feet mean sea level without operating the aircraft's transponder and altitude reporting equipment. Such operations would be conducted within designated special use aircraft.
25550	Department of the Army, Col. John A. Geurin.	91.83(c)	Petitioner seeks exemption from FAR § 91.83(c) to allow selection of an alternate airport, under flight plan filing provisions, when weather conditions at the alternate airport are less than these prescribed under this section.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25302	Flight International, Incorporated	14 CFR 135.169 and 25.853	To allow petitioner to operate all-cargo aircraft without complying with the seat cushion flammability requirements of those sections that became effective November 26, 1987.
25464	Alyeska Air Service	14 CFR 43.3(a)	To allow pilots employed by petitioner to perform the preventive maintenance functions of removing and/or replacing the passenger seats and seat belts of aircraft used in Part 135 operations.
25501	Tridair Helicopters	14 CFR 21.19	To allow petitioner to convert a Bell Long Ranger Model 206 helicopter from a single-engine to a twin-engine configuration without the required new type certificate.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
25478	Trans Continental Airlines	14 CFR 25.853(c) and 121.312(b)	To extend Exemption No. 4870 that allows airplanes to operate without compliance with seat cushion flammability requirements after November 26, 1987. *Denial, February 25, 1988.*

[FR Doc. 88-5451 Filed 3-11-88; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Hennepin County and Dakota County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of their intent to prepare an environmental impact statement for proposed highway improvement on I–35W in Hennepin County and Dakota County, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen Bahler, Area Engineer, Federal Highway Administration, Suite 490, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101 (612) 290–3259

or

Mr. Craig Robinson, PreDesign Engineer, Minnesota Department of Transportation, District 5 Office, 2055 North Lilac Drive, Golden Valley, Minnesota 55422 (612) 593–8522.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, and the Twin Cities Metropolitan Council is planning to prepare an environmental impact statement (EIS) on a proposal to improve Interstate highway I–35W between Washington Avenue in the City of Minneapolis to Interstate highway I–35E in the City of Burnsville. The propsed improvement would involve reconstruction of about 17 miles of I–35W. The proposed project would also involve Interstate highway I–94 in Minneapolis, County Road 62 in Minneapolis and Burnsville and Interstate highway I–494 in Burnsville and Bloomington as necessary to facilitate interchange reconstruction.

The project is being considered in order to mitigate the accident and congestion problems caused by the existing and rising future travel demands and deficient roadway design on I–35W. Also the proposed project would replace or reconstruct the old and deteriorating existing roadway surface.

Alternatives being considered during the scoping process include the no build alternate, an alternate to upgrade pavement and major safety deficiencies (called minimum safe operation), and capacity improvements. The capacity improvements include new lanes for all vehicles, reserved high occupancy vehicle lanes and Light Rail Transit in conjunction with a range of roadway and capacity improvements. A variety of access alternatives are also being considered. In the vicinity of County Road 62, alignment alternatives are also being evaluated. All alternatives include Transportation System Management (TSM) elements, including the no build. Existing I–35W includes TSM features such as ramp metering, ramp meter by-passes for carpools and buses, and camera surveillance to detect accidents and incidents.

A scoping document will be prepared and circulated for agency and public comment in accordance with state and federal requirements. A formal public scoping meeting will be held to receive comments on the issues addressed in the scoping document and on the proposed alternatives. That meeting will be held in the summer of 1988. Public notice of the time and place of the hearing will be given. In addition, several public information meetings have been held at various locations along the corridor to obtain public imput on potential alternates and impacts.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or Mn/DOT at the address provided above.

(Calalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

The provisions of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: March 4, 1988.

Alan Friesen,

District Engineer, St. Paul, Minnesota.

[FR Doc. 88–5466 Filed 3–11–88; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket S–825]

Falcon Carriers, Inc. et al.; Application for Operating-Differential Subsidy for the Falcon Leader and Falcon Champion

By letter of February 12, 1988, Falcon Carriers, Inc.; Equity Carriers, Inc.; Equity Carriers I, Inc.; Equity Carriers III, Inc.; and Asco-Falcon II Shipping Company (applicants) applied for operating-differential subsidy (ODS) for the operation of the FALCON LEADER and FALCON CHAMPION. These ships are U.S.-flag product tankers built in 1983 and 1984 with construction-differential subsidy (CDS) and title XI financing quarantees. The applicants state that approximately $60 million of Title XI debt is outstanding on these two vessels. The vessels are long-term bareboat chartered to Falcon Carriers, Inc., and have been time chartered to the Military Sealift Command (MSC) since their delivery from the shipyard, for an initial term of five years, with additional renewals at MSC's option.

The FALCON LEADER's initial five year charter will expire in August 1988, and the FALCON CHAMPION's charter will expire in January 1989. The applicants further state that they had preliminary discussions with MSC concerning charter renewal and have submitted a formal written proposal. However, the applicants state that MSC has advised that they will probably not wish to enter into renewal negotiations. Therefore, the applicants believe that alternate employment will have to be sought for the two ships. The CDS-built FALCON LEADER and FALCON CHAMPION are not eligible to engage in domestic trade and the applicants believe that ODS is needed to enable the ships to compete effectively in world market trades.

Recognizing that current Administration policy prevents the award of new ODS contracts, the applicants offer the following proposal: the FALCON LEADER and FALCON CHAMPION would be included under already existing ODS contracts of affiliated companies in a manner which will ensure that the Government's overall ODS exposure is not increased. Equity Carriers I, Inc., Equity Carriers III, Inc.; and Asco-Falcon II Shipping Company operate three subsidized Texas-class dry bulk carriers—STAR OF TEXAS, PRIDE OF TEXAS, and SPIRIT OF TEXAS—under ODS Agreement, Contract MA/MSB–439. The applicants request a sharing system in which the existing ODS contract would be expanded to include the FALCON LEADER and FALCON CHAMPION on a basis where in any year only three ship-years worth of CDS would be payable. Under the existing ODS contract there is a maximum of 1,095 days (365 days X 3 vessels = 1,095) of ODS potentially payable each year. The revised and expanded ODS contracts would simply provide that no more than 1,095 days of ODS could ever be paid in any year for the five-ship group.

The applicants aver that this proposal does not increase the total obligation of the Government with respect to ODS and has the advantages of protecting the

Maritime Administration's collateral and augmenting the U.S.-flag participation in the world market commercial trades, which is a basic policy goal of the Merchant Marine Act.

Interested parties may inspect the foregoing application in the Office of the Secretary, Maritime Administration, Room 7300 Nassif Building, 400 Seventh Street NW., Washington, DC 20590.

Any person, firm, or corporation having any interest in such application and desiring to submit comments thereon must file comments in triplicate with the Secretary, Maritime Administration by close of business on March 31, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider such comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Date: March 9, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-5535 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 1987

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor and reference price for calendar year 1987 as required by section 29(d)(2)(A) of the Internal Revenue Code (26 U.S.C. section 29(d)(2)(A)) (formerly section 44D, renumbered by the Deficit Reduction Act of 1984).

SUMMARY: The inflation adjustment factor and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATE: The 1987 inflation adjustment factor and reference price apply to qualified fuels sold during calendar year 1987.

Inflation Factor: The inflation adjustment factor for calendar year 1987 is 1.4949.

Price: The reference price for all qualified fuels is $15.41 per equivalent barrel for the 1987 calendar year.

Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor: Frederick A. Judd IV, PM:PFR:R, Internal Revenue Service, 1201 E Street, NW., Room 1109, Washington, DC 20224, Telephone Number (202) 376-0720 (not a toll-free number).

For the reference price: Noel J. Sheehan, CC:C:2:6, Internal Revenue Service, 1111 Constitution Ave., NW., Room 5238, Washington, DC 20224 Telephone Number (202) 566-3928 (not a toll-free number).

D. Kevin Dolan,

Associate Chief Counsel (Technical and International).

[FR Doc. 88-5503 Filed 3-11-88; 8:45 am]

BILLING CODE 4830-01-M

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue NW., Room 2575, Washington, DC, 20224, Telephone No. (202) 566-9259 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on April 14 in Room 3313 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-5504 Filed 3-11-88; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Photographs of Josef Sudek

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October, 1965 (Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, Photographs of Josef Sudek (see list), [1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the San Francisco State Museum of Modern Art, San Francisco, CA, beginning on or about April 15, 1988, to on or about May 29, 1988, and the Art Institute of Chicago, Chicago, IL, beginning on or about June 25, 1988, to on or about September 5, 1988, the University of Pittsburgh Gallery, Pittsburgh, PA, beginning on or about October 9, 1988, to on or about November 6, 1988, and at the Cleveland Museum of Art, Cleveland, OH, beginning on or about December 7, 1988, to on or about February 5, 1989, is in the national interest.

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street SW., Washington, DC 20547

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,

Acting General Counsel.

Date: March 11, 1988.

[FR Doc. 88-5688 Filed 3-11-88; 11:03 am]

BILLNG CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination; Prints and Paintings of Albin Brunovsky

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October, 1965 (Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, Prints and Paintings of Albin Brunovsky, (see list) [1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the San Francisco State University Gallery, San Francisco, CA, beginning on or about April 25, 1988, to on or about May 19, 1988, the Elvehjem Museum of Art, Madison, WI, beginning on or about June 4, 1988, to on or about July 31, 1988, the University of Pittsburgh Gallery, Pittsburgh, PA, beginning on or about October 9, 1988, to on or about November 6, 1988, and at the Cleveland Museum of Art, Cleveland, OH, beginning on or about December 7, 1988, to on or about February 5, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,

Acting General Counsel.

Date: March 11, 1988.

[FR Doc. 88-5689 Filed 3-11-88; 11:03]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street SW., Washington, DC 20547

Sunshine Act Meetings

Federal Register
Vol. 53, No. 49
Monday, March 14, 1988

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).

COUNCIL ON ENVIRONMENTAL QUALITY

DATE, TIME, PLACE: Tuesday, March 29, 1988; 10:00 a.m. Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. As part of its review of the problems of stratospheric ozone depletion and global warming, the Council will be briefed by Dr. Alan D. Hecht, Director of the National Climate Program Office at the National Oceanic and Atmospheric Administration. Dr. Hecht will discuss the Five Year Plan developed by the National Climate Program for research related to climate change.
2. Other matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: (202) 395-5754.

A. Alan Hill,
Chairman.

[FR Doc. 88-5581 Filed 3-10-88; 12:29 pm]

BILLING CODE 3125-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:27 p.m. on Tuesday, March 8, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider:

(1) The application of Commercial Bank of New York, a proposed new bank to be located at 301 Park Avenue, New York City, New York, for Federal deposit insurance; and
(2) Matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 9, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,
Deputy Executive Secretary.

[FR Doc. 88-5542 Filed 3-9-88; 4:50 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

March 9, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: March 16, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 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: Lois D. Cashell, Acting 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 Public Reference Room.

Consent Power Agenda—873rd Meeting, March 16, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 8287-007, Western Power, Inc.
CAP-2.
Project No. 8863-002, Northeast Hydrodevelopment Corporation
CAP-3.
Project No. 9694-003, Power Resources Development Corporation
CAP-4.
Project No. 6188-003, Camille E. Held, Walton B. Held, A.W. Stuart Trust, W. Titus Nelson and Dale E. Grenoble
Docket No. EL85-19-102, Procedure for Assessing Hydropower Projects Clustered in River Basins
CAP-5.
Project No. 1744-003, Utah Power & Light Company
CAP-6.
Project No. 2142-008, Central Maine Power Company
CAP-7.
Omitted
CAP-8.
Project No. 2934-013, New York State Electric and Gas Corporation
Project No. 4684-007, Long Lake Energy Corporation
CAP-9.
Project No. 9883-002, Weyerhaeuser Company
CAP-10.
Project No. 9391-002, Pan Pacific Hydro, Inc.
CAP-11.
Project No. 9625-001, Frontier Land and Power
CAP-12.
Project No. 8747-002, Power Resources Development Corporation
CAP-13.
Project Nos. 4682-001 and 4685-001, Long Lake Energy Corporation
CAP-14.
Project No. 9660-001, St. Maries Naturalists, Ltd.
CAP-15.
Project No. 5251-001, City of Fort Smith, Arkansas
CAP-16.
Docket No. EL85-38-000, Idaho Power Company
CAP-17.
Docket No. ER88-119-000, Utah Power & Light Company
CAP-18.
Docket Nos. ER87-455-000 and ER87-598-000, Idaho Power Company
CAP-19.
Docket No. ER88-177-001, Southwestern Electric Power Company
CAP-20.
Docket No. ER88-109-001, Commonwealth Edison Company
CAP-21.
Docket No. ER86-558-015, Gulf States Utilities Company
CAP-22.
Docket No. ER87-573-000, Mississippi Power Company
CAP-23.
Omitted
CAP-24.
Docket No. EL87-49-000, San Diego Gas & Electric Company v. Alamito Company
Docket No. EL87-54-000, Alamito Company and Tucson Electric Power Company v. San Diego Gas & Electric Company
CAP-25.
Docket No. QF82-169-001, QF82-171-001 and QF87-560-000, Applied Energy, Inc.
CAP-26.
Project No. 4669-004, John L. Symons

Docket No. EL85-19-102, Procedure for Assessing Hydropower Projects Clustered in River Basins

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA87-63-000, Virginia Electric Power Company
CAM-2.
Docket No. FA85-8-002, Public Service Company of New Hampshire
Docket No. FA86-23-003, Montaup Electric Company
CAM-3.
Omitted
CAM-4.
Docket No. RM87-29-000, State Corporation Commission of the State of Kansas
CAM-5.
Docket No. GP87-59-000, Department of Interior, Bureau of Indian Affairs, Osage Agency
CAM-6.
Docket No. GP86-45-001, Placid Oil Company
CAM-7.
Docket No. SA87-2-002, Pogo Producing Company
Docket No. SA87-3-002, Mobil Exploration and Producing, North America Inc. and Mobil Producing Texas & New Mexico Inc.
Docket No. SA87-6-002, Shell Offshore Inc. and Shell Oil Company
Docket No. SA87-11-002, Phillips Petroleum Company
Docket No. SA87-16-002, Columbia Gas Development Corporation
Docket No. SA87-28-002, Samedan Oil Corporation
Docket No. SA87-30-002, Sun Exploration and Production Company
CAM-8.
Docket No. RO85-9-001, Placid Oil Company
CAM-9.
(A) Docket No. IN86-5-003 (Phase I), Mobil Exploration and Producing North America, Inc.
(B) Docket No. IN86-5-005, (Phase II), Mobil Exploration and Producing North America, Inc.

Consent Gas Agenda

CAG-1.
Docket No. CP86-578-000, Northwest Pipeline Corporation
CAG-2.
Docket No. RP88-58-000, Williams Natural Gas Company.
CAG-3.
Docket No. RP88-63-000, Northwest Pipeline Corporation
CAG-4.
Docket No. TA88-4-5-002, Midwestern Gas Transmission Company
CAG-5.
Docket No. RP85-125-007 and TA88-1-12-001, Distrigas Corporation and Distrigas of Massachusetts Corporation
CAG-6.
Docket Nos. TA81-1-21-028 and RP87-55-002, Columbia Gas Transmission Corporation
CAG-7.
Docket No. RP85-169-032, Consolidated Gas Transmission Corporation
CAG-8.
Docket Nos. RP88-45-002 and RP88-46-001, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-9.
Docket Nos. RP88-44-001 and CP88-203-001, El Paso Natural Gas Company
CAG-10.
Docket Nos. RP88-41-001, RP85-13-017 and RP87-27-002, Northwest Pipeline Corporation
CAG-11.
Docket No. RP87-16-003, El Paso Natural Gas Company
CAG-12.
Docket No. RP86-51-002, Northwest Pipeline Corporation
Docket No. RP86-164-001, Mountain Fuel Resources, Inc. v. Northwest Pipeline Corporation
CAG-13.
Docket No. RP82-55-035, Transcontinental Gas Pipe Line Corporation
CAG-14.
Docket No. CP86-578-014, Northwest Pipeline Corporation
CAG-15.
Docket No. RP88-40-001, Mountain Fuel Resources, Inc.
CAG-16.
Docket No. RP85-193-005, North Penn Gas Company
CAG-17.
Docket NO. RP87-26-024, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-18.
Docket Nos. RP86-14-034, 036 and RP86-108-017, Columbia Gulf Transmission Company
Docket Nos. RP86-15-034, 036 and RP86-112-018, Columbia Gas Transmission Corporation
CAG-19.
Docket Nos. RP88-35-001, CP88-99-000, CP88-100-000 and CP88-143-001, Transwestern Pipeline Company
CAG-20.
Docket No. RP85-177-049, Texas Eastern Transmission Corporation
CAG-21.
Docket No. CP86-582-017, Natural Gas Pipeline Company of America
CAG-22.
Docket No. TA88-1-48-002, ANR Pipeline Company
CAG-23.
Omitted
CAG-24.
Docket Nos. TA88-1-9-000 and 002, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-25.
Docket No. IS88-13-000, Point Arguello Pipeline Company
CAG-26.
Docket Nos. TA85-1-33-004, TA84-1-33-001 and TA84-2-33-013, El Paso Natural Gas Company
CAG-27.
Omitted
CAG-28.
Docket No. TA87-3-55-003, Mountain Fuel Resources, Inc.
CAG-29.
Docket No. TA88-2-8-000, South Georgia Natural Gas Company
CAG-30.
Docket No. TA88-1-4-000, Granite State Gas Transmission, Inc.
CAG-31.
Docket No. TA88-1-37-000, Northwest Pipeline Corporation
CAG-32.
Docket Nos. CP86-589-002, RP86-104-003 and RP87-30-012, Colorado Interstate Gas Company
CAG-33.
Docket Nos. RP86-33-000 and RP86-91-000, Midwestern Gas Transmission Company
CAG-34.
Docket No. RP86-169-005, ANR Pipeline Company
CAG-35.
Docket No. ST88-1213-000, Mississippi Fuel Company
CAG-36.
Docket No. ST88-354-000, Stauffer-Wyoming Pipeline Company
CAG-37.
Omitted
CAG-38.
Docket No. CP83-335-208, Williston Basin Interstate Pipeline Company
CAG-39.
Docket No. CP85-824-006, Colorado Interstate Gas Company
CAG-40.
Docket No. CP86-676-001, Equitable Gas Company, a Division of Equitable Resources, Inc. and Equitable Transmission Company
CAG-41.
Docket No. CP88-229-001, Williams Natural Gas Company
CAG-42.
Docket No. CP88-6-001, United Gas Pipe Line Company
CAG-43.
Docket Nos. CP87-196-001 through CP87-196-003 and CP87-196-005, Transcontinental Gas Pipe Line Corporation
Docket No. CP87-203-001 through CP87-203-004, Consolidated Gas Transmission Corporation and North Penn Gas Company
CAG-44.
Docket No. CP87-210-001, Natural Gas Pipeline Company of America
Docket No. CP87-190-001, Lone Star Gas Company, a Division of Ensearch Corporation
CAG-45.
Docket No. CP85-186-004, Valero Interstate Transmission Company
Docket Nos. CI85-206-002, CI85-207-002 and CI85-213-002, Shell Western E&P, Inc.
CAG-46.
Docket No. CP86-631-002, Williams Natural Gas Company
CAG-47.
Docket No. CP81-84-000, Transcontinental Gas Pipe Line Corporation
Docket No. CP81-297-000, Eastern Shore Natural Gas Company
CAG-48.

Docket No. CP87-398-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG-49.
Docket No. CP87-281-000, Northwest Alabama Gas District

CAG-50.
Docket No. CP88-80-000, National Steel Corporation

CAG-51.
Docket No. CI86-22-003, Fina Oil and Chemical Company, Petrofina Delaware Incorporated, Fina Oil & Gas, Inc. and Fina Exploration, Inc.
Docket No. CI87-240-001, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
Docket No. CI87-385-002, Phillips 66 Natural Gas Company
Docket No. CI87-666-001, Texaco, Inc., Texaco Producing, Inc. and Getty Oil Company
Docket No. CI88-229-000, Phillips Petroleum Company
Docket No. CP85-710-008, Northern Natural Gas Company, Division of Enron Corporation
Docket No. CI86-33-003, Sun Exploration and Production Company
Docket No. CI87-308-002, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CI87-360-001, Coastal Oil & Gas Corporation
Docket No. CI87-361-001, ANR Production Company
Docket No. CI85-685-003, Northwest Pipeline Corporation
Docket No. CI86-22-003, Northwest Pipeline Corporation
Docket No. CI87-666-001, Northwest Pipeline Corporation and Transcontinental Gas Pipe Line Corporation
Docket No. CI88-229-000, Northwest Pipeline Corporation

CAG-52.
Docket No. CP83-452-052, Columbia Gas Transmission Corporation
Docket No. CP85-710-008, Northern Natural Gas Company, Division of Enron Corporation
Docket Nos. CI86-373-003 and CI86-370-003, Texas Gas Transmission Corporation
Docket Nos. CI86-278-003 and CI86-96-003, Transcontinental Gas Pipe Line Corporation and Transco Gas Supply Company

CAG-53.
Docket No. CP87-106-001, Midwestern Gas Transmission Company

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket No. ER84-705-000, Boston Edison Company. Opinion and order determining just and reasonable rates, including prudence of Pilgrim II cancellation costs.

ER-2.
Docket No. EL86-53-001, Southern Company Services, Inc.
Docket No. EL86-57-001, Gulf States Utilities Company v. Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Company Services, Inc. Opinion and order concerning unit power sales agreement and an interchange contract.

Miscellaneous

M-1.
Docket No. RM88-6-000, Administrative Determination of Full Avoided Costs, Rates for Sales of Power to Qualifying Facilities and Interconnection Facilities. Notice of Proposed Rulemaking.

M-2.
Docket No. RM88-5-000, Regulations Governing Bidding Programs. Notice of Proposed Rulemaking.

M-3.
Docket No. RM88-4-000, Independent Power Producers. Notice of Proposed Rulemaking.

I. Pipeline Rate Matters

RP-1.
Docket Nos. RP84-42-001, RP72-133-024, TA80-1-11-002, TA80-2-11-002, TA81-1-11-002, TA81-2-11-005, TA82-1-11-005, TA82-2-11-008, TA83-1-11-004, TA83-2-11-004, TA84-1-11-003, TA84-2-11-003, and TA84-2-11-002 (Phase III), United Gas Pipe Line Company. Opinion on initial decision concerning upaid accruals.

RP-2.
Docket Nos. ST84-773-000, ST86-1599-000, ST86-1601-000, ST86-1603-000, ST86-1643-000, ST86-1933-000, ST86-1937-000, ST86-1965-000, ST86-2265-000, ST86-2317-000, ST86-2323-000, ST86-2687-000, ST86-2688-000, ST86-2690-000, ST86-2699-000, ST86-2701-000, ST86-2706-000, ST86-2707-000, ST87-1518-000 and ST87-3269-000, Delhi Gas Pipeline Corporation. Order on NGPA Section 311 intrastate rates.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. CP87-451-004, Northeast U.S. Pipeline Projects
Docket Nos. CP87-380-000, CP87-492-000, CP87-554-000, CP88-167-000, CP88-185-000, CP88-186-000, CP88-187-000, CP88-188-000, CP88-189-000, CP88-192-000, Algonquin Gas Transmission Company
Docket Nos. CP88-168-000 and CP88-169-000, Champlain Pipeline Company
Docket Nos. CP86-334-000, CP87-5-000, CP87-313-000, CP87-314-000, CP87-447-000, CP88-128-000, CP88-183-000, CP88-195-000, CNG Transmission Corporation
Docket Nos. CP87-339-000, CP88-129-001, CP88-163-000 and CP88-164-000, Columbia Gas Transmission Corporation
Docket No. CP87-428-000, Consolidated Gas Transmission Corporation
Docket Nos. CP88-160-000 and CP88-161-000, Distrigas of Massachusetts Corporation
Docket No. CP88-193-000, Eastern American States Transmission Company
Docket Nos. CP86-329-001 and CP86-330-001, Erie Pipeline Company
Docket Nos. CP88-190-000 and CP88-191-000, Greater Northeast Pipeline Corporation
Docket No. CP88-178-000, Indiana-Ohio Pipeline Company
Docket Nos. CP86-523-000, 001, 002, 003, CP86-524-000 and CP88-198-000, Iroquois Gas Transmission System
Docket Nos. CP88-47-000 and CP88-94-000, National Fuel Gas Supply Corporation
Docket No. CP88-194-000, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket No. CP88-175-000, Northeastern Gas Transmission Company
Docket No. CP88-77-000, Northern Border Pipeline Company
Docket Nos. CP87-4-000, CP88-181-000 and CP88-197-000, PennEast Gas Services Company
Docket No. CP88-183-000, PennEast Gas Services Company and CNG Transmission Corporation
Docket Nos. CP88-182-000 and CP88-195-000, PennEast Gas Service Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket Nos. CP87-75-000, CP87-85-000, CP87-131-000, 001, CP87-132-000, 001, CP87-358-000, 001, CP88-171-000, CP88-172-000, CP88-173-000, CP88-174-000 and CP88-176-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Docket Nos. CP66-43-001, CP87-28-000, CP88-179-000 and CP88-180-000, Texas Eastern Transmission Corporation
Docket No. CP87-380-000, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company
Docket Nos. CP87-92-000, 001, 002 and CP87-312-000, Texas Eastern Transmission Corporation and PennEast Gas Services Company
Docket Nos. CP85-294-000, CP88-92-000 and CP88-177-000, Transcontinental Gas Pipe Line Corporation. Procedural order on applications to provide new gas service to the Northeast U.S.

CP-2.
Docket No. CP85-437-006, Mojave Pipeline Company
Docket Nos. CP87-479-001 and CP87-480-000, Wyoming-California Pipeline Company. Order on rehearing on applications to provide new gas service for the enhanced oil recovery market in California.

CP-3.
Docket No. RP88-13-000, James River Corporation of Nevada v. Northwest Pipeline Corporation. Order on complaint

of failure to provide transportation and on request to abandon transportation.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5572 Filed 3-10-88; 11:35 am]

BILLING CODE 6717-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1400)

TIME AND DATE: 10:00 a.m. (e.s.t.), Wednesday, March 16, 1988.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Action Items

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1988 Series A Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers to Take Further Action Relating to Issuance and Sale of 1988 Series A Power Bonds.

A3. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1988, Pursuant to section 26 of the TVA Act.

A4. Modification of the Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—(4.1) Upgrade Sewage Treatment Service Capabilities at Sequoyah Nuclear Plant (4.2) Complete Modifications to the Makeup Water Treatment Plant at Sequoyah Nuclear Plant.

A5. Modification of the Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—Control Rod Drives Changeout at Browns Ferry Nuclear Plant.

B—Purchase Awards

[1] B1. Negotiation GL-38017B—Low Pressure Turbine Blades for Cumberland Fossil Plant.

B2. Invitation GL-31074B—Tractor-Scrapers for Colbert, Kingston, John Sevier, and Widows Creek fossil plants.

B3. Negotiation GB-06281A—Electrostatic Precipitator Modifications on Johnsville Fossil Plant Units 7 Through 10.

B4. Requisition 64—Long-Term Spot Coal for Shawnee and Widows Creek Steam Plants.

C—Power Items

C1. Letter Agreement Between TVA and Kentucky Utilities Covering Arrangements for Delay in Establishment of the Pineville 500-kV Interconnection Point Provided for Under a 1979 Agreement Between the Parties.

C2. Supplement to Agreement No. TV-70477A with the Nuclear Management and Resources Council, Inc. (NUMARC), Covering Arrangements for Participation in NUMARC, the Chief Speaking Body for the Nuclear Industry on Regulatory Matters before NRC and other Federal Agencies.

C3. Supplement to Agreement No. TV-62776A with the Electric Power Research Institute (EPRI) Covering Arrangements for Participation with other Nuclear Utilities in the Seismicity Owners Group, an Organization Formed to Sponsor and Fund Work toward Investigating Seismic Hazards for Nuclear Electric Generating Plants in the Eastern United States.

D—Personnel Items

D1. Personal Services Contract No. TV-74326A with EG&G Intertech, Inc., Falls Church, Virginia, for Completion of Watts Bar Nuclear Plant Weld Reinspection Program.

E—Real Property Transactions

E1. Modification of Deed to Lakeshore Investors Limited III Affecting 13.3 Acres of Chickamauga Reservoir Land Located in Hamilton County, Tennessee, to Allow the Conversion of 121 Apartment Units to Condominiums—Tract No. XCR-444.

E2. Grant of Permanent Easement to Reed Crushed Stone Company, Inc., Affecting Approximately 0.9 Acre of Kentucky Reservoir Land Located In Livingston County, Kentucky to Provide Suitable Access for an Office Complex—Tract No. XGIR.913H.

E3. Sale of Noncommercial, Nonexclusive Permanent Recreation Easement to Bob E. Oxendine, Affecting a Total of 0.08 Acre of Tellico Reservoir Shoreline Located in Monroe County, Tennessee, for the Construction of Private Water Use Facilities—Tract No. XTELR-57RE.

E4. Filing of Condemnation Cases

F—Unclassified

F1. Supplement No. 7 to Agreement No. TV-61962A with Tennessee State University, Nashville State Technical Institute, and the State of Tennessee Board of Regents for Coordination and Administration of the Craft/Skill Upgrade Training Program at the Industrial Training Center at Cockrill Bend in Nashville, Tennessee.

F2. Supplement No. 4 to Contract No. TV-67766A with Tennessee State University for TVA to Assist the University in Administering the Craft/Skill Upgrade Training Program at the Industrial Training Center of the Nashville Project.

F3. Supplement No. 1 to Subagreement No. 21 to Memorandum of Agreement No. TV-23928A between TVA and the U.S. Department of the Army, Corps of Engineers, Covering Arrangements for Improvements to Navigation Facilities on the Tennessee River.

F4. Contract No. TV-73494A with the Swedish Society for Ethanol Development Covering Arrangements for TVA to Make its Specialized Services Available to Conduct Tests Related to Production of Ethanol and Other Chemicals from Biomass.

F5. New Investment Management Agreements Between the Tennessee Valley Authority Retirement System and Seven Investment Managers (Disciplined Investment Advisors, Inc.; Sun Bank, N.A.; Geewax, Terker & Company; Morgan Grenfell Capital Management, Inc.; Pacific Investment Management Company; Duff & Phelps Investment Management Company; and W.R. Huff Asset Management Company).

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: March 9, 1988.

W.F. Willis,

General Manager.

[FR Doc. 88-5564 Filed 3-10-88; 11:01 am]

BILLING CODE 8120-01-M

---

[1] This item approved by individual Board members. This would give formal ratification to the Board's action.

Corrections

Federal Register
Vol. 53, No. 49
Monday, March 14, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 88-009]

Importation of Sheep

Correction

In proposed rule document 88-4395 beginning on page 6656 in the issue of Wednesday, March 2, 1988, make the following corrections:

1. On page 6659, in the second column, in the fourth complete paragraph, in the second line, after "States", insert "unless".

§ 92.44 [Corrected]

2. On page 6663, in the first column, in § 92.44(a)(5), before the first "The", insert "If".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket No. 81N-0314]

Sulfiting Agents; Proposal To Revoke GRAS Status for Use on "Fresh" Potatoes Served or Sold Unpackaged and Unlabeled to Consumers; Extension of Comment Period

Correction

In proposed rule document 88-3181 appearing on page 4184 in the issue of Friday, February 12, 1988, make the following correction:

In the subject heading, in the third line, "Unpackaged" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78N-0434]

Mattox & Moore, Inc., Esmopal; Opportunity for Hearing

Correction

In notice document 88-2997 beginning on page 4214 in the issue of Friday, February 12, 1988, make the following corrections:

1. On page 4216, in the second column, in the first complete paragraph, in the third line, after "that", insert "it".

2. On page 4217, in the first column, in the first complete paragraph, in the 10th line, "dose" should read 'does".

3. On the same page, in the second column, in the 30th line, "505" should read "512".

4. On page 4218, in the first column, in the first complete paragraph, in the third line from the bottom, "level" should read "levels".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 88-3327 beginning on page 4724 in the issue of Wednesday, February 17, 1988, make the following correction:

On page 4724, in the second column, under *Type of meeting and contact person*, in the last line, the phone number should read "419-259-6211".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-12; A-18416-D and A-20242-D]

Reconveyed Land Opened to Entry; Apache County, Arizona

Correction

In notice document 87-28305 appearing on page 46847 in the issue of Thursday, December 10, 1987, make the following correction:

In the first column, in the **DATE** line, "March 9, 1987" should read "March 9, 1988".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Temporary Leave Transfer Program

Correction

In rule document 88-5118 beginning on page 7325 in the issue of Tuesday, March 8, 1988, make the following correction:

On page 7326, in the first column, under "**Authority**", in the fourth line, "12228" should read "11228".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AGL-26]

Alteration to Control Zone and Transition Area, Monroe County Airport, Bloomington, IN

Correction

In rule document 88-2988 beginning on page 4118 in the issue of Friday,

February 12, 1988, make the following correction:

§ 71.171 [Corrected]

In § 71.171, on page 4119, in the second line, "VORTAC; 236" should read "VORTAC 236".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8186]

Income Tax, Taxable Years Beginning After December 31, 1953; Election To Be Taxed as a Real Estate Mortgage Investment Conduit and Other Administrative Matters; and OMB Control Numbers Under the Paperwork Reduction Act

Correction

In rule document 88-5127 beginning on page 7504 in the issue of Wednesday, March 9, 1988, make the following correction:

PART 1——[CORRECTED]

On page 7507, in the second column, under **Authority**, in the fifth line, "27 U.S.C." should read "26 U.S.C.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8179]

Organizations Under Common Control; Eighty Percent Control Test for a Brother-Sister Controlled Group

Correction

In rule document 88-4238 beginning on page 6603 in the issue of Wednesday, March 2, 1988, make the following corrections:

§ 1.52-1 [Corrected]

1. On page 6605, in the second column, in § 1.52-1(h)(2)(i), in the third line, "is" should read "it".

§ 1.414(c)-3 [Corrected]

2. On page 6608, in the third column, in § 1.414(c)-3(d)(6)(i), in the seventh line, "with" should read "which".

3. On page 6609, in the first column, in § 1.414(c)-3(e), Example (1), in the 11th line, "and ABC" should read "of ABC".

§ 1.414(c)-4 [Corrected]

4. On page 6610, in the second column, in § 1.414(c)-4(b)(3)(ii)(A), in the 12th line, "decedent's" was misspelled.

5. On page 6611, in the first column, in § 1.414(c)-4(b)(6)(ii), in the second line, the first "In" should read "If".

§ 1.1563-1 [Corrected]

6. On page 6612, in the second column, in § 1.1563-1(a)(3)(ii), Example (3), in the first complete paragraph, in the seventh line, insert "of" after "stock".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 8181]

Manufacturers and Retailers Excise Taxes; Election to Have Certain Diesel Fuel Taxes Imposed on Sales to Retailers; and OMB Control Numbers Under the Paperwork Reduction Act

Correction

In rule document 88-4373 beginning on page 6518 in the issue of Tuesday, March 1, 1988, make the following correction:

§ 48.4041-21T [Corrected]

On page 6521, in the second column, in § 48.4041-21T(h)(2), under "**SELLER'S CONSENT TO LIABILITY**", in the second paragraph, in the last line, "thereof" should read "therefor".

BILLING CODE 1505-01-D

federal register

Monday
March 14, 1988

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Final Rulemaking Regarding Test Procedures for Central Air Conditioners, Including Heat Pumps

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-102]

Energy Conservation Program for Consumer Products; Final Rulemaking Regarding Test Procedures for Central Air Conditioners, Including Heat Pumps

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends the test procedures for central air conditioners, including heat pumps. Test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act (NECPA) and the National Appliance Energy Conservation Act (NAECA). Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

The purpose of today's notice is to improve and refine the test procedure for central air conditions, including heat pumps. Specifically, DOE is expanding the coverage of the test procedures to address innovative designs, including split-type ductless systems and variable-speed central air conditioners.

EFFECTIVE DATE: September 12, 1988.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE-132, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC-12, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

a. Background

The energy conservation program for consumer products was established pursuant to Title II, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619), and the National Appliance Energy Conservation Act of 1987 (NAECA) (Pub. L. 100-12). Among other program elements, section 323 of the EPCA, as amended, requires that standard methods of testing be prescribed for covered products, including central air conditioners and heat pumps. Test procedures appear at 10 CFR Part 430, Subpart B.

Test procedures for evaluating the cooling performance of air-source central air conditioners were issued initially by DOE on November 21, 1977. 42 FR 60150, November 27, 1977. Test procedures for evaluating the heating performance of air-source heat pumps as well as amendments to the test procedures for central air conditioners were issued by DOE on December 10, 1979. 44 FR 76700, December 27, 1979. On March 15, 1985, DOE issued a Notice of Inquiry to solicit comments concerning a rating method for determining efficiency ratings for untested combinations of split-system central air conditioners in lieu of laboratory testing of such units. 50 FR 13042, April 2, 1985. DOE published a proposed rule on October 3, 1986, 51 FR 35736, and held a public hearing November 12, 1986. To encourage broad participation in the rulemaking proceeding, DOE extended the comment period to January 30, 1987. 51 FR 40442, November 7, 1986.

Today's rulemaking expands the coverage of the test procedures to address innovative designs, including split-type ductless systems and variable-speed central air conditioners. It also prescribes additional requirements for alternative rating methods for estimating efficiency ratings for untested combinations of split-system central air conditioners in lieu of laboratory testing, by defining the meaning of a coil family and establishing a requirement for test data to support the results.

In 1981, DOE's Office of Hearings and Appeals (OHA) granted an exception authorizing a change in the test procedure to York Division Unitary Products (York) for its variable-speed heat pump. Federal Energy Guidelines, 7 DOE No. 81,209. In 1983, OHA extended the exception to Borg-Warner Central Environmental Systems (Borg-Warner), formerly York. Federal Energy Guidelines, 10 DOE No. 81,026. The two exceptions specify an alternative test procedure for evaluating variable-speed heat pumps. In 1986, the Carrier Corporation (Carrier) petitioned the Department for a test procedure waiver for its variable-speed heat pump. 51 FR 5587, February 14, 1986. DOE granted Carrier's petition on September 19, 1986, approving an alternative test procedure different from the Borg-Warner approach. 51 FR 35403, October 3, 1986. The Department also granted a waiver to the Trane Company for variable-speed heat pumps on March 26, 1987. 52 FR 11855, April 13, 1987. Today's rule establishes a test procedure for variable-speed heat pumps reflecting the methods used in the waivers granted to Carrier and Trane. The exceptions to Borg-Warner and York and waivers granted to Carrier and Trane by DOE will terminate on the effective date of today's rule.

b. Discussion of Comments

In response to the October 1986 proposal, DOE received comments from manufacturers, utility companies, a trade association, and interested individuals. The major issues raised by the comments are discussed below:

1. Continuous Air Test Method

The continuous air test method was proposed by DOE to replace the current damper test method. The continuous air test method eliminates the need for dampers and measures the efficiency of equipment while the fan moves air continuously across the indoor coils. The continuous air test method is based on American National Standards Institute/American Society of Heating Refrigerating and Air Conditioning Engineers (ANSI/ASHRAE) Standard 116-1983 and Air Conditioning and Refrigeration Institute (ARI) Standard 210/240-84.

Eleven manufacturers and an industry trade association, the Air Conditioning and Refrigeration Institute (ARI), addressed the issue of the continuous air test method.

Manufacturers agreed that the continuous air method would be a benefit, provided that DOE address certain concerns or problems. The manufacturers' primary concern was that the values for Seasonal Energy Efficiency Ratio (SEER) or Heating Seasonal Performance Factor (HSPF) rating for existing models of central air conditioners should remain unchanged. This would eliminate the requirement to retest and rerate all equipment. (York, No. 28, at 1; Bard, No. 31, at 1; IEC, No. 32, at 1; ARI, No. 39, at 2; Snyder General, No. 41, at 2; Carrier, No. 40, at 4) [1]. DOE's proposal would have established the continuous air test method with a six-minute compressor "on" time and a six-minute capacity integration time. (Hereafter referred to as the six- and six-method). The capacity integration time is the interval

[1] Comments on the proposal were given docket numbers and are numbered consecutively, beginning with No. 24. Comments presented at the November 12, 1986, public hearing are identified as Testimony.

during which the cooling or heating capability of the air conditioner or heat pump is measured. However, the ARI Standard 210/240–84 requires a six-minute compressor "on" time with an eight-minute capacity integration time (Hereafter referred to as the six- and eight-method). Nine manufacturers protested the use of a continuous air method with the DOE six- and six-method, recommending the ARI six- and eight-method. (Addision, No. 43, at 2; Lennox, No. 35, at 2; Rheem, No. 29, at 2; ARI, No. 39, at 2; Synder General, No. 41, at 2; IEC, No. 32, at 2; Heil Quaker, No. 34, at 2). York commented that the continuous air method with a six- and six-method showed an average 3.8 percent lower SEER rating than the rating achieved with the current damper method. When using a six- and eight-method the SEER value is 1.85 percent higher than the damper method. (York, No. 28, at 3).

Two commenters considered the additional expense of retrofitting test facilities to conform to the continuous air test method and testing models in accordance with the proposed test procedure to be excessive and burdensome. (Trane, No. 26, at 5; Addison, No. 43, at 2). These commenters also argued that the need or requirement to retest old models would add expense and impact negatively on manufacturer research and development.

Also bearing on this issue are the provisions of the National Appliance Energy Conservation Act (NAECA) of 1987, which require DOE to revise appropriately the energy conservation standard of a product when an amended test procedure would alter the measure of efficiency on energy use for that product. *See* Section 323(e).

DOE has examined three possible actions: To adopt the continuous air method with the six- and six-method, to adopt the continuous air method with the six- and eight-method, or to retain the current damper method. The Department has evaluated the impacts each action would have on the industry and consumers, as well as the energy implications of each approach.

DOE believes the adoption of the ARI Standard 210/240–84 and ANSI/ASHRAE Standard 116–1983 continuous air test method (with either six-and six-method or six- and eight-method) would cause disruption of test facilities, increase manufacturer costs, delay research and development, and require DOE to revise the energy conservation standards in order not to have an impact on the stringency of the legislated minimum efficiency levels. Use of the current DOE test procedure will allow manufacturers to utilize their test facilities for research and development of new products meeting NAECA's minimum efficiency requirements. It also eliminates the various problems of retesting, rerating and redefining the SEER and the HSPF values. The Department believes that although the continuous air method is an adequate method of testing, the current method has achieved a level of familiarity, confidence, dependability, and reliability over the years. The transition to the new procedure would surface all the concerns that existed when the current test procedure was first introduced. For these reasons, DOE has decided not to incorporate ANSI/ASHRAE Standard 116–83 and ARI Standard 210/240–84, and the proposed cyclic test in today's rule, leaving the damper method in place.

2. Degradation Coefficient

Several commenters objected to the proposed change in the assigned value of the heating degradation coefficient (C_D) from .25 to .35. The York Company (York, No. 28, at 3–4) stated that the change to a .35 value for C_D would reduce the HSPF rating in Region IV by five percent, requiring manufacturers to retest. The test burden was seen as excessive by Addison (Addison, No. 43, at 5 and 8). Four additional commenters objected to changing the value of C_D. (Synder General, No. 41, at 3; ARI, No. 29, at 10; IEC, No. 32, at 2; Bard, No. 31, at 4). Information provided by the National Bureau of Standards (NBS) indicated a tendency for C_D to differ between heating and cooling by approximately 0.1. This information indicates the average value of the heating C_D to be between .20 and .30. DOE has reviewed the comments and the NBS analysis and agrees that raising the CD value will result in additional testing with little increase in the accuracy of the ratings and may, in some cases, result in less accurate efficiency ratings.

As a result of the comments and the review of the previous data collected, DOE has decided not to amend the heating degradation coefficient. The value will remain at its designed value of 0.25.

3. Part Load Factor

As part of the calculation for determining the SEER or HSPF, DOE proposed to change the current part load factor linear method to an exponential method. The Department received four comments on the issue of part load factor. These commenters agreed that DOE should not change the method of determination. Based on the analysis of 40 basic unit models of heat pumps and air conditioners, Carrier determined that the impact of an exponential versus linear part load factor was smaller than one percent for both SEER and HSPF. (Carrier, No. 40, at 6). Lennox agreed that this small change in the values was negligible. (Lennox, No. 35, at 4). York concerned that the increase in effort to calculate the part load factor for SEER or HSPF seemed pointless and unnecessary. (York, No. 28, at 4). ARI agreed with these comments (ARI, No. 39, at 10).

DOE has reviewed these comments and finds that the variance between the present straight line and the proposed exponential method will, in most cases, be absorbed in the rounding of the values, making the procedure change unnecessary. Therefore, DOE is not adopting the exponential method in today's final rule.

4. Rating Procedure for Untested Combinations of Split-System Central Air Conditioners.

The existing regulation for central air conditioners, including heat pumps, allows manufacturers of untested combinations of split-systems to rate such systems by engineering analysis methods or computer models developed by the individual manufacturer or a consulting engineering firm. DOE decided to address the issue of rating untested combinations since each such rating method is unique and there is debate concerning the accuracy of any particular rating method.

DOE proposed the adoption of a standard rating procedure for equipment combinations that are not laboratory tested in accordance with Appendix M. Most commenters addressed the standard rating procedure for untested combinations of split-system central air conditioners. The majority of commenters favored the use of a standard method or a privately developed method (alternative method) when it can be verified to be more accurate than the standard method, as the desired procedure for rating equipment in lieu of laboratory testing.

Six commenters favored a standard rating procedure. York, ARI, BARD and Carrier supported the use of the standard procedure for manufacturers not in a certification program similar to ARI's. (York, No. 28, at 4; ARI, No. 39, at 4; Bard, No. 31, at 4; and Carrier, No. 40, at 7). While commenters held various opinions concerning implementation, the concept of utilizing a standard rating procedure was acceptable. Trante (Trane, No. 26, at 7) was concerned with the release or acquisition by other

manufacturers of proprietary information if a manufacturer's alternative procedure was submitted to DOE because it was more accurate.

Further comment was received concerning many of the components in a combination and the credit which manufacturers should receive in the calculations of the standard rating method proposed by DOE. These components include fan delay, thermostatic expansion valves, solenoid valves, coil circuitry, and coil configuration. While the comments provided a diversity of opinion on these subjects, they did not present uniform solutions. Moreover, NBS' evaluation of these comments identified many areas of research required to resolve these issues. In view of the lack of consensus in the comments and NBS's need for further research, DOE has decided to omit a standard rating procedure from today's rule. However, DOE has requested NBS to resolve the problems expressed by the commenters. NBS will develop a standard rating procedure to be submitted to DOE for review. After review by DOE, it will be published as an National Bureau of Standards Interagency Report (NBSIR), placing it in the public domain, available to any manufacturer or consultant to use in rating untested combinations.

Commenters preferring their own alternative procedure to the standard rating procedure for untested combinations disagreed with the need to submit proprietary information, computer codes, and other historical data that had been very costly to acquire and were concerned about release of possible proprietary information to competitors. (Addison, No. 43, at 4; Synder General, No. 41, at 5; Magic Aire, No. 30, at 3). Two commenters stated that the alternative methods used by them are supplied by a consulting firm and that the ability to divulge the consultant's proprietary information to DOE is impractical since these manufacturers do not have access to the programs. (Addison, No. 43, at 4; and Bard, No. 31, at 4). DOE believes that in these circumstances the consultant can submit the necessary documentation, with the proprietary information properly identified, directly to DOE.

Rheem, an ARI member, commented that it wanted the ability to use any rating procedure without approval from DOE as long as the rating was certified under a program similar to ARI's. (Rheem, No. 29, at 4).

One commenter, not a member of ARI, was opposed to DOE providing a blanket exemption to ARI members. (First Co., No. 37, at 6).

The alternative method should be verified by test data and a complete, detailed description of the alternative method with calculated result. (Carrier, No. 40, at 8; Trane, No. 26, at 7; Addison, No. 43, at 4; Synder General, No. 41, at 5).

All manufacturer comments opposed submission of computer codes to DOE for evaluation. Several comments were concerned with the time it would take to review the alternative method and raised the concern that computer codes and other proprietary data might be made available to competitors.

One commenter recommended that, for purposes of verification of the alternative method, results and test data should be provided for two condenser units, each with two different coils. This would require four sets of tests to verify the accuracy of the alternative rating method. (Carrier, No. 40, at 8).

NBS identified the need for manufacturers to submit sufficient information to enable DOE to determine the accuracy of the alternative rating method. NBS believes that, at a minimum, this would require that the rating procedure be traceable to actual and complete test data, that complete documentation of the alternative method be provided, including the computer code when a computer model is used, and that all product-related information be included to allow for DOE verification of ratings submitted by the manufacturer.

DOE agrees that the use of an alternative rating method is appropriate, if the alternative rating method is more accurate than a standardized rating method. The provision to allow the use of an alternative method of rating was included as part of DOE's 1979 central air conditioner final rule. Manufacturers are required to conduct tests of samples of the high sales volume combination, condenser and coil, while the alternative rating method is used on other combinations. The alternative rating method represents values determined by computer simulation or engineering analysis as defined by a mechanical vapor compression refrigeration cycle. The 1979 rule required the alternative rating procedure be submitted to DOE.

Synder General suggested at the public hearing that most manufacturers that submitted alternative rating methods to DOE in 1980 have since amended these methods without resubmitting them for DOE approval. (Testimony, No. 1, Synder General, at 12).

This situation prompts DOE to require that all manufacturers that amend alternative rating methods resubmit such methods to DOE in a timely manner for DOE review and approval. The Department also believes that all alternative methods should be resubmitted for DOE review and approval in order to maintain integrity in the ratings. Consequently, manufacturers who previously submitted for use of an alternative method must resubmit such method to DOE and receive approval before continuing use of the alternative method for rating central air conditioners. The approval process is the same in structure to the current process. The purpose of DOE's review and approval process is to ensure that use of alternative rating methods results in accurate ratings.

The Department rejects the concerns regarding possible release of proprietary information. Under Title 10 CFR 1004.11, the sensitivity of proprietary information is protected from release provided the manufacturer identifies properly those sections containing such information. Rating procedures have been submitted to DOE since 1979. Pursuant to the provisions in DOE's regulations, there have been no instances of information, identified as proprietary, being released by DOE. Therefore, DOE does not share commenters' concerns that proprietary information explaining a manufacturers alternative method will be divulged to third parties. Accordingly, DOE is maintaining the requirement that manufacturers provide full documentation of alternate rating methods, including that which is considered proprietary, e.g., computer codes, etc., to DOE for approval prior to the use of the ratings in today's rule.

Several commenters stressed the need for accurate data on the various components of the system, inaccurate data or inappropriate assumptions could result in large errors. Carrier recommended the ability to determine coil capacities by a computer computation/simulation approved by DOE or a test standard such as ASHRAE Standard 33–78. (Carrier, No. 40, at 7). The First Company wanted information for the components to be made available by the manufacturer, whereas Trane opposed the divulging of information even to DOE, of what it considers proprietary information, as long as the components are not sold to other manufacturers. (First Co., No. 37, at 3; Trane, No. 26 at 7).

York suggested that a standard rating method include a coil scaling factor, coil circuitry and heating cycle (York, No. 28, at 4).

Many commenters felt that the two percent tolerance was unrealistic. Trane wanted to maintain the five percent

tolerance identified in § 430.23(m)(1) as providing for a 90 percent confidence, with a true mean divided by 95 percent. (Trane, No. 26 at 7). Rheem sought the adoption of a five percent tolerance for test versus calculation method results. (Rheem, No. 29, at 5). Three coil manufacturers, IEC, Magic Aire, and First Company commented that the proposed rating procedure would force the manufacturer to purchase various condensing units and matched coils for testing prior to making determinations of comparative coils, creating an added expense. (IEC, No. 32, at 3; Magic Aire, No. 30, at 2; First Company, No. 37, at 4).

It is anticipated that publication of the standard rating method as an NBSIR, will enable manufacturers to use it as an alternative to testing or as the basis for an alternative rating method. DOE believes that development and publication of a standard method of rating combinations of condensers and coils will improve design, replacement selection and make DOE approval of alternative rating methods quick and easy.

Several commenters addressed the definition of a coil family in discussing the requirement that test data supporting a manufacturer's alternative method include data for two complete lines of coil families for two condensing units. One commenter stated that a complete coil line (family) included all coils in the same coil configuration (up flow, down flow, or horizontal) with the same basic model number and designed for a certain evaporating temperature at a given capacity (Lennox, No. 35, at 3). York's definition included coils of a given design (A-coils, air handlers, horizontal, counter flow or flat top coils) equipped with the same expansion device. Each family could cover a range of capacity from one to five tons. (York, No. 28, at 4). ARI provided a similar definition. Addison defined a coil family as all coils used with any specific outdoor condenser unit. [Addison, No. 43, at 2].

DOE has defined a coil family in today's notice. DOE considers a coil family to be a group of coils with the same basic design features that affect the heat exchanger performance. Those features which identify a coil family are:

(i) Basic configuration (A-shape, V-shape, slanted or flat top coils, etc.)

(ii) Heat transfer surfaces on refrigerant side and air side (flat tubes vs. grooved tubes, different fin shapes on air side).

(iii) Tube and fin materials.

(iv) Coil circuitry.

The family will cover different coil sizes. When a group of coils has all these factors in common it is a family. DOE has in today's final rulemaking defined a "coil family" and identified the procedures for acquiring DOE approval of alternative rating methods for untested combinations of split-type systems. The standard rating method is not presented in today's notice, however, it will be published as a NBSIR.

5. Ground Water Source Heat Pump and Earth Coupled Heat Pumps

Several commenters maintained that there is no need for a test procedure for ground water-source or earth-coupled heat pumps (ARI, No. 39, at 2; Bard, No. 31, at 4; Friedrich, No. 36, at 1). DOE proposed to incorporate ARI Standard 325–85 which was already in use by ARI and several manufacturers. The acceptance of this test procedure, with limited changes, would have allowed consumers to compare the ground water-source, earth-coupled, and air source central air conditioners or heat pumps.

However, NAECA, enacted on March 17, 1987, defines "central air conditioner" as an "air-cooled product." This requirement eliminates ground water-source and earth-coupled heat pumps from the category of central air conditioner and the ratings required of covered products. Therefore, DOE is not including a test procedure for ground water-source and earth-coupled heat pumps in today's final rule.

6. Split Type Ductless Systems

Two commenters stated that the test procedure for the split-type, ductless systems with multiple coils providing for multiple zones should give credit for energy savings due to multizoning. (Daikin, No. 27, at 1 and Toshiba, No. 38, at 2).

DOE does not believe a credit is appropriate since other heating systems having similar capabilities, e.g., hydronic and electric resistance heating, receive no credit for this utility feature.

Toshiba discussed the possible combination of a variable-speed condensing unit with multiple ductless coils. (Toshiba, No. 38, at 2). The test procedure for this system, although not specifically designated, would, in fact, be a combination of the split-type ductless system and variable-speed procedures provided in this final rule.

Three commenters stated that the proposed test procedure for the split-type ductless system would be too burdensome. To reduce the testing burden these commenters requested that the definition of "combinations" as proposed be clarified. (IEC, 32 at 5; Toshiba, No. 38, at 14; ARI, No. 39, at 11). DOE agrees that the number of possible combinations would create a burdensome test procedure. For this reason the test procedure considers the ability to zone as a utility similar to air conditioners with setback thermostats. Zoning is a consumer preference, not an efficiency improvement. Therefore, the efficiency of the system is analyzed as a single zone. The requirements of rating by test or alternative method of various combinations of indoor coils with a single outdoor unit are covered under section 430.23, units to be tested, paragraph (m) (1) and (2).

Two-speed outdoor units for split-type ductless systems will use the two-speed rating procedure with all indoor coils connected as in the single speed rating procedure.

Variable-speed outdoor units shall be rated according to the variable-speed test procedure mentioned in today's rule with all indoor coil units connected for all required tests.

The retention of the damper method for testing requires that changes be made to the proposed test procedure to allow coverage of split-type ductless systems. These changes are required due to the deletion of the incorporation of ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84. These two standards contain information and procedures identifying the basis for the proposed test procedure for split-type ductless system. The cyclic test of ductless units will be performed without dampers. The indoor fan will be turned on three minutes before compressor "cut-on" and remain on for three minutes after compressor "cut-off." For calculating the cyclic coefficient of performance (COP) the integration time for capacity shall be from compressor "cut-on" time to indoor fan "cut-off" and the integration time for power will be the compressor "cut-on" to indoor fan "cut-off" time. The fan power for the three minutes after compressor "cut-off" shall be added to the integrated cooling capacity and subtracted from the integrated heating capacity. The indoor coils of the ductless system will require the addition of plenums on the outlets to allow for the measurement of air flow and the capacity of the system.

7. Demand Defrost

The present procedure provides an enchancement credit factor equal to 1.07 which is used as a multiplier on capacity at T_{out} equal 35°F. This multiplier results in an HSPF improvement of approximately four percent according to data submitted to DOE during the 1979 rulemaking.

The proposed rule introduced an enhancement factor to be applied as a

multiplier directly to HSPF. The multiplier has a maximum value of 1.04 which is varied between 1.04 and 1.00 for single-speed, two-speed and variable-speed systems based on the length of time between defrost.

ARI and Snyder General expressed support for the existing credit (1.07 ×Q(35)). (ARI, No. 39, at 12; Snyder General No. 41, at 3).

Lennox questioned the 90-minute time used in the proposed correlation as the shortest defrost time used in prorating the demand defrost credit but did not give any alternative suggestion. (Lennox, No. 35, at 5).

York commented that the proposed procedure fails to recognize the use of auxiliary head during the defrost cycle. Taking into account that outdoor air relative humidity during the defrost test is much higher than the average relative humidity in region IV, a heat pump will run a much longer time in the field between defrosts than during the frost accumulations test. Correcting for the reduced frequency of defrosts with drier weather increased the span of time between defrosts by a factor of 2.8 (a typical demand system would defrost at 3.63 hour intervals at the actual average weather conditions.) A system equipped with a time-temperature defrost control which goes into defrost every 90 minutes would require 19.6 percent more power than a demand defrost system at this condition. York concluded by proposing that the seven percent enhancement value for demand control systems be retained. If any changes are made, York supports the enhancement that would have a increased value with increased span time between defrosts. (York, No. 28, at 3).

Carrier pointed out that the enhancement credit for variable-speed systems is inconsistent with that prescribed for single-speed systems. (Carrier, No. 40, at 11). Carrier stated that the amount of credit given for a demand defrost control should be based on the ratio of the time between defrosts during the frost accumulation test to the maximum time between defrost allowed by the demand defrost control. Carrier proposed the formula:

$FD = 1 + 0.04 \times (1 - Ttest - 90.0)/Tmax - 90.0)$

where:

FD = demand defrost credit (used as a multiplier to HSPF)

Ttest = test time between defrosts (in minutes)

Tmax = lesser of 720 or the maximum time between defrosts allowed by the unit control (in minutes)

Trane supported the concept of proportioning the demand defrost with the measured time between defrost terminations. (Trane, No. 26, at 4). However, Trane pointed out a lack of consistency in the time between defrost terminations for different units of the same model, and commented that the proposed correlation, being very sensitive to this time, may provide significantly different values of the damand defrost credit during the rating verification process. In connection with this observation, Trane suggested another form of the equation for the demand defrost credit:

$Fd = 1.03 + 0.03 \times [(90 - T_{test})/630]$

DOE recognizes that frosting/defrosting of a heat pump is a very complex phenomenon governed by system design and controls, operating conditions and sizing. System performance degradation in the frosting region is related to three basic penalties:

1. Degradation of performance due to frosting itself; formation of frost on the outdoor coil reduces system instantaneous capacity, and reduces system instantaneous COP.

2. Decrease of average capacity due to the need to perform defrosting of the outdoor coil. The time used by a system to defrost is subtracting from the time that would be used for heating, thus reducing system ability to supply heat. In addition, negative capacity (additional load) is introduced to the house.

3. Use of tempering heat above the balance point. Since delivery of cold air to the conditioned space would not be acceptable, an electric heater is used to temper heat pump negative capacity. If defrost occurs above the balance point, use of the electric heat degrades system seasonal efficiency.

DOE agrees that different heat pumps will exhibit different performance degradation due to frosting/defrosting. The three penalties identified above may have differing shares in performance degradation for different systems.

DOE recognizes that the present rating procedure contains the following simplifications affecting the HSPF rating:

- The procedure does not include frosting/defrosting below 17°F outdoor temperature even for time defrost controlled systems, (penalty no. 1 and 2.) Consequently, system capacity prescribed in the procedure is optimistically high (approx. 3–5 percent) for time-defrost heat pumps.
- The procedure does not take into account heat tempering above the balance point (penalty no. 3.)

A review of the comments on demand defrost credit show that manufacturers do not have a clear understanding of the objective of the demand defrost credit. DOE believes that demand defrost credit should be applied as compensation for improved performance not measured during the defrost test because of high humidity specification, and that frosting/defrosting is too complex for attempts to describe all three penalties by one correlation. The present procedure takes into account performance degradation due to frosting of the outdoor coil (penalty no. 1) through a test at 35 °F outdoor temperature. In order to shorten the defrost test, high outdoor humidity conditions, more severe than average in the field, were prescribed. During this test a system with demand defrost may not show its full performance potentital.

If the time between defrosts is the same for this unit as if equipped with a time controlled defrost, a credit is in order for the system because full sustem performance ability in field conditions was not measured during the test. On the other hand, if a system with a demand defrost control does not go into defrost at all during the 35 °F test, no extra credit should be given to the unit because the test accounted (on a relative basis) for the full performance potential of the tested unit. Systems equipped with demand defrost, that defrost during testing but after the period allotted to time controlled defrost systems, should receive a credit based on a prorated value of the actual defrost time versus the duration of the defrost test.

As a result of the review of the industry comments and performance data collected for ten various models with demand defrost, NBS recommended a revised formula for crediting demand defrost.

$Fs = 1 + 0.03 \times (1 - (Ttest - 90)/(Tmax - 90))$

where:

Fd = demand defrost credit (used as a multiplier to HSPF)

Ttest = time between defrost terminations in minutes
or
90, whichever is greater

Tmax = maximum time between defrosts allowed by controls in minutes
or
720, whichever is smaller

The correlation provides three percent credit for a system with demand defrost which has 90 minutes or less time between defrost terminations during the frost accumulation test. The amount of credit is linearly prorated to zero for longer time spans between defrosts. A value of zero is attained if the test time reaches the maximum compressor time allowed by its controls or maximum time prescribed by the procedure (720

minutes). The value of the maximum credit (three percent) was chosen based on review of the HSPF values of ten heat pumps with a demand defrost credit calculated using the existing procedure and applying a seven precent correction for capacity at the 35 °F test and comparing to the HSPF for the same units calculated without a seven percent capacity correction at the DHRmin in region IV. The seven percent capacity correction resulted in an HSPS improvement between 2.81 and 2.99 percent.

Based on the information and data provided, DOE has selected the maximum demand defrost credit of 1.03. DOE adopted the revised equation recommended by NBS to determine the value of the credit in today's final rule.

8. Variable Speed Units

One commenter, KeepRite, proposed adding a test to measure the difference in load matching ability of variable-speed units, and outlined the basis for such a test. (KeepRite, No. 33, at 1). KeepRite also recommended that systems with automatic controls and manual controls be differentiated. At this time, DOE does not believe there is a need for a procedure to test variable-speed systems for load matching ability. The test, as outlined by KeepRite, appears difficult to prescribe and burdensome to conduct. Regarding differentiation between manual and automatic controls, DOE does not think that systems with manual controls (in which a homeowner can set speed manually) will be offered in the market place. Therefore, DOE believes the effort to develop and present a procedure for manual variable-speed is not justified.

KeepRite commented that additional test points are needed at different intermediate speeds to more accurately represent the performance of variable-speed units. (KeepRite, No. 33, at 2). Trane showed that increasing the number of intermediate test points improves SEER of the tested unit. According to Trane, the impact of the number of test points is most significant for the unit of the highest maximum speed to minimum speed ratio. For this ratio having the value of 3.5, the addition of the first intermediate speed test (to the single-speed procedure) improved the SEER by 11 percent. The next additional point improved the SEER by one percent over the previous value (calculated with one intermediate test point). An additional third point provided an improvement of approximately 0.8 percent. (Trane, No. 26, at 16).

Since additional improvement to the SEER rated value decreases significantly with additional intermediate test points, adding such points does not seem to be the best solution. Instead, NBS suggested modifications to the proposed method to better account for variable-speed system performance during operation in the intermediate speed region. The DOE proposal used linear interpolation of the power input between the intermediate speed point and the maximum and minimum balance points for evaluation of the input power to the unit. NBS suggested using the same points for interpolation but with the following changes:

—Perform interpolation using EER or COP values and then derive the energy input by dividing capacity by EER or COP;

—Perform parabolic interpolation.

The advantage of this approach allows for the interpolation of EER (COP) versus interpolation of energy input.

The procedure relies on three performance points for evaluation of the unit performance in the intermediate speed operation range. The three points are:

—Maximum speed balance point (the intersection point between the building load line and the heat pump capacity line at the maximum speed);

—Minimum speed balance point (the intersection point between the building load line and the heat pump capacity line at the minimum speed); and

—Intermediate speed point (the intersection point between the building load line and the heat pump capacity line at the intermediate speed at which the unit was tested at 87°F temperature).

At these three points the unit capacity and power are known. To evaluate power NBS recommended obtaining power in the intermediate speed region through evaluating EER (COP) at the three points, interpolating EER (COP) at required temperature bins, and using the building loads at these temperatures and EERs (COPs).

NBS explained that since the capacity line, i.e., the building load line, is straight, the power line could also be a straight line if EER were independent of temperature. If EER was prescribed by a linear equation, the power line equation will be of a higher order. Thus the complexity of the power line is affected by the complexity of the EER line, with the power line always more complex.

NBS recommends the parabolic interpolation for two reasons:

—Unlike the power line, the EER (COP) line in the intermediate speed region may be either convex or concave. A straight line interpolation would unduly benefit systems with intermediate EERs following a concave line.

—From the comments received it appears that the EER line is of the second or higher order. Although different systems may have different characteristics, a parabolic fit should give the best estimation of the EER line with three data points as input.

Trane commented that the intermediate speed test should be run at a speed one-third of the way between the maximum speed and the minimum speed. (Trane, No. 26, at 17.) Trane's recommendation calls for the same speed in the cooling mode and the heating mode based on the maximum speed and minimum speed in the cooling mode.

Carrier commented that the intermediate speed test should not be fixed, but rather be specified in terms of minimum and maximum compressor speeds and respective capacities. (Carrier, No. 40, at 11.)

Lennox commented that the compressor speed at the intermediate speed test should be "tied down" better, perhaps in terms of inverter frequency. (Lennox, No. 35, at 4.) Carrier supported the proposed intermediate speed tolerance of plus or minus 10 percent. Trane considered this tolerance to be wide and suggested narrowing it to plus or minus 5 percent. York commented that system capacity at Tout=47°F used for calculation of the minimum and maximum DHR should be obtained at the compressor speed corresponding to maximum speed in the cooling mode.

DOE found that the speed for the intermediate speed test proposed in the proposed rule (average between the maximum and minimum compressor speeds) results in a capacity significantly greater than the building load at 87°F. Two commenters stated that description of the speed being one-third between the maximum speed and the minimum speed provides a reasonable estimate of the proper speed for the intermediate speed test. DOE also concurred with the need to identify the intermediate speed precisely to create repeatable tests. For this reason the intermediate speed is identified in terms of inverter frequency with a tolerance of plus 5 percent or the next higher step above the calculated speed. The maximum and minimum speeds to be used are those for the cooling mode:

Intermediate speed = min. speed + ⅓ (max. speed—min. speed)

It was suggested that 12 minutes on-time should be allowed only if the minimum speed is half the maximum speed. The off-time should be 18 minutes to reflect the decrease off-time variable-speed systems should provide. (Lennox, No. 35, at 4.) York commented that compressor on-time should be increased for variable-speed units but this increase should not be set arbitrarily to 12 minutes; the amount of increase should depend on the maximum to minimum capacity ratio. (York, No. 28, at 6.)

NBS pointed out that the amount of time prescribed as on-time and off-time for the cyclic test, following basic thermostat relationships, could be evaluated by the equations:

$$Ton = 6\ min \times Qmax/Qmin$$
$$Toff = 4 \times Ton$$

Following these equations, the time of the cycle would depend on the capacity modulation ration allowing longer on-time (and off-time) for systems with greater capacity modulation capability. NBS presented data for which a system with capacity modulation ratio of two, the penalty is less that five percent, while for a system with capacity modulation ratio of three, the penalty is less than 2.5 percent. Consequently, DOE believes that it is not practical to prescribe tests longer than one hour (12 minutes on, and 48 minutes off). Today's rule includes DOE's determination of the following cycle times for variable-speed units for both cooling and heating T_{on} is 12 minutes and T_{off} 48 minutes in order to retain the 20 percent on-time used in the single speed system procedure.

Trane suggested adding an optional nominal capacity test to allow the ratings to reflect energy savings of systems in which the maximum speed in the heating mode is greater than the maximum speed in the cooling mode. Trane suggested defining this nominal capacity as the capacity obtained at the compressor speed which is the lesser of the maximum speed allowed by controls in the cooling mode and the heating mode. (Trane, No. 26, at 17). DOE has adopted this test in today's rule as an optional test to be included for manufacturers with units which have the necessary characteristics to implement this test.

Carrier commented that the procedure should have provision for fan delay. The capacity integration period should include 12 minutes on-time plus the period of the fan delay. Similarly, the fan power should be integrated for 12 minutes plus the fan period. (Carrier, No. 4, at 11). NBS agreed with this comment if DOE decided to retain the damper test method.

DOE, in its decision to retain the damper method, has concluded that fan delay for variable-speed systems should be treated the same as for the current single-speed and two-speed units. This will provide a common perspection for units with fan delay verses those without fan delay.

NBS commented that if HSPF calculations are performed for the maximum design heating requirement, the procedure will underestimate energy input to the electric heater, overestimating the efficiency descriptor because the intersection point between the building load line and the maximum speed capacity line would fall around 35°F temperature. NBS recommended using the maximum speed capacity line with degradation due to frost accumulation as is done in the procedure for the single-speed systems by applying system capacity, Q(35), and power, E(35), at 35 °F outdoor temperature.

The NBS recommendations include correction factors of ten percent for capacity and 1.5 percent for power. These factors were selected after a review of test data of heat pumps equipped with demand defrost controls. NBS further recommended the tolerance for power measurement of 0.5 percent be maintained for variable-speed systems.

DOE evaluated the NBS comments on the capacity and energy input lines for determining HSPF and agrees that the method is sound. Therefore, the variable-speed procedure includes degradation due to frost accumulation at the maximum speed. The capacity and power of a variable-speed system at the maximum speed will be evaluated based on performance at 17 °F, 47 °F and 35 °F outdoor temperatures. The NBS equations are included in today's rulemaking.

9. Transition Period

Several commenters expressed concern with the impact of the effective date of the new procedures and any transition period. Since these comments addressed the implementation of a new test procedure for single speed and two-speed units other than the damper method, DOE has decided that these concerns have been resolved with DOE's decision to retain the damper method.

Since this amendment to the central air conditioner test procedure is concerned only with the demand defrost credit and additional procedures for split-type ductless systems, variable-speed systems, and untested combinations, DOE believes that a transition period is not necessary.

The amendments for new models will be effective 180 days after publication in the **Federal Register.**

During the period between publication and effective date, all manufacturers using an alternative method to rate untested combinations of central air conditioners or heat pumps must submit the necessary data to DOE for review and approval. Failure to receive approval for the alternative rating method will require manufacturers to amend the method or use testing to rate the equipment. Submittals of alternative rating methods should be made within three months of publication of today's rulemaking in order for review and approval to be assured by the effective date of this amendment. Those manufacturers not receiving approval prior to the effective date, must submit a written request to DOE for an extension.

c. Procedural Matters

1. *Test Procedures.* The test procedures for central air conditioners prescribed today are included in Subpart B of Part 430 and are substantially the same as those established in the existing procedures with the exception of the changes discussed above. Appendix M of Subpart B provides test procedures for those models of central air conditioners currently requiring waivers. The changes to appendix M of Subpart B do not incorporate the ASHRAE and ARI commercial standards contained in the proposed rulemaking, thus the requirements of the Federal Energy Administration Act do not apply.

2. *General Provisions.* Today's rulemaking contains the definitions of "central air conditioner," and "heat pump" as identified in NAECA and DOE's definition of a "coil family."

3. *Application of Test Procedures.* The test procedures prescribed today address variable-speed systems and split-type ductless systems. The revision of the demand defrost credit in today's notice applies to all system types. The new procedures will provide ratings comparable to those ratings already received pursuant to granted waiver test procedures. The compatibility of the new rating procedures with those established in prior rulemakings creates no conflict with the conservation standards established by NAECA.

d. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, DOE submitted a copy of this notice to the Administrator of the Environmental Protection Agency on January 29, 1987, for his comments

concerning the impact of this proposal on the quality of the environment. A response, dated April 6, 1987, was received expressing support of the rulemaking.

Since test procedures under the energy conservation program for consumer products will be used only to standardize the measurement of energy usage, and will not affect the quality of distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore, has determined that prescribing test procedures under the energy conservation program for consumer projects clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environment Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the final rule.

e. Review Under Executive Order 12291

This final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines "major rule"as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United State-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule only amends existing test procedures for central air conditioners and heat pumps, adding procedures for innovative designs such as variable-speed heat pumps and split type ductless systems. These procedures only serve to relieve the burden of requesting waivers. Therefore, DOE has determined that any burden imposed on any person, industry, or government entity by the amendment of existent procedures, is not sufficient to bring the final rule within the definition of "major rule."

f. Regulatory Flexibility

The Regulatory Flexibility Act, Pub. L. 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the final rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The final rule affects manufacturers of central air conditioners and heat pumps. As previously discussed, the changes will not have significant economic impacts, but rather will simply improve the test procedures. Furthermore, DOE is not aware of any central air conditioner manufacturers that would be considered small entities under the Act. Therefore, DOE certifies that the final rule will not have a "signficant economic impact on a substantial number of small entities."

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 95-619; and Pub. L. 100-12, Department of Energy Organization Act, Pub. L. 95-91).

List of Subjects in 10 CFR Part 430

Administrative practice and procedures, Energy conservation, Household appliances.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below, effective September 12, 1988.

Issued in Washington, DC, March 2, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, and National Appliance Energy Conservation Act (42 U.S.C. 6291-6309).

2. Section 430.2 is amended by deleting the definitions of "Air-source heat pump", "Cooling only unit", and "Water-source heat pump" and by revising the definition of "Central air conditioner" and "Heat pump" and adding the definition of a "Coil family" to read as follows:

§ 430.2 Definitions.

* * * * *

"Cental air conditioner" means a product, other than a packaged terminal air conditioner powered by single phase electric current, which is air-cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling only unit.

* * * * *

"Heat pump" means a product, other than a packaged terminal heat pump, which consists of one or more assemblies, powered by single phase electric current, rated below 65,000 Btu per hour, utilizing an indoor conditioning coil, compressor, and refrigerant-to-outdoor air heat exchanger to provide air heating, and may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

* * * * *

"Coil family" means a group of coils with the same basic design features that affect the heat exchanger performance. These features are the basic configuration, i.e., A-shape, V-shape, slanted or flat top, the heat transfer surfaces on refrigerant and air sides (flat tubes vs. grooved tubes, fin shapes), the tube and fin materials, and the coil circuitry. When a group of coils has all these features in common, it constitutes a "coil family."

3. Section 430.22 is amended by revising paragraph (m) to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(m) *Cental Air Conditioners.* (1) The estimated annual operating cost for cooling-only units and air-source heat pumps shall be one of the following:

(i) For cooling-only units or the cooling portion of the estimated annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the cooling capacity, in Btu's per hour, determined from the steady-state wet-coil test (Test A) measured at the highest compressor speed, as described in section 3.1 of Appendix M to this subpart, divided by the seasonal energy efficiency ratio, in Btu's per watt-hour, determined from section 5.1 of Appendix M to this subpart; (B) the representative average use cycle for cooling of 1,000 hours per year; (C) a conversion factor of 0.001 kilowatt per watt; and (D) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year;

(ii) For air-source heat pumps which provide only heating or the heating portion of the estimated annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the

standardized design heating requirement, in Btu's per hour, nearest to the capacity measured in the high temperature test, determined in sections 5.2 and 6.2.6 of Appendix M to this subpart, divided by the heating seasonal performance factor, in Btu's per watt-hour, calculated for heating region IV corresponding to the above mentioned standardized design heating requirement determined from section 5.2 of Appendix M to this subpart; (B) the representative average use cycle for heating of 2,080 hours per year; (C) the adjustment factor of 0.77 which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system; (D) a conversion factor of 0.001 kilowatt per watt; and (E) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year; or

(iii) For air-source heat pumps which provide both heating and cooling, the estimated annual operating cost is the sum of the quantity determined in paragraph (m)(1)(i) of this section added to the quantity determined in paragraph (m)(1)(ii) of this section.

(2) The estimated regional annual operating cost for cooling-only units and for air-source heat pumps shall be one of the following:

(i) For cooling-only units or the cooling portion of the estimated regional annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the cooling capacity, in Btu's per hour, determined from the steady-state wet-coil test (Test A) measured at the highest compressor speed, as described in section 3.1 of Appendix M to this subpart, divided by the seasonal energy efficiency ratio, in Btu's per watt-hour, determined from section 5.1 of Appendix M to this subpart; (B) the estimated number of regional cooling load hours per year determined from section 6.1.3 of Appendix M to this subpart; (C) a conversion factor of 0.001 kilowatts per watt; and (D) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year;

(ii) For air-source heat pumps which provide only heating or the heating portion of the estimated regional annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the standardized design heating requirement, in Btu's per hour, nearest to the capacity measured in the high temperature test (Test A), determined in sections 5.2 and 6.2.6 of Appendix M to this subpart, divided by the heating seasonal performance factor, in Btu's per watt-hour, calculated for the appropriate region of interest and corresponding to the above mentioned standardized design heating requirement determined from section 5.2 of Appendix M to this subpart; (B) the estimated number of regional heating load hours per year determined from section 6.2.5 of Appendix M to this subpart; (C) the adjustment factor of 0.77 which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system; (D) a conversion factor of 0.001 kilowatts per watt; and (E) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year; or

(iii) For air-source heat pumps which provide both heating and cooling, the estimated regional annual operating cost is the sum of the quantity determined in paragraph (m)(3)(i) of this section added to the quantity determined in paragraph (m)(3)(ii) of this section.

(3) The measure(s) of efficiency for cooling-only units and air-source heat pumps shall be one or more of the following:

(i) The seasonal energy efficiency ratio for cooling-only units and air-source heat pumps which provide cooling shall be the seasonal energy efficiency ratio, in Btu's per watt-hour, determined according to section 5.1 of Appendix M to this subpart, rounded off to the nearest 0.05.

(ii) The heating seasonal performance factors for air-source heat pumps shall be the heating seasonal performance factors, in Btu's per watt-hour, determined according to section 5.2 of Appendix M to this subpart for each applicable standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(iii) The annual performance factors for air-source heat pumps which provide heating and cooling, shall be the annual performance factors, in Btu's per watt-hour, determined according to section 5.3 of Appendix M to this subpart for each standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(4) Other useful measures of energy consumption for central air conditioners shall be those measures of energy consumption which the Secretary of Energy determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix M to this subpart.

(5) After September 12, 1988, all measures of energy consumption shall be determined by the test method as set forth in Appendix M to this subpart; or by an alternate rating method set forth in § 430.23(m)(4) as approved by the Assistant Secretary for Conservation and Renewable Energy in accordance with § 430.23(m)(5).

* * * * *

4. Section 430.23 is amended by revising paragraphs (m) (2) through (7) to read as follows:

§ 430.23 Units to be tested.

* * * * *

(m) * * *

(2) The condenser-evaporator coil combination selected for tests pursuant to paragraph (m)(1) of this section shall be that combination manufactured by the condensing unit manufacturer likely to have the largest volume of retail sales. Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provisions of paragraphs (m)(1)(i) and (m)(1)(ii) of this section. For every other condenser-evaporator coil combination manufactured by the same manufacturer or in part by a component manufacturer using that same condensing unit, either—

(i) A sample of sufficient size, comprised of production units or representing production units, shall be tested to ensure that the requirements of paragraphs (m)(1)(i) and (m)(1)(ii) of this section are met for such other condenser-evaporator coil combinations; or

(ii) The representative values of the measures of energy consumption shall be based on an alternative rating method that has been approved by DOE in accordance with the provisions of paragraphs (m)(4) and (m)(5) of this section.

(3) Whenever the representative values of the measures of energy consumption, as determined by the provisions of paragraph (m)(2)(ii) of this section, do not agree within five percent of the representative values of the measures of energy consumption as determined by actual testing, the representative values determined by actual testing shall be used to comply with section 323(c) of the Act, or to comply with rules prescribed under section 324 of the Act.

(4) The basis of the alternative rating method referred to in paragraph (m)(2)(ii) of this section shall be a

representation of the test data and calculations of a mechanical vapor compression refrigeration cycle. The major components in the refrigeration cycle shall be modeled as "fits" to manufacturer performance data or by graphic or tabular performance data. Heat transfer characteristics of coils may be modeled as a function of face area, number of rows, fins per inch, refrigerant circuitry, air flow rate and entering air enthalpy. Additional performance-related characteristics to be considered may include type of expansion device, refrigerant flow rate through the expansion device, power of the indoor fan and degradation coefficient.

(5) Manufacturers who elect to use an alternative rating method for determining measures of energy consumption under paragraphs (m)(2)(ii) and (m)(4) of this section must submit a request to DOE for reviewing the alternative rating method to the Assistant Secretary of Conservation and Renewable Energy, 1000 Independence Avenue, SW., Washington, DC 20585, and receive approval to use the alternative method by the Assistant Secretary before the alternative method may be used for rating central air conditioners.

(6) Each request to DOE for reviewing an alternative rating method shall include:

(i) The name, address and telephone number of the official representing the manufacturer.

(ii) Complete documentation of the alternative rating procedure, including the computer code when a computer model is used.

(iii) Test data for two coils from two different coil families for two different condensing units. The tested capacities for the matched systems for the two condensing units shall differ by at least a factor of two. Rating information for the mixed systems shall include the ratings from testing, and from the alternative rating method.

(iv) Complete test data, product information, and related information to allow DOE to verify the rating information submitted by the manufacturer.

(7) Manufacturers that elect to use an alternative rating method for determining measures of energy consumption under paragraphs (m)(2)(ii) and (m)(4) of this section must either subject a sample of their units to independent testing on a regular basis, e.g., voluntary certification program, or have the representations reviewed and certified by an independent state-registered professional engineer who is not an employee of the manufacturer. The registered professional engineer is to certify that the results of the alternative rating procedure accurately represent the energy consumption of the unit(s). The manufacturer is to keep the registered professional engineer's certifications on file for review by DOE for as long as said combination is made available for sale by the manufacturer. Any change to be made to the alternative rating method, must be approved by DOE prior to its use for rating.

* * * * *

Appendix M to Subpart B—[Amended]

5. Appendix M to Subpart B of Part 430 is amended by deleting sections 2.4, 3.4, 4.4, 5.4, 5.5, 5.6 and deleting from the seventh paragraph, section 5.2, the sentence "For units with demand defrost control system * * *," revising the headings for sections 2.1, 2.2., 3.1, 3.2, 4.1, and 4.2, adding five sentences at the end of section 4.1.1.2, adding one sentence at the end of 4.2.1.2 and 4.2.1.3, adding a paragraph to the end of section 5.2 and adding sections 2.1.5 through 2.1.7, 2.2.3 through 2.2.5, 3.1.5 through 3.1.7, 3.2.3 through 3.2.5, 4.1.1.3 through 4.1.1.5, and 5.1.5, 5.1.6, 5.1.7, 5.2.3, 5.2.4 and 5.2.5.

* * * * *

2.1 *Testing required for air source cooling only units.*

* * * * *

2.1.5 *Testing required for units with triple-capacity compressors.* (Reserved)

2.1.6 *Testing required for units with variable-speed compressors.* The tests for variable-speed equipment consist of five (5) wet coil tests and two (2) dry coil tests. Two of the wet coil tests, A and B, are conducted at the maximum speed. Two wet coil tests, B_2 and low temperature test, are conducted at the minimum speed. The fifth wet coil test is conducted at an intermediate speed. Dry coil tests, C and D, are conducted at the minimum speed if the coefficient of degradation (C_D) value of 0.25 is not adopted. The test conditions and procedures for the above are outlined in sections 3.1 and 4.1 of this Appendix.

2.1.7 *Testing required for split-type ductless systems.* The tests for split-type ductless systems are determined by the type of compressor installed in the outdoor unit. For the appropriate tests refer to sections 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, or 2.1.6 of this Appendix.

2.2 *Testing required for air source heating only units.*

* * * * *

2.2.3 *Testing required for units with triple-capacity compressors.* (Reserved)

2.2.4 *Testing required for units with variable-speed compressors.* There are seven basic tests and one optional test for variable-speed units. Three tests (high temperature test, low temperature test, and frost accumulation test) are performed at the maximum speed. Three tests (two high temperature and one cyclic test) are performed with the unit operating at minimum speed. A second frost accumulation test is performed at an intermediate speed. The intermediate speed is the same as in the cooling mode.

In lieu of the maximum speed frost accumulation test, two equations are provided in section 4.2 of this Appendix. In lieu of the cyclic test an assigned value of 0.25 may be used for the coefficient of degradation C_D. The optional test is a nominal capacity test applicable to units which have a heating mode maximum speed greater than the cooling mode maximum speed. The conditions and procedures for the above tests are described in sections 3.2 and 4.2 respectively, of this Appendix.

2.2.5 *Testing required for split-type ductless system.* The type of compressor installed in the outdoor unit determines the testing required, refer to previous sections 2.2.1, 2.2.2, 2.2.3, or 2.2.4. The conditions and procedures will be modified as indicated for the various types as stated in sections 3.2 and 4.2 respectively.

* * * * *

3.1 *Testing conditions for air source cooling only units.*

* * * * *

3.1.5 *Testing conditions for units with triple-capacity compressors.* (Reserved)

3.1.6 *Additional testing conditions for cooling-only units with variable-speed compressors.* For cooling-only units and air-source heat pumps with varaible-speed compressors, the air flow rate at fan speeds less than the maximum fan speed shall be determined by using the fan law for a fixed resistance system. The air flow rate is given by the ratio of the actual fan speed to the maximum fan speed multiplied by the air flow rate at the maximum fan speed. Minimum static pressure requirements only apply when the fan is running at the maximum speed.

3.1.6.1 *Testing conditions for steady-state wet coil tests.* Tests A and B shall be performed at the maximum speed at conditions specified in section 3.1.1 of this Appendix. Test B_2 and the low temperature test are performed at the minimum speed with outdoor dry bulb temperatures of 82°F and 67°F respectively. The intermediate speed wet coil test is performed at the outdoor dry bulb temperature of 87°F. For units which reject condensate the outdoor wet bulb temperature shall be maintained at 75°F for Test A, 65°F for Tests B and B_2, 53.5°F for the low temperature test and 69°F for the intermediate test. The indoor conditions for all wet coil tests are the same as those given in section 3.1.1 of this Appendix.

3.1.6.2 *Test conditions for dry coil tests.* Dry coil Tests C and D are conducted at an outdoor dry bulb temperature of 67°F. For units which reject condensate the outdoor wet bulb temperature shall be maintained at 53.5°F. The indoor dry bulb temperature shall be 80°F and the wet bulb temperature shall be sufficiently low so no condensation occurs on the evaporator (It is recommended that an indoor wet bulb temperature of 57°F or less be used).

3.1.7 *Split-type ductless systems.* Test conditions shall be the same as those specified for the same single outdoor unit compressor type, assuming it was matched with a single indoor coil.

3.1.7.1 *Interconnection.* For split-type ductless systems, all standard rating tests shall be performed with a minimum length of 25 feet of interconnecting tubing between each indoor fan-coil unit and the common outdoor unit. Such equipment in which the interconnection tubing is furnished as an integral part of the machine not recommended for cutting to length shall be tested with complete length of tubing furnished, or with 25 feet of tubing, whichever is greater. At least 10 feet of the interconnection tubing shall be exposed to the outside conditions. The line sizes, insulation and details of installation shall be in accordance with the manufacturer's published recommendation.

3.1.7.2 *Control testing conditions for split-type ductless systems.* For split-type ductless systems, a single control circuit shall be substituted for any multiple thermostats in order to maintain a uniform cycling rate during test D and the high temperature heating cyclic test. During the steady-state tests, all thermostats shall be shunted resulting in all indoor fan-coil units being in operation.

3.1.7.3 *Split-type ductless systems with multiple coils or multiple discharge outlets shall have short plenums attached to each outlet.* Each plenum shall discharge into a single common duct section, the duct section in turn discharging into the air measuring device (or a suitable dampering device when direct air measurement is not employed). Each plenum shall have an adjustable restrictor located in the plane where the plenums enter the common duct section for the purpose of equalizing the static pressures in each plenum. The length of the plenum is a minimum of $2.5\times(A\times B)^{.5}$, A = width and B = height of duct or outlet. Static pressure readings are taken at a distance of $2\times(A\times B)^{.5}$ from the outlet.

3.2 *Testing conditions for air source heating only units.*

* * * * *

3.2.3 *Testing conditions for units with triple-capacity compressors.* (Reserved)

3.2.4 *Testing conditions for units with variable-speed compressors.* The testing condition for variable-speed compressors shall be the same as those for single speed units as described in section 3.2.1 of this Appendix with the following exceptions: the cyclic test is performed with an outdoor dry bulb temperature of 62°F and a wet bulb temperature of 56.5°F. The optional, nominal capacity test shall be performed at the conditions specified for the 47°F high temperature test.

3.2.5 *Testing conditions for split-type ductless system.* The testing conditions for split-type ductless systems shall be based on the type of compressor installed in the single outdoor unit. The heating mode shall have the same piping and control requirements as in 3.1.7.

* * * * *

4.1 *Test procedures for air source cooling-only units.*

* * * * *

4.1.1.2 * * *

Cooling cyclic tests for variable-speed units shall be conducted by cycling the compressor 12 minutes "on" and 48 minutes "off". The capacity shall be measured for the integration time (θ), which is the compressor "on" time of 12 minutes or the "on" time as extended by fan delay, if so equipped. The electrical energy shall be measured for the total integration time (θ_{cyc}) of 60 minutes. In lieu of conducting C and D tests, an assigned value of 0.25 shall be used for the degradation coefficient for cooling, C_D.

4.1.1.3 *Testing procedures for triple-capacity compressors.* (Reserved)

4.1.1.4 *Intermediate cooling steady-state test for units with variable-speed compressors.* For units with variable-speed compressors, an intermediate cooling steady-state test shall be conducted in which the unit shall be operated at a constant, intermediate compressor speed (k = i) in which the dry/bulb and wet-bulb temperatures of the air entering the indoor coil are 80°F_{DB} and 67°F_{WB} and the outdoor coil are 87°$_{DB}$ and 69°F_{WB}. The tolerances for the dry-bulb and wet-bulb temperatures of the air entering the indoor and outdoor coils shall be the test operating tolerance and test condition tolerance specified in Table 6.1.1 of this Appendix. The intermediate compressor speed shall be the minimum compressor speed plus one-third the difference between the maximum and minimum speeds of the cooling mode. (Inter. speed = min. speed + ⅓ (max. speed − min. speed.) A tolerance of plus five percent or the next higher inverter frequency step from that calculated is allowed.

4.1.1.5 *Testing procedures for split-type ductless systems.* Cyclic tests of ductless units will be conducted without dampers. The data cycle shall be preceded by a minimum of two cycles in which the indoor fan cycles on and off with the compressor. For the data cycle the indoor fan will operate three minutes prior to compressor cut-on and remain on for three minutes after compressor cut-off. The integration time for capacity and power shall be from compressor cut-on time to indoor fan cut-off time. The fan power for three minutes after compressor cut-off shall be added to the integrated cooling capacity.

* * * * *

4.2 *Testing procedures for air source heating only units.*

* * * * *

4.2.1.2 * * *

The cycle times for variable-speed units is the same as the cyclic time in the cooling mode as specified in section 4.1.1.2 of this Appendix. Cyclic tests of split-type ductless units will be conducted without dampers, and the data cycle shall be preceded by a minimum of two cycles in which the indoor fan cycles on and off with the compressor. During the data cycle for the split type ductless units, the indoor fan will operate three minutes prior to compressor "cut-on" and remain on for three minutes after compressor "cut-off". The integration time for capacity and power will be from compressor "cut-on" time to indoor fan "cut-off" time. The fan power for the three minutes after compressor "cut-off" shall be subtracted from the integrated heating capacity. For split-type ductless systems which turn the indoor fan off during defrost, the indoor supply duct shall not be blocked.

4.2.1.3 * * *

For units with variable-speed compressors, the frost accumulation test at the intermediate speed shall be conducted such that the unit will operate at a constant, intermediate compressor speed (k = i) as determined in section 4.1.1.4 of this Appendix. The following two equations may be used in lieu of the frost accumulation test for variable-speed.

$$(a)\quad Q_{def}^{k=2}(35) = 0.90 \times [Q_{ss}^{k=2}(17) + (Q_{ss}^{k=2}(47) - Q_{ss}^{k=2}(17))] \times (35-17)/(47-17)$$

$$(b)\quad E_{def}^{k=2}(35) = 0.985 \times [E_{ss}^{k=2}(17) + (E_{ss}^{k=2}(47) - E_{ss}^{k=2}(17))] \times (35-17)/(47-17)$$

* * * * *

5.1.5 *Seasonal energy efficiency ratio for air-source units with triple-capacity compressors.* (Reserved)

5.1.6 *Seasonal energy efficiency ratio for air-source units with variable-speed compressors.* For air-source units with variable-speed compressors, the sasonal energy efficiency ratio (SEER), shall be defined as follows:

$$SEER = \frac{\sum_{j=1}^{8} \frac{Q(T_j)}{N}}{\sum_{j=1}^{8} \frac{E(T_j)}{N}}$$

where the number of hours in the j^{th} temperature bin $(n_j)/N$ is defined in Table 6.1.2 of this Appendix.

The SEER shall be determined by evaluating three cases of the compressor operation. Case I is the same as specified in 5.1.3.1 with the exception that the quantities $Q_{ss}^{k=1}(T_j)$ and $E_{ss}^{k=1}(T_j)$ shall be calculated by the following equations:

$$Q_{ss}^{k=1}(T_j) = Q_{ss}^{k=1}(82\ F) + \frac{Q_{ss}^{k=1}(67\ F) - Q_{ss}^{k=1}(82\ F)}{82 - 67} \times (82 - T_j)$$

$$E_{ss}^{k=1}(T_j) = E_{ss}^{k=1}(82\ F) + \frac{E_{ss}^{k=1}(67\ F) - E_{ss}^{k=1}(82\ F)}{82 - 67} \times (82 - T_j)$$

Case II is when the compressor operates at any intermediate (k=v) speed between the maximum (k=2) and minimum (k=1) speeds to satisfy the building cooling load. Evaluate the following equations:

$$Q_{ss}^{k=v}(T_j) = BL\ (T_j)$$

$$E_{ss}^{k=v}(T_j) = \frac{Q_{ss}^{k=v}(T_j)}{EER_{ss}^{k=v}(T_j)}$$

$$\frac{Q(T_j)}{N} = Q_{ss}^{k=v}(T_j) \times \frac{n_j}{N}$$

$$\frac{E(T_j)}{N} = E_{ss}^{k=v}(T_j) \times \frac{n_j}{N}$$

where $E_{ss}^{k=v}(T_j)$ the electrical power input required by the unit to deliver capacity matching the building load at temperature T_j.

where $Q_{ss}^{k=v}(T_j)$ = the capacity delivered by the unit matching the building load at temperature T_j.

$EER_{ss}^{k=v}(T_j)$ = the steady-state energy efficiency ratio at temperature T_j and an intermediate speed at which the unit capacity matches the building load.

Before the steady-state intermediate speed energy efficiency ratio, $EER_{ss}^{k=v}(T_j)$, can be calculated, the unit performance has to be evaluated at the compressor speed (k=i) at which the intermediate speed test was conducted. The capacity of the unit at any temperature T_j when the compressor operates at the intermediate speed (k=i) may be determined by:

$$Q_{ss}^{k=i}(T_j) = Q_{ss}^{k=i}(87) + M_Q\ (T_j - 87)$$

Where:

$Q_{ss}^{k=i}(87)$ = the capacity of the unit at 87°F determined by the intermediate cooling steady-state test.

M_Q = slope of the capacity curve for the intermediate compressor speed (k=i)

$$M_Q = \frac{Q_{ss}^{k=1}(82) - Q_{ss}^{k=1}(67)}{82 - 67} \times (1 - N_Q) + N_Q \times \frac{Q_{ss}^{k=2}(95) - Q_{ss}^{k=2}(82)}{95 - 82}$$

$$N_Q = \frac{Q_{ss}^{k=i}(87) - Q_{ss}^{k=1}(87)}{Q_{ss}^{k=2}(87) - Q_{ss}^{k=1}(87)}$$

Once the equation for $Q_{ss}^{k=i}(T_j)$ has been determined, the temperature where $Q_{ss}^{k=i}(T_j) = BL(T_j)$ can be found. This temperature is designated as (T_{vc}). The electrical power input for the unit operating at the intermediate compressor speed (k=i) and the temperature (T_{vc}) is determined by:

$$E_{ss}^{k=i}(T_{vc}) = E_{ss}^{k=i}(87) + M_E\ (T_{vc} - 87)$$

where:

$E_{ss}^{k=i}(87)$ = the electrical power input of the unit at 87°F determined by the intermediate cooling steady-state test

M_E = scope of the electrical power input curve for the intermediate compressor speed (k=i)

$$M_E = \frac{E_{ss}^{k=1}(82) - E_{ss}^{k=1}(67)}{82 - 67} \times (1 - N_E) + N_E \frac{E_{ss}^{k=2}(95) - E_{ss}^{k=2}(82)}{95 - 82}$$

$$N_E = \frac{E_{ss}^{k=i}(87) - E_{ss}^{k=1}(87)}{E_{ss}^{k=2}(87) - E_{ss}^{k=1}(87)}$$

The energy efficiency ratio of the unit, $EER_{ss}(T_{vc})$, at the intermediate speed (k=i) and temperature T_{vc} can be calculated by the equation:

$$EER_{ss}^{k=i}(T_{vc}) = \frac{Q_{ss}^{k=i}(T_{vc})}{E_{ss}^{k=i}(T_{vc})}$$

Similarly, energy efficiency ratios at temperatures T_1 and T_2 can be calculated by the equations:

$$EER_{ss}^{k=1}(T_1) = \frac{Q_{ss}^{k=1}(T_1)}{E_{ss}^{k=1}(T_1)}$$

$$EER_{ss}^{k=2}(T_2) = \frac{Q_{ss}^{k=2}(T_2)}{E_{ss}^{k=2}(T_2)}$$

where:

T_1 = temperature at which the unit, operating at the minimum compressor speed, delivers capacity equal to the building load ($Q_{ss}^{k=1}(T_1) = BL(T_2)$), found by equating the capacity equation [$Q_{ss}^{k=1}(T_j)$] and building load equation [BL (T_j)] in section 5.1.3 and solving for temperature.

T_2 = temperature at which the unit, operating at the maximum compressor speed, delivers capacity equal to the building load ($Q_{ss}^{k=2}(T_2) = BL(T_2)$), found by equating the capacity equation [$Q_{ss}^{k=2}(T_j)$] and the building equation [BL (T_j)] in section 5.1.3 and solving for temperature.

$EER_{ss}^{k=1}(T_1)$ = the steady state energy efficiency ratio at the minimum compressor speed at temperature T_1.

$EER_{ss}^{k=2}(T_2)$ = the steady state energy efficiency ratio at the maximum compressor speed at temperature T_2.

$E_{ss}^{k=1}(T_1)$ = the electrical power input at the minimum compressor speed at temperature T_1, calculated by the equation in section 5.1.3.

$E_{ss}^{k=2}(T_2)$ = the electrical power input at the maximum compressor speed at temperature T_2, calculated by the equation in section 5.1.3.

The energy efficiency ratio, $EER_{ss}^{k=v}(T_j)$, shall be calculated by the following equation:

$$EER_{ss}^{k=v}(T_j) = A + B \times T_j + C \times T_j^2$$

where coefficients A, B, and C shall be evaluated using the following calculation steps:

$$D = \frac{T_2^2 - T_1^2}{T_{vc}^2 - T_1^2}$$

$$B = \frac{EER_{ss}^{k=1}(T_1) - EER_{ss}^{k=2}(T_2) - D\,(EER_{ss}^{k=1}(T_1) - EER_{ss}^{k=i}(T_{vc}))}{T_1 - T_2 - D \times (T_1 - T_{vc})}$$

$$C = \frac{EER_{ss}^{k=1}(T_1) - EER_{ss}^{k=2}(T_2) - B \times (T_1 - T_2)}{T_1^2 - T_2^2}$$

$$A = EER_{ss}^{k=2}(T_2) - B \times T_2 - C \times T_2^2$$

Case III is the same as specified in 5.1.3.4. The quantities $Q_{ss}^{k=1}(T_j)$ and $E_{ss}^{k=2}(T_j)$ shall be calculated by the equations prescribed in 5.1.3.

5.1.7 *Seasonal energy efficiency ration for split-type ductless systems.* For split-type ductless systems, SEER shall be defined as specified in section 5.1.1 of this Appendix for each combination set of indoor coils to be used with a common outdoor unit.

5.2 * * *

For air-source units that are equipped with "demand defrost control systems", the value for HSPF, as determined above shall be multiplied by an enhancement factor F_{def} to compensate for improved performance not measured in the Frost Accumulation Test. The factor, F_{def} depends on the number of defrost cycles in a 12-hour period and should be calculated as follows:

$F_{def} = 1 + 0.03 \times (1 - (T_{test} - 90)/(T_{max} - 90))$

where:

F_{def} = demand defrost credit (used as a multiplier to HSPF)

T_{test} = time between defrost terminations in minutes or 90, (whichever is greater)

T_{max} = maximum time between defrosts allowed by controls, (in minutes or 720 (whichever is less)

* * * * *

5.2.3 *Heating seasonal performance factor for air-source units with triple-capacity compressors.* (Reserved)

5.2.4 *Heating seasonal performance factor for units with variable-speed compressors.* For units with variable-speed compressors, the heating seasonal performance factor (HSPF) is defined by the following equation:

$$HSPF = \frac{\sum_j \frac{n_j}{N} \; BL(T_j)}{\left(\sum_j \frac{E(T_j)}{N} + \sum_j \frac{RH\ (T_j)}{N}\right)}$$

where: all symbols in the above equations are as defined in 5.2.2.

The minimum and maximum heating design requirements, DHR_{min} and DHR_{max}, which a variable-speed heat pump is likely to encounter, shall be evaluated as described for two-speed units in 5.2.2. with the option of using the nominal capacity, $Q_{ss}^{k=n}(47°\ F)$, in lieu of the maximum speed capacity, $Q_{ss}^{k=2}(47)$, in the prescribed equations if the manufacturer performed the nominal capacity test.

In evaluation of HSPF, three cases are considered, the quantities $E\ (T/N_j)$ and $RH(T/N_j)$ shall be calculated depending on compressor mode of operation.

Case I

The compressor operates at the minimum speed (k = 1) for which the building heating load, $BL(T_j)$, is less than or equal to the heating capacity, $Q_{ss}^{k=1}(T_j)$.

Calculations shall be performed as prescribed for two-speed systems in Case I of 5.2.2. with the exception that system capacity $Q_{ss}^{k=1}(T_j)$, and power, $E_{ss}^{k=1}(T_j)$, shall be calculated by the following equeations:

$$Q_{ss}^{k=1}(T_j) = Q_{ss}^{k=1}(47) + \frac{Q_{ss}^{k=1}(62) - Q_{ss}^{k=1}(47)}{15} \times (T_j - 47)$$

$$E_{ss}^{k=1}(T_j) = E_{ss}^{k=1}(47) + \frac{E_{ss}^{k=1}(62) - E_{ss}^{k=1}(47)}{15} \times (T_j - 47)$$

Case II

The compressor operates at any intermediate (k = v) speed between the maximum speed (k = 2) and minimum (k = 1) speed to satisfy the building load.

Evaluate the following equations:

$$Q^{k=v}(T_j) = BL(T_j)$$

$$\frac{Q(T_j)}{N} = Q^{k=v}(T_j) \times \frac{n_j}{N}$$

$$E^{k=v}(T_j) = \frac{Q^{k=v}(T_j)}{3.413 \times COP^{k=v}(T_j)}$$

$$\frac{E(T_j)}{N} = E^{k=v}(T_j) \times \frac{n_j}{N}$$

where:

$Q^{k=v}(T_j)$ = capacity delivered by the unit at any intermediate speed between the minimum and maximum compressor speed matching the building load at temperature T_j

$E^{k=v}(T_j)$ = the electrical power input required by the unit at temperature T_j to deliver capacity matching the building load

$COP^{k=v}(T_j)$ = the coefficient of performance at which the unit delivers capacity matching the building load at temperature T_j

Before the coefficient of performance, $COP^{k=v}(T_j)$, can be calculated, the unit performance has to be evaluated at the compressor speed (k = i) at which the intermediate speed test was conducted. The capacity of the unit at any temperature T when compressor operates at the

intermediate speed (k=i) may be determined by:

$Q_{def}^{k=i}(T_j) = Q_{def}^{k=i}(35) + M_Q(T_j - 35)$

where:

$Q_{def}^{k=i}(35)$ = the capacity of the unit at 35°F determined at the intermediate compressor speed (k=i) in the frost accumulation test

M_Q = slope of the capacity curve for the intermediate compressor speed (k=i)

$$M_Q = \frac{Q_{ss}^{k=1}(62) - Q_{ss}^{k=1}(47)}{62 - 47} \times (1 - N_Q) + N_Q \frac{Q_{def}^{k=2}(35) - Q_{ss}^{k=2}(17)}{35 - 17}$$

$$N_Q = \frac{Q_{def}^{k=i}(35) - Q_{ss}^{k=1}(35)}{Q_{def}^{k=2}(35) - Q_{ss}^{k=1}(35)}$$

Once the equation for $Q^{k=i}(T_j)$ has been determined, the temperature where $Q_{def}^{k=i}(T_j) = BL(T_j)$ can be found. This temperature is designated at T_{vh}. A separate T_{vh} shall be determined for each design heating requirement.

The electrical power input for the unit operating at the intermediate compressor speed (k=v) and at the temperature (T_{vh}) is determined by:

$E_{def}^{k=i}(T_{vh}) = E_{def}^{k=i}(35) + M_E(T_{vh} - 35)$

where:

$E_{def}^{k=i}(35)$ = the electrical power input of the unit at 35 °F determined at the intermediate compressor speed (k=i) in the frost accumulation test

M_E = slope of the electrical power input curve for the intermediate compressor speed (k=i)

$$M_E = \frac{E_{ss}^{k=1}(62) - E_{ss}^{k=1}(47)}{62 - 47} \times (1 - N_E) + N_E \frac{E_{def}^{k=2}(35) - E_{ss}^{k=2}(17)}{35 - 17}$$

$$N_E = \frac{E_{def}^{k=i}(35) - E_{ss}^{k=1}(35)}{E_{def}^{k=2}(35) - E_{ss}^{k=1}(35)}$$

The coefficient of performance, $COP^{k=i}(T_{vh})$, at the intermediate speed (k=i) and temperature T_{vh} can be calculated by the equation:

$$COP^{k=i}(T_{vh}) = \frac{Q_{def}^{k=i}(T_{vh})}{3.413 \times E_{def}^{k=i}(T_{vh})}$$

Similarly, coefficients of performance at temperature T_3 and T_4 can be calculated by the equations:

$$COP^{k=1}(T_3) = \frac{Q^{k=1}(T_3)}{3.413 \times E^{k=1}(T_3)}$$

$$COP^{k=2}(T_4) = \frac{Q^{k=2}(T_4)}{3.413 \times E^{k=2}(T_4)}$$

where:

T_3 = temperature at which the unit, operating at the minimum compressor speed, delivers capacity equal to the building load ($Q^{k=1}(T_3) = BL(T_3)$), found by equating the capacity equation $Q^{k=1}(T_j)$ (at T_j 40°F) equal to the building load equation $BL(T_j)$ as identified in section 5.2.2 of this Appendix and solving for temperature

T_4 = temperature at which the unit, operating at the maximum, delivers capacity equal to the building load ($Q^{k=2}(T_4) = BL(T_4)$), found by setting the equation for capacity $Q^{k=2}(T_j)$ equal to the equation for building load $BL(T_j)$ from the two-speed procedure in section 5.2.2 and solving for temperature

$COP^{k=1}(T_3)$ = the coefficient of performance at the minimum compressor speed at temperature T_3

$COP^{k=2}(T_4)$ = the coefficient of performance at the minimum compressor speed at temperature T_4

$Q^{k=1}(T_3)$ = steady-state capacity at the minimum compressor speed at temperature T_3, using equations for $Q^{k=1}(T_j)$ from the two-speed procedure

$Q^{k=2}(T_4)$ = steady-state capacity at the maximum compressor speed at temperature T_4, calculated using the equations $Q^{k=2}(T_j)$ of the two-speed procedure

$E^{k=1}(T_3)$ = the electrical power input at the minimum compressor speed at temperature T_3, calculated by using the equation for $E^{k=1}(T_j)$ (where $T_j \geq 40$ °F) from the two-speed procedure in section 5.2.2 of this Appendix

$E^{k=2}(T_4)$ = the electrical power input at the maximum compressor speed at temperature T_4, calculated by using the equation for $E^{k=2}(T_j)$ from the two-speed procedure in section 5.2.2 of this Appendix

The coefficient of performance, $COP^{k=v}(T_j)$, shall be calculated by the following equation:

$COP^{k=v}(T_j) = A + B \times T_j + C \times T_j^2$

where coefficients A, B and C shall be evaluated using the following calculations step:

$$D = \frac{T_3^2 - T_4^2}{T_{vh}^2 - T_4^2}$$

$$B = \frac{COP^{k=2}(T_4) = COP^{k=1}(T_3 - D \times [COP^{k=2}(T_4) - COP^{k=i}(T_{vh})]}{T_4 - T_3 - D \times (T_4 - T_{vh})}$$

$$C = \frac{COP^{k=2}(T_4) - COP^{k=1}(T_3) - B \times (T_4 - T_3)}{T_4^2 - T_3^2}$$

$$A = COP^{k=2}(T_4) - B * T_4 - C \times T_4^2$$

Case III

The compressor operates at the maximum speed (k=2) for which the building heating load, $BL(T_j)$, is greater than or equal to the heating capacity, $Q_{ss}^{k=2}(T_j)$.

Calculations shall be performed as prescribed for two-speed systems in Case IV of 5.2.2

5.2.5. *Heating seasonal performance factor for split-type ductless systems.* For split-type ductless systems, HSPF shall be defined as specified in section 5.2.1 of this Appendix. Separate values of HSPF shall be determined for each corresponding combination set of indoor coils used in the development of SEER as specified in section 5.1.7. The calculations used shall be the same as those used for unit with the same type of compressor.

* * * * *

[FR Doc. 88-5288 Filed 3-11-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Register

Monday
March 14, 1988

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Presence Sensing Device Initiation of Mechanical Power Presses; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Presence Sensing Device Initiation of Mechanical Power Presses

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its standard for mechanical power presses, 29 CFR 1910.217, Subpart O, to allow (but not require) presence sensing device initiation (PSDI) on certain types of power presses. The amended standard addresses the use of presence sensing devices as well as the entire mechanical power press safety system involved in operating in the PSDI mode. OSHA is also amending the related standard on definitions, 29 CFR 1910.211, as appropriate, to support the revision to the mechanical power press standard.

Until this rulemaking, OHSA did not permit PSDI, but rather required that a mechanical power press operator physically initiate the stroke of the press by using hand controls or a foot pedal. The specific prohibition against PSDI was contained in 29 CFR 1910.217(c)(3)(iii)(*b*).

Because presence sensing device initiation has been used safely in other countries, in one case for over 30 years, and on an experimental basis in the United States since 1976, OSHA believes this prohibition is technically outdated and that PSDI, overall, enhances employee safety. This revision allows a presence sensing device to initiate the stroke of the press automatically when the operator's body is out of the danger zone.

DATE: Appendix C of this final rule will become effective on April 13, 1988 and the balance of this final rule will become effective June 13, 1988. See also "Effective Date" section in **SUPPLEMENTARY INFORMATION.**

ADDRESS: For additional copies of this standard contact: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Publications, Room N–3101, Washington, DC 20210, (202) 523–9667.

FOR FURTHER INFORMATION CONTACT: James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N–3637, Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION: This notice of final rulemaking has been prepared by Carrol Burtner and Judy Goodrich of the Office of Mechanical Engineering Safety Standards.

I. Background

A mechanical power press is a mechanically powered machine that shears, punches, forms or assembles metal or other material by means of cutting, shaping, or combination dies attached to slides. While PSDI will likely have wider application for presses that perform metal stamping operations, any mechanical power press use for materials other than metal may also be considered for PSDI.

A press consists of a stationary bed or anvil, and a slide having a controlled reciprocating motion. The slide, called the ram, is equipped with special punches and moves downward into a die block which is attached to the rigid bed. The punches and the die block assembly are generally referred to as a "die set." The main function of a stamping press is to provide sufficient power to close and open the die set, thus shaping or cutting the metal part set on the die block. The metal part is fed into the die block and the ram descends to perform the desired stamping operation. The danger zone for the operator is between the punches and the die block. This area is referred to as the "point of operation."

Other major components of a mechanical power press, apart from the frame, are the driving motor, the flywheel, the clutch and brake. The flywheel, a large rotating mass powered by the driving motor, transmits energy to the working elements by means of an eccentric (a mechanism which converts circular motion to linear motion), a crankshaft, or other means. The function of the clutch is to connect the rotating flywheel with the crankshaft causing the press to stroke.

The clutch on mechanical power presses is usually either a full-revolution clutch or part-revolution clutch. A full-revolution clutch transfers motion from the flywheel to the ram through a mechanical connector. The connection cannot be broken until one full revolution has been completed. A part-revolution clutch is also referred to as a friction clutch. Motion is transmitted by two pieces of material being pushed against one another. This type of clutch can be disengaged at any time.

The function of the brake is to stop the motion of the ram. The brake may be a constant drag-type (typical on a full-revolution clutch machine), or it may be engaged only while the clutch is disengaged (typical with part-revolution clutch machines). A brake may be a separate unit, or it may be incorporated in a combination unit with the clutch (applies only to friction clutches).

The feeding of the press is the process of placing material in or removing material from the point of operation. It is done by one of the following methods:

Automatic Feeding—the material or part being processed is placed within and removed from the point of operation by mechanical or machine-operated means. An operator is not required to initiate each stroke of the press.

Semiautomatic Feeding—the material or part being processed is placed within or removed from the point of operation by an auxiliary means *controlled* by the operator on each stroke of the press.

Manual Feeding—the material or part being processed is handled by the operator (with or without use of a grasping hand tool) on each stroke of the press.

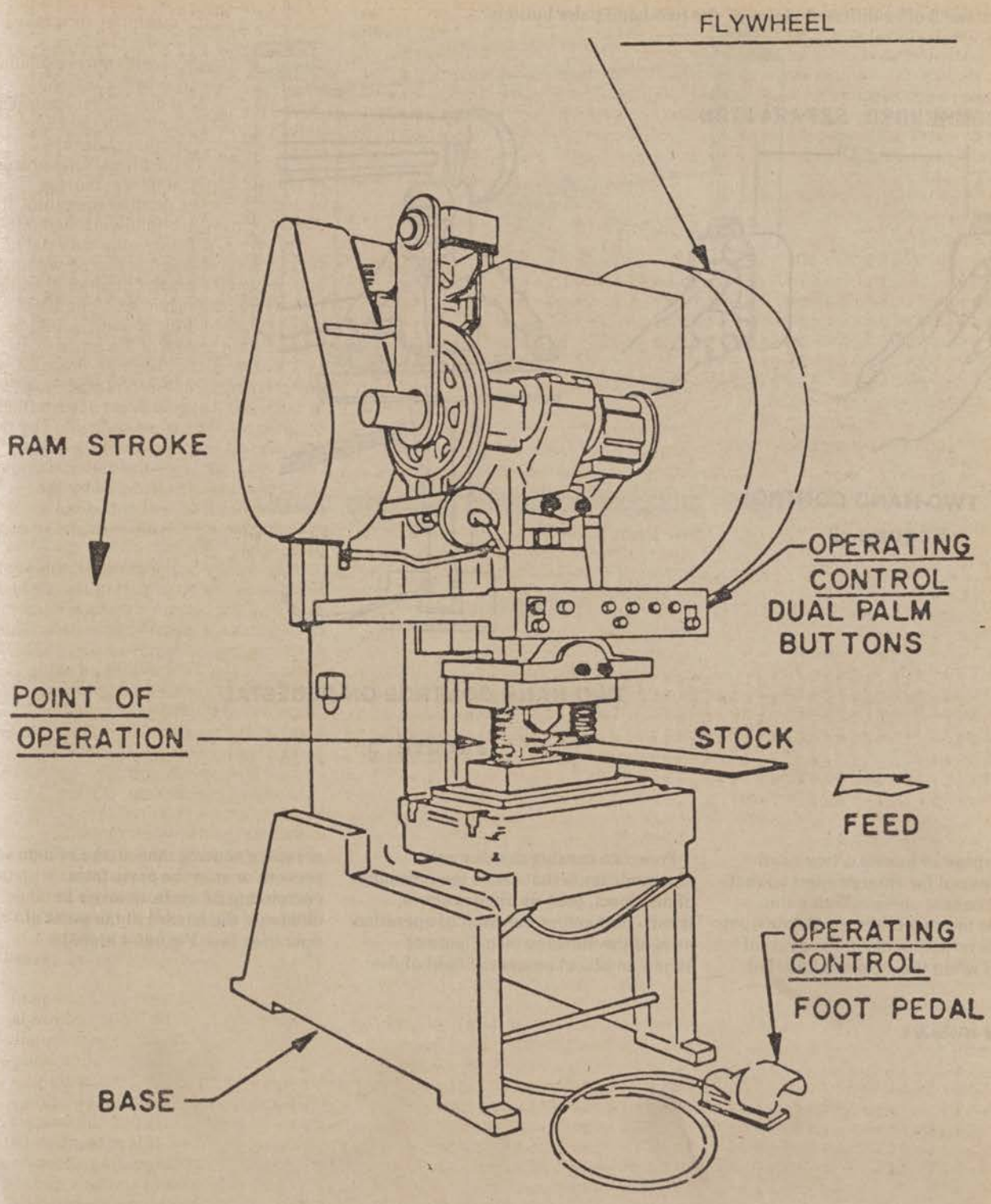
In manually-fed operations, tools can be used to place the part in the die bed such that the operator's hands need never be in the point of operation. This is known as "no-hands-in-die" (NHID). Parts can also be fed without using tools. This latter method is referred to as "hands-in-die" (HID) because the operator's hands actually reach into the point of operation. *PSDI is mainly considered for manually-fed operations.*

Until this rulemaking, OSHA standards have required that a mehanical power press operator *physically initiate* the stroke of a power press by making bodily contact with the operating control (normally a hand or foot control) to "tell" the press to stroke. A special and *overt* action of the operator was necessary for the press to stroke.

The total population of mechanical power presses in the United States is estimated to be 230,000, about equally divided between full revolution and part revolution presses. Approximately 69,000 of the 115,000 part revolution presses are manually fed, the balance being machine fed. It is estimated that 40 percent of the manually fed presses are operated by hand controls and the remaining 60 percent are operated by foot controls.

Figure 1 illustrates a common type of mechanical power press. Note the dual palm buttons and the foot pedal that require direct bodily contact in order to initiate the stroke of the press.

BILLING CODE 4510-26-M

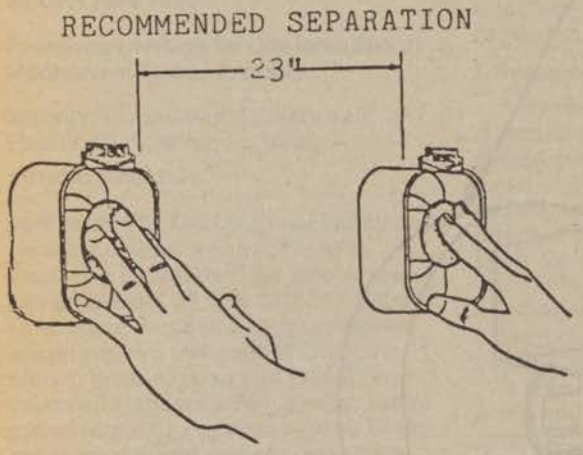


MECHANICAL POWER PRESS
(OBI)

FIGURE 1

BILLING CODE 4510-26-C

Figures 2 and 3 offer different views of the two-hand palm buttons.



TWO-HAND CONTROL

Figure 2

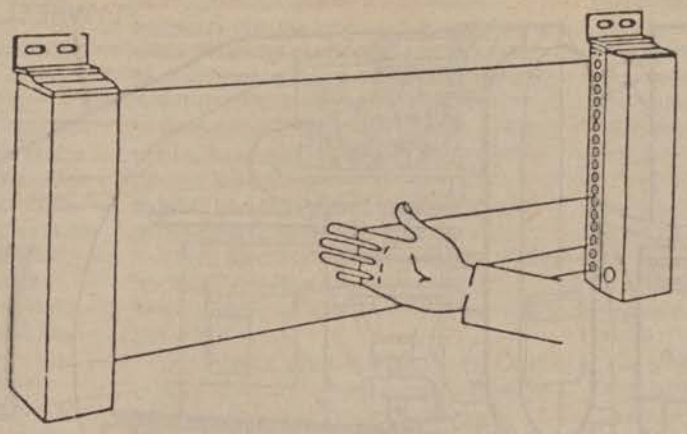
TWO-HAND CONTROL ON PEDESTAL

Figure 3

The purpose of having a two-hand control, spaced far enough apart so that one hand cannot operate both palm buttons, is to prevent the employee from having his or her hands in the point of operation when the stroke is initiated.

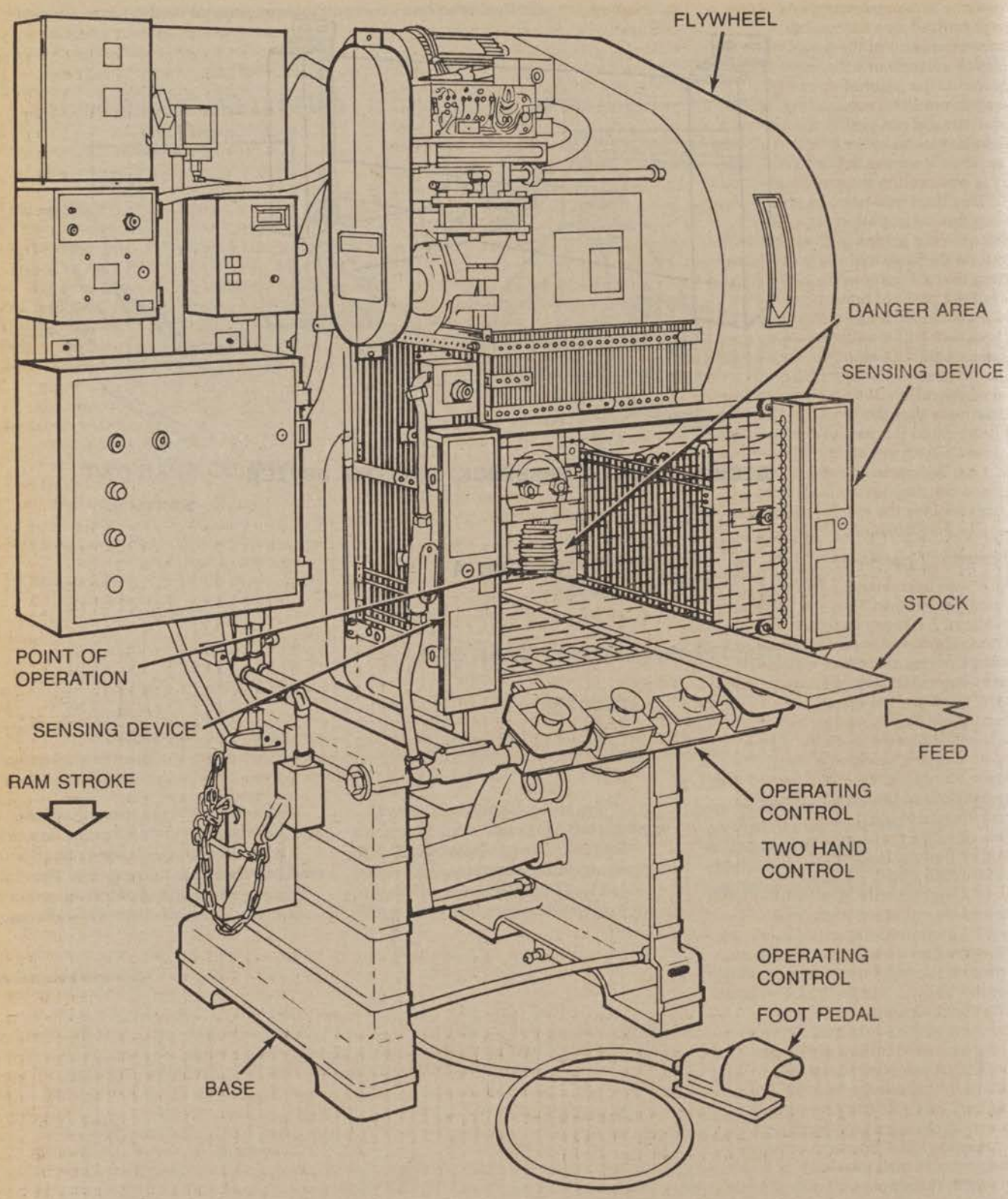
Presence sensing devices are electronic units that sense the presence of an object, such as an operator's hands, that enters the point of operation area of the machine (see Figure 4). When an object enters the field of the presence sensing device, the system will prevent or stop the press from completing its cycle, in order to eliminate the hazard at the point of operation (see Figures 4 and 5).

BILLING CODE 4510-26-M



LIGHT CURTAIN PRESENCE SENSING DEVICE

FIGURE 4



MECHANICAL POWER PRESS WITH PRESENCE SENSING DEVICE

FIGURE 5

BILLING CODE 4510-26-C

Presence sensing devices have long been permitted as a safeguard to prevent operation of the press when the employee's hands or other part of the body are at the point of operation. However, until this rulemaking, OSHA regulations did not permit the presence sensing device to initiate a stroke of the press when it senses that no part of the body is obstructing the presence sensing field. This final rule permits presence sensing device initiation—a system which uses the presence sensing device to initiate the stroke of the press upon sensing that all parts of the body are clear of the point of operation. The device also must sense that all parts of the body are sufficiently far away so that accidental action of the employee cannot expose parts of the body to the point of operation during the stroke, or alternatively that the stroke of the press can be stopped if a part of the employee's body reenters the point of operation. Initiation of the stroke by the presence sensing device makes it unnecessary for the employee to initiate manually the stroke of the press.

A. History of Regulation

PSDI was introduced in West Germany in 1953. In 1971, the Federal Republic of Germany developed the "German Basic Rules for Presence Sensing Devices on Power Operated Presses in the Metalwork Industry" and in 1973, the National Board of Occupational Safety and Health in Sweden developed standards which apply to oversee safety and health in Sweden, Denmark, Finland, Iceland and Norway. Both of these regulations permit the use of PSDI. In the United States, the 1971 revision of the American National Standards Institute voluntary consensus standard, ANSI B11.1, "Safety Requirements for Construction, Care and Use of Mechanical Power Presses," permitted the use of presence sensing devices as safeguards to stop the press if the employee placed part of his or her body in the point of operation during the stroke. However, the standard prohibited their use as a tripping means to initiate the press cycle. OSHA adopted the ANSI standard in its entirety as a Federal regulation (29 CFR 1910.217) in 1971. This action changed the prohibition against using PSDI from a voluntary consensus standard provision to a rule with which the employer was *required* to comply, regardless of preferences, capabilities or changes in technology.

The prohibition was continued to subsequent issues of the ANSI standard. Although not a factor in the OSHA decisional process, in working drafts of revisions to the ANSI standard subsequent to OSHA's published proposal, the prohibition has been deleted. In the comments on the proposal which were received from the ANSI B11.1 subcommittee (Ex. 18–14), it is stated that PSDI will be considered in the forthcoming revision of the standard for mechanical power presses. This exhibit and the other exhibit numbers mentioned may be found in Docket No. S–225 in the OSHA Docket Office, Room N–3670, U.S. Department of Labor, Washington, DC 20210. Telephone: (202) 523–7894.

The ANSI standard adopted by OSHA in 1971 also contained a requirement of "no-hands-in-die." In 1974, through rulemaking under section 6(b) of the Act, OSHA revoked the no-hands-in-die requirement because evidence indicated it did not lead to greater safety and because of feasibility difficulties. OSHA added protective provisions when hands-in-die feeding is used, in order to increase safety (39 FR 41844) (Ex. 14). Further discussion on this subject can be found in Section II, "Public Response."

At that time, OSHA considered but rejected the possibility of deleting the prohibition against using presence sensing devices as a tripping mechanism on mechanical power presses. The rejection was based on the evidence available at the time and in part on the fact that while European countries which authorize this method have procedures and facilities for approval of the presence sensing devices, OSHA did not have the capability for such approval. However, OSHA further stated that the requirement might be reconsidered if a satisfactory means of approval and a regulation could be implemented, and that new evidence indicating the safety of PSDI would of course lead to reconsideration of the earlier decision.

OSHA granted a variance permitting the use of PSDI on an experimental basis to the Interlake Stamping Corporation of Willoughby, Ohio, on August 31, 1976 (41 FR 36703, August 31, 1976) (Ex. 15). It was the opinion of OSHA that the PSDI system might well prove to be an improved safety technique, based on a document submitted by the Swedish National Board of Industrial Safety. OSHA stated, "Their [the National Board] experience has shown no accidents related to the functioning of the light curtain in this mode. It further appears that the simplicity of the system would reduce worker fatigue, a recognized cause of industrial accidents, by eliminating the need for the press operator to manually operate a two-hand control, foot pedal, or other permissible tripping device. In addition, minimizing the operator's task would appear to eliminate an inclination to bypass or inactivate the safeguard. Thus, accidents from these causes could be reduced or eliminated" (41 FR 36703; August 31, 1976) (Ex. 15).

The Interlake Stamping Company variance was the subject of a study done by the Purdue Research Foundation in 1982 under a contract for the National Institute for Occupational Safety and Health (NIOSH) (Exs. 6, 7, 8, 9, 10).

In 1982, OSHA contracted with Mr. Trygve Hauge of Technology 80, Inc., to examine 29 CFR 1910.217 and to recommend appropriate revisions to the standards to allow PSDI. Hauge's report, "Self-Tripping of Mechanical Power Presses" (Ex. 1), contains supporting information and recommended revisions and additions to existing regulations.

Approximately 350 copies of the report were distributed in June 1983 to individuals and organizations that are members of pertinent voluntary consensus standards organizations; that have participated in a previous rulemaking relating to 29 CFR 1910.217; or that otherwise have demonstrated interest in the subject. Critical comments and suggestions were invited on the draft of changes to the standard. There were 55 public comments on the report. They were entered into the record of the proposed rulemaking as Exhibits 4–1 through 4–55.

Based on these studies, the experience under the variance and in Europe, the preproposal comments and other information, OSHA proposed to delete the prohibition on PSDI and incorporate regulatory provisions so that PSDI would be used in a safe manner. The proposal appeared in the **Federal Register** on March 29, 1985, at 50 FR 12700 (Ex. 20). The proposal requested public comments which were due within 90 days, by June 27, 1985. OSHA received 83 comments in response to the proposal (Exs. 18–1 to 18–83).

OSHA also notified the public of its right to request an informal public hearing. Two parties tentatively indicated an interest in holding a hearing. However, after discussions and agreement that there was sufficient information in the record, the hearing requests were withdrawn. No other requests for hearings were received.

B. Basis for Proposal

The principal basis of OSHA's proposal was the growing body of evidence indicating that PSDI could be used safely. Since the 1974 decision to retain the prohibition against using

presence sensing devices as tripping mechanisms on mechanical power presses, the experimental variance and several studies added much to the background information and understanding of operating presses with presence sensing devices. These studies and the variance operating results indicated the use of properly designed light curtain type presence sensing devices used in the PSDI mode to be extremely safe, and to have the added benefits of lessening operator fatigue, thus further enhancing safety. The studies suggested that the OSHA requirements for manual tripping may be an unnecessary prohibition which imposes a burden on business and provides no increased safety to employees.

As mentioned, OSHA granted a variance permitting the use of PSDI on an experimental basis to the Interlake Stamping Corporation (now Interlake Stamping of Ohio, Inc.) on August 31, 1976. The Interlake variance was designed to demonstrate a total safety system employing a light curtain type presence sensing device as a tripping mechanism, as it is used in other countries, and to validate the accident-free experience with this system. Detailed requirements were developed by Interlake to assure that the equipment would meet safety requirements equal to those contained in Swedish standards as well as pertinent OSHA standards. A light curtain type presence sensing device was used to function as a combined safeguard and tripping mechanism on five open back inclinable (OBI) mechanical power presses.

This light curtain device is part of a sophisticated control system which automatically checks all press systems between strokes. If any of the electronic or mechanical systems do not operate properly, the press will shut down without stroking. In addition, the press will automatically shut down if the brake does not stop the press within a pre-determined period, or if the operating rhythm is interrupted so that the press does not cycle within a pre-set time. Before the press can be operated again, necessary repairs or adjustments must be made, and special operating means must be actuated to restart the press.

The 1976 experimental variance has been renewed several times and is a very useful method for comparing the performance of PSDI to two-hand control or foot control initiation. In nearly a decade of continuous, carefully monitored use at Interlake, there have been no injuries in PSDI equipped presses.

The Interlake Stamping Corporation variance was also the subject of a study done by the Purdue Research Foundation under a contract for the National Institute for Occupational Safety and Health (NIOSH) (Exs. 6, 7, 8, 9, 10). As a result of this study, the researchers at Purdue recommended to OSHA that the prohibition be lifted against the use of fail-safe cycle initiation using presence sensing light curtain devices. The rationale for this recommendation was based on the finding that the two-hand palm button actuator system was no more safe than the tested light curtain device at Interlake Stamping. Although the two devices are equally safe to the operator, the PSDI system also protects all other personnel such as maintenance or servicing personnel who may be exposed at the point of operation (danger zone). The two-hand palm button device protects only the operator. The recommendation to remove the prohibition was qualified by additional recommendations related to certification of the safety of light curtains, installation, operation, maintenance, inspection, and operator training.

The previously mentioned OSHA contract with Mr. Trygve Hauge of Technology 80, Inc., was to examine 29 CFR 1910.217 and to recommend appropriate revisions to the standards to allow PSDI (then called "self-tripping"). Hauge's report, "Self Tripping of Mechanical Power Presses" (Ex. 1) concluded that the previous studies done on the European experience with PSDI and the operating variance in the United States were documented evidence that "the use of these devices in a self-tripping mode has been found to be equally safe plus have the added benefit of less operator fatigue and greater productivity."

OSHA preliminarily concluded that the studies and experimental variance had shown that PSDI overall enhances safety at the point of operation of part revolution mechanical power presses when compared with currently permitted actuation means and safeguarding methods. There were several reasons for this conclusion.

1. The press opeator is protected just as well with PSDI as with present stroke initiation methods.

2. In addition to the operator, presence sensing devices protect all others who intrude into the point of operation, as opposed to pull-outs, two-hand controls, and restraints, which protect only the operator.

3. Personnel who violate § 1910.217(d)(1)(ii) by attempting to remove scrap or stuck parts with their hands rather than with tools are also protected by PSDI.

4. The overall press and control system safety are enhanced by certification and related requirements to ensure a higher degree of equipment capability and reliability than was provided for in the former standard.

5. With PSDI, there is less operator fatigue than there is with manual controls because the repetitious reaching motions will be eliminated.

6. The previous requirements for training and maintenance have been enhanced to assure the safe use of PSDI.

7. The integral nature of the actuation and guarding device reduces human factors risk because the press cannot be operated without the presence sensing device in the PSDI mode. Presence sensing devices do not have to be removed at the completion of the stroke in order to gain access to the point of operation. Also, the devices do not physicially obstruct or interact directly with operators, so there is less tendency for operators to void this safeguarding device than there is with other types of guards, such as gate devices which can be removed; pull-out devices that are strapped to the hands in order to pull them out with the movement of the ram, but which can get out of adjustment with no notice to the operator; or restraint devices that restrict the movement of the hands.

For these reasons, OSHA published a proposed rule in order that the state-of-the-art in technological advancements may be recognized and be permitted to be utilized in a manner consistent with, and protective of, worker safety and health.

II. Public Response

A. General Issues on Whether OSHA Standards Should Permit Use of PSDI

OSHA received 83 comments to the proposed rule of March 29, 1985 (50 FR 12700) (Ex. 20). The comments addressed the issues on three levels. First, the general issue of whether OSHA regulations should permit the use of PSDI, second, specific questions relevant to the general issue, and third, if it is permitted, what specific technical provisions are appropriate to assure that PSDI is used safely. The immediately following discussion addresses the first issue: Should OSHA permit PSDI? Then follows a discussion of the specific questions about the general issue of the safety of PSDI. The third issue of specific technical provisions is

discussed later in this document under III. *Summary and Explanation of the Final Rule.*

The majority of the comments received stated general support for permitting the use of PSDI. For example, the Spiral Shim Company (Ex. 18–62) stated:

Our experience of 40 years in the metal stamping production has kept us on the search for improved safety, and we believe that a properly designed, installed, and maintained PSDI is a stepping stone to ever improved safety conditions.

That comment and the following comments generally represent the industries who will use PSDI. From the American Metal Stamping Association (EX. 18–64) came this request:

Please move quickly in implementing the PSDI regulation so employers can begin to implement this proven, accepted technology for improving operator safety and productivity.

From Alofs Manufacturing Company (Ex. 18–27) came this statement:

For the past few years we have been watching with interest the P.S.D.I. operation at a metal stamping plant in Ohio. While this device is new for our industry in the United States it has been in operation in Europe for many years. We support the P.S.D.I. concept and feel it will be one of the best improvements for our industry in some time.

Anchor Fabrication (Ex. 18–7) stated:

We favor adoption of the PSDI regulation for several reasons:

1. First, it is a proven system for increasing productivity. The system as you know has been used successfully in Europe for over twenty years.

2. Second, it promotes safety through increased reliability of controls and other machine components.

3. Finally, the certification programs help to insure that these technological improvements do not deteriorate through abuse nor neglect.

In summation, we feel that the opportunity to increase productivity, upgrade the quality of our national manufacturing capacity, while at the same time increasing the level of operator safety is too good a proposal not to try. Surely we can show ourselves to be as creative and responsible as our European trading partners and should be given an opportunity to implement this proposal.

Another commenter, the Olin Brass Corporation (Ex. 18–21), expressed support by stating:

In the case of PSDI, we have an opportunity to achieve efficiency and to improve the safety of the work place. This proposed standard should be implemented as soon as possible.

Another commenter, the Torrington Company (Ex. 18–15) supported the use of PSDI by stating:

Over the past few years we have had various strain injuries including tendonitis caused by repetitive contact with palm buttons. One case was severe enough to cause the operator to be permanently removed from the job. This proposed rule would eliminate this type of injury.

From Trans-Matic (Ex. 18–31), this comment was received:

The proposed PSDI legislation is long past due in the United States. This is not new technology, but firmly established, widely used and adequately tested technology implemented in other countries. The time has come for change. While I do not agree with every provision of this proposed legislation, I want to lend my personal and corporate support to his proposal. As presently drafted, the implementation of this legislation will assist U.S. manufacturers increase safety and productivity at the same time. Rarely do we have an opportunity to accomplish both goals concurrently.

and, the American Metalcraft Company (Ex. 18–47) stated:

Recently the metal stamping industry has perfected a technology which will greatly enhance press operator safety, presence sensing device initiation of power presses.

I totally support the efforts of my fellow manufacturers to work with the regulatory agencies to formulate a set of regulations to insure proper utilization of this technology by all manufacturers.

In contrast to the numerous favorable comments, there were some who expressed opposition to the use of PSDI. From the press manufacturers' comments, the following viewpoints were received:

It is because of our deep concern for operator safety that we object to this revision. We cannot sanction a proposal that transfers safety conditions from the operator to the press system—thereby placing the operator completely at the mercy of that system. (Niagara Machine and Tool Works (Ex. 18–50)).

It is true that PSDI has been used in Europe for many years. The history and statistics of the safe use of PSDI operated equipment are really unknown. The governmental regulations of European countries and their methods of enforcement of these regulations are considerably different from ours. It is also my understanding that the present use of PSDI on mechanical power presses is very limited. The majority of PSDI in Europe is involving hydraulic power presses, not mechanical power presses. (Minster Machine Company (Ex. 18–18)).

I fail to see any increase in operator safety when the press, not the operator, controls the cycling of the press. (Verson Press Manufacturing (Ex. 18–2)).

OSHA has considered all of the comments which were received and agrees with the supportive comments from those who will use PSDI on their presses that it can increase safety by protecting more than just the operator; eliminating strain injuries and fatigue; adding certification requirements; and enhancing the training and maintenance requirements for more protection than the current requirements for manual controls. These reasons are discussed at length both above and below in this document.

In specific response to the opposing comments, OSHA believes that safe use in Europe for over 30 years provides support for the safety of PSDI. Speculation on possible differences between Europe and American systems does not negate that history of safe use. OSHA regulations are enforceable and incorporation of a certification system in this regulation conforms to European practice. The European practice, variance and studies demonstrated that PSDI is as safe as manual actuation for the operator and safer for others in the work area.

The specific safe experience of Interlake Stamping (Ex. 18–63) also indicates that the general concerns of those opposing PSDI have not in practice caused problems. The comment from Interlake stated:

As you already know, our company is the only company allowed to permit this PSDI at the present time. Officially we have been using this PSDI since 1976 with a 100% safety record. All other good points of this PSDI are part of a record you already have. I am not only writing this for myself and my company but also for the many employees that have been involved in this operation over the past 9 years. They have endorsed the operation not only as a safety system but also from a productivity and from an ergonomic perspective.

The safe experience of those who have used PSDI is valuable in evaluating the comments from those who object to allowing the use of this new technology.

Based on the history of the safe use of PSDI in Europe, the experimental variance studies done by NIOSH which concluded that PSDI was equally as safe as manual controls, the added protection which it gives to others in the work area, the reasons previously stated and the ergonomics factors discussed, OSHA concludes that if the provisions of paragraph (h) and the certification requirements in the appendices are complied with, PSDI should be permitted. It is as least as safe for the operator and overall safer because of the protection it gives others.

This conclusion has been reinforced by the consultants with experience in this area of technology; Trygve Hauge of Technology 80, Inc. (Ex. 1), James Barrett, Jr., of Link Systems (Ex. 12), and Sergio Concha, Paser Associates (Ex. 11), who were contracted by OSHA to give expert advice on the subject of PSDI and recommended its adoption, and Purdue University (Exs. 6, 7, 8, 9 and

10) which was contracted by NIOSH to study OSHA's experimental variance. In addition, the substantial number of reasoned comments recommending permitting PSDI is a further basis for OSHA's conclusion that it should be allowed.

B. Specific Questions and Analysis for Safety of PSDI

The following section discusses comments addressing some specific issues on the general question of the safety of PSDI.

1. The major reason for the OSHA proposal to remove the prohibition against the use of PSDI is the history of its safe use in Europe for over 30 years. As an example expressed in a comment from Trans-Matic Manufacturing Company (Ex. 18–54):

> I would like to take this opportunity to support Presence Sensing Device Initiation (PSDI) of mechanical power presses. It is my firm belief that this technology, when properly administered, can be as safe or safer than the current hand methods for loading mechnical power presses
>
> Metal stampers in Europe have used this technology for sometime and have experienced high productivity with impressive safety records. The metal stamping industry in the United States is anxious to take advantage of the technology to make us more competitive on a global basis.

Another commenter, F.F.R. Associates (Ex. 18–33), stated:

> I wholeheartedly endorse the PSDI safety systems and have since I first inspected them in Europe many year ago and saw the safety records they produced.

A few of the comments were critical of the use of the experience wth PSDI in Europe as a base for its use in the United States. The National Machine Tool Builders (Ex. 18–70), stated:

> We do not deny that there has been some success in Europe by using PSDI, however we strongly object to the manner in which such comparisons have been used to support the reasons for accepting PSDI on a broad basis in U.S.

Another commenter, Peter N. Bosch (Ex. 18–25), noted that:

> In my direct experience and knowledge, other countries operate safely in large measure due to harsh penalties imposed on employers for unsafe conditions and not because of technological excellence.

OSHA agrees with the supportive comments that the safe use of PSDI in Europe is a testimony to the fact that the advanced technology available to other countries should also be available in the United States.

To the commenters who object to the use of the experience in Europe as proof of its success, OSHA is aware that there are differences in the procedures between the United States and the European countries to enforce the regulation of PSDI use. However, there are also many similarities. OSHA regulations are enforceable. This standard incorporates a certification requirement. Consequently, U.S. requirements have now become as effective, if not more effective than European requirements in this regard.

The variance provisions were based on Swedish requirements for safety and the provisions of paragraph (h) have incorporated these and other requirements to improve safety measures. In the comment from Interlake Stamping (Ex. 18–63), the following statement was made:

> The PSDI used at Interlake is, in my estimation, even better than the systems used in Germany and Sweden. I also feel that the effort in the new proposed regulation will certainly enhance and help keep PSDI systems a safe means of operating power presses.

OSHA believes that the PSDI system with the safety provisions of paragraph (h) will be more safe than the current regulation provides for.

2. The second major reason for the proposal was the safe experience of the variance at Interlake Stamping Corporation. In support of this reason was the comment from F.F.R. Associates (Ex. 18–33) who stated:

> After the no accident performance since 1976, and the Purdue University Study, I urge OSHA to certify PSDI as soon as possible to make it available to the entire industry.

Another supportive comment was received from Rockford Systems Incorporated (Ex. 18–38), which stated that:

> Representatives from our company participated in AMSA's June 4th seminar on PSDI. Information presented there regarding the use of PSDI in Sweden and Germany was very positive and encouraging as were the test results from the NIOSH/Purdue study. However, the most encouraging evidence that PSDI can be effective in a "real world" U.S. manufacturing plant was presented by Mr. Wayne Groenstein of the Interlake Stamping Company, Willoughby, Ohio. His situation seems by far the most tangible example that the system can provide both safety and increased productivity over an extended period of time.

One critical comment to the use of the variance as a valid base was that of Niagara Tool Works (Ex. 18–50), which stated:

> This proposed revision stems from the results of a variance granted to one member of the AMSA. How can any of us believe that such a limited application conducted under laboratory conditions proves anything either as to operator safety or productivity? This experiment was conducted under conditions not even faintly resembling those existing in the real world.

It is OSHA's opinion, after reviewing the studies done on the variance and conducting a number of OSHA staff visits to the Interlake Stamping Corporation to view the actual function of the PSDI system in action, that the environment was, in fact, sufficiently representative of anticipated workplace conditions to present a good indication of PSDI use. The excellent safety record still exists after 10 years at Interlake Stamping. OSHA believes this demonstrates an example of the ability for PSDI to increase safety.

The National Machine Tool Builders (Ex. 18–70) suggested that "Interlake Stamping Corporation be extended a permanent variance and that OSHA advertise again for additional companies who would like to apply for such a variance."

Based on the many comments received in favor of PSDI and its safety record, OSHA believes that a prolonged delay for PSDI is unnecessary. To require applications for variances would impose a time-consuming burden both to OSHA and the employer, which would further delay the availability of the improved safety capability presented by PSDI. In addition, 10 years of experience under the experimental variance is sufficient to test the safety of PSDI.

3. The third major reason for removing the prohibition on the use of PSDI was the conclusion of the Purdue University study of the Interlake Stamping Corporation experience.

As previously stated, the findings of this study recommended that "the prohibition be lifted against the use of safe-fail self-tripping light curtain devices" (Ex. 8). None of the comments received were critical of the Purdue study other than the previously mentioned comment (Ex. 18–50) regarding the limited number of presses used in the variance at Interlake Stamping Corporation.

It is OSHA's determination that the Purdue study of the Interlake Stamping Corporation variance is technically sound and provides good validation of the successful implementation of the experimental variance. It further supports OSHA's contention that PSDI may be accomplished safely.

4. The fourth reason for removing the PSDI prohibition is the safety advantage of less operator fatigue. In a report from Wayne Groenstein, President of Interlake Stamping Corporation, it is stated that in his experience with the Swedish government, they were "much concerned with ergonomics * * * which

relates roughly to what we call human engineering. For this reason they do not use restraints, which they consider a source of fatigue." The human factors of fatigue can cause errors in judgment and alertness which can result in accidents. Of the 10 operators that worked on the Interlake Stamping Corporation presses, all stated that they preferred the use of PSDI as opposed to two hand tripping restraint devices (Metal Stamping, May 1977).

As previously mentioned, the Torrington Company (Ex. 18–15) expressed the need for PSDI by stating "Over the past few years we have had various strain injuries including tendonitis caused by repetitive contact with palm buttons. One case was severe enough to cause the operator to be permanently removed from the job. This proposed rule would eliminate this type of injury."

There were no comments that dissented from the conclusion that PSDI reduces fatigue factor.

OSHA believes that reduction of fatigue is a positive safety benefit. Fatigue can cause errors in operator's judgment and alertness which can lead to accidents. In addition, reduction in operator fatigue is a benefit in itself for the health and welfare of the operator.

5. A fifth reason for revising the provisions of this standard is the provision of greater safety for those other than the operator who may be working in or around the area of the press. With the current method of manual control (unless supplemented by a light curtain as an auxiliary guard which is not required), only the hands of the operator are protected.

This opinion was reflected in a comment submitted by the Air Transport Association (Ex. 18–43) from Federal Express, which is one of its members that use mechanical power presses:

> We believe the Presence Sensing Device is a better method of guarding because it not only protects the operator but also anyone standing near the equipment.

The sensing device will immediately stop the downward stroke of the ram whenever anything or anyone interrupts the curtain of light, thus providing added protection for all employees who may be in the area in addition to the operator. Examples of this type of accident where a person who was not the operator was injured or the operator was injured because of the actions of a second person who actuated the manual controls were included in an attachment to a comment from the National Safety Council (Ex. 18–72). Three injuries were cited that involved more than one person in press operations while using two-hand control.

> Employee was not injured on own press. A second employee, operating a different press, was working on the same part but performing a different operation (double beading the part). The parts were being double beaded first and then going to the first employee for the expansion process. First employee ran out of parts to expand. Went over to the second employee and was reaching behind the machine to take out parts while the second employee was still running the press. Injury sustained: amputation, tip of right thumb.
>
> Press has a part revolution air clutch with two-hand controls on side of press and point of operation guarding. Cause of accident: Injured party was removing stamped parts from die and second party inadvertently inched press down causing amputation of part of left thumb. Press is equipped with automatic roll feed and two-hand control to actuate press.
>
> Adjusting mandril cylinder manually, operator energized air cylinder without notifying toolmaker. Toolmaker reached into die to clean off anvil, mandril came in pinched thumb and finger between mandril and anvil.

The use of PSDI could prevent these types of injuries by protecting the operator and others at the point of operation.

6. A sixth advantage of PSDI safety over the use of manual controls is that the operator will be less likely to disengage or by-pass the safeguarding methods, as is sometimes done to increase production when using manual controls.

The comment from Federal Express (Ex. 18–43) reinforced this statement by commenting that "If designed properly, the electrical devices cannot be over-ridden as in the case of two hand controls. Also, an adjustable field of coverage allows precise guarding of the hazard area."

The safety provisions of two hand or foot control can be over-ridden by purposely removing or manipulating other types of guarding to increase the operator's speed in feeding the material to the press and retrieving the product from the press. With PSDI this unsafe practice will be eliminated because any interruption of the presence sensing device will stop the movement of the ram, thereby safeguarding the point of operation.

C. Hands-in-Die Operations

On December 3, 1974 (39 FR 41844; [Ex. 14]), after extensive hearings, OSHA removed a prohibition on hands-in-die (HID) operations. In HID operation, the operator's hands may be placed at the point of operation as long as certain safeguards exist. In no-hands-in-die (NHID) operations, only hand tools or other devices are supposed to be at the point of operation, and not the operator's hands. The reasoning justifying the change was generally upheld by the Court of Appeals with a remand for a further supplemental statement of reasons on one issue, *AFL–CIO v. Brennan*, 530 F.2d 109 (3rd Cir. 1975). The further statement of reasons was published at 41 FR 40103 (September 17, 1976).

Prior to the proposal, a number of comments which OSHA had received, nominally on PSDI, were actually arguments that HID should be banned and only NHID operations should be permitted. OSHA did not reopen the issue of HID in the proposal on PSDI. The proposal (50 FR 12704–5; March 29, 1985 [Ex. 20]) did discuss the issue. It pointed out that 59 percent of point of operation accidents occur in NHID operations. Accidents occur because of fatigue, carelessness, and defeat of safeguards as well as hand location. Although the statistics are not definitive because data are not kept on the number of press cycles using HID and NHID operations, the statistics do not indicate that NHID is overall safer, as discussed in the proposal.

Although OSHA did not reopen the issue of HID compared to NHID in its proposal, a number of comments did address the issue. The Stamp Matic Corporation (Ex. 18–61) submitted a comment similar to OSHA's analysis which states:

> The OSHA studies and experimental variance have shown that when PSDI is properly used, the operator is as safe or safer when compared with currently permitted actuation means and safeguarding methods for HID operations.

Some other comments were principally directed toward the issues of HID and argued that it should not be allowed. From some press manufacturers, trade associations, and unions, OSHA has received opinions that are generally similar to this comment by the Niagara Machine and Tool Works (Ex. 18–50):

> Instead of sanctioning a system that encourages "hands in the die" we should all be working toward a system of keeping "hands out of the die" or as a minimum keeping them out as much as possible if not completely.

All the reasons and evidence given above for the safety of PSDI, are equally applicable for HID as for NHID. When the light curtain field is interrupted by a hand in HID or a tool in NHID, the ram will stop, thus eliminating the chance of injury at the point of operation.

For the reason discussed in the proposal preamble (50 FR 12704–5), OSHA continues to believe that its 1974 decision to permit HID operation was correct and that the available facts and data do not provide evidence indicating a need to reopen the issue. None of the comments which recommended disallowing HID operations submitted facts or data which would indicate the need to reconsider the issue, rather they were limited to expressing opinions.

The evidence of safety of PSDI was generated in HID operations. The presses used in the Interlake variance were operated in the HID mode. There were no accidents. The Purdue Research Foundation and the Hauge studies of PSDI operation were of it used in the HID mode and their recommendations of its safety were based on using it in HID modes. The European evidence of safe use of PSDI is based principally on using it in the HID mode. The additional safety benefits of PSDI through reduction in fatigue and protection of other persons in addition to the operators applies equally to HID and NHID operations.

The new provisions for the safety of the entire system, which are provided in paragraph (h) and new appendices of the final rule, are applicable of course both to HID and NHID operations, and are intended to assure that the use of PSDI will be done safely with a very high degree of reliability. No factual or statistical evidence has been presented that PSDI will not present the same degree of safety for HID as for NHID. Indeed, no comments have been presented on this specific point rather than on the broader point of the relative merits of HID and NHID. Based on all the evidence just discussed, OSHA concludes that PSDI is appropriate for HID and NHID operations.

D. Range of Interests Reflected in Comments

The comments that were received on the proposed rule represented the broad range of interests that are involved with mechanical power presses.

Included in this group were 3 insurance companies, 32 press users, 6 trade associations, 2 labor organizations, 15 press manufacturers, 20 presence sensing device manufacturers, 5 safety consultants and 4 government agencies. The largest group of the responses were from those who will use PSDI on their presses.

Within these groups, the breakdown of those for and against the revision for PSDI was as follows:

	For	Against
Press Users	32	0
Device Manufacturers	20	0
Press Manufacturers	11	4
Trade Associations	3	3
Consultants	3	2
Government Agencies	4	0
Insurance Companies	2	1
Unions	0	2
Other	2	0

In the comments from those who will use PSDI on their presses, the general opinion was that it is a necessary step forward that will not only enhance safety but will increase productivity and international competitiveness as well. OSHA's decision to approve PSDI was based on evidence of its safety.

The comments from the presence sensing device manufacturers were similar to the ones from those who will use PSDI. They requested prompt action and suggested as few changes in the language for clarification and feasibility in the requirements. Where those suggestions assisted in clarifying or improving the feasibility of the rule without reducing safety, OSHA has incorporated them in the final standard.

The comments from press manufacturers generally favored the proposal, but many had concerns about the product liability they would have as designers and builders who would have no assurance that the press would be used in a manner that would meet the requirements of the standard. OSHA has no statutory authority on matters of workers' compensation or liability. In addition, section 4(b)(4) of the Occupational Safety and Health Act states:

> Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

However, OSHA believes the specific requirements of the PSDI standard will lead to safer operation and more reliable operation of safety systems. OSHA of course has authority to enforce these requirements. The resulting improvement in safety may reduce liability concerns through fewer accidents.

Several other comments, including insurance companies, government agencies, consultants, and a safety council, also generally endorsed the regulation for PSDI, with some qualifications. Many stressed the importance of certification to assure the reliability of the entire system.

The labor union comments were opposed to PSDI based on their policy of NHID and their belief that such a program cannot feasibly be implemented in a normal industrial setting. OSHA has evaluated these comments as well as other comments received, and believes that the previously mentioned facts and analyses are evidence that PSDI can be used safely.

Among the other comments received were requests for minor changes in the language used for the purpose of clarification and enforceability of the requirements. Other requests were to delete paragraphs that are covered in other standards or were too restrictive.

OSHA has carefully considered at of the comments that were received and appreciates the interest and concerns of all of the respondents. Where changes were suggested that would not adversely affect the health and safety of the employee, and had a reasonable basis, revisions to the proposed rule generally were incorporated.

The public comments on the proposal frequently suggested specific technical considerations for enhancing the safety of PSDI. OSHA has attempted to incorporate these suggestions by including a number of technical provisions in the standard. OSHA believes the specificity of the provisions is appropriate for the highly technical nature of PSDI operation, and is necessary—in conjunction with the certification requirement—to assure worker safety.

III. Summary and Explanation of the Final Rule

The following section discusses the individual requirements of the standard permitting presence sensing device initiation of mechanical power presses. It includes an analysis of the comments and record evidence on those specific requirements and changes made in response to the comments. The language of the standard essentially follows that of the proposal except for revisions based on OSHA's review of the entire rulemaking record, including the written comments and data submitted during the comment period.

There were some provisions that received no comments. Where there has been no change from the proposed rule, these provisions have been referenced to the specific page in the Notice of Proposed Rulemaking of March 29, 1985 (50 FR 12700) where a discussion of the provision can be found and, in general, the discussion has not been repeated in this final preamble.

A. Definitions

Section 1910.211(d)(11), "Device," was proposed for revision to make it more appropriate for PSDI by detecting any part of an operator's body or by detecting any other objects such as hand tools. Guardimark International and the Motor Vehicle Manufacturers Association (MVMA) (Exs. 18–1 and ×45) pointed out that the revision is limiting and would not be pertinent to all devices. MVMA (Ex. 18–45) suggested retaining the language presently in § 1910.211(d)(11)(ii) and adding the proposed definition in a new subparagraph (iv). OSHA has adopted this suggestion in the wording of the final rule.

Section 1910.211(d)(12), "Presence sensing device," was proposed for revision to better define the control of the press and to include activation by other objects such as hand tools. Two commenters (Exs. 18–1 and –45) raised objections to the term "any other object." The point was made that the phrase could be misconstrued to mean an employer could not have a semiautomatic system using a contact switch to sense the presence of a part. Accordingly, the provision is revised in the final rule to substitute "a hand tool" for "any other object."

Section 1910.211(d)(61), "Presence sensing device initiation." A discussion of this term can be found in the proposal at 50 FR 12707. There were no comments received on the definition.

Section 1910.211(d)(62), "Safety system," was proposed as a new concept for a functionally complete, certifiable, total system for PSDI. The definition enlarges upon the control reliability concept in the current standard, for applicability to the PSDI mode of operation, such that a single failure or single human error will not cause injury due to point of operation hazards. The general concept was not criticized. However, several commenters, including the American Metal Stamping Association (AMSA) (Exs. 18–38, –39, –40, –45, and –64) expressed concern regarding the overly broad term "human error," suggesting instead that the error be related to operation of the press. OSHA agrees that it is the intention of the definition to address operating errors, and the definition is so revised in the final rule.

Section 1910.211(d)(63), "Authorized person." This new definition was proposed to clarify the term "authorized person" as one to whom the authority and responsibility to perform a specific assignment has been given by the employer. No substantive comments were made on this definition, and it is included in the final rule without revision.

Section 1910.211(d)(64), "Certification" or "certify." This new definition is added to clarify the distinction, for PSDI safety systems, between the certification of the safety systems by manufacturers, employers, or their representatives, and the validation (by an OSHA-recognized third-party validation organization) of the certification.

Section 1910.211(d)(65), "Validation" or "validate." This new definition is added to clarify the distinction, for PSDI safety systems, between the validation (by the OSHA-recognized third-party validation organization) of the certifications of the safety systems by manufacturers, employers, or their representatives, and the certification itself.

Section 1910.211(d)(66), "Certification/validation" or "certify/validate." This new definition means the combined process of certification and validation.

B. Revisions

Section 1910.217(c)(3)(iii)(b). This revision was proposed to modify the current prohibition on slide motion initiation to permit PSDI if it is used in total conformance with the proposed new paragraph (h) of this section. No comments were received, and it is included in the final rule as proposed.

Section 1910.217(h)(1), "General." In paragraph (h) of § 1910.217, OSHA states the additional requirements which must be fulfilled in order to use PSDI on a mechanical power press which is in conformance with the other applicable requirements of § 1910.217. In addition, to increase convenience, some of the paragraphs of the current standard (those which OSHA believes will be most helpful) which specifically are applicable for PSDI are referenced in appropriate portions of § 1910.217(h). OSHA believes this will facilitate the understanding of the requirements for PSDI, and will aid in identification of the total system concept required for PSDI use. While such references are intended to enhance emphasis, convenience and understanding in relating the new provisions to the existing standard, it should be noted that other portions of the existing standard continue to be applicable, and it is not OSHA's intent to exclude the applicability of those other provisions.

Paragraph (h)(1)(ii) states that the paragraph (h) requirements apply in addition to other portions of § 1910.217.

Not all requirements of paragraphs (a) through (g) of § 1910.217 apply to all mechanical power presses. Some of the requirements are general, but others are directed at specific types (full or part revolution) of mechanical power presses and some requirements are directed at specific operator controls and guarding methods for a particular type of press. For example, paragraph (c)(5) is clearly invoked for presence sensing device initiation modes that use hands-in-die feeding, because the presence sensing device is the guarding method on such operations. It would not be invoked by presence sensing initiation if parts are fed manually with tools. Since the intent of the new provision is to supplement the requirements of paragraphs (a) through (g), paragraph (h)(1)(ii) includes the relevant requirements of § 1910.217 (a) through (g) for all presses used in the PSDI mode of operation.

In § 1910.217(h)(1)(iii), OSHA continues the prohibition on PSDI on full revolution mechanical power presses. OSHA believes that full revolution presses are not suitable for PSDI use. By definition, a full revolution clutch, when tripped, cannot be disengaged until the crankshaft has completed a full revolution and the press slide has completed a full stroke. The capability of a press to be stopped at any point in the down stroke of the slide is considered essential for the safe operation of a press in the PSDI mode.

The American Metal Stamping Association and others (Exs. 18–25, –39 and –64) expressed concern regarding the language proposed in (h)(1)(iv) which prohibits the PSDI mode of operation for presses with a configuration which enables a person to insert his or her body completely into the bed area. The intention of the provision is that some part of an operator's body must remain in the presence sensing device field or be protected by supplemental safeguarding when any part of the same person's body is in the point of operation. This is necessary for safety so that PSDI would not be defeated. If an operator can totally pass through the presence sensing device field into the bed or bolster area of the press, any accidental intrusion into the field could cause the press to trip while the operator is exposed. This hazard potential is described in the comments by Link Systems (Ex. 4–45) on the preproposal draft standard which OSHA circulated for public comment in June 1983.

The commenters to the proposal agreed to the overall necessity of the provision but suggested more specific wording in order to clarify the intent that some part of the operator's body remain in the sensing field. The provision is so revised in the final rule.

One commenter (Ex. 18–64) suggested that it should be made clear that the provision does not apply to die-setting or maintenance procedures where other appropriate safeguards are in use. OSHA agrees that the wording should be clarified, and the final rule is therefore revised accordingly. With regard to the exception for die-setting and maintenance, die-setting is excluded from being done in the PSDI mode by paragraph (h)(6)(xv) of the proposal. However, to prevent possible confusion, an additional provision, (h)(1)(v), is contained in the final rule to emphasize that the PSDI mode only applies for normal production operations.

Section 1910.217(h)(2), "Brake and clutch requirements." There are a number of factors which indicate the need for more stringent provisions for brake and clutch systems in the PSDI mode. Among these are the greater operator speed and smaller margin for operator error. For these reasons, the standard includes limits on types of brakes, a requirement for demonstrating high torque capability, and a requirement for assuring non-interleaving of brake springs.

In § 1910.217(h)(2)(i), OSHA prohibits flexible steel band brakes and mechanical linkage actuated brakes or clutches on presses used in the PSDI mode. OSHA believes that fast and consistent stopping are critical to safety in the PSDI mode. The prohibited types of brakes and clutches have been shown by experience not to possess a long-term reliability against structural failure, as compared to other types, and therefore, are not considered acceptable. This provision was not criticized and is retained in the final rule.

Several commenters (Exs. 18–26, –39, –57, –60, –64 and –76) addressed the provisions in (h)(2)(ii) which would require high torque capability for press brakes so that the ram will stop quickly if the operator's hand reentered the light curtain. OSHA believes such a capability is necessary for PSDI because of the greater operator speed and the smaller margin for operator error. One commenter (Ex. 18–64) views the requirement as a "benchmark" by which an employer could check an existing press to determine whether or not it is potentially suitable for PSDI operation. That commenter, however, as well as others, expressed reservations regarding certain aspects of the provisions, as follows.

The definition of "full stop" which is cited in Appendix A for the determination of the stopping times measurements was discussed by several commenters (Exs. 18–15, –24, –25, –64 and –76). It was generally recommended that full stop be defined by crankshaft rotation, rather than by deceleration of the slide as OSHA proposed, with one or two revolutions per minute most often suggested as the full stop. OSHA accepts this recommendation because it will be more practical and will better define and aid in monitoring the measurement of stopping time, and Appendix A is so revised in the final rule.

Sick-Optick-Electronik, Incorporated (Exs. 18–57, –58 and –79) suggested that the brake torque tests be conducted at full speed if there is a speed selection. OSHA concurs that the measurement should reflect maximum speed conditions, and the final rule includes this requirement.

ELKAY Manufacturing Company (Ex. 18–39) suggested that in paragraph (h)(2)(ii) the *longest* stopping time be used, rather than the *average* stopping time. This commenter was concerned about the possibility of injury under an emergency stop condition, and pointed out that stopping times at other than 125 percent of the time at the top crankshaft position would not represent the worst stopping conditions. OSHA agrees that there may be considerable variation in stopping time depending on crankshaft position. However, the purpose of the tests defined in paragraph (h)(2)(ii) is to ensure that the brake systems on presses used in the PSDI mode be of a high torque design for fast and consistent stopping time capability. The specific stopping time elements used in calculating safety distance as defined in a different provision, paragraph (h)(9)(v), are the longest of averages, with additional built-in safety factors. No additional changes were made in the final rule, therefore, because OSHA believes the safety factors already built in are sufficient for the purpose of the provision.

In § 1910.217(h)(2)(iii), OSHA prohibits brake springs of interleaving design. In the event of a break in a spring, OSHA believes this and other provisions of the paragraph will reduce the possibility of significantly increasing the stopping time beyond the normal brake stopping capability. There were no objections to this provision.

Section 1910.217(h)(3), "Pneumatic systems." OSHA considers fast and consistent stopping capability to be critical to PSDI safety. Variations in stopping time may be caused by such factors as air value failure, and mechanical variations due to air cleanliness, pressure, moisture, and lubrication. Section 1910.217(h)(3) addresses such pneumatic system failures and other conditions which could affect the stopping time of a press in the PSDI mode. It also highlights some of the provisions of the current standard which are applicable to pneumatic systems in PSDI operations. Finally, it prescribes the correct adjustment of air counterbalance systems for the die weight used in order to maintain the stopping time. There were several comments on technical matters, but the overall objectives were not criticized.

The American Metal Stamping Association (Ex. 18–64) pointed out that paragraph (h)(3)(ii)(B) was not clearly written, and suggested shortening the provision to clarify it. OSHA agrees that the intent of the provision is to ensure the correct counterbalancing of the slide attachment (upper die) weight, and the wording is so revised in the final rule.

The ELKAY Manufacturing Company and Data Instruments (Exs. 18–39 and 40) commented on the correlation between adjustment of the pneumatic systems and the stopping time measurements. In order to clarify the intent of the provisions and ensure accurate time measurements, the final rule includes a requirement that the counterbalance adjustments be made before performing the stopping time measurements required in paragraphs (h)(2)(ii), (h)(5)(iii), and (h)(9)(v).

Section 1910.217(h)(4), "Flywheels and bearings." This provision is intended to prevent unintended and uncontrolled press strokes caused by bearing seizure. One commenter (Ex. 18–12) included this provision in a list of several provisions in the proposed standard with the recommendation that, if they are imposed on PSDI operations, they should also apply to other methods of press cycle initiation. The list also included paragraphs (h)(2) (i) and (iii), (h)(3), (h)(5), (h)(6) (i), (ix), (xiii) and (xv), (h)(7), (h)(8)(i), and (h)(10). The commenter stated that the proposed regulations for PSDI impose limitations which are not imposed on operating modes which are less safe, and that these might militate against the adoption of PSDI in some applications, with a resulting loss in the potential for improved safety and efficiency.

PSDI requires enhanced reliability of systems because back-up safeguards are not used. The additional provisions are designed to give the necessary enhanced reliability and are therefore necessary for PSDI operation. It was not an issue in the rulemaking whether such provisions would enhance non-PSDI operations. This was generally the only comment received to this issue and the issue has not been studied in depth. Therefore, it is not possible to state

whether the referenced provision would improve non-PSDI operations.

Section 1910.217(h)(5), "Brake monitoring." OSHA considers fast and consistent stopping capability to be critical to PSDI safety. The provisions on brake monitoring are intended to ensure that increases in press stopping time over a period of use do not exceed the time used to develop the safety distance established for the press set-up. A detailed discussion of the technical provisions is included in the proposal at 50 FR 12708. The aims of the provision were not objected to.

Some comments, including two from the State of Maryland, Division of Labor and Industry (Exs. 18–19, –22, –39 and –66), were received regarding paragraph (h)(5)(ii). One commenter (Ex. 18–66) suggested that the provision be revised to require that the adjustment of the brake monitor not be done without the supervision of an authorized person, and to delete the requirement for prior approval by the third-party certification program. Two commenters from the State of Maryland (Exs. 18–19 and –22) questioned an apparent conflict between this provision and (h)(12)(iii) which requires, following a die change, that the safety distance be checked and maintained by authorized persons with certain qualifications. These commenters asked why prior approval by the third-party certification program is required in (h)(5)(ii) but not in (h)(12)(iii). The ELKAY Manufacturing Company (Ex. 18–39) suggests that the brake monitor unit be sealed with a seal that would have to be broken in order to adjust it to aid in policing the requirement.

OSHA agrees with the suggestion that (h)(5)(ii) be extended to require that brake monitor adjustment be done under the supervision of an authorized person. Such a provision would strengthen the requirement. The provision is so revised in the final rule.

OSHA believes, however, that the adjustment of the brake monitor has the potential of such impact on the safety distance that prior approval of the validation organization (previously called "certification program" in the proposal) is essential. The degree of importance is based on the fact that the calculation of the impact of the brake monitor adjustment on the safety distance is extremely critical and complex, but is much less frequent than checking the safety distance after a die change. The minimum safety distance for a press with a certified/validated safety is required by paragraph (h)(11)(vi) to be indicated on a label affixed to the press, and the process of checking and maintaining the safety distance would not require review by the validation organization. The validating organization must decide in what circumstances general advance approval can be given and in which circumstances specific authorization is needed.

Sealing of the brake monitor unit to prevent unauthorized adjustment would seem to be an unnecessary burden on the employer. OSHA has not adopted this suggestion.

A large number of commenters (Exs. 18–2, –15, –17, –24, –26, –37, –40 –52, –58, –63, –64, –71, –77, –79, –80 and –83) representing 10 users, five device manufacturer, and one press manufacturer, expressed concern regarding the provision in paragraph (h)(5)(iii) that the brake monitor setting allow no more than a 10 percent increase in the longest stopping time for the press. It was the general concern of the commenters that the 10 percent limit would result in too limited a range of operation for fast stopping brakes (i.e., only five milliseconds for 50 millisecond brakes) and would, in fact, penalize the faster stopping machines. It was suggested that the provision be revised to call for a maximum of 10 milliseconds or 10 percent, whichever is longer, as the allowable variation. OSHA agrees, for those reasons, and the final rule is revised accordingly.

Section 1910.217(h)(6), "Cycle control and control systems." The PSDI reliance upon the control system to initiate safe press operation places a particular burden on the controls to function properly and to be arranged in a manner to be understood and properly used by the operator. The provisions on cycle control and the control system are intended to ensure that the controls will enable safe operation in the PSDI mode. The technical details and explanation of the specific reasons for the various provisions are discussed at length in the proposal at 50 FR 12709. There were a large number of public comments on these several provisions. The provisions not discussed below were generally not criticized by commenters.

Paragraph (h)(6)(ii) in the proposal called for dynamically monitoring the crankshaft rotary position indicating device in order to prevent successive strokes if the device were to become decoupled. The provision was mentioned in several comments by press users or their representatives and the ANSI Bill Committee (Exs. 18–37, –39, –40, –51 and –64). Some of the commenters (Exs. 18–37, –40 and –64) suggested that the word "dynamically" be deleted. The reasons stated were that it is misleading, could be confusing, and implies immediate sensing of the lack of motion. One commenter (Ex. 18–39), however, reported on an experience with a broken crankshaft which was not detected. The word "dynamically" was used by OSHA in the wording of the provision in order to prevent the use of a static switch-type monitor which could be subject to an undetected failure. Dynamic monitoring entails use of a motion sensor, such as an inductive sensor or a photoelectric sensor that senses gaps or teeth in a wheel or gear that is directly coupled to the rotary position indicator. This type of motion sensing cycles with each cycle of the press, with the result that the sensing of the lack of motion is immediate, and the press will be stopped immediately. In veiw of the need to immediately sense any lack of motion, the word "dynamically" is being retained in the final rule.

Mr. Robert D. Jordan (Ex. 18–51), a consultant, questioned the use of the word "device" in the term "rotary position indicating device," pointing out that the use is inconsistent with definitions in § 1910.211. OSHA agrees, and in the final rule, the word "mechanism" is used in place of the word "device" in the provision.

Paragraph (h)(6)(vi) called for a timer to deactivate the PSDI mode when the press does not stroke within a period of time set by the timer. The purpose is to prevent the operator from inadvertently operating the press in the PSDI mode, after being distracted or leaving the work station, by making the operator reset the press after a longer than normal gap in time for insertion of stock.

The provision in the proposal set a limit of 15 seconds for a manually adjustable timer, with a special tool for the adjustments. This requirement was mentioned by a number of commenters (Exs. 18–19, –22, –37, –40, –44, –52, –56, –58, –64, –77, –78, –79, –80 and –83). It was the general opinion that if the setting for the manually adjustable timer is limited to a maximum of 15 seconds, there should be no need for a special tool because it is unlikely that the operator could change or forget the operating mode in such a short interval. Sick-Optik-Electronik (Exs. 18–56 and –78) noted that a longer time, up to 30 seconds, is used in other countries. The ELKAY Manufacturing Company (Ex. 18–39) stated that the 15-second time limit is impractical on larger, higher tonnage, slower presses where many operations may be required before loading the press, and suggested that the limit be made more flexible in order to avoid preventing PSDI use on many presses. OSHA agree with the comments and the provision is revised in the final

rule to permit greater flexibility in the maximum time setting, where required by the nature of the operation, and to delete the need for a special tool for short time interval settings of the timer.

The State of Maryland, Division of Labor and Industry (Exs. 18–19 and –22), suggested that an indicator be required in paragraphs (h)(6)(vi) and (h)(6)(xi) which will present the number of intrusions that have been programmed for tripping, and the number of insertions that have been made toward tripping the press. OSHA believes that the need and utility of such an indicator would not be such as to warrant its inclusion as a mandatory element of the control system.

Paragraph (h)(6)(xi) requires that, where there is more than one operator of a press in the PSDI mode, each operator must be protected by a separate, independently functioning presence sensing device. The ELKAY Manufacturing Company (Ex. 18–39) stated that the requirement is acceptable if multiple operators are positioned so that only one operator is on any one side of a press, but that where there is more than one operator on one side of a press, a single presence sensing device would be usable. OSHA believes having more than one operator protected by a single presence sensing device could be hazardous because of the need for exceptional coordination between the operators, and the provisions, therefore, is unchanged in the final rule.

Paragraph (h)(6)(xii) in the proposal required that when a press is equipped for PSDI operation, the presence sensing devices must provide effective safeguarding in all other production modes as well as PSDI. The purpose of this provision was to enhance the reliability of the presence sensing device by ensuring that it remains operable. Several commenters, including a consultant, metal stampers and device manufacturers (Exs. 18–25, –37, –56, –57, –78, –79 and –83), objected to this requirement. It was pointed out that, although the requirement is well-intended, there are other modes of operation, such as two hand control, which are safe and meet the current standard without the use of an additional presence sensing device as a safeguard. By allowing the alternative mode, the press can be utilized safely in the event a presence sensing device is removed for servicing. If the device were required for the other mode, there would be an incentive for jumpering or bypassing the device, which could create a potential hazard if it is not done properly or is not later removed. OSHA agrees with the commenters. If the final rule, the provision is deleted from the standard and is included as an advisory suggestion for consideration in Appendix D.

Paragraph (h)(6)(xiii) requires that the control system incorporate interlocks for supplemental guards, if used, which will prevent stroke initiation or stop a stroke in process if any supplemental guard fails or is deactivated. The purpose of the requirement is to ensure that no part of an operator's body is in the point of operation during a stroke if a supplemental guard is not in operation. Supplemental safeguards are required by the standard in order to protect all areas of access to the point of operation which are unprotected by the PSDI presence sensing devices. Two comments (Exs. 18–45 and –64) were received on this provision. The Motor Vehicle Manufacturers Association saw no need for the interlock and believed it would not materially enhance the safe operation of presses. The American Metal Stamping Association supported the requirement, and suggested a method of interlocking which requires no extra microswitches or interlocking sensors. This method has been used successfully at the Interlake Stamping Corporation in connection with the experimental variance. OSHA believes it is essential for the safety of the operator that any deactivation of a necessary supplemental safeguard prevent a subsequent stroke initiation or stop a stroke in progress. Otherwise, an operator could inadvertently cause stroke initation while exposed at the point of operation. With PSDI, if there were no interlock of supplemental safeguards, the safeguards could be removed and a second employee could get his or her hand into the point of operation while the operator activated the press. The interlock, of course, prevents this. The provision is continued in the final rule as proposed. In addition, the method suggested by the commenter is described in Appendix D to the final rule as an acceptable method of complying with the requirement. Other methods of preventing stroke initiation that are as effective are also permitted.

Paragraph (h)(6)(xiv) addresses requirements for automatic self-checking of the control system at least once each cycle and before the initial PSDI stroke. The intent of this provision is to ensure proper functioning of the control system for each PSDI cycle. A number of commenters, representing the metal stamping industry and presence sensing device manufacturers (Exs. 18–39, –40, –56, –57, –58, –64, –66, –78, –80 and –83), expressed concern that the wording is unclear and could be construed to include all switches and contacts. It was suggested that the requirement be revised to call for checks for correct status of control elements after power-on and before the initial PSDI stroke, and for operation of all cycling control logic element switches and contacts at least one each cycle. OSHA agrees, and the provision is so revised in the final rule.

Paragraph (h)(6)(xv) contains provisions for an "inch" operating means meeting the requirements of paragraph (b)(7)(iv) of this section, and prohibits die-setting in the PSDI mode. Consultant Peter N. Bosch (Ex. 18–25) correctly noted that the sensing device would be by-passed in the "inch" mode, and expressed an observation that press owners are increasingly using the "inch" mode as a production mode in the erroneous belief that it is the safest operator control means. He pointed out the need to reinforce prohibiting production in the "inch" mode. OSHA agrees the "inch" mode is not designed for production (see § 1910.211(39)). Specifically, the safeguards are disconnected and an employee could have his or her hand at the point of operation. Should the inch mode be activated, the ram of the press would move downward, even though at slow speed, and cause harm. The final rule has been revised from the proposal to include such a prohibition in this paragraph, as well as to include discussion and guidance on the subject in Appendix D.

Paragraph (h)(6)(xvii) of the proposal required that controls with internally stored programs meet the control reliability requirements of the standard, and default to a predetermined safe condition in the event of any failure within the system. The proposal also prohibited the use of programmable controllers. The intent of the paragraph is to permit controls with internally stored programs which will fail safe, but to prohibit programmable controllers in order to prevent their manipulation to an unsafe condition.

There were a number of comments on this paragraph (Exs. 18–2, –12, –16, –18, –25, –32, –39, –40, –42, –64, –66, –73 and –81). A consultant for Travelers Insurance Company (Ex. 18–16) pointed out that the term "internally stored program" could be misunderstood to apply only to electronic type controls since the term is colloquially applied to solid state equipment. On the correct assumption that the paragraph is intended to apply to all types of controls—including mechanically operated rotary cam switches—the

commenter suggested adding wording to include mechanical, electro-mechanical or electronic types of controls. OSHA agrees that the clarification is useful and has made the recommended changes.

Data Instruments and AMSA (Exs. 18–40 and –64) suggested the provision be modified to use the term "single failure" rather than "failure," in order to be consistent with other control reliability requirements. The Wiremold Company (Ex. 18–32) agreed with the prohibition to prohibit programmable controllers because of the unpredictable failure of input/output modules, and the inability to inspect them. Nearly all of the other commenters, however, objected to the prohibition against *all* programmable controllers. It was pointed out that programmable controllers increasingly are being supplied with new presses and are safely arranged by "burning-in" the logic to control those safety parameters which the press user does not want to be tampered with, while permitting the adjustment of other control items not related to safety. Such systems are said to meet the control reliability requirements of the standard, and are considered less user-accessible than relays or some other types of solid state controls. It was suggested that the paragraph be revised to permit the use of programmable controllers provided that all elements affecting the safety system and point of operation safety are internally stored and protected in such a manner that they cannot be altered or manipulated by the user to an unsafe condition. OSHA agrees with these suggestions for the reasons stated, and the paragraph is revised in the final rule in order to incorporate them.

Section 1910.217(h)(7), "Environmental requirements." This paragraph addresses, in performance language, the operational and environmental stresses (such as temperature, vibration, humidity, etc.) which could impair the capability of the control system to perform as intended. Since PSDI places great reliance on the control system for safe press operation, it is necessary that the control system not be deleteriously affected by such stresses. Two comments were received on this paragraph. As mentioned in the discussion on paragraph (h)(4), Alcona Associates (Ex. 18–12) included this provision in a list of several provisions in the standard, with the recommendation that they also apply to other methods of press cycle initiation. As stated in the earlier discussion, this rulemaking can only address PSDI requirements, but OSHA shall continue to monitor the efficacy of the § 1910.217 requirements. The Motor Vehicle Manufacturers Association (Ex. 18–45) suggested that the paragraph be deleted because it presents a burden on the employer to anticipate the unknown. OSHA believes the requirement is essential for the safe accomplishment of PSDI. The stresses involved are not totally unknown; Appendix A outlines the major likely stresses. The burden is principally placed on the manufacturer, not the employer, to design the PSDI safety system to meet the stresses likely on the shop floor, such as heat and vibration. This type of consideration is present in the design of most machines. It is not an unusual requirement nor a requirement to anticipate the unknown, but the likely or possible. Therefore, the paragraph in the final rule is unchanged from the proposal.

Section 1910.217(h)(8), "Safety system." This paragraph expands upon the control reliability requirements of the existing standard to assure safety both when the PSDI safety system is working properly and when there is a malfunction. Specifically, a single malfunction, either by the operator or the PSDI safety system, is not to permit a point-of-operation accident. It also requires, through the certification/validation provisions, that the manufacturer and the employer will design and operate the PSDI safety system as an integrated group of components designed to operate together compatibly. The required safety system includes all elements which operate together to prevent the worker from receiving injury at the point of operation. Supplementary safeguards, if required, are considered a component of the safety system. *The safety system concept emphasizes the fact that PSDI shall not be attempted merely by the addition of a presence sensing device to an existing press.*

The paragraph in the proposal included a provision that a single failure or single human error shall not cause injury to personnel from point of operation hazards. Nearly all of the comments received on this paragraph were from press users and device manufacturers (Exs. 18–18, –32, –40, –44, –52, –56, –58, –64, –77, –78, –79, –80 and –83) and contained objections to the term "human error." It was pointed out the term is too broad, as it might be construed to include human error in any facet of PSDI implementation. OSHA agrees. The intent of the provision is to address operating errors. The provision is so revised in the final rule. Otherwise, there were not substantial objections to the provision.

Section 1910.217(h)(9), "Safeguarding the point of operation." This portion of the standard contains a number of provisions intended to safeguard the point of operation.

Paragraph (h)(9)(i) cross references the applicability of the requirements in the current standards relating to safeguarding the point of operation.

Paragraph (h)(9)(ii)(A) states that implementation of PSDI shall be with the light curtain (photo-electric) type. The only current presence sensing devices suitable for stroke initiation are the light curtain type. However, to allow for advancements in technology (h)(9)(ii)(B) provides the procedure for obtaining approval for alternatives to light curtains if they are demonstrated to be as safe and reliable.

The ELKAY Manufacturing Company (Ex. 18–39) suggested additional wording to require that the device cannot be sensitive to ambient light or other external light source or signal. The apparent intention of the suggestion is to prevent inadvertent sensing of any external light or signal sources by the device. This is recognized as a basic design requirement for any functionally effective presence sensing device. The suggested change is not considered necessary in the paragraph.

Guardimark International, Inc. (Ex. 18–66) suggested additional wording to avoid implication that supplemental safeguarding is limited to light curtain devices. Since paragraphs (h)(9)(viii) clearly permits the use of other types of guards—which meet the requirements of paragraphs (c) and (h) of this section—to be used as supplemental safeguards, the suggested change is not considered necessary in (h)(9)(ii).

Paragraph (h)(9)(iii) limits the individual sensing field of a presence sensing device used to initiate strokes in the PSDI mode to cover only one side of a press. Three comments from device manufacturers (Ex. 18–11, –56 and –78) objected to the limitation. It was stated that if the light curtain systems are independent and mutually exclusive, there would be no erroneous signals, and that single light curtains have been used safely for PSDI on multiple side installation. OSHA believes that the use of mirrors or other techniques to "bend" the field of a light curtain reduces the reliability of the device for stroke initiation. The paragraph (h)(6)(xi) requirement for a separate device and control for each operator of a press dictates that no more than one side of a press be covered with any one sensing field. No change is made in this paragraph in the final rule.

Paragraph (h)(9)(iv) in the proposal called for a minimum object sensitivity of one and one-fourth inches (31.75 mm)

for light curtains used for PSDI operation, and limited blanking to one blanked area with a maximum size of two inches (50.8 mm). "Object sensitivity" describes the capability of a presence sensing device to detect an object in the sensing field. The intention of the paragraph was to ensure fast and reliable detection of parts of the body and hand tools entering the light curtain as well as reliable and consistent stroke initiation.

ELKAY Manufacturing Company (Ex. 18–39) stated the opinion that the one and one-fourth inch (31.75 mm) minimum is needed because if it were larger, persons with small arms and hands could penetrate the presence sensing field so as to prevent or delay the detection of their hands. Two commenters (Exs. 18–65 and –75) suggested that the one and one-fourth inch (31.75 mm) minimum could be increased because the average thickness of the back of the hand is greater. One of these commenters suggested one and three-fourths inches (44.45 mm) as minimum.

OSHA believes the one and one-fourth inch (31.75 mm) minimum is necessary to prevent small hands from penetration too close to the press before the device senses the intrusion and prevents the ram from operating or stops it. Retaining this minimum will also enhance safety by lowering the penetration depth factor—from about five inches (127.0 mm) for one and three-fourths inches (44.45 mm) to about 3.3 inches (83.8 mm) for one and one-fourth inches (31.75 mm)—which would affect the safety distance calculations called for by paragraph (h)(9)(v). Consequently, no change is made in this provision in the final rule.

A number of commenters (Exs. 18–6, –19, –22, –37, –39, –40 and –60) objected to the provision for blanking. "Blanking" is a form of blocking of the sensing device pattern to allow the feeding of stock or parts. It removes a portion of the sensing field from operation, creating a blind spot which does not sense the presence of any object or any part of the operator's body. Many commenters suggested not only that the two inch (50.8 mm) size is unsafe, but that blanking should not be permitted because in combination with minimum object sensitivity, it could result in too great a gap in the sensing field. OSHA agrees that the provision for blanking is potentially unsafe for the reason stated, and the final rule is revised from the proposal to prohibit blanking.

Paragraph (h)(9)(v) in the proposal sets forth the formula for calculating the required safety distance—the distance from the sensing field to the point of operation. The purpose of the safety distance is to prevent the operator's hand from being caught in the point of operation if the hand reenters the space between the light curtain and the point of operation after the stroke has been initiated. The safety distance allows sufficient time for the ram of the press to be stopped before the hand reaches the point of operation. It does this making sure that the time from when the presence sensing device senses that the hand has reentered the light curtain field, until the brake stops the ram is less than the time it will take the hand to move from the sensing device field to the point of operation.

The current regulation utilizes a formula based on a hand speed of 63 inches per second (1.6 m/s) and the total press stopping time. In the proposal, OSHA increased the safety distance for any given press by changing the safety distance formulas in two manners.

First, the hand speed was increased from 63 in/sec to 100 in/sec. (The faster the assumed hand speed, the longer the necessary safety distance, because the hand is assumed to travel further in a given stopping time of the press ram.) OSHA questioned whether there was a greater possibility with PSDI than with dual palm buttons initiation that a hand could reenter the sensing field moving rapidly and consequently overall faster hand speed would result. In addition, OSHA discussed several studies of hand speeds (see 50 FR 12701–1) with divergent conclusions. Some indicated slower maximum hand speeds and others higher maximum hand speeds. OSHA also pointed out that Germany used 63 in/sec and Sweden used 100 in/sec.

Secondly, OSHA proposed to increase the safety distance by defining additional time elements and adding a factor for hand penetration through the sensing field. The four stopping time elements represented an extension of the previously established stopping time of the press into the four distinct increments of the total stopping time from initial presence sensing to full stop: (1) The presence sensing device response time; (2) the response time of interposing elements between the presence sensing device and the clutch/brake operating mechanism; (3) the increase in stopping time allowed by the brake monitor for brake wear (multiplied by a safety factor of two); and (4) the press stopping time (defined as the sum of the kinetic energy dissipation time plus the pneumatic/magnetic/hydraulic reaction time of the clutch/brake operating mechanism). The penetration depth factor incorporated into the calculation the distance an operator's fingers or hand could penetrate through the presence sensing field before detection, based on the minimum object sensitivity or blanking size.

The proposal particularly invited public comment on the hand speed constant because of the wide range of available data on the subject. Approximately one-half of the commenters who responded to OSHA on the proposal included comments on the constant (Exs. 18–6, –11, –15, –17, –19, –22, –23, –24, –25, –26, –32, –37, –38, –39, –40, –44, –46, –48, –49, –51, –52, –56, –57, –58, –60, –61, –63, –64, –65, –67, –68, –69, –71, –73, –75, –76, –77, –78, –79, –80 and –83). The preponderant position—in all but six of the 41 comments which addressed the subject—was in opposition to the increase in hand speed.

Frequently expressed, in 13 comments, was the fact that the commenters had never had knowledge of any accidents in which the hand speed of 63 inches/second (1.6 m/s) had been a factor. These commenters spoke of many years of experience as metal stampers or otherwise associated with mechanical power press operations, with lengths of experience stated as 13 years, 28 years, 3 years, 12 years, 13 years, 11 years, 2 years, 9 years, and 4 years. Typical of these comments was one from Service Stamping Inc. (Ex. 18–17) which stated:

> In our 28 years of experience in the metal stamping business, we never had an accident that was caused by the proximity of the hand initiated mechanism to the point of operation. Obviously, some of these years came under OSHA regulations requiring other safety devices, but a portion of this period covers operations not subject to the 63 inch/second hand speed, and still providing 100% safety for our employees.

Two commenters, however, did speak of knowledge of one or more accidents in which safe distance or hand speed was a factor. Consultant Peter N. Bosch (Ex. 18–25) mentioned investigating at least six light curtain related injuries in which the safety distance was a *disputed factor*. This commenter suggested that the hand-speed constant of 100 inches/second (2.54 m/s) be used in two hand trip calculations also. The other commenter, Sick-Optick-Electroniks (Ex. 18–57), stated that the hand speed of 63 inches/second (1.6 m/s) has only been a factor in one accident in their knowledge.

Six comments were received in support of the higher hand speed constant (Exs. 18–19, –22, –25, –51, –60 and –73). Two comments (Exs. 18–19 and –22) from the State of Maryland were

based on the experience of the Swedish, and the documentation and recommendation by NIOSH. Consultant Peter N. Bosch (Ex. 18–25) suggested that with complete hand freedom using PSDI, distance seems more critical than where other controls are used in conjunction with a conventional presence sensing device. Another consultant, Robert D. Jordan (Ex. 18–51), stated that the use of 100 inches per second (2.54 m/s) for hand speed is a move in the right direction and that evaluation of this hand speed constant should be continued. Mr. Jordan also stated that the greater "distance" should be used, based on other studies demonstrating hand speeds of 161 to 177 inches per second.

The comments from the National Institute for Occupational Safety and Health (NIOSH) (Ex. 18–73) discussed hand speed at length. In reviewing the hand speed research described in the OSHA proposal, it was mentioned that some of the studies had the subjects begin with their hands at zero velocity, but that the researcher (van Ballegooijen) later acknowledged that the early studies were based on procedures which obtained reach velocities which are not likely to be encountered in real press operations. In the Dutch study mentioned in the proposal, there are problems resulting from ambiguity as to the mean, median, mode, and range of average reach speed values obtained at various conditions, but the data suggests that at a 40 cm distance between the light curtain and the point of operation, the speeds obtained had a mean of 2.01 m/s (80 in/sec) and a mode of 2.0 m/s (79 in/sec) with a range of 0.05 m/s (1.9 in/sec) to 3.4 m/s (134 in/sec). The resulting frequency distribution indicates that out of 71 test values, 63 (89 percent) would be less than a speed of 2.54 m/s (100 in/sec), but the remaining eight (11 percent) would be faster. The suggestion is made to set the safety distance for the largest die, in order that smaller dies would provide some extra distance.

NIOSH further suggested that the safety distance formula be revised to show the numerical value of the hand speed constant separately, in order that the metric equivalent expression is not misinterpreted as a multiplier of the constant in inches per second. OSHA concurs with this suggestion, and the formula is so revised in the final rule.

Further, the suggestion was made that a recent NIOSH study on press operator hand movement also be included in consideration. This study simulated a power press operation for the measurement of normal hand reach speed as well as after-reach speed. A finding of the study suggests that a hand speed constant of 63 inches per second (1.6 m/s) would protect 50 percent of the power press workforce, but that a constant of 121 inches per second (3.07 m/s) would be required to protect 95 percent of the power press workforce.

Three commenters (Exs. 18–37, –39 and –76) pointed out that in PSDI operation, at the instant of press initiation, the operator's hand is moving out of the press. It would have to come to a full stop after moving some extra distance out of the sensing field and then start again in the opposite direction, toward the press, in order to approach the point of operation. These commenters believe, therefore, that the current hand speed constant of 63 inches per second (1.6 m/s) is adequate for PSDI; in fact, one of the commenters (Ex. 18–39) suggested that it should require a figure less than 63 inches per second (1.6 m/s), as they have had no accident experience resulting from the present use of 63 inches per second (1.6 m/s) in establishing safety distance for their press operations—involving operators' hand motion toward the point of operation rather than away from it.

From one consultant, Paul J. Glascow and several comments from the metal stamping industry (Exs. 18–6, –64, –71 and –76), concern was expressed that if the higher hand speed constant is used, the resulting increase in required safety distance could in fact create safety concerns. In Ex. 18–6, it was stated that a typical scenario with the higher hand speed could result in a safety distance of 26 inches (66 cm) which would not be considered safe and effective. The commenter described another scenario involving a mechanical clutch with eight engaging points which would develop a safety distance of 43.5 inches (1.1 m) with the higher hand speed; a distance described as neither workable nor safe. In Ex. 18–64 from AMSA, it was calculated that the higher hand speed constant, on a press with a total stopping time of 100 milli-seconds and a penetration depth factor of 3.5 inches (8.9 cm), would increase the safety distance from 13.6 inches (34.5 cm) to 19.5 inches (49.5 cm), with the result that the reach is prohibitive, and the potential for increased safety due to the PSDI benefits would be lost.

The Standard-Thompson Corporation (Ex. 18–71) stated that the higher hand speed constant would not only make operation of the press inefficient; it would result in operator fatigue and a lack of willingness to run the press. Mercury Minnesota (Ex. 18–76) expressed concern that if distances are increased, an operator may inadvertently be able to pass through the field, initiating a cycle.

The reason that lengthening the safety distances too much may decrease safety is that it increases operator fatigue, may make the operator's work operation awkward and may affect the operator's balance. These factors may lead to accidents.

A sizable number of commenters, including three metal stampers, two press manufacturers, one device manufacturer and a consultant (Exs. 18–6, –24, –38, –40, –49, –64, –71 and –80), were concerned that the increased safety distance resulting from the higher hand speed constant would render PSDI unworkable and infeasible.

Further, a significant number of commenters of similar affiliations (Exs. 18–24, –38, –40, –46, –56, –57, –58, –61, –63, –64, –80 and –83) discussed the fact that the new safety distance formula not only increased the hand speed constant but also listed additional time elements and added a totally new concept—the penetration depth factor—the combination of which results in unnecessarily long safety distances. Interlake Stamping (Ex. 18–63) pointed out that the safety distance formula which was used at the time of approval of the initial variance request for PSDI utilized a hand speed constant of 100 inches per second (2.54 m/s) but had only a single time element, Ts (stopping time). It was calculated that if 63 inches per second (1.6 m/s) were substituted for 100 inches per second (2.54 m/s) in the proposed new formula, the safety distance would be approximately the same as would be developed using the 100 inches per second (2.54 m/s) in the initial variance request formula. The point was made that the lower hand speed constant is sufficient when used with the new formula, the rationale being the zero-accidents safety record demonstrated during the nine-year period of PSDI operation at the firm.

Another commenter, the American Metal Stamping Association (Ex. 18–64), discussed the establishment of its Project Committee on PSDI, which was composed of representatives of a broad range of interests, and the endorsement by the Committee of a safety distance formula incorporating the additional elements contained in the proposed formula but with a 63 inches per second (1.6 m/s) hand speed factor. This commenter stated that the combination of the higher hand speed factor with the additional elements is unwarranted, and that there is no evidence to suggest, based on actual reports of injuries in metal stamping operations, that 63

inches per second (1.6 m/s) is insufficient.

Earlier, it was stated that some commenters referred to the fact that the Swedish National Board of Industrial Security uses a hand speed constant of 100 inches per second (2.54 m/s). As stated in the proposal, it was the Swedish experience which was the basis for the design of the PSDI operation for the Interlake Stamping Corporation variance. Although 100 inches per second (2.54 m/s) is used as the Swedish mechanical power press hand speed constant, the Swedish safety distance formula is less stringent than the OSHA proposed formula because it does not include all of the elements of the OSHA formula.

Several commenters (Ex. 18–56, –76, –77 and –83) discussed the German experience. They pointed out that 63 inches per second (1.6 m/s) has been used safely and successfully for many years in similar applications there.

OSHA has reviewed and carefully evaluated the comments and evidence in the record concerning hand speed and safety distance. The extensive research which has been documented demonstrates a broad range of hand speed capabilities. Although there is some question concerning the real world applicability of some of the test results, with some researchers indicating that certain reach velocities are not likely to be encountered in real press operations, OSHA agrees that there is a sufficient body of findings to demonstrate a broad range of hand speed capabilities, the upper limits of which may exceed both the current and proposed hand speed constants.

Even though such high hand speed capabilities have been demonstrated by the research, a practical question is raised by the fact that an overwhelming majority of the commenters can cite no accident experiences in which hand speed was a factor. In evaluating the importance of hand speed, it is recognized that the practical objective of considering hand speed capability is only for the determination of a hand speed constant to calculate the necessary safety distance between the sensing field and the point of operation. The hand speed constant is only one element in the formula used to calculate the safety distance. The current safety distance formula specified in 29 CFR 1910.217(c)(3)(iii)(*e*) includes only two factors: the hand speed constant of 63 inches per second (1.6 m/s), and the stopping time of the press. The new safety distance formula is more stringent, in that it defines four stopping time elements—the presence sensing device response time, the response time of interposing elements between the presence sensing device and the clutch/brake operation mechanism, the increase in stopping time allowed by the brake monitor for brake wear (multiplied by a safety factor of two), and the press stopping time—and adds an additional element, the penetration depth factor, representing the distance an operator's fingers or hand could penetrate through the sensing field before detection.

A significant point in comparing the current formula with the proposed new formula was made in the comments from Interlake Stamping (Ex. 18–63) which were discussed above. The safety distance formula which was used for the approval of the initial variance request for PSDI was based on the Swedish experience, using a hand speed constant of 100 inches per second (2.54 m/s) with only the single stopping time element. Thus, the safety distance used for the variance request was based on the formula and hand speed constant used successfully in Sweden since the 1950's. It is noted that the formula used was the same as the current formula specified in 29 CFR 1910.217(c)(3)(iii)(*e*), with the exception that the higher hand speed constant was used for the PSDI operations under the experimental variance.

However, in the proposal, OSHA not only increased the hand speed but added four additional factors to be considered in calculating the safety distance each of which would increase the safety distance. Consequently, the OSHA proposal would have lengthened the safety distance substantially more than the Swedish requirement and the requirement for the variance.

Interlake has calculated that the use of a hand speed constant of 63 inches per second (1.6 m/s)—instead of 100 inches per second (2.54 m/s)—in the proposed new formula with the additional elements would result in approximately the same safety distance as that which was derived from the formula which was used to establish the safety distance for the variance and used in Sweden; that is, the higher hand speed and only the single time element.

OSHA has calculated the differences in safety distances derived from the experimental variance formula versus safety distances which would be derived from the proposed new formula using 63 inches per second (1.6 m/s) instead of 100 inches per second (2.54 m/s). Over a broad range of time elements, including various combinations of times considered reasonably likely to be acceptable for PSDI, the safety distance derived from the proposed new formula using 63 inches per second (1.6 m/s) was somewhat greater than that derived from the experimental variance formula in each case. In the lower end of the range—representing the faster stopping times—the greater safety distance was as much as half again the length of the shorter one. In the upper end of the range—representing the slower qualifying stopping times, the greater safety distance was approximately five to six inches greater.

After reviewing the substantial body of evidence and opinions, OSHA concludes that the 63 inch per second hand speed constant with the five-element formula will result in a safe safety distance. It leads to a slightly larger safety distance than the formula that is used in Sweden and in the experimental variance which will be somewhat safer for the employees. This increase is appropriate because presses will be used more widely than the more controlled condition of the variance. The final result reflects the view of most of the comments received.

As an alternative, OSHA considered the option of using a safety distance formula which would retain the hand speed factor of 100 inches per second (2.54 m/s) but would delete the added time elements and penetration depth factor—comparable to the time element in the current formula specified in 29 CFR 1910.217(c)(3)(ii)(*e*). While this would be the same formula used in the experimental variance at Interlake, and has been demonstrated to be effective, OSHA has opted not to use such a formula. OSHA has determined that it is preferable to identify in the formula the individual components of the stopping time of a press. Not only will this present the capability for more precise evaluations in the certification/validation of the safety system; OSHA believes it will help identify critical components and provide incentive for design improvements where appropriate.

Based on the comments which have been received on hand speed, OSHA has determined that the use of a hand speed constant of 63 inches per second (1.6 m/s)—rather than 100 inches per second (2.54 m/s)—in the new safety distance formula will provide a level of safety at least equal to or greater than that which has been provided in any of the successful PSDI operations known to OSHA. In addition, it will provide for a realistic and usable safety distance, with the result of a further potential for increased safety due to the other benefits of this rulemaking, including safety system certification, enhanced

control reliability, and improved training requirements.

OSHA concludes that the evidence indicates that the additional increase in the safety distance of the proposal through increasing hand speed as well as adding elements would not further increase safety. By increasing operator reach, it will increase fatigue and awkwardness of use which would cancel the benefits of the increase in distance. OSHA further concludes that its final decision properly balances all factors, based on the evidence in the record.

The American Metal Stamping Association (Ex. 18–64) suggested that minor improvements be made in the definitions for two of the time elements in the safety distance formula. It was suggested that the definition for Ts be modified by adding the word "the" in the first sentence so that the phrase reads, "* * * the longest of *the* three averages is the stopping time to use." It was also suggested that the definition for Tm be modified to add the word "press" in two locations where "stopping time" is discussed. OSHA agrees that these suggestions will enhance clarification and understanding of these definitions, and the definitions are so revised in the final rule. In addition, the definition for Tm is to be further revised to reflect the alternative of permitting an increase of 10 milliseconds or 10 percent of the longest stopping time of the press, whichever is longer, in accordance with the comments discussed earlier regarding paragraph (h)(5)(iii).

In paragraph (h)(9)(vi), the presence sensing device location is required either to be set at each tool change, or to be fixed in location to provide the required safety distance for all tooling set-ups. OSHA believes either method will ensure the necessary safety distance. Where the adjustable set-up is used, paragraph (h)(9)(vii) requires the use of a special tool available only to authorized persons. OSHA believes this is necessary in order to prevent unauthorized changes in the presence sensing device location which might place the sensing field too close to the point of operation and, thus, result in exposure of the operator to injury at the point of operation. These paragraphs received no comments.

Paragraph (h)(9)(viii) requires supplemental safeguarding to protect all areas of access to the point of operation not protected by the PSDI presence sensing device. Such supplemental safeguarding is considered a component of the safety system because of its importance for worker safety during PSDI. It is limited to either additional presence sensing devices or to other types of guards meeting the standard, and is required to be interlocked with the press control to prevent press PSDI operation if the guard fails, is removed, or is out of position. If a presence sensing device is used as a supplemental safeguard, it can not be used to initiate a press stroke but is required to meet the requirements of the standard.

Guardimark International, Inc. (Ex. 18–66) expressed concern that this provision would impose an additional restriction on PSDI, and questioned the need for it. OSHA is retaining this requirement in order to ensure that all areas of access to the point of operation are protected during PSDI operation. Because the backup safety of dual palm buttons or other safeguards are not used, the increased reliability of the system is needed.

Paragraph (h)(9)(viii)(B) requires interlocking of supplemental safeguards to prevent PSDI operation if the supplemental safeguard fails, is removed or is out of position. Three comments were received on this paragraph. The Minster Machine Company (Ex. 18–18) suggested that the supplemental safeguards be certified because simple interlocking may not be adequate for PSDI. The Motor Vehicle Manufacturers Association (Ex. 18–45) requested deletion of this paragraph because there is no demonstrated need for interlocking supplemental guards on presses.

OSHA has considered these two comments, and concludes that supplemental safeguards are of sufficient importance to be included in the certification requirement. As just stated, the backup safety that dual palm buttons or other safeguards provides does not exist and therefore the increased system reliability of certification is appropriate.

It had been OSHA's intention in the proposal to consider supplemental safeguarding as a part of the safety system. In order to prevent misunderstanding, the final rule is revised to so state, and thus to include it in the certification requirement. AMSA (Ex. 18–64) suggested that the word "fail" be removed from this paragraph because it relates more to electrical or electronic devices rather than guards or barriers. Since the standard does permit the use of presence sensing devices as supplemental safeguards, the word "fail" is considered appropriate, and no change is made.

Paragraph (h)(9)(ix) originally required the installation of barriers or supplemental light curtain presence sensing device safeguards to prevent the situation where personnel could pass completely through the PSDI presence sensing device sensing field. OSHA believes that, without such safeguards, there is a potential for triggering a stroke initiation by inadvertent interruption of the field while the operator is still on the point-of-operation side of the presence sensing device. One comment from Guardimark International, Inc. (Ex. 18–66) was received that requested the words "light curtain" be removed from this paragraph to allow other types of presence sensing device use. Although OSHA believes that the only current presence sensing device suitable for PSDI use—either for stroke initiation or for protecting other areas of access to the point-of-operation—is the light curtain inasmuch as it is the only device currently in use for which there is experimental evidence of safety, considering its successful integration into the entire safety system. The requested deletion is, however, being made to permit other types of supplemental presence sensing device safeguards provided equivalent safety and reliability are maintained. In addition, OSHA has added a new subparagraph to § 1910.217(h) to encourage the development of new technology and to assure that regulatory approval of such technological advancement will be done efficiently.

To allow for advancements in technology, (h)(9)(ii)(B) provides the procedure for obtaining approval for alternatives if they are demonstrated to be as safe and reliable as light curtains.

Paragraph (h)(9)(x) requires that hand tools be designed, either by tool handle thickness or tool length, to ensure that the intrusion of the hand tool or an operator's hands into the sensing field of the PSDI presence sensing device will be detected during the entire period of hand tool use. This is required to be suitable for any safety distance determined by the press set-ups. Stroke initiation while a hand tool is in the point of operation could seriously injure the operator by fly-back of the tool or its parts, or by forcing the operator's hand against the press or another object. Two comments (Exs. 19–19, –22) were received to this paragraph which suggested adding the words "and larger than any blanked out (fixed or floating) band width." As mentioned above, OSHA has deleted the proposed provision in (h)(9)(iv) which would have allowed blanking, so there now is no need for the suggested revision to (h)(9)(x).

Section 1910.217(h)(10), "Inspection and maintenance." Paragraph (h)(10)(i) requires that a test rod, with

accompanying instructions for its use, be provided to ensure the object sensitivity capability of the presence sensing device and to facilitate appropriate inspection and maintenance.

Three comments were received to this paragraph. From the Alcona Associates, Inc. (Ex. 18–12), a suggestion was received regarding this and several other provisions that if this is required for PSDI, it should be required in other methods of initiation as well. As mentioned earlier, this rulemaking can only address PSDI-related changes to the standard. The Minster Machine Company (Ex. 18–18) stated that there is a need for "highly qualified" maintenance personnel. To attempt to set qualification requirements for maintenance personnel is considered beyond the scope of this rulemaking. OSHA believes the mandatory provisions of the standard require the employer to have an effective maintenance program. The certification/validation provisions of the standard enhance the reliability of the program. Guardimark International, Inc. (Ex. 18–66) objected to the restriction to light curtain use. This aspect has been commented on above, for paragraph (h)(9)(ix).

Paragraph (h)(10)(ii) in the proposal listed the specific checks at the beginning of each shift or whenever a die change is made which OSHA believes are necessary to ensure that the designed safety features are fully operational. It was the intention in the proposal that the checks be made at least at the beginning of each shift and more often if die changes are made more often. In view of the fact that there will be operations in which dies are changed less frequently than once each shift, the provision is revised in the final rule to clarify the intent to require the checks at the beginning of each shift *and* whenever a die change is made. The checks will include: Tests of the PSDI and supplemental safeguarding; checks of the safety distance; and verification of the correct counterbalance adjustment. As with paragraph (h)(10)(i), one objection from Guardimark International, Inc. (Ex. 18–66) was received to this paragraph because of the restriction to light curtain safeguarding. As discussed earlier, the use of other presence sensing devices may be used where safety and reliability equivalent to that obtained with the light curtain can be demonstrated. Another commenter suggests that subparagraph (E) be revised to require a "system or visual" check, apparently to prevent any misunderstanding which might result in a more rigorous check. OSHA agrees, and the final rule is revised to reflect this change.

Paragraph (h)(10)(iii) reflects OSHA's belief in the necessity to inspect, lubricate, and maintain flywheels and bearings in order to preclude bearing seizures and possible uncontrolled press strokes. There were no comments to this paragraph. Therefore, it remains unchanged from the proposal (50 FR 12712).

Paragraph (h)(10)(iv) requires periodic inspections of clutch and brake mechanisms in accordance with the press manufacturer's recommendations. OSHA believes that compliance with the manufacturer's recommendations should ensure continued full operational capability of the clutch and brake mechanisms. The Motor Vehicle Manufacturers Association (Ex. 18–45) recommended that this paragraph be deleted. The commenter objected to the requirement that the manufacturer's recommendations be followed, on the basis that the inspection requirements in paragraph (e) of the standard are adequate. Because of the importance of the clutch and brake mechanisms for safe operation in the PSDI mode, and the fact that the clutch/brake inspection requirements in paragraph (e) do not apply to presses which comply with the standard's requirements for control reliability and brake monitoring, OSHA believes it important that the manufacturer's recommendations also be followed.

Paragraph (h)(10)(v) provides that any condition of failure, non-compliance, or improper adjustment which may be revealed by the checks specified in paragraphs (h)(10) (ii), (iii), or (iv) must be corrected before any further operation of the press is attempted. No comments were received on this paragraph, therefore, it remains unchanged from the proposal (50 FR 12712).

Paragraph (h)(10)(vi) requires that the employer ensure the competence of personnel who would care for, inspect, or maintain presses equipped for PSDI operation, through initial and periodic training. OSHA believes the continuing inspection, care, and maintenance of the presses is critical to the continuing safety of the operator. No comments were received on this paragraph, therefore, it remains unchanged from the proposal (50 FR 12712).

Section 1910.217(h)(11), "Safety system certification/validation." This paragraph requires three specified certifications of the PSDI safety system by the manufacturer or employer and validations by an OSHA-recognized third-party validation organization. The PSDI safety system, as explained above, includes not only the presence sensing device but pertinent elements of the press, brake, clutch, controls, safeguarding, etc., integrated together.

Specifically, the "certification/validation" term refers to an organized system under which the manufacturer/fabricator, employer, and/or their representatives certify that a PSDI safety system meets all requirements of this standard, and a testing/validation organization, which is independent of employers or manufacturers and which is recognized by OSHA as having a reasonable level of expertise related to the PSDI standard, validates the certifications. The third-party validation concept is also described in ANSI Z–34.1–1987, the American National Standard for Certification—Third Party Certification Program.

The three specified certifications/validations in this PSDI standard are (1) design, (2) installation, and (3) annual. The design and installation certifications/validations would be required before the initial use of the press, and the certification/validation on an annual basis thereafter. The specific requirements for arriving at necessary certifications/validations are detailed in Appendix A to § 1910.217. This entire process is referred to as "certification/validation" in this preamble section. See the definitions of certification and validation in § 1910.211(d) (64) and (65), and the defintion of certification/validation in § 1910.211(d)(66).

The design certification/validation would operate in the following manner. A manufacturer or fabricator (which conceivably could be an employer) would design, manufacture and/or assemble, analyze and test the system. The manufacturer/fabricator would certify, based on the tests and analyses performed, that its PSDI safety system meets the requirements of the PSDI standard. The OSHA-recognized validation organization validates, through its own examination, that the design certification is correct and that the PSDI safety system meets the requirements of the standard. It does this through review and validation of the analyses and tests of the manufacturer and other analyses and tests of the PSDI safety system which may be required by the standard or deemed necessary by the recognized validation organization itself.

Subsequently, the employer would install and maintain the PSDI safety system pursuant to the requirements of

the PSDI standard, and would so certify to the validation organization. The recognized validation organization validates the employer certification, upon installation and at least annually thereafter, that the PSDI safety system as installed is meeting the PSDI standard and is in accord with any special conditions established under the design certification/validation. (Recertification/revalidation may occasionally be required on a more frequent than annual basis under certain special conditions.)

OSHA proposed that third-party certification be required for use of PSDI (50 FR 12703, 12707, 12712–13). At the time of the proposal, OSHA used the term "certification" to apply both to what is called "certification" and "validation" in the final standard. The comments reflect the earlier terminology. The reasons were that when OSHA initially rejected the use of PSDI in 1974 (39 FR 41844), it felt that a certification system was necessary for proper use to protect employees. The European countries which permitted PSDI, and used it safely, had procedures for prior government approval of the equipment and components used in PSDI systems.

OSHA believed that it was important for safe operation that PSDI safety systems are designed, installed and maintained pursuant to the requirements of the standard. OSHA also pointed out the technical nature of the standard and consequently the usefulness of third-party certification to verify compliance.

OSHA stated that it believed that an OSHA-recognized third-party certification program would present a feasible administrative mechanism for assuring that the PSDI safety systems are designed, installed and maintained in accordance with all requirements of this section. OSHA referred to a separate rulemaking action (49 FR 8326, March 6, 1984) (Ex. 17), where OSHA proposed revisions to 29 CFR Parts 1907 and 1910 for new regulations covering OSHA recognition of testing-related agencies and certification programs. OSHA made the rulemaking record of that proceeding part of this proceeding and requested comment on that view or whether an alternate approach to third-party certification would be more appropriate.

OSHA also stated that the general rulemaking on third-party certification, which includes an OSHA procedure for recognition, might not be completed by the time OSHA was ready to issue a final PSDI standard. Consequently, it requested comment on an appropriate interim approach to certification just for PSDI until such time as there was a general framework in effect (50 FR 12707). OSHA also stated it would prefer a less detailed certification system if it would fulfill the requirements of the standard (50 FR 12713).

There were 22 general comments in response to certification. Over one-half of the responses supported third-party certification without qualification because they believed it would improve employee safety and is necessary for safe use of PSDI. Another one-third supported third-party certification but raised questions such as what organizations would do it, what protection from the liability standpoint would be available, and what controls would be available. Less than one-quarter of the 22 responses did not support third-party certification for various reasons, including a preference for self-certification, doubt that such a program would be feasible, and belief that it would be beyond OSHA's authority.

There were a number of reasons given in the comments supporting certification. For example, Anchor Fabricating (Ex. 18–7) stated it supported certification because:

> * * * the certification programs help to insure that these technological improvements do not deteriorate through abuse nor neglect.

The Travelers Insurance Companies (Ex. 18–16) stated:

> We recognize that OSHA is relying upon 3rd party certification to assure the safe use of PSDI and we concur that this is a significant and necessary measure.

The Wiremold Company (Ex. 18–32) commented on third-party certification that:

> Again, we feel that proper integration of the safety system is essential, and that a responsible certifying authority *must be* utilized.

See the comments along similar lines in Exs. 18–17, –24, –48, –75, –76 and –83. Many of these comments are by press users. Interlake Stamping (Ex. 18–63), the company which has been using PSDI under the variance, also supported the need for certification.

There were also more detailed comments supporting certification. The Forging Industry Association (Ex. 18–30) stated that third-party certification "is a critical requirement if we are to establish and maintain the desired level of power press safety." They gave several reasons for this conclusion including the need to assure an appropriate level of maintenance and the need to assure that the electrical and mechanical systems are accurately interfaced with the press.

The National Safety Council (Ex. 18–55) stated:

> * * * we are convinced that the third party certification requirements that are part of the proposed rule are not only essential, but critical if the desired level of power press safety is to be achieved.

The Council generally was opposed to PSDI and preferred NHID to HID but felt if OSHA were to adopt PSDI that third-party certification was crucial for safety.

The American Metal Stamping Association (Ex. 18–64) which represents companies which use power presses as well as companies which supply them with equipment, strongly supported an OSHA recognized third-party certification program. It felt that certification, along with OSHA's reasonably detailed safety requirements, was needed to assure that a suitable control system was used and that the press was properly maintained. It pointed out that in view of the large number of types of presses, light curtains, clutch brakes, etc., available, there was a need to make sure that "the entire system is carefully designed, constructed, installed and maintained to assure proper and safe operation." (p. 2)

AMSA stated:

> The type of certification that is needed for PSDI is relatively straightforward. Technically competent people—who are scrupulously unbiased—must review diagrams, tests, failure mode analyses, performance benchmarks, etc., to determine that elements of the safety system are designed, manufuactured, integrated, installed and maintained in conformance with requirements of the proposed new paragraph (h). Conflicts of interest must be avoided. And the benefits of "third-party" certification, as opposed to self-certification, are obvious.

AMSA believed that manufacturers of the various elements of the PSDI safety system, and employers who wish to use the PSDI mode, should be required to submit tests, diagrams, performance benchmarks, etc., to the third-party organization which would need to be reviewed and verified. It also believed that extensive additional tests performed by the recognized certification program should be avoided, where feasible, with the emphasis on review and verification. (p. 4)

AMSA made a number of technical recommendations on certification which are discussed below. It also stressed the importance of not delaying PSDI until a general procedure of OSHA recognizing third-party certification programs was in operation if there was to be a substantial delay. It supported an interim procedure if that were the case and stated their Board of Directors had

authorized "an AMSA sponsored" private sector initiative for third-party certification of PSDI safety systems.

Danley Machine Corporation (Ex. 18–72) is a manufacturer of presses. It stated:

> In our opinion the proposed rules reflect the culmination or a very careful extensive program of investigations regarding PSDI. Further we would have to believe that operation under the proposed rules would result in a higher degree of safety than exists today in many applications. If, in fact, the requirements for Certification of a Safety System and the Safety System itself can be implemented, it would be a giant step in a safe direction.

A number of other comments supported some type of third-party certification, but with qualifications or recommended substantially different approaches than the one OSHA proposed. One presence-sensing device manufacturer supported third-party certification but recommended that OSHA directly appoint Underwriters Laboratories because of their experience and capabilities (Ex. 18–37, ISB Products). Data Instruments (Ex. 18–40) stated that "Generally, we agree with the need for certification," but believed a substantially simpler PSDI safety system was more appropriate. They felt the electronic, electro-mechanical, and pneumatic control systems should be certified, but not the press and clutch/brake because there were too many variations of the latter to make it practical except for new machines. They felt fewer tests were needed for design certification but supported installation certification and annual checks.

Robert D. Jordan (Ex. 18–51), a professional engineer, felt that no technical reasons to prohibit PSDI existed now, but felt human factors still existed. However, he supported certification if the certifier had financial responsibility. Several commenters (Exs. 18–, –12, –60) felt certification was a good idea but would not be practical from a products liability aspect either, because it would not relieve the manufacturer from liability or the liability of the certifier. Sick-Optik-Electronik (Exs. 18–56, –57, –78), a manufacturer of light curtains and PSDI systems, supported third-party certification but felt OSHA should not set specifications for tests and analyses. It stated that those details should be left to the certifier because it believed this would be more practical and stated that many organizations have the capability to certify PSDI and indeed guidelines already existed.

Guardimark International (Ex. 18–66), a manufacturer of electronic safety devices, was in favor of certification but not third-party certification. They believe that manufacturers do proper testing of their equipment to make them safe especially because of the need to minimize product liability. They felt that the qualification of the third-party certifier "cannot be predicted." They stated that a respectable certifier did a skilled analysis of one of their products but made serious errors in the analysis of another device. They recommended that the certification be limited to confirmation of the manufacturers' analyses by government employees.

There were several comments generally critical of certification. The Computer and Business Equipment Manufacturer's Association (Ex. 18–34) stated:

> CBEMA opposes the requirement for third-party certification. This is, in our view, an unwarranted prohibition of a manufacturer's self-certification program. This requirement would add an unnecessary cost, without any increase in safety to a system that is already functioning safely and successfully.

Verson Allsteel Press Company (Ex. 18–2) did not object to the concept of certification, but believed an effective certification program could not be devised.

Two trade associations strongly objected to third-party certification. The Motor Vehicle Manufacturers Association (Ex. 18–45) proposed the use of a "qualified person" instead. They stated:

> The certification process which requires the utilization of the independent third party certification program recognized by OSHA in accordance with the final procedure specified in the **Federal Register**. 29 CFR 1936 does not add materially to the safety of the operations of the PSDI operating mode. The requirement of Appendices A and B are really beyond the state of the art in safeguarding employees and really beyond the scope of this rule. A better approach to insure the proper operation of a press is to use a qualified person as defined in ANSI/ASME B30.2–1983:
>
> "A qualified person is defined as a person who by possession of a recognized degree or a certificate of professional standing, or who by extensive knowledge, training and experience has successfully demonstrated the ability to solve or resolve problems relating to the subject matter and work."
>
> Using this definition, the cost and time involved with certifying the proper operation of a press will be materially reduced without increasing the risk.

The National Electrical Manufacturers Association (Ex. 18–43) was critical of both PSDI generally and the certification concept. They stated that electrical mechanical interference (EMI) in the workplace might interfere with the safe use of PSDI and that "EMI from all sources cannot possibly be anticipated through the proposed third-party certification system."

They further stated that they did not believe annual recertification was sufficient to keep the PSDI press in "non-degraded" condition. "Practical experience in the workplace indicates that controls, even those necessary for safety, will be changed by operators and others. These inevitable changes will result in a control system which is inconsistent with the certification * * *."

NEMA also stated:

> This proposed rule is particularly undesirable because NEMA members who manufacture a component or subassembly of a punch press are not likely to have control over how it is ultimately used in the workplace. Nevertheless, the rule could expose such manufacturers to liability under the present product liability law. The employer, upon whom the proposed rule is dependent and over whem OSHA has sole jurisdiction, is in most states free from liability exposure because of the workers' compensation laws. This shield minimizes the employer's motive to maintain the extremely high degree of safety demanded by this proposed control. Regardless of whether OSHA is convinced that injuries will occur or not, adoption of this proposed rule should include provisions which eliminate liability exposure by the manufacturers whose products become a part of the system.

Further, NEMA makes the following two arguments:

> By this rulemaking, OSHA attempts to delegate its regulatory decision to the design process by manufacturers. Even if one grants the proposition for the sake of argument that OSHA has jurisdiction over product design, it is questionable as a matter of administrative law whether the proposed delegation in this rulemaking without sufficient criteria for oversight can withstand judicial scrutiny * * *
>
> The design certification requirements on manufacturers are particularly onerous because of the degree ot which OSH intrudes into the product development process. The Appendix describes all of the information that must be submitted to the certification program for approval.

Finally, NEMA points out that completing the third-party certification rule may take OSHA a long time and it might be challenged in court. Therefore, it would not be ready for use for PSDI. Also NEMA believes the PSDI rule will require more data to be submitted to the government than the government really needs.

OSHA has carefully reviewed all the comments on this requirement for design, installation and recurrent certification by an OSHA-recognized third-party certification program to assure that the PSDI safety system meets the requirements of the PSDI

standard. Based on its review of the comments, evidence in the record and analysis, OSHA concludes that such a requirement is needed for safe use of PSDI.

One major reason OSHA has concluded that certified PSDI can be safely used is the European experience of safe use. The European experience includes strict control of specific manufacturers' products used in PSDI operations—an arrangement which is neither practicable nor desirable in this country. Certification/validation of the safety system is recognized as an alternative method to ensure that the design, installation, and ongoing use of the safety system will meet the standard. While it cannot be stated with certainty that certification/validation will provide the equivalent degree of control as the European system, the most logical conclusion from the European experience and the experiential evidence is that a certification/validation program is necessary for safe use of PSDI.

Secondly, a safe PSDI system requires the proper integration or interfacing of a number of sophisticated mechanical and electrical systems such as the press, clutch/brake, sensing device and controls. Review and validation of the manufacturer's design and tests on whether the PSDI press meets the requirement of the OSHA standard will lead to substantially greater certainty that there has been proper integration and interfacing of the various systems and components. This conclusion of OSHA's has been strongly supported by a number of commenters quoted above, including the Wiremold Company, the Forging Industry Association (FIA) and the American Metal Stamping Association (AMSA).

Thirdly, there is no dispute that systems such as PSDI presses need to be installed and maintained properly to keep them operating properly. Installation certification and recertification at least annually will clearly lead to a higher standard of operation because there will be regular checks by a competent independent party that the safety systems are properly maintained and operated. Many commenters, such as Anchor Fabricating, FIA and AMSA quoted above, strongly believe installation and recurrent certification is necessary to maintain safe operation of PSDI systems, and OSHA concurs in this view for the reasons stated.

Finally, OSHA has the authority to set up mechanisms such as third-party certification which will lead to more protective and reliable safety systems.

One of the commenters which disagreed with third-party certification, the National Electrical Manufacturers Association (NEMA), argued, as quoted above, that annual recertification was not sufficient to prevent "degradation" or changes in the controls by operators or others. But the annual revalidation by an independent third-party will certainly do more to encourage employers to maintain and prevent changes in controls and more likely catch and correct improper maintenance and control changes, than if no such third-party recertification/revalidation requirement existed. Currently, accidents occur on non-PSDI power presses for a number of reasons, including poor maintenance or operators or employers changing or interfering with safety devices. It is clear to OSHA that third-party recertification/revalidation will not only maintain a high level of safety for PSDI presses but will add a safety factor for PSDI presses which does not currently exist for non-PSDI presses. The selection of at least an annual frequency for the recertification provision in the standard was endorsed by the commenters as a reasonable means of encouraging and controlling proper maintenance of the safety system, without being so restrictive that PSDI might be rendered impractical to implement. (See the comments of Danley Machine above which also make this point.)

OSHA believes the "qualified person" concept, as recommended by the Motor Vehicle Manufacturers Association, is not the most effective method of accomplishing the purpose of certification. Rather, the scope and complexity of PSDI warrant more than one individual's view or professional experience. The requirements and qualifications listed for a third-party certification program (now called "validation organization" in the final rule) bring to the process an organization approach which is considered more appropriate.

A wide variety of different interests supported OSHA's proposal that there be an OSHA-recognized third-party certification program. This included several major trade associations, many press users, several equipment suppliers, the National Safety Council and a major insurance company. This wide range of support from parties with expertise in the area is additional support for the value of third-party certification in maintaining safety.

OSHA believes the views expressed by those who objected to third-party certification are not convincing. The Computer and Business Equipment Manufacturers' Association argued that the program would be "an unwarranted prohibition of a manufacturer's self-certification program." But the OSHA standard does not prohibit manufacturer certification at all. Rather, it provides that an outside party validate (that is verify) the employer's or manufacturer's certification and tests.

The Motor Vehicle Manufacturers Association argued that third-party certification and the requirements of Appendix A were not necessary and could be replaced by review by a qualified individual. The requirements of Appendix A are the result of the recommendations of many experts and essentially this entire preamble explains their necessity. It is clear to OSHA that a qualified validation organization, guided by requirements which are the result of recommendations of experts in the field, will be in a better position to assist in maintaining the safe use of PSDI than review by a vaguely defined qualified individual without any particular guidance as to the type of review.

The lengthiest discussion disagreeing with the need for third-party certification came from the National Electrical Manufacturers Association (NEMA). Their arguments are quoted at length above and the one on possible degradation in operation is responded to above. A second contention they make is that manufacturers of PSDI safety systems will not have adequate control over how they are used in workplaces. In fact the opposite is true. The requirements of the standard which the employer is required to meet and the existence of the installation certification/validation and at least annual recertification/revalidation will give a reasonable degree of assurance that PSDI presses are used and maintained properly. Indeed the existence of this standard and certification/validation will give manufacturers greater assurance that their equipment will be used properly than is normally the case. Normally, there is less control and no regular independent review of how equipment is used and maintained in the workplace.

A further set of arguments made by NEMA is that on the one hand OSHA is improperly "attempt(ing) to delegate its regulatory decision to the design process by manufacturers," but on the other hand the requirements of the standard and certification process "are particularly onerous because of the degree to which OSHA intrudes into the product development process." These two arguments appear mutually contradictory. The PSDI standard does

set some reasonably concrete safety requirements to be met. Those responsibilities have not been delegated. The responsibility on how to design the PSDI press to meet those requirements is left with the manufacturer. The certification/validation program validates that the press does indeed meet the standard's requirements. OSHA is setting forth necessary safety requirements but it leaves to the manufacturer responsibility for designing the press to meet safety requirements.

NEMA raises questions about possible electromagnetic interference (EMI) with safe use of PSDI and whether third-party certification could anticipate all possible sources. There are specific requirements to test for and control EMI and the existence of a certification/validation program is more likely to detect and avoid EMI than without such a program. Safe use of PSDI in Europe and use of light curtains as guards in the U.S. indicates that EMI has been safely controlled.

As quoted above, several commenters made more limited criticisms of OSHA's proposal. One suggested that OSHA appoint Underwriters Laboratories, Inc., as the third-party certification program. However, OSHA does not want to prevent other qualified providers from supplying the services.

Several commenters argued that certification would not end manufacturers' product liability or raised other product liability issues. Section 4(b)(4) of the OSH Act states:

> Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of or in the course of, employment.

Consequently, termination of common law causes of action would not generally be within OSHA's authority. However, OSHA believes that the PSDI standard will improve press safety and consequently fewer accidents will arise to occasion liability questions.

Several commenters felt the areas covered by the certification requirement should be narrowed and one questioned the competence of certification organizations. As discussed throughout this document, the PSDI standard is based on the recommendations of many experts, the European and OSHA variance experiences, the need for proper integration of components, the need for proper periodic maintenance, and the general support of most commenters. OSHA believes, therefore, that the final regulations are the best approach to PSDI safety and that the scope of certification/validation properly balances an appropriate level of review of equipment and operations without excessive interference in design or employer responsibilities. If experience with PSDI in the workplace indicates a lesser or greater role for certification/validation is needed, OSHA will consider that based on the shopfloor experience.

The Agency currently believes that its approach to OSHA recognition of third-party validation organizations under the PSDI standard attains the proper balance of utilizing a competent and effective third-party validator to improve safety without excessive interference into the details of the program for PSDI safety systems. (OSHA intends to study the long term effectiveness of its certification/validation program resources permitting.) OSHA is reaching no conclusions on the appropriateness of the PSDI approach for other areas. As mentioned above, OSHA has an ongoing rulemaking on third-party certification programs generally and it will reach its final conclusions on the general issue in that rulemaking. OSHA may later change PSDI's approach to recognition to be equivalent to its final decisions on the general issue depending on the evidence and views presented in the general rulemaking. However, OSHA agrees with many of the commenters that an OSHA certification/validation program is needed now for PSDI safety systems so that implementation of PSDI, a safe and productive technology, is not further delayed.

In the comments from States with their own OSHA-approved occupational safety and health programs, or State plans, it was suggested that the Secretary of Labor or the responsible official of a State plan State be notified when a PSDI capability has been added to a press. The reason stated for this was that there would be need for action on the part of the compliance organization to review the installation. Rather than impose a reporting burden on the employer, the procedures for the certification/validation program include provisions for making available, listings of certification/validation actions.

Regarding application of the certification/validation requirements in State plan States, OSHA would consider any State standards which do not provide for the full scope of certification/validation, either is required by this standard or by an equivalent certification/validation program, to be less effective than this standard. A state may alternately accept Federal OSHA approved rather than initiate its own program. OSHA also would anticipate that all State plan States would accept OSHA-recognized third-party validation organizations for the validation of the certification of PSDI safety systems. OSHA will recognize state certification/validation if it is based on a system at least as effective as OSHA's.

For the reasons discussed, OSHA concludes that certification/validation as set forth in this standard is necessary for the safe use of PSDI. OSHA's views are reinforced by the wise range of support from press users, manufacturers, trade associations, insurance companies and a safety association.

Paragraphs (h)(11) (i), (ii), and (iii), respectively, contain the general requirements for the three levels of certification/validation. Because of the technical nature of the standard, and the dependence on the certification/validation process to ensure compliance with the standard, the certification/validation requirements are supplemented by three appendices. Appendix A provides the mandatory requirements pertinent to each provision in the section, and identifies the responsibilities of the employer, the manufacturer, and the validation organization. Appendix B provides nonmandatory guidelines which assist employers, manufacturers and others in understanding and implementing the requirements. Appendix C provides mandatory requirements for OSHA recognition of third-party validation organizations; this appendix lists the procedures for application, review, experience, terms and conditions, and provisions for OSHA recognition. OSHA believes these three appendices provide clearer delineation and understanding of the requirements.

There were no comments received to paragraph (h)(11)(ii), therefore, it remains unchanged from the proposal (50 FR 12179).

Paragraph (h)(11)(iii) received one comment from the Motor Vehicle Manufacturers Association (Ex. 18–45) that suggested a revision to read "any press whose safety system has not been certified or recertified annually should be removed from service until the safety system is recertified." This change, it was said, would help to better implement a plant safety program. OSHA has considered this suggestion and believes the wording of the provisions as published in the proposal is more effective.

Paragraphs (h)(11) (iv) and (v) received no comments.

Paragraph (h)(11)(vi) received two comments. One suggested that OSHA add language to make it plain that this is not a substitute for notification of the Secretary of Labor or the State Plan agency (Exs. 18–19 and 22). OSHA agrees, and the provision is so revised in the final rule. The other commenter requested adding the requirement to notify the manufacturer of any injury as well as the certifier so that they may be "in consultation to determine cause if one can be found" (Ex. 18–25). OSHA is including such notification to the manufacturer in the procedures to be followed by the validation organization, rather than increasing the burden on the employer to do so. The validation organization should be better able to determine which manufacturer(s) of safety system components would be involved in the event of an injury.

Section 1910.217(h)(12), "Die Setting and Work Set-Up." This paragraph addresses the requirements for die setting the work set-up on presses used in the PSDI mode. Paragraph (h)(12)(i) requires conformance with current requirements as well as with the new requirements for PSDI. Paragraph (h)(12)(ii) prohibits the use of PSDI for the actual die setting or set-up. Paragraph (h)(12)(iii) requires checks of the safety distance, supplemental safeguarding, and slide counterbalance adjustment following each die change. It also requires a special tool, available only to authorized personnel, for adjustment of the PSDI presence sensing device.

OSHA concludes these requirements are necessary in order to assure that die setting and work set-up are accomplished safely and without degrading the safety of the PSDI operations. There were no comments on this paragraph. However, in the final rule, paragraph (h)(12)(iii) is revised to refer to adjustments of the *location* of the presence sensing device. This change is necessary in order to prevent confusion with the provisions in paragraph (h)(9)(iv) which address adjustments of the *sensitivity* of the presence sensing device.

Section 1910.217(h)(13), "Operator training." This paragraph supplements the training required by the present standard by requiring additional training for the operator of a press used in the PSDI mode. OSHA recognizes the importance of operator training, and believes that the additional specific training for PSDI operation is necessary in order to ensure operator understanding and capability to perform PSDI safely. The Minster Machine Company (Ex. 18–18) commented on this requirement, pointing out the need for increased training as well as supervision because of the new PSDI requirements, and stating concern that even the present training requirements are not being regularly met or enforced. OSHA agrees that there are more rigorous training requirements needed for PSDI and has incorporated them in the standard. The provisions are enforceable.

The provisions of this final rule give emphasis to this need for more training by specifying in paragraph (h)(13) the specific additional areas where extra training is required. In addition, the certification/validation requirement, in particular, defines a mechanism for the employer to demonstrate conformance with the training requirements as well as with the broad requirements for PSDI. If an employer elects to use PSDI in conformance with this standard, the standard is explicit in defining the continuing training and various methods, practices and responsibilities to do so safely.

Further, in response to the above-mentioned public comment (Ex. 18–18) and several others (Exs. 18–2, –8 and –35) that present training requirements are not being regularly met or enforced, although OSHA does not agree that this is so, a provision is added in the final rule to require certification that employees have been trained. The minimum information required for this certification record is the identity of the trainee, the signature of the employer or the person who conducted the training, and the date the training was completed. This certification is not considered an Information Collection Burden under the terms of the Paperwork Reduction Act.

Appendix A—"Requirements for Certification/Validation of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses." This Appendix provides the mandatory requirements for certification/validation of the safety system. The requirements attempt to provide a degree of specificity which can be utilized as a basis for demonstrating and evaluating the capability of a safety system to satisfy the requirements of the standard for safe PSDI.

The requirements from the proposal are more explicitly stated in the final rule in order to better define the relationships between the OSHA-recognized third-party validation organization and the manufacturer and employer or their representatives, for the three categories of certification/validation—design, installation, and recertification/revalidation.

For each category of certification/validation, there is a two-stage process. In simple terms, for design certification/validation, the manufacturer (which can be an employer) certifies that the PSDI safety system meets the requirements of the PSDI standard, and then the OSHA-recognized validation organization validates that certification. For installation certification/validation and recertification/revalidation, the employer certifies that the PSDI safety system meets the requirements of the PSDI standard, and then the OSHA-recognized validation organization validates that certification.

The proposal did not perhaps make the language as clear as was intended between certification by the manufacturer and employer and validation by the validation organization (called the "third-party certification program" in the proposal). The two stages together are referred to as "certification/validation." Moreover, this is the standardized nomenclature in the field. (See ANSI Z34.1–1987, American National Standard for Certification—Third Party Certification Program; Department of Housing and Urban Development (HUD) Administrator Qualifications and Procedures for HUD Building Products Certification Programs; Final Rule, September 20, 1979 (44 FR 54656); and Department of Labor, Occupational Safety and Health Administration (OSHA), 29 CFR Part 1926, Safety Testing or Certification of Certain Workplace Equipment and Materials, Proposed Rulemaking of March 6, 1984 (49 FR 8343).)

This clarification may answer some of the criticism such as by NEMA that OSHA was not fully indicating the design responsibility of the manufacturer. This clarification of language appropriately affirms the primary design and certification responsibility of the manufacturer.

As part of the simplification process, the final version of Appendix A eliminates several paragraphs which cross reference several requirements in other subparagraphs of 29 CFR 1910.217 (a)–(h). Since the cross references were basically to the whole standard, there was essentially no assistance by the cross references to the public and the lists were confusing. However, the elimination of the cross references is not intended to eliminate any existing requirements of 29 CFR 1910.217 (a)–(h).

Many of the comments on Appendix A were the same as those stated on paragraph (h)(11). There were 12 general comments on the Purpose, Scope, and Summary of Appendix A (Exs. 18–66,

–25, –26, –45, –40, –51, –56, –57, –64, –71, –79 and –83). Four of these comments stated that the language should be written more simply (Exs. 18–40, –51, –57, and –83). As an example of these, one commenter stated "I am in favor of the certification and annual recertification. Specifications shuld be written in performance-based language, making use of standards such as those already established in European countries that have years of demonstrated safe history" (Ex. 18–83). Three comments from Sick-Optik-Electroniks (Ex. 18–56, –57, and –78) suggested that all specifications be deleted and left to the third-party certification/validation agency for development. OSHA recognizes and endorses the benefits of using performance language wherever possible in workplace safety standards. A number of revisions are being made in the final rule Appendix in order to better organize the certification/validation requirements and to make them shorter, simpler and more performance-oriented. Some specificity is necessarily retained, however, in order to ensure understanding and effective implementation of the certification/validation function.

AMSA (Ex. 18–64) suggested that the language of the Summary be changed to eliminate the words "* * * shall be performed in a sequential manner and * * *" in order to simplify the certification process and allow flexibility in meeting the requirements. OSHA agrees, and the change is incorporated into the final rule.

In the Summary, paragraph C, reference is made to recertification/revalidation requirements when operational conditions are changed. The American Metal Stamping Association (Ex. 18–64) suggested that "It should be made clear that this does not apply to die changes (application), location of the press where disassembly of the safety system isn't required to move the press (facility changes), or other changes of this nature." OSHA agrees that recertification/revalidation should not be necessary under such conditions, and an appropriate exception is added in the final rule.

Other paragraphs in Appendix A address more specific details of certification/validation. For example, where reference is made to "single human error" in new paragraph A.2., Certification/Validation Program Level of Risk Evaluation Requirements, it was noted by two commenters (Exs. 18–31 and –64) that it should be changed to read "single operator error." As was previously mentioned for §§ 1910.211(d)(62) and 1910.217(h)(8)(i), OSHA agrees, and the change is included in the final rule.

ISB Products Incorporated (Ex. 18–37) stated, regarding this same paragraph, "Redundancy is not enough for a safety system. It should be fail-safe for any single component failure. If the system is safe for a single component failure, then component life specifications are not needed." OSHA agrees that redundancy, per se, is not necessarily an acceptable alternative to the requirement that no single failure point may cause injury. However, the provision considers redundancy as an acceptable, although less preferable, alternative when comparison and/or diagnostic checking is combined in order to ensure continued operating capability of both the primary and the redundant items.

The American Metal Stamping Association (Ex. 18–64) pointed out the desirability for a power press builder or other agent to offer a fully equipped press package that is "design certified" for PSDI operations, which would encourage development of a product line of new PSDI presses and would reduce the cost of design certification by spreading it over a large base of machines. OSHA agrees, and the manufacturer's design certification provisions have been so revised in paragraph A.3., New Design Certification/Validation, in the final rule.

That same commenter also suggested that manufacturers of subsystems should be able to obtain design certification/validation for their subsystems independent of the rest of the subsystems needed in a PSDI system. OSHA agrees that this could enhance flexibility in integrating different subsystems into the safety system, but it would not provide employers with the assurances which certification/validation of the *total* safety system would provide. At this time, OSHA is retaining in the final rule the certification/validation requirements for the safety system in its entirety, with provisions for acceptance of subsystems which are determined by the certification/validation program to be equivalent through similarity analysis. If and when future developments permit equipment sophistication or standardization sufficient for interchangeability, this requirement will be re-evaluated.

There were nine responses to the Manufacturer's Certification Requirements, paragraph D(1)(a)(1) in the proposal, which refer to the definition of "full stop" (Exs. 18–39, –40, –44, –57, –58, –64, –66, –77, –80). All of the comments criticized the wording of the paragraph.

ELKAY Manufacturing Company (Ex. 18–39) was opposed on the basis that the definition of full stop should not be based on deceleration, and it would be difficult to measure the indicated criteria in the average shop. Although that commenter was opposed to a definition based on some low crank speed, other commenters (Exs. 18–40, –44, –57, –64, –77) suggested that the measurement be taken from the crankshaft and not the slide. It was recommended that the rotation of the crankshaft at a low number of revolutions per minute (RPM), such as one or two RPM, be used for the definition of "full stop." As previously stated in comments on paragraph (h)(2) of the standard, OSHA agrees that a more feasible definition of "full stop" is when the crankshaft rotation has slowed to two revolutions per minute, just before stopping completely. Appendix A is so revised in the final rule (new paragraph B.2., Definitions).

The test instrument accuracy requirement for measurement of reaction times to be accurate within 0.0001 seconds was viewed as being too strict by one commenter (Ex. 18–51) who stated that "* * * an instrument accuracy within 0.0001 seconds (Appendix A) seems to be overly restrictive by a whole order of magnitude, with no stated justification for such accuracy." OSHA has considered the comment, noting that an error in a time measurement of 1.0 milliseconds at a hand speed of 63 inches per second (1.6 m/s) equates to a distance of only 0.063 inches in the safety distance calculation, and concurs that the accuracy requirement may be relaxed to 0.001 seconds. In the final rule (new paragraph B.2.), the requirement is so revised.

The majority of the comments received on Appendix A were in reference to paragraph D(2) of the proposal, which involves brake tests. There were 16 comments received, most of which suggested that this paragraph should be deleted (Exs. 18–32, –37, –44, –52, –61, –62 and –79) or changed (Exs. 18–15, –17, –24, –25, –26 and –39). The objections to this paragraph expressed the concern that the requirements was not realistic or meaningful to simulate brake wear by grinding the brake lining. It was suggested instead that visual inspections be required of the brakes.

OSHA believes that considerations of brake wear are valid concerns in the tests defined in paragraph (h)(2)(ii) to determine if the brake system qualifies for high torque capability. Since grinding

of the brake lining to simulate wear may not be realistic and may present other disadvantages, OSHA will accept the manufacturer's recommendations for estimating or simulating brake wear in the stopping time tests to determine torque sufficiency and to meet design certification/validation requirements.

With regard to installation certification/validation and annual recertification/revalidation, however, OSHA believes the stopping time tests should reflect the brake system conditions as they exist at that time. Brakes which are the adjustable type would need to be adjusted properly before the test, and brake wear would not be a factor, other than to evaluate the expectation that the manufacturer's minimum lining depth would not be exceeded before the next annual recertification. Stopping time tests in compliance with paragraph (h)(5)(iii) and (h)(9)(v) would be in this category. Accordingly, Appendix A is so revised in the final rule (new paragraphs B.3. and B.4.).

There were four comments received on proposed paragraph D(4) of the Appendix, which contains the requirements for spring testing. These responses were similar to those received for brake tests, recommending deletion of the test and promoting the use of visual tests and reliance on the brake monitor to ensure stopping time integrity (Exs. 18–39, –46, –58, –64 and –80). One of these commenters, AMSA (Ex. 18–64), stated:

> Simulated tests with one broken spring should be deleted. The standard requires non-interlocking springs and mounting on a rod or in a tube, etc. AMSA has recommended a visual check be conducted of springs prior to the stopping tests in paragraphs (h)(2)(ii) and (h)(5)(iii). Further, a brake monitor is required for PSDI. Its function is to shut down the system if brake performance degrades regardless of cause. A single broken spring is unlikely to cause a catastrophic failure of a brake. Therefore, the brake monitor is capable of addressing this concern.

OSHA agrees. Since the impact of a broken spring on safety is the increase of stopping time, the requirement in the proposal to simulate a broken spring and to evaluate the test on the basis of the torque developed is deleted in the final rule. In its place, Appendix A (new paragraph B.5.) includes provisions for visual checks of the springs prior to stopping time tests, with investigation of the springs as a possible cause of excessive stopping times beyond the brake monitor setting limits defined in paragraph (h)(5)(iii).

One comment was received in reference to paragraph D(1)(a)(7) in the proposal which details the requirements for a hand tool device and object sensitivity. AMSA stated that: "This paragraph should be deleted. The requirement of paragraph (h)(9)(x) is straightforward and not in need of further tests or specifications." OSHA believes that the tests are necessary to determine that the proper hand tool diameters have allowed for variations in minimum object sensitivity response. There is no change in this provision (new paragraph B.8.) in the final rule.

AMSA also addressed proposed paragraph D(1)(b) on Integrated Tests Certification which stated: "Determination that requirements of paragraph (h)(6) are met can be based on analysis, such as failure mode analysis, and/on tests. There should be no absolute requirements for integrated tests if less expensive analysis can provide necessary assurances" (Ex. 18–64). OSHA has carefully reviewed this comment and believes these tests are necessary to assure that the requirements of paragraph (h)(6) have been met. This provision remains unchanged in the final rule (new paragraph B.9.).

Proposed paragraph D(1)(c), Analysis, received one comment referencing failure mode and effect analysis. Peter N. Bosch (Ex. 18–25) stated that "much of the data required for certification, such as failure mode effect analysis, is not available for current press designs, much less for older presses that may be candidates for retrofit." OSHA believes that the data required for these tests can be made available by the manufacturer by using the development tests and the design engineer's experience and knowledge of press components and integrated systems. This provision is retained as new paragraph B.10. in the final rule.

Section E of the proposed Appendix A was concerned with the types of tests acceptable for certification. One response was received to this section which stated "The description of the types of test acceptable for certification seems overly specific. A simple statement that the manufacturer and certification agency shall agree on appropriate tests could be just as effective" (Ex. 18–64). OSHA is of the opinion that guidelines for testing are important to assure that the test methods will be appropriate for providing maximum safety of the components and the entire system. The provision is retained as new paragraph B.11. in the final rule.

Appendix B—"Guidelines for Certification/Validation of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses." This Appendix provides nonmandatory guidelines to assist employers, manufacturers, and their representatives in accomplishing the certification process. It supplements the provisions of the standard and the mandatory requirements in Appendix A.

Three comments were received on Appendix B. Exhibit 18–64 stated that "* * * the certification process should be kept as simple and cost-effective as possible." OSHA has attempted to do this and has reviewed and incorporated as many comments that suggested methods to accomplish this goal without sacrificing the safety of the operator while using PSDI.

Two comments from the State of Maryland (Exs. 18–19 and –22) were received on Section F that support deletion of this guideline because: "There is no way that a 'data base' of any kind can be accumulated during a certification program." OSHA believes that the experience with the testing procedures of the certification/validation program will enable those participants to accumulate data based on the results of the various test methods. However, the purpose of Appendix B is not to create a data base, but to give nonmandatory guidance for an effective certification/validation program.

Appendix C—"OSHA Recognition of Third-Party Validation Organizations for the PSDI Standard." This Appendix provides mandatory requirements for OSHA recognition of PSDI-related third-party validation organizations. The proposal discussed OSHA recognition of third-party certification programs (50 FR 12703, 12707, 12712–3). It referred to and incorporated into the PSDI record an earlier OSHA proposal covering OSHA recognition of third-party certification programs generally (Ex. 17, 49 FR 8326, March 6, 1984). OSHA specifically referenced in the PSDI proposal Subparts A, C, D, and I of the proposed Part 1936.

However, the proposal stated that the general approach to OSHA recognition (proposed Part 1936) may not be finalized by the time OSHA had completed work on a final PSDI standard. Therefore, OSHA requested comment on whether an interim approach to OSHA recognition should be incorporated into the PSDI standard to prevent delay in issuing a final PSDI standard. OSHA also expressed an interest in receiving comments on possibly simplifying the process.

Many comments supported OSHA's suggestion that an interim procedure for OSHA recognition of third-party organizations be adopted for PSDI if a

final general procedure had not been adopted by that time. (See the AMSA comment above Ex. 18–64 and Exs. 18–15, –17, –24, etc.)

There was also some general support for simplification from Stampmatic (Ex. 18–46) and Sick-Optik-Electronik (Ex. 18–56). AMSA (Ex. 18–64) commented:

> As an advocate of certification, AMSA is concerned that rulemaking not establish a certification process that is so cumbersome it cannot function. Nothing could destroy incentive to utilize proven, productive, safety-improving technology faster than an inordinately cumbersome series of administrative procedures and/or certification processes.
>
> The type of certification that is needed for PSDI is relatively straightforward. Technically competent people—who are scrupulously unbiased—must review diagrams, tests, failure mode analyses, performance benchmarks, etc., to determine that elements of the safety system are designed, manufactured, integrated, installed and maintained in conformance with requirements of the proposed new paragraph (h). Conflicts of interest must be avoided. And the benefits of "third-party" certification, as opposed to self-certification, are obvious.

There was little or no opposition to simplification. However, there were few specific suggestions on how to simplify the OSHA recognition process. Several suggested that OSHA directly appoint a specific third-party organization. But as discussed above, that does not appear to be appropriate. However, in one significant change in this final rule, the term "validation organization" is used, rather than "certification program," in order to enhance clarity and understanding.

OSHA, to prevent delay, has incorporated a recognition process for PSDI validation organizations because a general recognition process (proposed Part 1936) has not yet been adopted by OSHA. The PSDI certification/validation process is now based only on the proposed Subparts C and D of proposed Part 1936. However, OSHA has substantially simplified the recognition process as set forth in section I of Appendix C from that which was originally proposed for Part 1936.

The reason OSHA has simplified its Part 1936 proposal is that OSHA recognition of third-party validation organizations for PSDI is obviously a much more limited universe than OSHA recognition of programs for a wide variety of different equipment. Secondly, the simplification should make the recognition process take less time. Thirdly, in light of the fairly explicit requirements oif the PSDI standard and Appendix A, it does not appear necessary for OSHA to get involved in the detailed operation of the validation organization. Therefore, for example, provisions have not been included on the validation organization's records management operation, its employee training practices and its security arrangements. A competent third-party validation organization is capable of handling questions like those itself.

Nevertheless, this action is not intended to set any precedents; final decisions on the 1984 proposal will be based on the record of that proposal.

As mentioned, section I of Appendix C of this final rule states procedures for OSHA recognition. An application must be filed and after investigation a preliminary decision is made. Notification of the preliminary decision is published in the **Federal Register**. Public comment is provided for and, if appropriate, a hearing. The final decision on recognition is based on the evidence in the record. Procedures are provided for renewal or expansion of recognition if the program is performing in a satisfactory manner. There is also a provision for withdrawal of recognition if performance is unsatisfactory.

The OSHA recognition provisions are directed towards having third-party validation organization demonstrate to OSHA that they are competent to handle PSDI certification/validation. Accordingly, section II of Appendix C states reasonable qualifications for experience in relevant areas such as press design, test selection and testing. It sets requirements for qualifications of the senior employees of the program and availability of adequate testing equipment. Certain requirements of independence from possible pressure from equipment manufacturers and press users are stated. In addition, the program must be legally authorized to validate certifications, and have a certification/validation mark which can be protected from improper use.

Section III of Appendix C sets certain reasonable requirements for the certification/validation program's procedures. These cover certification and validation procedures, test and certification/validation reports, making available a list of certified/validated systems, follow-up activities and a disputes resolution procedure.

OSHA concludes that the procedures for recognition meet the requirements of law, are fair and are reasonable for determining the competency of the validation organization without excessive delay. OSHA concludes that the provisions for validation organization competency and certification/validation procedures are reasonable for certifying/validating PSDI safety systems. The provisions are based on proposed Part 1936, but with changes to appropriately simplify them and make them responsive to certifying/validating PSDI safety systems. The changes meet the general tenor of comments in the PSDI record and no comments in the PSDI record gave specific comments contradicting this approach to OSHA recognition. (As discussed above, there were criticisms of third-party certification.) As stated before, OSHA does not intend that this approach for PSDI set precedents for other areas.

It should be stated that OSHA's approach to certification/validation of PSDI safety system and recognition of third-party validation organizations is similar to a system which has been utilized successfully by the Department of Housing and Urban Development (HUD) for over six years in its program for certification of building products. Under the program, organizations acceptable to HUD validate manufacturers' certifications that certain building materials or products meet applicable standards. It has been demonstrated that the system works effectively to ensure satisfactory building materials or products, and it is also claimed that liability exposures on the part of both the manufacturer and the validator have been greatly reduced.

Appendix D—"Supplementary Information." This Appendix provides supplementary nonmandatory information to assist in the understanding of paragraph (h) of this section.

One comment was received to Appendix D. ELKAY Manufacturing Association (Ex. 18–39) included comments regarding brake torque tests, which are discussed above in the portion regarding paragraph (h)(2)(ii). As stated there, no changes are made in the discussion of this provision in Appendix D. However, there are other changes in this Appendix. There is additional discussion under 6. *Cycle control and control systems* on the following topics: Extending the PSDI deactivation timer adjustable limit from 15 to 30 seconds; recommending that the presence sensing device on a press equipped for PSDI operation be used as a guarding device in other than the PSDI mode; describing an acceptable method for interlocking supplemental guards; and explaining the prohibition against die-setting in the PSDI mode and against production in the "inch" mode. In addition, a typographical correction is made in 9. *Safeguarding the point of operation.* These changes have all been discussed in their respective portions of this

Summary and Explanation of the Final Rule..

IV. Termination of Experimental Variance

As a result of the implementation of this final rule, OSHA will terminate the experimental variance which was granted to the Interlake Stamping Company (now Interlake Stamping of Ohio, Inc.), to permit presence sensing device initiation on selected mechanical power presses. The effective date of the termination will be left open in order to allow a reasonable time for certification of the PSDI safety systems at Interlake after the establishment of a certification/validation program. This will be the only formal announcement of the termination of the variance.

OSHA wishes to recognize and express appreciation for the contribution which has been made by Mr. Wayne E. Groenstein, President, and the employees of Interlake in initiating and carrying out the experimental variance. Their successful safe implementation of presence sensing device initiation was a significant factor in OSHA's evaluation and decision to enter into a rulemaking action to permit its use.

V. Summary of the Regulatory Impact Analysis and Regulatory Flexibility Assessment

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a Regulatory Impact Analysis (RIA) be performed for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the proposed regulation on small entities.

Consistent with these requirements, OSHA has prepared a Regulatory Impact Analysis and Regulatory Flexibility Assessment for the revisions to the OSHA standard governing mechanical power presses. These revisions amend the present standard for mechanical power presses (29 CFR 1910.217) to allow employers to voluntarily adopt presence sensing device initiation (PSDI) on mechanical power presses. OSHA's present standard does not permit presence sensing device initiation. Rather, it requires that a mechanical power press operator physically initiate the stroke of a power press by using hand controls or a foot pedal. This revision will allow, but not require, a presence sensing device to initiate the mechanical stroke automatically when the operator's body is out of the danger zone. The amended standard's provisions cover not only the use of presence sensing devices, but also the entire safety system of the presses that will use these devices.

This RIA describes the industries and workers affected by the standard, the current use of and productivity gains associated with PSDI technology, the costs of compliance with the standard, the expected level of use of PSDI by U.S. industry, and the net savings to the United States from PSDI technology. The primary data source used to prepare this RIA is "A Study of the Proposed Revisions to the OSHA Standard Governing Mechanical Power Pressess" (29 CFR 1910.217) (Ex. 23), which was prepared by Eastern Research Group (ERG) for OSHA in February 1984.

The standard affects mechanical power presses, a type of equipment widely used in various metalworking and other industries. In particular, these machines are extensively used in Fabricated Metal Products (SIC 34), Machinery, Excluding Electrical (SIC 35), and Electrical and Electronic Equipment (SIC 36). The impact of this revision is greater upon Metal Forgings and Stampings (SIC 346), the industry that makes the most intensive use of mechanical power presses. Within SIC 346, Automative Stampings (3465), Crowns and Closures (3466), and Metal Stampings, Not Elsewhere Classified (3469) are the primary users of mechanical power presses. A variety of industries outside the metalworking industries will also be affected by the regulation. Thirteen percent of all machine tools (a category of equipment that includes mechanical power presses) are used in industries other than metalworking industries.

Impact of the Standard

Worker Population

There are about 73,000 employees who will be affected by the standard. Two occupational groups, "punch and stamping press operators" and "job and die setters," contain nearly all the employees now operating the manually fed presses that could be converted to PSDI technology. There are 96,000 employees in the former occupational group and 74,000 in the latter. This total of 170,000 employees includes both operators of non-mechanical presses as well as die setters who do not manually feed the presses. OSHA has estimated that about 60 percent of the first occupational group and 20 percent of the second occupational group work on manually fed power presses. Thus, about 73,000 workers (58,000 "press operatives" and 15,000 "job and die setters) could be affected by the standard.

Technological Feasibility

OSHA is required to assess the technological feasibility of new regulations prior to their promulgation. This standard removes OSHA's prohibition against the use of PSDI on mechanical power presses, but does not require the use of this technology. Under a 1976 OSHA-granted variance, one U.S. metal stamping firm has utilized PSDI technology in a manner consonant with the operational requirements of the standard. This technology has been utilized in Europe for over 30 years. A significant portion of the manually fed mechanical power presses are capable of being retrofitted with PSDI technology. Thus, the safety equipment and work practices contained in the proposed OSHA standard have been demonstrated to be technologically feasible.

Savings and Costs

The current regulatory environment prohibits the use of PSDI on mechanical power presses. OSHA has estimated that allowing employers to convert existing presses to PSDI systems will increase the productivity of each press converted by an average of 24.3 percent. This gain implies that the addition of PSDI technology to an existing press will, on average, annually release about $8,160 worth of resources to the U.S. economy. Multiplying this figure by OSHA's projection of 19,875 conversions of existing mechanical presses indicates that by 1990 this standard would save about $162 million per year.

The net annualized savings to the U.S. economy from the conversion of existing presses to PSDI is the excess of the savings over the cost of these conversions. The cost of these conversions includes: (1) The cost of converting the existing equipment to PSDI technology; (2) the cost of certifying and validating the PSDI safety system; (3) the cost of inspecting and maintaining the PSDI systems; and (4) the cost of training workers. OSHA has estimated these annualized costs at between $49 and $77 million by 1991. Therefore, the estimated net annualized savings from the conversion of existing presses to PSDI is between $85 and $113 million.

OSHA has also estimated that 250 new presses per year will utilize PSDI for an annual productivity increase of $2.04 million. By 1996, after an estimated 2,500 new presses are equipped with PSDI systems, their total annualized

costs will be between $4.1 and $5.5 million and their total annualized savings will be $20.4 million, resulting in a new annualized savings of $14.9 to $16.3 million for new presses. The combined annualized savings from existing and new presses by 1996 is expected to be between $99.8 and $129.1 million.

Economic Feasibility

As stated, there is no requirement for a press owner to convert to this new technology. If the press owner converts, the annual savings from increased productivity are more than twice the annualized costs of the conversion. Consequently, the amended standard is clearly economically feasible.

Impacts on Small Firms

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)), OSHA is required to consider the impact of the new regulation on small entities. As a result of this review, the Assistant Secretary certifies that the standard would not have an adverse impact upon a significant number of small entities.

The standard will not have any differential adverse impact on small firms. In fact, small firms may have a relatively greater cost savings than those in larger firms because in the affected industries small firms tend to be newer than large firms. Newer firms tend to have newer presses and as the required investment for retrofitting presses with presence sensing devices usually increases with the age of the equipment, newer firms will incur relatively lower costs than those incurred by older firms.

These relative cost savings may be offset to some extent, however, because a large firm would be able to distribute the overhead costs associated with equipment certification and validation and employee training among more presses than would a small firm. In addition, the relative productivity gain may be smaller for new presses.

International Trade Impacts

Pursuant to Executive Order 12291, OSHA has considered the impact of this standard on the U.S. trade balance. The promulgation of the standard may have a positive impact on the U.S. trade balance for fabricated metal products.

Foreign competition in both U.S. manufacturing and finished products markets has contributed to the recent decreased demand for U.S. contract stamping services. The increase in productivity associated with the use of PSDI systems should improve the competitive position of U.S. parts and equipment manufacturers. These gains should reduce the production costs for certain final products of U.S. manufacturers.

VI. Environmental Impact Assessment—Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Compliance regulations (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact and that the revisions are categorized as excluded actions according to Subpart B, § 11.10 of the DOL NEPA Compliance regulations.

The proposed revisions to 29 CFR 1910.217 would allow the use of presence sensing devices to initiate the stroke of mechanically powered presses after the operator is out of the danger zone. The provisions of the proposal focus on reducing accidents or injuries by the proper use and handling of equipment, by means of work practices and procedures, by certification of equipment, by worker training, as well as by changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment.

VII. Paperwork Reduction Act

The recordkeeping requirements in this standard have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The approval number is 1218–0143 and the approval has been granted until February 29, 1991.

VIII. State Plan Applicability

The 23 States and two territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months of this publication date. These are: Alaska, Arizona, California (for State and local government employees only), Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

IX. Effective Date

The provision for OSHA recognition of third-party validation organizations set forth in Appendix C becomes effective 30 days after date of publication in the **Federal Register**. The other provisions of this standard become effective the later of 90 days after publication in the **Federal Register** or the date of OSHA recognition of a third-party validation organization. As certification/validation is a requirement, PSDI cannot be implemented unit such time as a validation organization has been recognized. A **Federal Register** notice will be published when a third-party validation organization has been recognized by OSHA.

X. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington DC 20210.

List of Subjects in 29 CFR Part 1910

Certification, Light curtains, Mechanical power presses, Occupational safety and health, Presence sensing device initiation, Safety, Training, Validation.

Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, OSHA is amending § 1910.211, § 1910.217 and the authority citation for Subpart O of 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 7th day of March 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

1. The authority citation for Subpart O of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable. Sections 1910.211 and 1910.217 also issued under 29 CFR Part 1911.

2. Section 1910.211 is hereby amended by revising paragraph (d)(12) and (d)(11)(iii), by removing the period and adding ", or" at the end of paragraph

(d)(11)(iii), and by adding new paragraphs (d)(11)(iv), (d)(61), (d)(62), (d)(63), (d)(64), (d)(65), and (d)(66) to read as follows:

§ 1910.211 Definitions.

* * * * *

(d) * * *

(11) * * *

(iii) Automatically withdraws the operator's hands if the operator's hands are inadvertently within the point of operation as the dies close, or

(iv) Prevents the initiation of a stroke, or stops of stroke in progress, when there is an intrusion through the sensing field by any part of the operator's body or by any other object.

(12) "Presence sensing device" means a device designed, constructed and arranged to create a sensing field or area that signals the clutch/brake control to deactivate the clutch and activate the brake of the press when any part of the operator's body or a hand tool is within such field or area.

* * * *

(61) "Presence sensing device initiation" means an operating mode of indirect manual initiation of a single stroke by a presence sensing device when it senses that work motions of the operator, related to feeding and/or removing parts, are completed and all parts of the operator's body or hand tools are safely clear of the point of operation.

(62) "Safety system" means the integrated total system, including the pertinent elements of the press, the controls, the safeguarding and any required supplemental safeguarding, and their interfaces with the operator, and the environment, designed, constructed and arranged to operate together as a unit, such that a single failure or single operating error will not cause injury to personnel due to point of operation hazards.

(63) "Authorized person" means one to whom the authority and responsibility to perform a specific assignment has been given by the employer.

(64) "Certification" or "certify" means, in the case of design certification/validation, that the manufacturer has reviewed and tested the design and manufacture, and in the case of installation certification/validation and annual recertification/revalidation, that the employer has reviewed and tested the installation, and concludes in both cases that the requirements of § 1910.217 (a) through (h) and Appendix A have been met. The certifications are made to the validation organization.

(65) "Validation" or "validate" means for PSDI safety systems that an OSHA recognized third-party validation organization:

(i) For design certification/validation has reviewed the manufacturer's certification that the PSDI safety system meets the requirements of § 1910.217 (a) through (h) and Appendix A and the underlying tests and analyses performed by the manufacturer, has performed additional tests and analyses which may be required by § 1910.217 (a) through (h) and Appendix A, and concludes that the requirements of § 1910.217 (a) through (h) and Appendix A have been met; and

(ii) For installation certification/validation and annual recertification/revalidation has reviewed the employer's certification that the PSDI safety system meets the requirements of § 1910.217 (a) through (h) and Appendix A and the underlying tests performed by the employer, has performed additional tests and analyses which may be required by § 1910.217 (a) through (h) and Appendix A, and concludes that the requirements of § 1910.217 (a) through (h) and Appendix A have been met.

(66) "Certification/validation" and "certify/validate" means the combined process of certification and validation.

3. Section 1910.217 is hereby amended by revising paragraph (c)(3)(iii)(*b*) and by adding a new paragraph (h), to read as follows:

§ 1910.217 Mechanical power presses.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(*b*) The device may not be used as a tripping means to initiate slide motion, except when used in total conformance with paragraph (h) of this section.

* * * * *

(h) *Presence sensing device initiation (PSDI)*—(1) *General.* (i) The requirements of paragraph (h) shall apply to all part revolution mechanical power presses used in the PSDI mode of operation.

(ii) The relevant requirements of paragraphs (a) through (g) of this section also shall apply to all presses used in the PSDI mode of operation, whether or not cross referenced in this paragraph (h). Such cross-referencing of specific requirements from paragraphs (a) through (g) of this section is intended only to enhance convenience and understanding in relating to the new provisions to the existing standard, and is not to be construed as limiting the applicability of other provisions in paragraphs (a) through (g) of this section.

(iii) Full revolution mechanical power presses shall not be used in the PSDI mode of operation.

(iv) Mechanical power presses with a configuration which would allow a person to enter, pass through, and become clear of the sensing field into the hazardous portion of the press shall not be used in the PSDI mode of operation.

(v) The PSDI mode of operation shall be used only for normal production operations. Die-setting and maintenance procedures shall comply with paragraphs (a) through (g) of this section, and shall not be done in the PSDI mode.

(2) *Brake and clutch requirements.* (i) Presses with flexible steel band brakes or with mechanical linkage actuated brakes or clutches shall not be used in the PSDI mode.

(ii) Brake systems on presses used in the PSDI mode shall have sufficient torque so that each average value of stopping times (Ts) for stops initiated at approximately 45 degrees, 60 degrees, and 90 degrees, respectively, of crankshaft angular position, shall not be more than 125 percent of the average value of the stopping time at the top crankshaft position. Compliance with this requirement shall be determined by using the heaviest upper die to be used on the press, and operating at the fastest press speed if there is speed selection.

(iii) Where brake engagement and clutch release is effected by spring action, such spring(s) shall operate in compression on a rod or within a hole or tube, and shall be of non-interleaving design.

(3) *Pneumatic systems.* (i) Air valve and air pressure supply/control.

(A) The requirements of paragraphs (b)(7)(xiii), (b)(7)(xiv), (b)(10), (b)(12) and (c)(5)(iii) of this section apply to the pneumatic systems of machines used in the PSDI mode.

(B) The air supply for pneumatic clutch/brake control valves shall incorporate a filter, an air regulator, and, when necessary for proper operation, a lubricator.

(C) The air pressure supply for clutch/brake valves on machines used in the PSDI mode shall be regulated to pressures less than or equal to the air pressure used when making the stop time measurements required by paragraph (h)(2)(ii) of this section.

(ii) Air counterbalance systems.

(A) Where presses that have slide counterbalance systems are used in the PSDI mode, the counterbalance system shall also meet the requirements of paragraph (b)(9) of this section.

(B) Counterbalances shall be adjusted in accordance with the press manufacturer's recommendations to assure correct counterbalancing of the slide attachment (upper die) weight for all operations performed on presses

used in the PSDI mode. The adjustments shall be made before performing the stopping time measurements required by paragraphs (h)(2)(ii), (h)(5)(iii), and (h)(9)(v) of this section.

(4) *Flywheels and bearings.* Presses whose designs incorporate flywheels running on journals on the crankshaft or back shaft, or bull gears running on journals mounted on the crankshaft, shall be inspected, lubricated, and maintained as provided in paragraph (h)(10) of this section to reduce the possibility of unintended and uncontrolled press strokes caused by bearing seizure.

(5) *Brake monitoring.* (i) Presses operated in the PSDI mode shall be equipped with a brake monitor that meets the requirements of paragraphs (b)(13) and (b)(14) of this section. In addition, the brake monitor shall be adjusted during installation certification to prevent successive stroking of the press if increases in stopping time cause an increase in the safety distance above that required by paragraph (h)(9)(v) of this section.

(ii) Once the PSDI safety system has been certified/validated, adjustment of the brake monitor shall not be done without prior approval of the validation organization for both the brake monitor adjustment and the corresponding adjustment of the safety distance. The validation organization shall in its installation validation, state that in what circumstances, if any, the employer has advance approval for adjustment, when prior oral approval is appropriate and when prior approval must be in writing. The adjustment shall be done under the supervision of an authorized person whose qualifications include knowledge of safety distance requirements and experience with the brake system and its adjustment. When brake wear or other factors extend press stopping time beyond the limit permitted by the brake monitor, adjustment, repair, or maintenance shall be performed on the brake or other press system element that extends the stopping time.

(iii) The brake monitor setting shall allow an increase of no more than 10 percent of the longest stopping time for the press, or 10 milliseconds, whichever is longer, measured at the top of the stroke.

(6) *Cycle control and control systems.* (i) The control system on presses used in the PSDI mode shall meet the applicable requirements of paragraphs (b)(7), (b)(8), (b)(13), and (c)(5) of this section.

(ii) The control system shall incorporate a means of dynamically monitoring for decoupling of the rotary position indicating mechanism drive from the crankshaft. This monitor shall stop slide motion and prevent successive press strokes if decoupling occurs, or if the monitor itself fails.

(iii) The mode selection means of paragraph (b)(7)(iii) of this section shall have at least one position for selection of the PSDI mode. Where more than one interruption of the light sensing field is used in the initiation of a stroke, either the mode selection means must have one position for each function, or a separate selection means shall be provided which becomes operable when the PSDI mode is selected. Selection of PSDI mode and the number of interruptions/withdrawals of the light sensing field required to initiate a press cycle shall be by means capable of supervision by the employer.

(iv) A PSDI set-up/reset means shall be provided which requires an overt action by the operator, in addition to PSDI mode selection, before operation of the press by means of PSDI can be started.

(v) An indicator visible to the operator and readily seen by the employer shall be provided which shall clearly indicate that the system is set-up for cycling in the PSDI mode.

(vi) The control system shall incorporate a timer to deactivate PSDI when the press does not stroke within the period of time set by the timer. The timer shall be manually adjustable, to a maximum time of 30 seconds. For any timer setting greater than 15 seconds, the adjustment shall be made by the use of a special tool available only to authorized persons. Following a deactivation of PSDI by the timer, the system shall make it necessary to reset the set-up/reset means in order to reactivate the PSDI mode.

(vii) Reactivation of PSDI operation following deactivation of the PSDI mode from any other cause, such as activation of the red color stop control required by paragraph (b)(7)(ii) of this section, interruption of the presence sensing field, opening of an interlock, or reselection of the number of sensing field interruptions/withdrawals required to cycle the press, shall require resetting of the set-up/reset means.

(viii) The control system shall incorporate an automatic means to prevent initiation or continued operation in the PSDI mode unless the press drive motor is energized in the forward direction of crankshaft rotation.

(ix) The control design shall preclude any movement of the slide caused by operation of power on, power off, or selector switches, or from checks for proper operations as required by paragraph (h)(6)(xiv) of this section.

(x) All components and subsystems of the control system shall be designed to operate together to provide total control system compliance with the requirements of this section.

(xi) Where there is more than one operator of a press used for PSDI, each operator shall be protected by a separate, independently functioning, presence sensing device. The control system shall require that each sensing field be interrupted the selected number of times prior to initiating a stroke. Further, each operator shall be provided with a set-up/reset means that meets the requirements of paragraph (h)(6) of this section, and which must be actuated to initiate operation of the press in the PSDI mode.

(xii) [*Reserved*].

(xiii) The Control system shall incorporate interlocks for supplemental guards, if used, which will prevent stroke initiation or will stop a stroke in progress if any supplemental guard fails or is deactivated.

(xiv) The control system shall perform checks for proper operation of all cycle control logic element switches and contacts at least once each cycle. Control elements shall be checked for correct status after power "on" and before the initial PSDI stroke.

(xv) The control system shall have provisions for an "inch" operating means meeting the requirements of paragraph (b)(7)(iv) of this section. Die-setting shall not be done in the PSDI mode. Production shall not be done in the "inch" mode.

(xvi) The control system shall permit only a single stroke per initiation command.

(xvii) Controls with internally stored programs (e.g., mechanical, electro-mechanical, or electronic) shall meet the requirements of paragraph (b)(13) of this section, and shall default to a predetermined safe condition in the event of any single failure within the system. Programmable controllers which meet the requirements for controls with internally stored programs stated above shall be permitted only if all logic elements affecting the safety system and point of operation safety are internally stored and protected in such a manner that they cannot be altered or manipulated by the user to an unsafe condition.

(7) *Environmental requirements.* Control components shall be selected, constructed, and connected together in such a way as to withstand expected operational and environmental stresses, at least including those outlined in Appendix A. Such stresses shall not so

affect the control system as to cause unsafe operation.

(8) *Safety system.* (i) Mechanical power presses used in the PSDI mode shall be operated under the control of a safety system which, in addition to meeting the applicable requirements of paragraphs (b)(13) and (c)(5) and other applicable provisions of this section, shall function such that a single failure or single operating error shall not cause injury to personnel from point of operation hazards.

(ii) The safety system shall be designed, constructed, and arranged as an integral total system, including all elements of the press, the controls, the safeguarding and any required supplemental safeguarding, and their interfaces with the operator and that part of the environment which has effect on the protection against point of operation hazards.

(9) *Safeguarding the point of operation.* (i) The point of operation of presses operated in the PSDI mode shall be safeguarded in accordance with the requirements of paragraph (c) of this section, except that the safety distance requirements of paragraph (h)(9)(v) of this section shall be used for PSDI operation.

(ii)(A) PSDI shall be implemented only by use of light curtain (photo-electric) presence sensing devices which meet the requirements of paragraph (c)(3)(iii)(*c*) of this section unless the requirements of the following paragraph have been met.

(B) Alternatives to photo-electric light curtains may be used for PSDI when the employer can demonstrate, through tests and analysis by the employer or the manufacturer, that the alternative is as safe as the photo-electric light curtain, that the alternative meets the conditions of this section, has the same long term reliability as light curtains and can be integrated into the entire safety system as provided for in this section. Prior to use, both the employer and manufacturer must certify that these requirements and all the other applicable requirements of this section are met and these certifications must be validated by an OSHA-recognized third-party validation organization to meet these additional requirements and all the other applicable requirements of paragraphs (a) through (h) and Appendix A of this section. Three months prior to the operation of any alternative system, the employer must notify the OSHA Directorate of Safety Standards Programs of the name of the system to be installed, the manufacturer and the OSHA-recognized third-party validation organization immediately. Upon request, the employer must make available to that office all tests and analyses for OSHA review.

(iii) Individual sensing fields of presence sensing devices used to initiate strokes in the PSDI mode shall cover only one side of the press.

(iv) Light curtains used for PSDI operation shall have minimum object sensitivity not to exceed one and one-fourth inches (31.75 mm). Where light curtain object sensitivity is user-adjustable, either discretely or continuously, design features shall limit the minimum object sensitivity adjustment not to exceed one and one-fourth inches (31.75 mm). Blanking of the sensing field is not permitted.

(v) The safety distance (Ds) from the sensing field of the presence sensing device to the point of operation shall be greater than or equal to the distance determined by the formula:

$$Ds = Hs \times (Ts + Tp + Tr + 2Tm) + Dp$$

Where:

Ds = Minimum safety distance.

Hs = Hand speed constant of 63 inches per second (1.6 m/s).

Ts = Longest press stopping time, in seconds, computed by taking averages of multiple measurements at each of three positions (45 degrees, 60 degrees, and 90 degrees) of crankshaft angular position; the longest of the three averages is the stopping time to use. (Ts is defined as the sum of the kinetic energy dissipation time plus the pneumatic/magnetic/hydraulic reaction time of the clutch/brake operating mechanism(s).)

Tp = Longest presence sensing device response time, in seconds.

Tr = Longest response time, in seconds, of all interposing control elements between the presence sensing device and the clutch/brake operating mechanism(s).

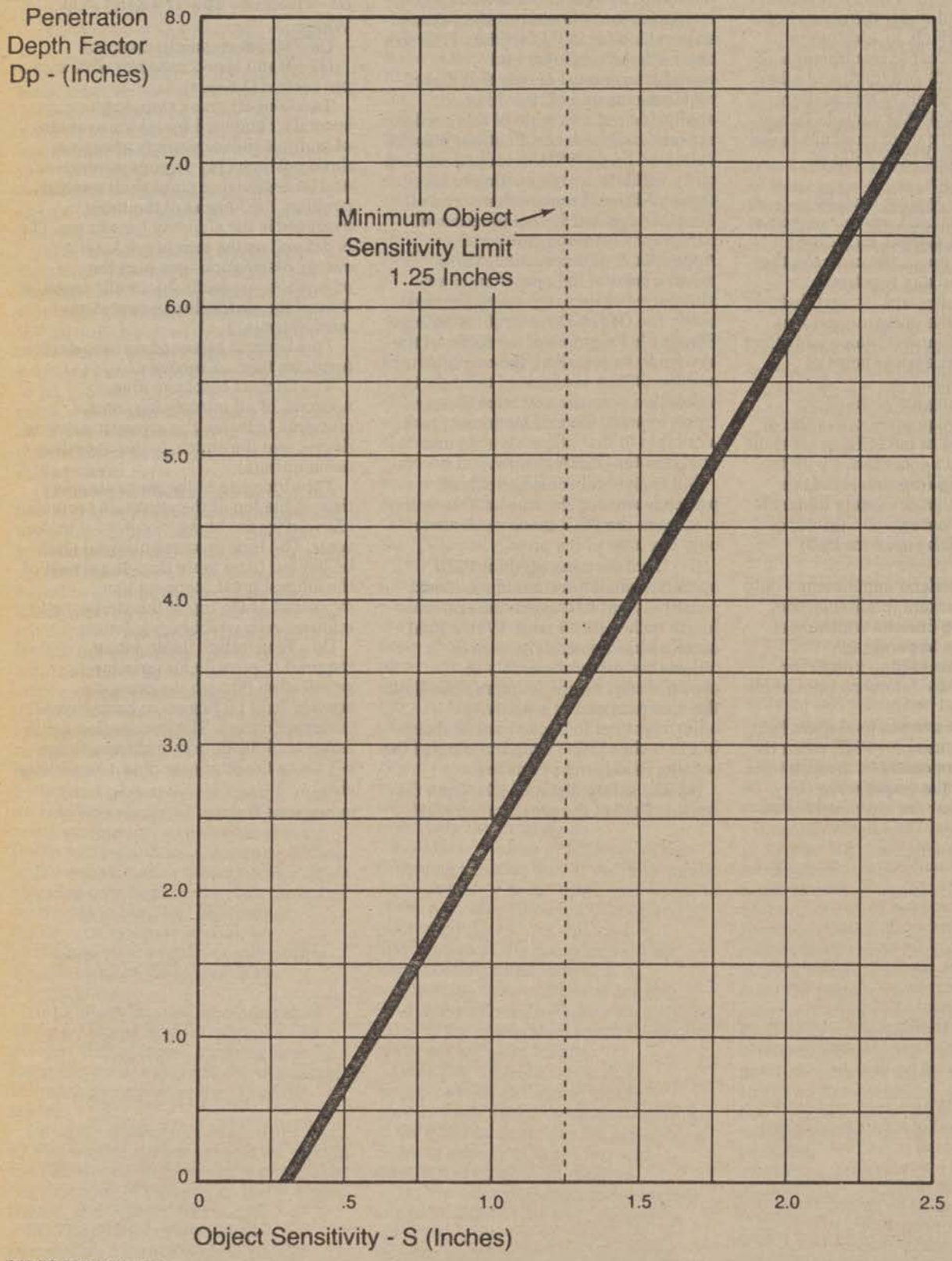
Tm = Increase in the press stopping time at the top of the stroke, in seconds, allowed by the brake monitor for brake wear. The time increase allowed shall be limited to no more than 10 percent of the longest press stopping time measured at the top of the stroke, or 10 milliseconds, whichever is longer.

Dp = Penetration depth factor, required to provide for possible penetration through the presence sensing field by fingers or hand before detection occurs. The penetration depth factor shall be determined from Graph h–1 using the minimum object sensitivity size.

BILLING CODE 4510-26-M

Penetration Depth Factor Calculation

$Dp = 3.4 (S-0.276)$



BILLING CODE 4510-26-C

(vi) The presence sensing device location shall either be set at each tool change and set-up to provide at least the minimum safety distance, or fixed in location to provide a safety distance greater than or equal to the minimum safety distance for all tooling set-ups which are to be used on that press.

(vii) Where presence sensing device location is adjustable, adjustment shall require the use of a special tool available only to authorized persons.

(viii) Supplemental safeguarding shall be used to protect all areas of access to the point of operation which are unprotected by the PSDI presence sensing device. Such supplemental safeguarding shall consist of either additional light curtain (photo-electric) presence sensing devices or other types of guards which meet the requirements of paragraphs (c) and (h) of this section.

(A) Presence sensing devices used as supplemental safeguarding shall not initiate a press stroke, and shall conform to the requirements of paragraph (c)(3)(iii) and other applicable provisions of this section, except that the safety distance shall comply with paragraph (h)(9)(v) of this section.

(B) Guards used as supplemental safeguarding shall conform to the design, construction and application requirements of paragraph (c)(2) of this section, and shall be interlocked with the press control to prevent press PSDI operation if the guard fails, is removed, or is out of position.

(ix) Barriers shall be fixed to the press frame or bolster to prevent personnel from passing completely through the sensing field, where safety distance or press configuration is such that personnel could pass through the PSDI presence sensing field and assume a position where the point of operation could be accessed without detection by the PSDI presence sensing device. As an alternative, supplemental presence sensing devices used only in the safeguard mode may be provided. If used, these devices shall be located so as to detect all operator locations and positions not detected by the PSDI sensing field, and shall prevent stroking or stop a stroke in process when any supplemental sensing field(s) are interrupted.

(x) Hand tools. Where tools are used for feeding, removal of scrap, lubrication of parts, or removal of parts that stick on the die in PSDI operations:

(A) The minimum diameter of the tool handle extension shall be greater than the minimum object sensitivity of the presence sensing device(s) used to initiate press strokes; or

(B) The length of the hand tool shall be such as to ensure that the operator's hand will be detected for any safety distance required by the press set-ups.

(10) *Inspection and maintenance.* (i) Any press equipped with presence sensing devices for use in PSDI, or for supplemental safeguarding on presses used in the PSDI mode, shall be equipped with a test rod of diameter specified by the presence sensing device manufacturer to represent the minimum object sensitivity of the sensing field. Instructions for use of the test rod shall be noted on a label affixed to the presence sensing device.

(ii) The following checks shall be made at the beginning of each shift and whenever a die change is made.

(A) A check shall be performed using the test rod according to the presence sensing device manufacturer's instructions to determine that the presence sensing device used for PSDI is operational.

(B) The safety distance shall be checked for compliance with (h)(9)(v) of this section.

(C) A check shall be made to determine that all supplemental safeguarding is in place. Where presence sensing devices are used for supplemental safeguarding, a check for proper operation shall be performed using the test rod according to the presence sensing device manufacturer's instructions.

(D) A check shall be made to assure that the barriers and/or supplemental presence sensing devices required by paragraph (h)(9)(ix) of this section are operating properly.

(E) A system or visual check shall be made to verify correct counterbalance adjustment for die weight according to the press manufacturer's instructions, when a press is equipped with a slide counterbalance system.

(iii) When presses used in the PSDI mode have flywheel or bullgear running on crankshaft mounted journals and bearings, or a flywheel mounted on back shaft journals and bearings, periodic inspections following the press manufacturer's recommendations shall be made to ascertain that bearings are in good working order, and that automatic lubrication systems for these bearings (if automatic lubrication is provided) are supplying proper lubrication. On presses with provision for manual lubrication of flywheel or bullgear bearings, lubrication shall be provided according to the press manufacturer's recommendations.

(iv) Periodic inspections of clutch and brake mechanisms shall be performed to assure they are in proper operating condition. The press manufacturer's recommendations shall be followed.

(v) When any check of the press, including those performed in accordance with the requirements of paragraphs (h)(10)(ii), (iii) or (iv) of this section, reveals a condition of noncompliance, improper adjustment, or failure, the press shall not be operated until the condition has been corrected by adjustment, replacement, or repair.

(vi) It shall be the responsibility of the employer to ensure the competence of personnel caring for, inspecting, and maintaining power presses equipped for PSDI operation, through initial and periodic training.

(11) *Safety system certification/validation.* (i) Prior to the initial use of any mechanical press in the PSDI mode, two sets of certification and validation are required:

(A) The design of the safety system required for the use of a press in the PSDI mode shall be certified and validated prior to installation. The manufacturer's certification shall be validated by an OSHA-recognized third-party validation organization to meet all applicable requirements of paragraphs (a) through (h) and Appendix A of this section.

(B) After a press has been equipped with a safety system whose design has been certified and validated in accordance with paragraph (h)(11)(i) of this section, the safety system installation shall be certified by the employer, and then shall be validated by an OSHA-recognized third-party validation organization to meet all applicable requirements of paragraphs (a) through (h) and Appendix A of this section.

(ii) At least annually thereafter, the safety system on a mechanical power press used in the PSDI mode shall be recertified by the employer and revalidated by an OSHA-recognized third-party validation organization to meet all applicable requirements of paragraphs (a) through (h) and Appendix A of this section. Any press whose safety system has not been recertified and revalidated within the preceding 12 months shall be removed from service in the PSDI mode until the safety system is recertified and revalidated.

(iii) A label shall be affixed to the press as part of each installation certification/validation and the most recent recertification/revalidation. The label shall indicate the press serial number, the minimum safety distance (Ds) required by paragraph (h)(9)(v) of this section, the fulfillment of design certification/validation, the employer's signed certification, the identification of the OSHA-recognized third-party

validation organization, its signed validation, and the date the certification/validation and recertification/revalidation are issued.

(iv) Records of the installation certification and validation and the most recent recertification and revalidation shall be maintained for each safety system equipped press by the employer as long as the press is in use. The records shall include the manufacture and model number of each component and subsystem, the calculations of the safety distance as required by paragraph (h)(9)(v) of this section, and the stopping time measurements required by paragraph (h)(2)(ii) of this section. The most recent records shall be made available to OSHA upon request.

(v) The employer shall notify the OSHA-recognized third-party validation organization within five days whenever a component or a subsystem of the safety system fails or modifications are made which may affect the safety of the system. The failure of a critical component shall necessitate the removal of the safety system from service until it is recertified and revalidated, except recertification by the employer without revalidation is permitted when a non-critical component or subsystem is replaced by one of the same manufacture and design as the original, or determined by the third-party validation organization to be equivalent by similarity analysis, as set forth in Appendix A.

(vi) The employer shall notify the OSHA-recognized third-party validation organization within five days of the occurrence of any point of operation injury while a press is used in the PSDI mode. This is in addition to the report of injury required by paragraph (g) of this section; however, a copy of that report may be used for this purpose.

(12) *Die setting and work set-up.* (i) Die setting on presses used in the PSDI mode shall be performed in accordance with paragraphs (d) and (h) of this section.

(ii) The PSDI mode shall not be used for die setting or set-up. An alternative manual cycle initiation and control means shall be supplied for use in die setting which meets the requirements of paragraph (b)(7) of this section.

(iii) Following a die change, the safety distance, the proper application of supplemental safeguarding, and the slide counterbalance adjustment (if the press is equipped with a counterbalance) shall be checked and maintained by authorized persons whose qualifications include knowledge of the safety distance, supplemental safeguarding requirements, and the manufacturer's specifications for counterbalance adjustment. Adjustment of the location of the PSDI presence sensing device shall require use of a special tool available only to the authorized persons.

(13) *Operator training.* (i) The operator training required by paragraph (f)(2) of this section shall be provided to the employee before the employee initially operates the press and as needed to maintain competence, but not less than annually thereafter. It shall include instruction relative to the following items for presses used in the PSDI mode.

(A) The manufacturer's recommended test procedures for checking operation of the presence sensing device. This shall include the use of the test rod required by paragraph (h)(10)(i) of this section.

(B) The safety distance required.

(C) The operation, function and performance of the PSDI mode.

(D) The requirements for hand tools that may be used in the PSDI mode.

(E) The severe consequences that can result if he or she attempts to circumvent or by-pass any of the safeguard or operating functions of the PSDI system.

(ii) The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The certification record shall be made available upon request to the Assistant Secretary for Occupational Safety and Health.

4. Appendices A–D are added to § 1910.217 to read as follows:

Appendix A to § 1910.217.—Mandatory Requirements for Certification/Validation of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses

Purpose

The purpose of the certification/validation of safety systems for presence sensing device initiation (PSDI) of mechanical power presses is to ensure that the safety systems are designed, installed, and maintained in accordance with all applicable requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A.

General

The certification/validation process shall utilize an independent third-party validation organization recognized by OSHA in accordance with the requirements specified in Appendix C of this section.

While the employer is responsible for assuring that the certification/validation requirements in §1910.217(h)(11) are fulfilled, the design certification of PSDI safety systems may be initiated by manufacturers, employers, and/or their representatives. The term "manufacturers" refers to the manufacturer of any of the components of the safety system. An employer who assembles a PSDI safety system would be a manufacturer as well as employer for purposes of this standard and Appendix.

The certification/validation process includes two stages. For design certification, in the first stage, the manufacturer (which can be an employer) certifies that the PSDI safety system meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A, based on appropriate design criteria and tests. In the second stage, the OSHA-recognized third-party validation organization validates that the PSDI safety system meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A and the manufacturer's certification by reviewing the manufacturer's design and test data and performing any additional reviews required by this standard or which it believes appropriate.

For installation certification/validation and annual recertification/revalidation, in the first stage the employer certifies or recertifies that the employer is installing or utilizing a PSDI safety system validated as meeting the design requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A by an OSHA-recognized third-party validation organization and that the installation, operation and maintenance meet the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A. In the second stage, the OSHA-recognized third-party validation organization validates or revalidates that the PSDI safety system installation meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A and the employer's certification, by reviewing that the PSDI safety system has been certified; the employer's certification, designs and tests, if any; the installation, operation, maintenance and training; and by performing any additional tests and reviews which the validation organization believes is necessary.

Summary

The certification/validation of safety systems for PSDI shall consider the press, controls, safeguards, operator, and environment as an integrated system which shall comply with all of the requirements in 29 CFR 1910.217 (a) through (h) and this Appendix A. The certification/validation process shall verify that the safety system complies with the OSHA safety requirements as follows:

A. Design Certification/Validation

1. The major parts, components and subsystems used shall be defined by part number or serial number, as appropriate, and by manufacturer to establish the configuration of the system.

2. The identified parts, components and subsystems shall be certified by the manufacturer to be able to withstand the

functional and operational environments of the PSDI safety system.

3. The total system design shall be certified by the manufacturer as complying with all requirements in 29 CFR 1910.217 (a) through (h) and this Appendix A.

4. The third-party validation organization shall validate the manufacturer's certification under paragraphs 2 and 3.

B. Installation Certification/Validation

1. The employer shall certify that the PSDI safety system has been design certified and validated, that the installation meets the operational and environmental requirements specified by the manufacturer, that the installation drawings are accurate, and that the installation meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A. (The operational and installation requirements of the PSDI safety system may vary for different applications.)

2. The third-party validation organization shall validate the employer's certifications that the PSDI safety system is design certified and validated, that the installation meets the installation and environmental requirements specified by the manufacturer, and that the installation meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A.

C. Recertification/Revalidation

1. The PSDI safety system shall remain under certification/validation for the shorter of one year or until the system hardware is changed, modified or refurbished, or operating conditions are changed (including environmental, application or facility changes), or a failure of a critical component has occurred.

2. Annually, or after a change specified in paragraph 1., the employer shall inspect and recertify the installation as meeting the requirements set forth under B., Installation Certification/Validation.

3. The third-party validation organization, annually or after a change specified in paragraph 1., shall validate the employer's certification that the requirements of paragraph B., Installation Certification/Validation have been met.

(**Note:** Such changes in operational conditions as die changes or press relocations not involving disassembly or revision to the safety system would not require recertification/revalidation.)

Certification/Validation Requirements

A. General Design Certification/Validation Requirements

1. *Certification/Validation Program Requirements.* The manufacturer shall certify and the OSHA-recognized third-party validation organization shall validate that:

(a) The design of components, subsystems, software and assemblies meets OSHA performance requirements and are ready for the intended use; and

(b) The performance of combined subsystems meets OSHA's operational requirements.

2. *Certification/Validation Program Level of Risk Evaluation Requirements.* The manufacturer shall evaluate and certify, and the OSHA-recognized third-party validation organization shall validate, the design and operation of the safety system by determining conformance with the following:

a. The safety system shall have the ability to sustain a single failure or a single operating error and not cause injury to personnel from point of operation hazards. Acceptable design features shall demonstrate, in the following order or precedence, that:

(1) No single failure points may cause injury; or

(2) Redundancy, and comparison and/or diagnostic checking, exist for the critical items that may cause injury, and the electrical, electronic, electromechanical and mechanical parts and components are selected so that they can withstand operational and external environments. The safety factor and/or derated percentage shall be specifically noted and complied with.

b. The manufacturer shall design, evaluate, test and certify, and the third-party validation organization shall evaluate and validate, that the PSDI safety system meets appropriate requirements in the following areas.

(1) Environmental Limits

(a) Temperature

(b) Relative humidity

(c) Vibration

(d) Fluid compatability with other materials

(2) Design Limits

(a) Power requirements

(b) Power transient tolerances

(c) Compatability of materials used

(d) Material stress tolerances and limits

(e) Stability to long term power fluctuations

(f) Sensitivity to signal acquisition

(g) Repeatability of measured parameter without inadvertent initiation of a press stroke

(h) Operational life of components in cycles, hours, or both

(i) Electromagnetic tolerance to:

(*1*) Specific operational wave lengths; and

(*2*) Externally generated wave lengths

(3) *New Design Certification/Validation.* Design certification/validation for a new safety system, i.e., a new design or new integration of specifically identified components and subsystems, would entail a single certification/validation which would be applicable to all identical safety systems. It would not be necessary to repeat the tests on individual safety systems of the same manufacture or design. Nor would it be necessary to repeat these tests in the case of modifications where determined by the manufacturer and validated by the third-party validation organization to be equivalent by similarity analysis. Minor modifications not affecting the safety of the system may be made by the manufacturer without revalidation.

Substantial modifications would require testing as a new safety system, as deemed necessary by the validation organization.

B. Additional Detailed Design Certification/Validation Requirements

1. *General.* The manufacturer or the manufacturer's representative shall certify to and submit to an OSHA-recognized third-party validation organization the documentation necessary to demonstrate that the PSDI safety system design is in full compliance with the requirements of 29 CFR 1910.217(a)–(h) and this Appendix A, as applicable, by means of analysis, tests, or combination of both, establishing that the following additional certification/validation requirements are fulfilled.

2. *Reaction Times.* For the purpose of demonstrating compliance with the reaction time required by §1910.217(h), the tests shall use the following definitions and requirements:

a. "Reaction time" means the time, in seconds, it takes the signal, required to activate/deactivate the system, to travel through the system, measured from the time of signal initiation to the time the function being measured is completed.

b. "Full stop" or "No movement of the slide or ram" means when the crankshaft rotation has slowed to two or less revolutions per minute, just before stopping completely.

c. "Function completion" means for, electrical, electromechanical and electronic devices, when the circuit produces a change of state in the output element of the device.

d. When the change of state is motion, the measurement shall be made at the completion of the motion.

e. The generation of the test signal introduced into the system for measuring reaction time shall be such that the initiation time can be established with an error of less than 0.5 percent of the reaction time measured.

f. The instrument used to measure reaction time shall be calibrated to be accurate to within 0.001 second.

3. *Compliance with § 1910.217(h)(2)(ii).* For compliance with these requirements, the average value of the stopping time, Ts, shall be the arithmetic mean of at least 25 stops for each stop angle initiation measured with the brake and/or clutch unused, 50 percent worn, and 90 percent worn. The recommendations of the brake system manufacturer shall be used to simulate or estimate the brake wear. The manufacturer's recommended minimum lining depth shall be identified and documented, and an evaluation made that the minimum depth will not be exceeded before the next (annual) recertification/revalidation. A correlation of the brake and/or clutch degradation based on the above tests and/or estimates shall be made and documented. The results shall document the conditions under which the brake and/or clutch will and will not comply with the requirement. Based upon this determination, a scale shall be developed to indicate the allowable 10 percent of the stopping time at the top of the stroke for slide or ram overtravel due to brake wear. The scale shall be marked to indicate that brake adjustment and/or replacement is required. The explanation and use of the scale shall be documented.

The test specification and procedure shall be submitted to the validation organization for review and validation prior to the test. The validation organization representative shall witness at least one set of tests.

4. *Compliance with §§ 1910.217(h)(5)(iii) and (h)(9)(v).* Each reaction time required to calculate the Safety Distance, including the brake monitor setting, shall be documented in separate reaction time tests. These tests shall specify the acceptable tolerance band

sufficient to assure that tolerance build-up will not render the safety distance unsafe.

a. Integrated test of the press fully equipped to operate in the PSDI mode shall be conducted to establish the total system reaction time.

b. Brakes which are the adjustable type shall be adjusted properly before the test.

5. *Compliance with § 1910.217(h)(2)(iii).* a. Prior to conducting the brake system test required by paragraph (h)(2)(ii), a visual check shall be made of the springs. The visual check shall include a determination that the spring housing or rod does not show damage sufficient to degrade the structural integrity of the unit, and the spring does not show any tendency to interleave.

b. Any detected broken or unserviceable springs shall be replaced before the test is conducted. The test shall be considered successful if the stopping time remains within that which is determined by paragraph (h)(9)(v) for the safety distance setting. If the increase in press stopping time exceeds the brake monitor setting limit defined in paragraph (h)(5)(iii), the test shall be considered unsuccessful, and the cause of the excessive stopping time shall be investigated. It shall be ascertained that the springs have not been broken and that they are functioning properly.

6. *Compliance with § 1910.217(h)(7).* a. Tests which are conducted by the manufacturers of electrical components to establish stress, life, temperature and loading limits must be tests which are in compliance with the provisions of the National Electrical Code.

b. Electrical and/or electronic cards or boards assembled with discreet components shall be considered a subsystem and shall require separate testing that the subsystems do not degrade in any of the following conditions:

(1) Ambient temperature variation from −20° C to +50° C.

(2) Ambient relative humidity of 99 percent.

(3) Vibration of 45G for one millisecond per stroke when the item is to be mounted on the press frame.

(4) Electromagnetic interference at the same wavelengths used for the radiation sensing field, at the power line frequency fundamental and harmonics, and also from outogenous radiation due to system switching.

(5) Electrical power supply variations of ±15 percent.

c. The manufacturer shall specify the test requirements and procedures from existing consensus tests in compliance with the provisions of the National Electrical Code.

d. Tests designed by the manufacturer shall be made available upon request to the validation organization. The validation organization representative shall witness at least one set of each of these tests.

7. *Compliance with § 1910.217(h)(9)(iv).* a. The manufacturer shall design a test to demonstrate that the prescribed minimum object sensitivity of the presence sensing device is met.

b. The test specifications and procedures shall be made available upon request to the validation organization.

8. *Compliance with § 1910.217(h)(9)(x).* a. The manufacturer shall design a test(s) to establish the hand tool extension diameters allowed for variations in minimum object sensitivity response.

b. The test(s) shall document the range of object diameter sizes which will produce both single and double break conditions.

c. The test(s) specifications and procedures shall be made available upon request to the validation organization.

9. *Integrated Tests Certification/Validation.* a. The manufacturer shall design a set of integrated tests to demonstrate compliance with the following requirements:

Sections 1910.217(h)(6) (ii); (iii); (iv); (v); (vi); (vii); (viii); (ix); (xi); (xii); (xiii); (xiv); (xv); and (xvii).

b. The integrated test specifications and procedures shall be made available to the validation organization.

10. *Analysis.* a. The manufacturer shall submit to the validation organization the technical analysis such as Hazard Analysis, Failure Mode and Effect Analysis, Stress Analysis, Component and Material Selection Analysis, Fluid Compatibility, and/or other analyses which may be necessary to demonstrate, compliance with the following requirements:

Sections 1910.217(h)(8) (i) and (ii); (h)(2) (ii) and (iii); (h)(3)(i) (A) and (C), and (ii); (h)(5) (i), (ii) and (iii); (h)(6) (i), (iii), (iv), (vi), (vii), (viii), (ix), (x), (xi), (xiii), (xiv), (xv), (xvi), and (xvii); (h)(7) (i) and (ii); (h)(9) (iv), (v), (viii), (ix) and (x); (h)(10) (i) and (ii).

11. *Types of Tests Acceptable for Certification/Validation.* a. Test results obtained from development testing may be used to certify/validate the design.

b. The test results shall provide the engineering data necessary to establish confidence that the hardware and software will meet specifications, the manufacturing process has adequate quality control and the data acquired was used to establish processes, procedures, and test levels supporting subsequent hardware design, production, installation and maintenance.

12. *Validation for Design Certification/Validation.* If, after review of all documentation, tests, analyses, manufacturer's certifications, and any additional tests which the third-party validation organization believes are necessary, the third-party validation organization determines that the PSDI safety system is in full compliance with the applicable requirements of 29 CFR 1910.217(a) through (h) and this Appendix A, it shall validate the manufacturer's certification that it so meets the stated requirements.

C. Installation Certification/Validation Requirements

1. The employer shall evaluate and test the PSDI system installation, shall submit to the OSHA-recognized third-party validation organization the necessary supporting documentation, and shall certify that the requirements of § 1910.217(a) through (h) and this Appendix A have been met and that the installation is proper.

2. The OSHA-recognized third-party validation organization shall conduct tests, and/or review and evaluate the employer's installation tests, documentation and representations. If it so determines, it shall validate the employer's certification that the PSDI safety system is in full conformance with all requirements of 29 CFR 1910.217(a) through (h) and this Appendix A.

D. Recertification/Revalidation Requirements

1. A PSDI safety system which has received installation certification/validation shall undergo recertification/revalidation the earlier of:

a. Each time the systems hardware is significantly changed, modified, or refurbished;

b. Each time the operational conditions are significantly changed (including environmental, application or facility changes, but excluding such changes as die changes or press relocations not involving revision to the safety system);

c. When a failure of a significant component has occurred or a change has been made which may affect safety; or

d. When one year has elapsed since the installation certification/validation or the last recertification/revalidation.

2. *Conduct or recertification/revalidation.* The employer shall evaluate and test the PSDI safety system installation, shall submit to the OSHA-recognized third-party validation organization the necessary supporting documentation, and shall recertify that the requirements of § 1910.217(a) through (h) and this Appendix are being met. The documentation shall include, but not be limited to, the following items:

a. Demonstration of a thorough inspection of the entire press and PSDI safety system to ascertain that the installation, components and safeguarding have not been changed, modified or tampered with since the installation certification/validation or last recertification/revalidation was made.

b. Demonstrations that such adjustments as may be needed (such as to the brake monitor setting) have been accomplished with proper changes made in the records and on such notices as are located on the press and safety system.

c. Demonstration that review has been made of the reports covering the design certification/validation, the installation certification/validation, and all recertification/revalidations, in order to detect any degradation to an unsafe condition, and that necessary changes have been made to restore the safety system to previous certification/validation levels.

3. The OSHA-recognized third-party validation organization shall conduct tests, and/or review and evaluate the employer's installation, tests, documentation and representations. If it so determines, it shall revalidate the employer's recertification that the PSDI system is in full conformance with all requirements of 29 CFR 1910.217(a) through (h) and this Appendix A.

Appendix B to § 1910.217—Nonmandatory Guidelines for Certification/Validation of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses

Objectives

This Appendix provides employers, manufacturers, and their representatives, with nonmandatory guidelines for use in developing certification documents.

Employers and manufacturers are encouraged to recommend other approaches if there is a potential for improving safety and reducing cost. The guidelines apply to certification/validation activity from design evaluation through the completion of the installation test and the annual recertification/revalidation tests.

General Guidelines

A. The certification/validation process should confirm that hazards identified by hazard analysis, (HA), failure mode effect analysis (FMEA), and other system analyses have been eliminated by design or reduced to an acceptable level through the use of appropriate design features, safety devices, warning devices, or special procedures. The certification/validation process should also confirm that residual hazards identified by operational analysis are addressed by warning, labeling safety instructions or other appropriate means.

B. The objective of the certification/validation program is to demonstrate and document that the system satisfies specification and operational requirements for safe operations.

Quality Control

The safety attributes of a certified/validated PSDI safety system are more likely to be maintained if the quality of the system and its parts, components and subsystem is consistently controlled. Each manufacturer supplying parts, components, subsystems, and assemblies needs to maintain the quality of the product, and each employer needs to maintain the system in a non-degraded condition.

Analysis Guidelines

A. Certification/validation of hardware design below the system level should be accomplished by test and/or analysis.

B. Analytical methods may be used in lieu of, in combination with, or in support of tests to satisfy specification requirements.

C. Analyses may be used for certification/validation when existing data are available or when test is not feasible.

D. Similarity analysis may be used in lieu of tests where it can be shown that the article is similar in design, manufacturing process, and quality control to another article that was previously certified/validated in accordance with equivalent or more stringent criteria. If previous design, history and application are considered to be similar, but not equal to or more exacting than earlier experiences, the additional or partial certification/validation tests should concentrate on the areas of changed or increased requirements.

Analysis Reports

The analysis reports should identify: (1) The basis for the analysis; (2) the hardware or software items analyzed; (3) conclusions; (4) safety factors; and (5) limit of the analysis. The assumptions made during the analysis should be clearly stated and a description of the effects of these assumptions on the conclusions and limits should be included.

Certification/validation by similarity analysis reports should identify, in addition to the above, application of the part, component or subsystem for which certification/validation is being sought as well as data from previous usage establishing adequacy of the item. Similarity analysis should not be accepted when the internal and external stresses on the item being certified/validated are not defined.

Usage experience should also include failure data supporting adequacy of the design.

Appendix C to § 1910.217—Mandatory Requirements for OSHA Recognition of Third-Party Validation Organizations for the PSDI Standard

This Appendix prescribes mandatory requirements and procedures for OSHA recognition of third-party validation organizations to validate employer and manufacturer certifications that their equipment and practices meet the requirements of the PSDI standard. The scope of the Appendix includes the three categories of certification/validation required by the PSDI standard: Design Certification/Validation, Installation Certification/Validation, and Annual Recertification/Revalidation.

If further detailing of these provisions will assist the validation organization or OSHA in this activity, this detailing will be done through appropriate OSHA Program Directives.

I. Procedure for OSHA Recognition of Validation Organizations

A. Applications

1. *Eligibility.* a. Any person or organization considering itself capable of conducting a PSDI-related third-party validation function may apply for OSHA recognition.

b. However, in determining eligibility for a foreign-based third-party validation organization, OSHA shall take into consideration whether there is reciprocity of treatment by the foreign government after consultation with relevant U.S. government agencies.

2. *Content of application.* a. The application shall identify the scope of the validation activity for which the applicant wishes to be recognized, based on one of the following alternatives:

(1) Design Certification/Validation, Installation Certification/Validation, and Annual Recertification/Revalidation;

(2) Design Certification/Validation only; or

(3) Installation/Certification/Validation and Annual Recertification/Revalidation.

b. The application shall provide information demonstrating that it and any validating laboratory utilized meet the qualifications set forth in section II of this Appendix.

c. The applicant shall provide information demonstrating that it and any validating laboratory utilized meet the program requirements set forth in section III of this Appendix.

d. The applicant shall identify the test methods it or the validating laboratory will use to test or judge the components and operations of the PSDI safety system required to be tested by the PSDI standard and Appendix A, and shall specify the reasons the test methods are appropriate.

e. The applicant may include whatever enclosures, attachments, or exhibits the applicant deems appropriate. The application need not be submitted on a Federal form.

f. The applicant shall certify that the information submitted is accurate.

3. *Filing office location.* The application shall be filed with: PSDI Certification/Validation Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Amendments and withdrawals.* a. An application may be revised by an applicant at any time prior to the completion of the final staff recommendation.

b. An application may be withdrawn by an applicant, without prejudice, at any time prior to the final decision by the Assistant Secretary in paragraph I.B.8.b.(4) of this Appendix.

B. Review and Decision Process

1. *Acceptance and field inspection.* All applications submitted will be accepted by OSHA, and their receipt acknowledged in writing. After receipt of an application, OSHA may request additional information if it believes information relevant to the requirements for recognition have been omitted. OSHA may inspect the facilities of the third-party validation organization and any validating laboratory, and while there shall review any additional documentation underlying the application. A report shall be made of each field inspection.

2. *Requirements for recognition.* The requirements for OSHA recognition of a third-party validation organization for the PSDI standard are that the program has fulfilled the requirements of section II of this Appendix for qualifications and of section III of this Appendix for program requirements, and the program has identified appropriate test and analysis methods to meet the requirements of the PSDI standard and Appendix A.

3. *Preliminary approval.* If, after review of the application, any additional information, and the inspection report, the applicant and any validating laboratory appear to have met the requirements for recognition, a written recommendation shall be submitted by the responsible OSHA personnel to the Assistant Secretary to approve the application with a supporting explanation.

4. *Preliminary disapproval.* If, after review of the application, additional information, and inspection report, the applicant does not appear to have met the requirements for recognition, the Director of the PSDI certification/validation program shall notify the applicant in writing, listing the specific requirements of this Appendix which the applicant has not met, and the reasons.

5. *Revision of application.* After receipt of a notification of preliminary disapproval, the applicant may submit a revised application for further review by OSHA pursuant to subsection I.B. of this Appendix or may request that the original application be submitted to the Assistant Secretary with a statement of reasons supplied by the applicant as to why the application should be approved.

6. *Preliminary decision by Assistant Secretary.* a. The Assistant Secretary, or a special designee for this purpose, will make a preliminary decision whether the applicant has met the requirements for recognition based on the completed application file and the written staff recommendation, as well as the statement of reasons by the applicant if there is a recommendation of disapproval.

b. This preliminary decision will be sent to the applicant and subsequently published in the **Federal Register.**

7. *Public review and comment period.* a. The **Federal Register** notice of preliminary decision will provide a period of not less than 60 calendar days for the written comments on the applicant's fulfillment of the requirements for recognition. The application, supporting documents, staff recommendation, statement of applicant's reasons, and any comments received, will be available for public inspection in the OSHA Docket Office.

b. If the preliminary decision is in favor of recognition, a member of the public, or if the preliminary decision is against recognition, the applicant may request a public hearing by the close of the comment period, if it supplies detailed reasons and evidence challenging the basis of the Assistant Secretary's preliminary decision and justifying the need for a public hearing to bring out evidence which could not be effectively supplied through written submissions.

8. *Final decision by Assistant Secretary—*
a. *Without hearing.* If there are no valid requests for a hearing, based on the application, supporting documents, staff recommendation, evidence and public comment, the Assistant Secretary shall issue the final decision (including reasons) of the Department of Labor on whether the applicant has demonstrated by a preponderance of the evidence that it meets the requirements for recognition.

b. *After hearing.* If there is a valid request for a hearing pursuant to paragraph I.B.7.b. of this Appendix, the following procedures will be used:

(1) The Assistant Secretary will issue a notice of hearing before an administrative law judge of the Department of Labor pursuant to the rules specified in 29 CFR Part 1905, Subpart C.

(2) After the hearing, pursuant to Subpart C, the administrative law judge shall issue a decision (including reasons) based on the application, the supporting documentation, the staff recommendation, the public comments and the evidence submitted during the hearing (the record), stating whether it has been demonstrated, based on a preponderance of evidence, that the applicant meets the requirements for recognition. If no exceptions are filed, this is the final decision of the Department of Labor.

(3) Upon issuance of the decision, any party to the hearing may file exceptions within 20 days pursuant to Subpart C. If exceptions are filed, the administrative law judge shall forward the decision, exceptions and record to the Assistant Secretary for the final decision on the application.

(4) The Assistant Secretary shall review the record, the decision by the administrative law judge, and the exceptions. Based on this, the Assistant Secretary shall issue the final decision (including reasons) of the Department of Labor stating whether the applicant has demonstrated by a preponderance of evidence that it meets the requirements for recognition.

b. *Publication.* A notification of the final decision shall be published in the **Federal Register.**

C. Terms and Conditions of Recognition, Renewal and Revocation

1. The following terms and conditions shall be part of every recognition:

a. The recognition of any validation organization will be evidenced by a letter of recognition from OSHA. The letter will provide the specific details of the scope of the OSHA recognition as well as any conditions imposed by OSHA, including any Federal monitoring requirements.

b. The recognition of each validation organization will be valid for five years, unless terminated before or renewed after the expiration of the period. The dates of the period of recognition will be stated in the recognition letter.

c. The recognized validation organization shall continue to satisfy all the requirements of this Appendix and the letter of recognition during the period of recognition.

2. A recognized validation organization may change a test method of the PSDI safety system certification/validation program by notifying the Assistant Secretary of the change, certifying that the revised method will be at least as effective as the prior method, and providing the supporting data upon which its conclusions are based.

3. A recognized validation organization may renew its recognition by filing a renewal request at the address in paragraph I.A.3. of this Appendix, above, not less than 180 calendar days, nor more than one year, before the expiration date of its current recognition. When a recognized validation organization has filed such a renewal request, its current recognition will not expire until a final decision has been made on the request. The renewal request will be processed in accordance with subsection I.B. of this Appendix, above, except that a reinspection is not required but may be performed by OSHA. A hearing will be granted to an objecting member of the public if evidence of failure to meet the requirements of this Appendix is supplied to OSHA.

4. A recognized validation organization may apply to OSHA for an expansion of its current recognition to cover other categories of PSDI certification/validation in addition to those included in the current recognition. The application for expansion will be acted upon and processed by OSHA in accordance with subsection I.B. of this Appendix, subject to the possible reinspection exception. If the validation organization has been recognized for more than one year, meets the requirements for expansion of recognition, and there is no evidence that the recognized validation organization has not been following the requirements of this Appendix and the letter of recognition, an expansion will normally be granted. A hearing will be granted to an objecting member of the public only if evidence of failure to meet the requirements of this Appendix is supplied to OSHA.

5. A recognized validation organization may voluntarily terminate its recognition, either in its entirety or with respect to any area covered in its recognition, by giving written notice to OSHA at any time. The written notice shall indicate the termination date. A validation organization may not terminate its installation certification and recertification validation functions earlier than either one year from the date of the written notice, or the date on which another recognized validation organization is able to perform the validation of installation certification and recertification.

6.a. OSHA may revoke its recognition of a validation organization if its program either has failed to continue to satisfy the requirements of this Appendix or its letter of recognition, has not been performing the validation functions required by the PSDI standard and Appendix A, or has misrepresented itself in its applications. Before proposing to revoke recognition, the Agency will notify the recognized validation organization of the basis of the proposed revocation and will allow rebuttal or correction of the alleged deficiencies. If the deficiencies are not corrected, OSHA may revoke recognition, effective in 60 days, unless the validation organization requests a hearing within that time.

b. If a hearing is requested, it shall be held before an administrative law judge of the Department of Labor pursuant to the rules specified in 29 CFR Part 1905, Subpart C.

c. The parties shall be OSHA and the recognized validation organization. The decision shall be made pursuant to the procedures specified in paragraphs I.B.8.b.(2) through (4) of this Appendix except that the burden of proof shall be on OSHA to demonstrate by a preponderance of the evidence that the recognition should be revoked because the validation organization either is not meeting the requirements for recognition, has not been performing the validation functions required by the PSDI standard and Appendix A, or has misrepresented itself in its applications.

D. Provisions of OSHA Recognition

Each recognized third-party validation organization and its validating laboratories shall:

1. Allow OSHA to conduct unscheduled reviews or on-site audits of it or the validating laboratories on matters relevant to PSDI, and cooperate in the conduct of these reviews and audits;

2. Agree to terms and conditions established by OSHA in the grant of recognition on matters such as exchange of data, submission of accident reports, and assistance in studies for improving PSDI or the certification/validation process.

II. Qualifications

The third-party validation organization, the validating laboratory, and the employees of each shall meet the requirements set forth in this section of this Appendix.

A. Experience of Validation Organization

1. The third-party validation organization shall have legal authority to perform certification/validation activities.

2. The validation organization shall demonstrate competence and experience in either power press design, manufacture or use, or testing, quality control or certification/validation of equipment comparable to power presses and associated control systems.

3. The validation organization shall demonstrate a capability for selecting, reviewing, and/or validating appropriate standards and test methods to be used for validating the certification of PSDI safety systems, as well as for reviewing judgements on the safety of PSDI safety systems and their conformance with the requirements of this section.

4. The validating organization may utilize the competence, experience, and capability of its employees to demonstrate this competence, experience and capability.

B. Independence of Validation Organization

1. The validation organization shall demonstrate that:

a. It is financially capable to conduct the work;

b. It is free of direct influence or control by manufacturers, suppliers, vendors, representatives of employers and employees, and employer or employee organizations; and

c. Its employees are secure from discharge resulting from pressures from manufacturers, suppliers, vendors, employers or employee representatives.

2. A validation organization may be considered independent even if it has ties with manufacturers, employers or employee representatives if these ties are with at least two of these three groups; it has a board of directors (or equivalent leadership responsible for the certification/validation activities) which includes representatives of the three groups; and it has a binding commitment of funding for a period of three years or more.

C. Validating Laboratory

The validation organization's laboratory (which organizationally may be a part of the third-party validation organization):

1. Shall have legal authority to perform the validation of certification;

2. Shall be free of operational control and influence of manufacturers, suppliers, vendors, employers, or employee representatives that would impair its integrity of performance; and

3. Shall not engage in the design, manufacture, sale, promotion, or use of the certified equipment.

D. Facilities and Equipment

The validation organization's validating laboratory shall have available all testing facilities and necessary test and inspection equipment relevant to the validation of the certification of PSDI safety systems, installations and operations.

E. Personnel

The validation organization and the validating laboratory shall be adequately staffed by personnel who are qualified by technical training and/or experience to conduct the validation of the certification of PSDI safety systems.

1. The validation organization shall assign overall responsibility for the validation of PSDI certification to an Administrative Director. Minimum requirements for this position are a Bachelor's degree and five years professional experience, at least one of which shall have been in responsible charge of a function in the areas of power press design or manufacture or a broad range of power press use, or in the areas of testing, quality control, or certification/validation of equipment comparable to power presses or their associated control systems.

2. The validating laboratory, if a separate organization from the validation organization, shall assign technical responsibility for the validation of PSDI certification to a Technical Director. Minimum requirements for this position are a Bachelor's degree in a technical field and five years of professional experience, at least one of which shall have been in responsible charge of a function in the area of testing, quality control or certification/validation of equipment comparable to power presses or their associated control systems.

3. If the validation organization and the validating laboratory are the same organization, the administrative and technical responsibilities may be combined in a single position, with minimum requirements as described in E.1. and 2. for the combined position.

4. The validation organization and validating laboratory shall have adequate administrative and technical staffs to conduct the validation of the certification of PSDI safety systems.

F. Certification/Validation Mark or Logo.

1. The validation organization or the validating laboratory shall own a registered certification/validation mark or logo.

2. The mark or logo shall be suitable for incorporation into the label required by paragraph (h)(11)(iii) of this section.

III. Program Requirements

A. Test and Certification/Validation Procedures

1. The validation organization and/or validating laboratory shall have established written procedures for test and certification/validation of PSDI safety systems. The procedures shall be based on pertinent OSHA standards and test methods, or other publicly available standards and test methods generally recognized as appropriate in the field, such as national consensus standards or published standards of professional societies or trade associations.

2. The written procedures for test and certification/validation of PSDI systems, and the standards and test methods on which they are based, shall be reproducible and be available to OSHA and to the public upon request.

B. Test Reports

1. A test report shall be prepared for each PSDI safety system that is tested. The test report shall be signed by a technical staff representative and the Technical Director.

2. The test report shall include the following:

a. Name of manufacturer and catalog or model number of each subsystem or major component.

b. Identification and description of test methods or procedures used. (This may be through reference to published sources which describe the test methods or procedures used.)

c. Results of all tests performed.

d. All safety distance calculations.

3. A copy of the test report shall be maintained on file at the validation organization and/or validating laboratory, and shall be available to OSHA upon request.

C. Certification/Validation Reports

1. A certification/validation report shall be prepared for each PSDI safety system for which the certification is validated. The certification/validation report shall be signed by the Administrative Director and the Technical Director.

2. The certification/validation report shall include the following:

a. Name of manufacturer and catalog or model number of each subsystem or major component.

b. Results of all tests which serve as the basis for the certification.

c. All safety distance calculations.

d. Statement that the safety system conforms with all requirements of the PSDI standard and Appendix A.

3. A copy of the certification/validation report shall be maintained on file at the validation organization and/or validating laboratory, and shall be available to the public upon request.

4. A copy of the certification/validation report shall be submitted to OSHA within 30 days of its completion.

D. Publications System

The validation organization shall make available upon request a list of PSDI safety systems which have been certified/validated by the program.

E. Follow-up Activities

1. The validation organization or validating laboratory shall have a follow-up system for inspecting or testing manufacturer's production of design certified/validated PSDI safety system components and subassemblies where deemed appropriate by the validation organization.

2. The validation organization shall notify the appropriate product manufacturer(s) of any reports from employers of point of operation injuries which occur while a press is operated in a PSDI mode.

F. Records

The validation organization or validating laboratory shall maintain a record of each certification/validation of a PSDI safety system, including manufacturer and/or employer certification documentation, test and working data, test report, certification/validation report, any follow-up inspections or testing, and reports of equipment failures, any reports of accidents involving the equipment, and any other pertinent information. These records shall be available

for inspection by OSHA and OSHA State Plan offices.

G. Dispute Resolution Procedures

1. The validation organization shall have a reasonable written procedure for acknowledging and processing appeals or complaints from program participants (manufacturers, producers, suppliers, vendors and employers) as well as other interested parties (employees or their representatives, safety personnel, government agencies, etc.), concerning certification or validation.

2. The validation organization may charge any complainant the reasonable charge for repeating tests needed for the resolution of disputes.

Appendix D to § 1910.217—Nonmandatory Supplementary Information

This Appendix provides nonmandatory supplementary information and guidelines to assist in the understanding and use of 29 CFR 1910.217(h) to allow presence sensing device initiation (PSDI) of mechanical power presses. Although this Appendix as such is not mandatory, it references sections and requirements which are made mandatory by other parts of the PSDI standard and appendices.

1. General

OSHA intends that PSDI continue to be prohibited where present state-of-the-art technology will not allow it to be done safely. Only *part revolution* type mechanical power presses are approved for PSDI. Similarly, only presses with a configuration such that a person's body cannot completely enter the bed area are approved for PSDI.

2. Brake and Clutch

Flexible steel band brakes do not possess a long-term reliability against structural failure as compared to other types of brakes, and therefore are not acceptable on presses used in the PSDI mode of operation.

Fast and consistent stopping times are important to safety for the PSDI mode of operation. Consistency of braking action is enhanced by high brake torque. The requirement in paragraph (h)(2)(ii) defines a high torque capability which should ensure fast and consistent stopping times.

Brake design parameters important to PSDI are high torque, low moment of inertia, low air volume (if pneumatic) mechanisms, non-interleaving engagement springs, and structural integrity which is enhanced by over-design. The requirement in paragrpah (h)(2)(iii) reduces the possibility of significantly increased stopping time if a spring breaks.

As an added precaution to the requirements in paragraph (h)(2)(iii), brake adjustment locking means should be secured. Where brake springs are externally accessible, lock nuts or other means may be provided to reduce the possibility of backing off of the compression nut which holds the springs in place.

3. Pneumatic Systems

Elevated clutch/brake air pressure results in longer stopping time. The requirement in paragraph (h)(3)(i)(*C*) is intended to prevent degradation in stoping speed from higher air pressure. Higher pressures may be permitted, however, to increase clutch torque to free "jammed" dies, provided positive measures are provided to prevent the higher pressure at other times.

4. Flywheels and Bearings

Lubrication of bearings is considered the single greatest deterrent to their failure. The manufacturer's recommended procedures for maintenance and inspection should be closely followed.

5. Brake Monitoring

The approval of brake monitor adjustments, as required in paragraph (h)(5)(ii), is not considered a *recertification*, and does not necessarily involve an on-site inspection by a representative of the validation organization. It is expected that the brake monitor adjustment normally could be evaluated on the basis of the effect on the safety system certification/validation documentation retained by the validation organization.

Use of a brake monitor does not eliminate the need for periodic brake inspection and maintenance to reduce the possibility of catastrophic failures.

6. Cycle Control and Control Systems

The PSDI set-up/reset means required by paragraph (h)(6)(iv) may be initiated by the actuation of a special momentary pushbutton or by the actuation of a special momentary pushbutton and the initiation of a first stroke with two hand controls.

It would normally be preferable to limit the adjustment of the time required in paragraph (h)(6)(vi) to a maximum of 15 seconds. However, where an operator must do many operations outside the press, such as lubricating, trimming, deburring, etc., a longer interval up to 30 seconds is permitted.

When a press is equipped for PSDI operation, it is recommended that the presence sensing device be active as a guarding device in other production modes. This should enhance the reliability of the device and ensure that it remains operable.

An acceptable method for interlocking supplemental guards as required by paragraph (h)(6)(xiii) would be to incorporate the supplemental guard and the PSDI presence sensing device into a hinged arrangement in which the alignment of the presence sensing device serves, in effect, as the interlock. If the supplemental guards are moved, the presence sensing device would become misaligned and the press control would be deactivated. No extra microswitches or interlocking sensors would be required.

Paragraph (h)(6)(xv) of the standard requires that the control system have provisions for an "inch" operating means; that die-setting not be done in the PSDI mode; and that production not be done in the "inch" mode. It should be noted that the sensing device would be by-passed in the "inch" mode. For that reason, the prohibitions against die-setting in the PSDI mode, and against production in the "inch" mode are cited to emphasize that "inch" operation is of reduced safety and is not compatible with PSDI or other production modes.

7. Environmental Requirements

It is the intent of paragraph (h)(7) that control components be provided with inherent design protection against operating stresses and environmental factors affecting safety and reliability.

8. Safety system

The safety system provision continues the concept of paragraph (b)(13) that the probability of two independent failures in the length of time required to make one press cycle is so remote as to be a negligible risk factor in the total array of equipment and human factors. The emphasis is on an integrated total system including all elements affecting point of operation safety.

It should be noted that this does not require redundancy for press components such as structural elements, clutch/brake mechanisms, plates, etc., for which adequate reliability may be achieved by proper design, maintenance, and inspection.

9. Safeguarding the Point of Operation

The intent of paragraph (h)(9)(iii) is to prohibit use of mirrors to "bend" a single light curtain sensing field around corners to cover more than one side of a press. This prohibition is needed to increase the reliability of the presence sensing device in initiating a stroke only when the desired work motion has been completed.

"Object sensitivity" describes the capability of a presence sensing device to detect an object in the sensing field, expressed as the linear measurement of the smallest interruption which can be detected at any point in the field. Minimum object sensitivity describes the largest acceptable size of the interruption in the sensing field. A minimum object sensitivity of one and one-fourth inches (31.75 mm) means that a one and one-fourth inch (31.75 mm) diameter object will be continuously detected at all locations in the sensing field.

In deriving the safety distance required in paragraph (h)(9)(v), all stopping time measurements should be made with clutch/brake air pressure regulated to the press manufacturer's recommended value for full clutch torque capability. The stopping time measurements should be made with the heaviest upper die that is planned for use in the press. If the press has a slide counterbalance system, it is important that the counterbalance be adjusted correctly for upper die weight according to the manufacturer's instructions. While the brake monitor setting is based on the stopping time it actually measures, i.e., the normal stopping time at the top of the stroke, it is important that the safety distance be computed from the longest stopping time measured at any of the indicated three downstroke stopping positions listed in the explanation of Ts. The use in the formula of twice the stopping time increase, Tm, allowed by the brake monitor for brake wear allows for greater increases in the downstroke stopping time than occur in normal stopping time at the top of the stroke.

10. Inspection and Maintenance. [Reserved]

11. Safety System Certification/Validation

Mandatory requirements for certification/validation of the PSDI safety system are provided in Appendix A and Appendix C to this standard. Nonmandatory supplementary information and guidelines relating to certification/validation of the PSDI safety system are provided to Appendix B to this standard.

[FR Doc. 88-5299 Filed 3-11-88; 8:45 am]
BILLING CODE 4510-26-M

Federal Register

Monday
March 14, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135
Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135

[Docket No. 25148, Notice No. 88-4]

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes rules to require domestic and supplemental air carriers, commercial operators of large aircraft, air taxi operators, commercial operators, certain contractors to these operators, and air traffic control facilities not operated by FAA or the U.S. military to have an anti-drug program for employees who perform sensitive safety and security-related functions. Testing under these proposed rules would be conducted prior to employment, periodically, randomly, after an accident and based on reasonable cause. This notice also requests comments on how to provide employers with the maximum flexibility in designing company-specific programs. In addition, these proposed rules seek comments on a regulatory alternative for the rehabilitation to be offered to employees. The proposed rules are needed to prohibit the presence of a prohibited drug in an employee's system at any time. The proposed rules are intended to ensure a drug-free aviation environment and to eliminate drug abuse in commercial aviation.

DATE: Comments must be received on or before June 13, 1988. The FAA is considering holding a public hearing on this proposal.

ADDRESS: Send or deliver comments on this notice in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Room 915G, Docket No. 25148, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 25148. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Bartanowicz, Assistant Manager, Safety Regulations Division (APR-200), Office of Program and Regulations Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591. Telephone (202) 267-9679

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice of Proposed Rulemaking (NPRM) is issued under the Federal Aviation Administration's (FAA) policy of soliciting public participation in rulemaking proceedings. Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25148." The postcard will be dated and time stamped and returned to the commenter. 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 substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

In an attempt to gather information on how the FAA might combat drug and alcohol abuse in both commercial and general aviation, the FAA on December 4, 1986, issued an Advanced Notice of Proposed Rulemaking (ANPRM) No. 86-20, entitled "Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities" (51 FR 44432; December 9, 1986), inviting comments on drug and alcohol abuse by personnel in the aviation industry and options available for regulatory or other actions in the interest of aviation safety.

The Drug Problem in American Society

Drug abuse constitutes a major societal problem. Statistics have been compiled and reported by the National Institute on Drug Abuse (NIDA) and by media polls, all of which indicate use of drugs such as marijuana to be widespread. While the problem appears to be "youth centered" because the majority of users are in the younger age categories, the problem also exists with older groups. For instance, data from the 1985 NIDA "National Survey on Drug Abuse" based on scientific random sampling and using population projections, indicates the following national results:

1. In the age 18 to 25 category:

(a) Sixty (60) percent reported using marijuana sometime during their life;

(b) Twenty-two (22) percent reported using marijuana within the past month;

(c) Twenty-five (25) percent reported using cocaine sometime during their lifetime; and

(d) Eight (8) percent reported using cocaine within the past month.

2. In the age 26 and over category:

(a) Twenty-seven (27) percent reported using marijuana sometime during their life;

(b) Six (6) percent reported using marijuana within the past month;

(c) Nine (9) percent reported using cocaine sometime during their life; and

(d) Two (2) percent reported using cocaine within the past month.

Because of statistics like these, many members of the public are concerned that the abuse of drugs by others may jeopardize their personal safety. A recently issued special report from the Comptroller General of the United States titled "Controlling Drug Abuse: A Status Report" (1988 GAO Report) states that "Drug abuse in the United States has persisted at a very high level throughout the 1980's. Drug abuse is a serious national problem that adversely affects all parts of our society * * *."

There is widespread public sentiment and belief that persons in safety-sensitive occupations should not be drug abusers. A May-June 1986 national survey conducted by Populous Incorporated of Greenwich, Connecticut, and Decision/Making/Information of McLean, Virginia, showed the following results:

1. 88 percent of the respondents favored testing of airline pilots and air traffic controllers;

2. 85 percent of the respondents favored testing of police and other law enforcement agents; and

3. 81 percent of the respondents favored testing of bus drivers.

The survey indicated that respondents favor testing people who are responsible for the physical safety of others.

Another survey, conducted by American Viewpoint, Inc., on August 6–19, 1986, examined the public's attitude toward drug abuse and drug testing and produced informative results. Specifically, "By a margin of 76 percent—22 percent, Americans agree that the drug crisis today is serious enough for mandatory testing." The American Viewpoint survey used a "forced choice" list and asked which groups should submit to mandatory drug testing. While the generic transportation modes (e.g., railroads, aviation, highways, urban mass transportation, and marine or maritime activities) were not included in the survey, safety-related occupations were at the top of the list. Eighty-four percent of the respondents favor testing of police and firefighters; 81 percent favor testing of armed forces personnel; and 81 percent favor testing of doctors and nurses. Another interesting fact was that 80 percent of the respondents indicate that they would participate in voluntary testing if asked to do so by their employer.

These surveys suggest that the majority of the public is concerned about drug abuse and favors the mandatory testing of persons in certain safety-related occupations.

The Drug Problem in Aviation

The FAA, in its regulatory role, has no evidence to suggest that the aviation community differs significantly from the overall population in terms of drug abuse. The public expects, and is entitled to, a drug-free environment in those aviation activities that involve their personal safety. Allegations that certain air carrier crewmembers have used illegal drugs have raised questions about the overall degree of drug abuse in the industry and whether crewmembers are flying after having used drugs, and thus jeopardizing the personal safety of passengers and others.

The available data indicate that drugs have been a factor in general aviation fatalities, but not in commercial aviation fatalities. These data were presented in tabular form in ANPRM No. 86–20. The updated table, including 1986 statistics, follows:

TABLE 1— DRUGS FOUND IN DECEASED GENERAL AVIATION PILOTS BY CLASSIFICATION 1976–1986 [1]

Year	Deceased Pilots	Legal therapeutic drugs [2]	Legal drugs of abuse [3]	Illegal drugs of abuse [4]
1976	377	1	0	1
1977	394	2	1	1
1978	410	2	2	0
1979	388	4	3	2
1980	384	10	0	3
1981	431	5	2	3
1982	389	2	2	3
1983	412	6	0	3
1984	399	2	1	2
1985	412	9	3	4
1986	380	7	7	6
Total	4,376	50	21	28

Notes:

[1] The presence of drugs in an individual's system may, or may not, have been a factor in a fatal accident. For instance, an individual might have been taking a legal therapeutic drug, but could have been abusing it by taking it at more frequent intervals than prescribed. For this reason, the FAA reports all drugs found in fatalities.

[2] This would include over-the-counter drugs, such as aspirin and diet pills, as well as those drugs prescribed by physicians.

[3] A legal drug of abuse is a drug that may be prescribed by a physician or purchased over-the-counter, but which has properties that may result in psychological or physiological dependencies or addiction.

[4] Illegal drugs of abuse would include drugs such as marijuana and cocaine.

As stated in the ANPRM, "there have not been any fatal accidents involving commercial airline pilots where drugs were shown to be factors."

Additional data has been gathered since the ANPRM was issued. Specifically, regarding cargo-carrying aircraft, a fatal accident with a Gates Learjet, Model 25 took place on March 30, 1983, at Newark International Airport. The accident report revealed that the pilot and copilot had used, or been exposed to, marijuana.

One aviation company (a Part 121 and a Part 135 certificate holder), in its comment on the ANPRM, reports that upon initiation of an unannounced testing program, 2.5 percent of its pilots and 4 percent of its mechanics tested positive for a trace or more of illegal drugs. This was based on a population of 180 pilots and 240 mechanics. Although this data group is small and cannot be considered statistically representative of all pilots and mechanics, it does indicate the presence of illegal drugs and the possibility of drug abuse. Data also were provided by some members of the airline industry regarding pre-employment drug screening. These data, however, do not distinguish between specific occupational categories of employees (e.g., pilots, baggage handlers, etc.). The data show that the number of positive tests range from 4.2 percent to 20 percent and that some individual geographic locations reported a positive test range of 25 percent to 30 percent.

In February 1987, the FAA began performing drug tests in connection with periodic medical examinations required of certain sensitive safety and security-related agency employees. As of March 3, 1988, 21,983 samples have been tested pursuant to the periodic testing program. Specimens for 35 employees have been determined to include one or more illegal drugs. In addition, the Department implemented its employee random drug testing program on September 8, 1987. As of February 26, 1988, DOT has conducted 1,191 urinalysis tests pursuant to its random drug testing program for DOT employees occupying critical sensitive safety and security-related positions. Eight employees have tested positive for illegal drugs. These employees are currently in counseling or rehabilitation programs and have been relieved of their critical safety duties pending successful completion of these

programs. In addition, since the inception of the DOT program, four employees out of six have tested positive for illegal drugs as a result of reasonable cause drug testing.

It is acknowledged that the above data are sparse and are not conclusive. There are no data indicating drug abuse by Part 121 and Part 135 crewmembers or other employees involved in fatal or major aircraft accidents. Conversely, fatal accidents cannot be the only basis to judge whether there is a problem with drug abuse. For example, there is no way to gauge how many near accidents there are due to pilot impairment. The issue is problematic. A responsive anti-drug program would provide the public with the necessary protection while enabling the FAA to achieve a statistically valid representation and understanding of the Problem. The FAA cannot wait for a problem to reveal itself before acting to protect the public from the problem's consequences.

The absence of more detailed data may be due to several factors. First, the use of drugs is something that persons may go to great lengths to conceal. For commercial pilots, the discovery of their drug use by supervisors or other crewmembers could result in loss of jobs, and individuals would be careful to conceal drug use for fear of detection. The same economic rationale (loss of jobs) would hold true for others who earn their living through aviation. Second, detection is not easy in some situations, such as those of some commercial pilots who may not see their supervisors on a regular basis. In the case of pilots who operate at numerous locations full-time surveillance by the FAA or others is neither practical nor economically feasible. Third, even when there is supervision or surveillance of individuals, not everyone, including fellow crewmembers, is trained to detect drug abuse by observing behavioral or performance cues. As one commenter to the ANPRM states "We have been surprised by the persons who have tested positive. Employees whose personal habits, appearances, and lifestyles appear to be above reproach have tested positive for drugs and subsequently admitted their use." Fourth, it is possible that there are individuals who may serve as "enablers" by tolerating or covering for a person with a drug problem, especially if that person might lose his or her job and suffer adverse financial consequences. Finally, the FAA does not dispute the professionalism of the vast majority of commercial and general aviation pilots and other professionals in aviation and their commitment to a drug-free aviation environment. However, the current situation as it involves drugs can be likened to the 1970's when alcoholism among airline pilots was sometimes ignored or denied. Only after the industry and the affected individuals admitted that a problem existed was the issue faced and action taken.

Comments to the ANPRM

The ANPRM encouraged comments, through a series of questions, to assist the FAA with information gathering in pertinent areas to ensure an aviation environment free of alcohol and drugs. Some of the topics addressed in the ANPRM included:

1. To what extent alcohol and drugs are abused by occupational categories;
2. Whether the consumption of legal drugs is sufficiently monitored;
3. How off-duty alcohol use impacts aviation safety;
4. What kinds of mandatory alcohol and drug testing programs should be required, if any;
5. Who should be tested;
6. Whether regulations should be extended to safety-related occupations not presently covered by the FAA's drug and alcohol rules;
7. What should be included in an Employee Assistance Program;
8. Under what circumstances testing should be conducted based on "reasonable suspicion;"
9. By what means the FAA can achieve an alcohol- and drug-free environment throughout the industry; and,
10. Whether the FAA should request legislation to gain access to the National Driver Register to identify aviation personnel who have convictions for driving under the influence of alcohol or drugs.

The responses to the ANPRM were numerous; over 650 comments were received. Due consideration has been given to all comments received. The information and views received in response to the notice are summarized below.

General Summary of Comments Received

For purposes of general discussion, the comments may be grouped into three categories: Aviation industry organizations and members; Aviation labor organizations and members; and, other commenters. Comments by individuals have been assigned to one of the three categories based on an analysis of the comment. The FAA has noted both the common themes expressed by members of these groups and the many variations on, and exceptions to, these themes. The major themes that were addressed most frequently show that: (1) The vast majority of commenters oppose random drug testing but favor testing based on reasonable suspicion or following accidents; (2) a large majority believe that more thorough enforcement of present regulations will eliminate a minimal drug problem; (3) many commenters urge the FAA to endorse employee assistance programs (EAP's) in lieu of chemical testing programs; and (4) a significant number question the constitutionality of testing for drugs and, in particular, random testing. Basically, all three groups of commenters are against drug and alcohol abuse in the aviation environment and are committed to safety. Whatever differences exist among the groups are principally based on the means by which to best accomplish this objective.

Industry

Among those participating in the comment process are: Air Transport Association of America (ATA); National Business Aircraft Association, Inc. (NBAA); Northwest Airlines, Inc.; American Cyanamid Co.; Continental Airlines, Inc.; Regional Airline Association; ERA Helicopters, Inc., DHL Airways, Inc./Worldwide Express; Federal Express Corporation; and National American Wholesale Grocers' Association. Aviation industry organizations and their members generally believe there is a problem and favor rulemaking. One exception to this near consensus of organizations that favor rulemaking is the position taken by the NBAA, representing over 2,900 companies who operate approximately 5,500 aircraft. NBAA bases its opposition to rulemaking on what it considers to be the debatable constitutionality of regulation in this area. The commonly held position of the other industry commenters, however, is best reflected by ATA, representing a number of the air carriers that carry the majority of air travelers. ATA endorses regulatory action.

ATA submitted, along with its comments, a draft regulatory proposal addressing some of the issues on which comments were requested by the ANPRM. ATA advocates testing before employment, after an accident or incident, and based on "reasonable suspicion." Although ATA itself favors the use of random drug testing, member carriers differ on whether this testing should be mandated or expressly permitted. One such member carrier, for example, believes that the Government should set minimum standards for such

categories as mandatory random drug testing. On most other issues, the carrier concurs with the ATA position.

Another issue where the aviation industry organizations are in agreement is in extending the categories of employees to be tested. These organizations want certificated and noncertificated crewmembers, mechanics, and any other employees whose duties could affect the safety of aviation to be tested—generally, those employees participating in operations, maintenance, engineering, and aircraft servicing activities.

ATA believes that there is little similarity between issues and problems surrounding the control of drugs and alcohol usage in the airline industry as compared to general aviation. This organization believes that each should be addressed in a separate rulemaking proceeding; others outside the organization, (e.g., Federal Express) agree with this position.

A number of industry organizations expressed concerns about EAP's. Several carriers believe that EAP's for drug abuse should not be mandated by the FAA; one association suggests that requiring the establishment of EAP's is not an appropriate function of the FAA.

While concurring with the overall views of the industry on EAP's, one carrier suggests that if the FAA does mandate the EAP's, there should be a stipulation that would require limiting the availability of these programs to only those employees who seek treatment prior to becoming involved in a rule violation. For example, an individual who tests positive for a prohibited drug, as a result of testing based on an observed violation of a specific rule or prohibition, should not benefit from the protection of an EAP. For the most part, ATA members believe that participation in EAP's should be limited to only those employees who admit voluntarily to being drug or alcohol dependent.

The issue of whether the FAA should request legislation to exchange information with the National Driver Register (NDR) receive mixed comments. This exchange would identify those pilots with convictions for driving under the influence of drugs or alcohol. The following breakdown describes the position of the commenters: (1) Many express no views on the subject; (2) others support the exchange; and (3) one opposes access to NDR information entirely. Another commenter opposes access to these records by the FAA, but supports records being made available only to employers for pre-employment review of applicants.

Labor

A good cross section of the labor organizations, professional associations, and their membership participated in the public comment process. Among those responding were: Transport Workers Union of America, AFL–CIO; Air Line Pilots Association; Association of Flight Attendants, AFL–CIO; Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Stations Employees, AFL–CIO–CLC; Union of Flight Attendants; Aircraft Owners and Pilots Association; Allied Pilots Association; International Association of Machinists and Aerospace Workers; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

With notable exceptions, the aviation labor organizations generally contend that there are sufficient existing regulations to address the problem of drug abuse. One such organization, representing a large membership of both certificated and noncertificated employees, supports FAA's goal to achieve a drug-free environment in commercial aviation but believes that this goal can be more readily achieved by more thorough enforcement of the present FAA regulations.

Many commenters strongly oppose any program for mandatory random or across-the-board testing. These commenters base their views on the lack of statistics to warrant such "drastic" measures. They acknowledge that an airman who is impaired while on duty creates a potential hazard but emphatically submit that no concrete data of any such abuse in commercial aviation exist. Others in this group concur with that position. They believe that crewmembers are already subject to testing under current Parts 65 and 91 of the Federal Aviation Regulations (FAR) and believe that these provisions are adequate. To substantiate their position, they cite that there is no recorded incident or accident attributable to drug or alcohol impairment involving a commercial cockpit crewmember.

While categorically opposing random drug testing, one major labor association could, however, support testing under the following circumstances: (1) Preemployment evaluations; (2) testing for probable cause; (3) testing after an accident or incident, and (4) random testing as part of aftercare monitoring.

If testing is mandated, several commenters support expanding coverage to all airline employees, the opinion being that personnel working in operations, maintenance, scheduling, loading, controlling, and management all have an impact on safety.

Typically, the labor organizations question the accuracy of methods proposed for testing. Their concerns center around the various drug tests' purported "high" error rate, which could result in suspension and stigmatization of crewmemers accused after less-than-accurate results. The representatives believe that such testing would not provide assurances of lack of impairment or otherwise contribute to the safety of the flying public. Some organizations suggest that they already have successful systems for making management aware of crewmembers suspected of impairment.

The issue of regulating off-duty drug use received numerous comments. Most commenters oppose any attempt to regulate the off-duty conduct of aviation personnel by amending the rules. Nevertheless, one large organization believes strongly that the use of illicit drugs, on or off duty, must be "strictly forbidden."

Most agreement is reached in the area of EAP's. Commenters from labor unequivocally support such programs in lieu of random chemical testing for drugs. Many commenters suggest the need for improving and standardizing existing EAP's. Others believe that labor must actively participate in EAP's to ensure that the programs work well to assist employees with drug problems. Primarily, however, commenters believe that if the programs are to succeed, then the EAP's must be both comprehensive and nonpunitive.

Other Commenters

The last category of commenters encompasses an extensive and varied group: Private citizens, some unaffiliated but more often members of aviation organizations; other governmental agencies; industrial relations firms; public advocacy groups; organizations representing general aviation firms; and recreational pilot associations. This group tends to have many of the same concerns, often with corresponding responses. A substantial number from this group believe that the FAA should make every reasonable effort to enforce present regulations, which they assert adequately prohibit personnel from acting as crewmembers while under the influence of drugs. These commenters believe that the FAA should resort to other measures addressed in the ANPRM only if enforcement of present regulations proves to be ineffective.

A significant number of these commenters share views similar to those of labor. For example, many from this

group contend that there is no concrete data available to indicate widespread illegal drug and alcohol abuse within the aviation community. They believe that aviation is being unfairly singled out over other transportation modes who license operators of vehicles.

With few exceptions, this large group opposes random and scheduled testing for drugs and alcohol and views it as bordering on intrusive and unconstitutional action.

Comments received from commercial pilots cite that there has never been an accident involving commercial aviation attributable to either drugs or alcohol. Moreover, the commenters recount that this profession is more closely monitored than any other profession in the country. This belief is founded on requirements set for commercial pilots that include frequent proficiency tests and examinations.

Many commenters echo the perception that there is no evidence to support testing, especially for general aviation pilots who conduct only personal, noncommercial flights. Consequently, the financial burden that random and scheduled testing would impose on general aviation is seen as excessive. Also problematic for some commenters is whether the general aviation population, which lacks geographical concentration, would be readily accessible for testing.

There is, however, abundant support among this group to test for probable cause, after an accident, before employment, and following participation in a rehabilitation program.

Opinions vary on which occupations to include for testing. One association favors inclusion of anyone in contact with, or having access to, aircraft. This group would include flight crewmembers, mechanics, security personnel, and baggage handlers. However, this same association supports exclusion from testing for management personnel.

Another commenter, with considerable experience in airport operations, relates that he has observed extensive alcohol and drug abuse within operations and maintenance departments. The abuse he witnessed extends to top-level management personnel. Therefore, the commenter proposes that all individuals be subject to testing and that the tests include random, scheduled, and pre-employment testing to effectively eliminate the problem.

A few commenters tend to support a strong Federal role. They firmly believe it is their constitutional right, as members of the traveling public, to have their safety protected, by whatever means necessary, from persons whose judgment and motor skills may be impaired by the use of alcohol or drugs.

Most commenters, however, dismiss the "by whatever means necessary" approach and insist that the FAA deal with the drug-abuse problem in a lawful, prudent, and humane manner.

Commenters predominantly oppose exchanging information with the NDR. Many base their objection on the lack of correlation between highway actions and subsequent flying actions. Also, commenters caution the FAA on the possibility of misunderstanding and misuse of this information. Several commenters, however, urge the FAA to seek legislative authority to use the NDR to identify aviation personnel whose driver's licenses have been suspended or revoked for drug- or alcohol-related offenses. They contend that substance abusers, in general, will act irresponsibly in more than one situation. Furthermore, they propose that off-duty alcohol and drug use can affect aviation safety. Still, most commenters vehemently oppose extending the regulations to monitor off-duty activities. Some argue that no data has surfaced to connect off-duty use with impaired on-duty performance. Other commenters cite the absence of a test to accurately measure drug-induced impairment.

Notably, the issue that received near-unanimous support was in the area of EAP's. Those commenters that addressed this subject indicate that EAP's are the most effective means to combat drug and alcohol problems. One professional association, although taking no position for or against drug testing, states that drug testing, by itself, will not control substance abuse in the long term.

A substantial number of commenters are not convinced of the accuracy of drug testing. They perceive the testing to be unreliable and encourage the FAA to require EAP's, citing the programs' success within the private sector.

A good many commenters from all three categories share and appreciate the FAA's concern that the general problems of drug and alcohol abuse in our society may spill over into the aviation system and, therefore, impact air safety. As the comments reflect, the issue no longer is simply whether it is reasonable to implement substance abuse programs; rather, the central issue is how such programs should be constructed to operate fairly and effectively.

Overview of the Proposed Anti-Drug Program

The FAA recognizes the complex issues and burdens involved in developing effective anti-drug programs. The FAA also recognizes the serious impact of the proposed program and the concerns of those who are subject to the proposed rule. Conversely, the public interest in a safe and drug-free aviation environment is paramount and will not be overlooked by the FAA. To meet the statutory mandate to promote safety of flight of civil aircraft in air commerce, the FAA must engage in a preventive program to combat drug use and abuse in aviation activities.

The FAA is proposing that employers develop a drug program for sensitive safety and security-related employees: All scheduled and nonscheduled Part 121 and Part 135 certificate holders; those entities that, by contract, provide employees who perform sensitive safety and security-related functions for the Part 121 and Part 135 certificate holders and other aviation operators; including those entities that employ individuals in the capacity of aviation security screeners (also referred to as "airport pre-departure screeners") and control tower operators. Certain persons who conduct operations for compensation or hire who are currently exempt from the requirements of Part 135 would be required to implement, or participate in, an anti-drug program. These individuals conduct the following types of operations: Student instructions; nonstop sightseeing flights that begin and end at the same airport and are conducted within 25 miles of that airport; ferry or training flights; aerial work operations, including crop dusting, seeding, spraying, bird chasing, banner towing, aerial photography or survey, fire fighting, helicopter operations in construction or repair, and powerline or pipeline patrol operations, or similar types of patrol approved by the Administrator; sightseeing flights conducted in hot-air balloons; nonstop flights conducted within 25 miles of the takeoff airport carrying persons for intentional parachute jumps; specified helicopter flights conducted within 25 miles of the takeoff airport; rotorcraft external-load operation pursuant to Part 133; and the carriage of candidates in Federal elections. The FAA invites comments on the proposed range of covered employees. The FAA is not considering covering persons conducting the following types of operations under § 135.1 (b)(8) or (b)(9): Foreign civil aircraft navigated within the United States pursuant to Part 375; and

emergency mail service under section 405(h) of the Federal Aviation Act of 1958. For the purposes of this notice, and the proposed rule, the persons who conduct operations under Part 135 and who would be required to implement a drug program under the proposed rules have been defined as "operators."

These employers would test employees who are required to hold a certificate issued by the FAA or who perform specified sensitive safety and security-related functions, either directly or indirectly, for those employers. These employees would include the following occupational groups: Pilots; flight engineers; flight navigators; aircraft dispatchers; mechanics: repairmen; parachute riggers; ground instructors; flight attendants; security coordinators, and aviation security screeners (airport pre-departure screeners); individuals who perform air traffic control duties who are not employed by, or under contract to, the FAA or by the U.S. military.

Under the proposed anti-drug program, the employer would be required to conduct the following types of testing: Pre-employment testing for all applicants for sensitive safety and security-related jobs; periodic testing for those employees required by Federal Regulation to have periodic medical examinations; random testing; post-accident testing for employees whose performance may have contributed to an accident; and testing based on reasonable cause.

The proposed rule would not require that an employer's anti-drug program be effective immediately. Employers would have 120 days from the effective date in which to develop and submit a proposed anti-drug plan acceptable to the Administrator. The FAA would review an employer's proposed anti-drug program for compliance with the criteria and requirements contained in the proposed appendix to Part 121. The FAA's silence would be tantamount to approval because the FAA will respond only if the plan is not acceptable. The plan must be implemented 180 days after the deadline for submitting the program to the FAA. Thereafter, periodic progress reports must be sent to the FAA according to a predetermined schedule. Employers would be free to submit amendments to their anti-drug programs as warranted. The FAA would respond within 120 days following submission of the amendment if the plan is not "acceptable"; otherwise the amendment would be considered approved. In the final rule, the FAA would specify which of its organizational elements would be responsible for reviewing all plans and reports. FAA also would be able to order an employer to amend an approved program if it is determined that safety and the public interest require it. While the FAA would not prohibit employers from taking independent actions beyond those required by the proposed rule, such actions would not be authorized by the FAA. Additional or more stringent procedures, therefore, would not be considered as part of an employer's approved anti-drug program.

The program would be composed of two distinct parts: The first part is testing for drugs to detect users and to deter future use; the second part is an ongoing and active "preventive" program that would offer EAP services including rehabilitation, education, and training. The two parts of the program are complementary and mutually supportive because the problem of drug abuse is attacked from all directions. Minimum requirements for rehabilitation, education, and training have been included in the proposed rule.

It must be recognized that an EAP, by itself, would not seriously deter drug use and abuse. To do so, it must be accompanied by the threat of drug testing and detection to encourage voluntary referral. An example of a voluntary EAP, unsupported by drug testing, which did not deter drug usage includes a program instituted by the Coast Guard.

From 1980 to 1982 the Coast Guard Drug Exemption Program encouraged uniformed personnel (members) to seek rehabilitation by voluntary disclosure of past illegal drug use. A Commanding Officer's grant of a one-time exemption, following disclosure, precluded disciplinary action and any administrative action other than an honorable discharge. Rehabilitation for members who were retained included counselling, education, and inpatient treatment at U.S. Navy facilities for members who were diagnosed as drug dependent. Users detected without voluntary disclosure were subject to disciplinary or adverse administrative action.

The Drug Exemption Program failed to deter usage. The Coast Guard cancelled the program and initiated a drug testing program that resulted in a decrease in the number of routine confirmatory urinalysis tests from 103 per 1,000 in 1983 to 29 per 1,000 in 1986. Based on this information, the FAA believes that the threat of detection through testing would help reduce the incidence of drug use and motivate those who are drug users to seek help through either EAP's or other referral sources.

The proposed anti-drug program is intended to create a drug-free aviation environment. Therefore, an individual may not use illicit drugs at any time, even off duty. An individual who uses drugs off duty and is tested for drug use upon returning to duty and is found to have such drugs in his or her system would violate this proposed rule even if there is no basis for concluding that an individual is impaired on the job. The absolute prohibition against drug use is based on fundamental safety concerns about the effects of possible impairment on the performance of an individual who uses illicit drugs or abuses illicit drugs. Drug use either on or off duty is prohibited since certain drugs can remain in a person's system long after use and may impair performance. It is clearly in the public interest to ensure that individuals impaired by drug use or abuse are identified before they jeopardize air safety. The FAA considers impairment due to drug use or abuse a serious safety problem because neither the individual nor his or her colleagues may be able to detect the subtle and varying degrees of impairment to motor skills and judgment that are critical to aircraft operation or performance of sensitive safety and security-related duties.

It is important to emphasize that this notice is not intended to alter or contradict the current restrictions contained in the Federal Aviation Regulations (FAR) regarding the use of drugs in aviation-related activities. The FAA has always recognized that even if over-the-counter or prescription drugs are used according to instructions or a physician's orders, these drugs, nevertheless, may impair an individual's job performance or adversely affect critical safety functions. Although the FAA will not require an employer to test for over-the-counter or prescription drugs, section 91.11 will continue to provide that a crewmember may not perform functions for an employer while using any drug that affects the person's faculties in any way contrary to safety.

The question of alcohol abuse was raised in the ANPRM to determine what additional actions might be required, if any, to address the overall issue. After review of the current regulations dealing with the use of alcohol, §§ 61.15, 61.16, 63.12, 63.12a, 65.12 and 91.11 of the FAR, the FAA determined that these regulations are clear and are understood by both employees and employers. In the case of alcohol, an individual would be allowed to consume alcohol off duty as long as he or she complies with

§ 91.11 of the FAR. The FAA is not proposing any changes in this NPRM regarding the use of alcohol. In addition, the idea of testing for alcohol using urinalysis was rejected based on the inadequacies of urinalysis as a truly acceptable method of testing for the presence of alcohol. The preferable method for testing for alcohol is either a breath measurement device or drawing blood from the individual, the latter method preferred for scientific accuracy. Therefore, if tests were run for alcohol, two different types of tests (breath measurement and blood alcohol concentration) would have to be conducted. This would greatly complicate the process as well as increase costs. Also, the blood test method generally is considered an invasive procedure and would not be favorably received by those being tested. Finally, it is easier to identify someone who abuses alcohol and reports for work impaired than someone who uses drugs. As such, the issue of testing for alcohol was removed from consideration in the rulemaking proceeding. FAA will continue to review the effectiveness of its alcohol abatement programs.

Who Would Establish an Anti-Drug Program

The major issue in determining who should be required to establish an anti-drug program centered around the issue of public trust. The FAA believes that those aviation entities who operate for compensation or hire and who provide services to the public clearly are dependent on public trust and should take steps toward ensuring a drug-free aviation environment. The ANPRM solicited comments regarding other activities, including general aviation operations. While these activities require FAA certification, the FAA believes that they are not subject to the same degree of public trust. In the case of general aviation pilots, the FAA determined that they are private individuals, engaged in a private activity, and, thus, did not fall within the public trust criterion. It is recognized that the exclusion of general aviation pilots will spark controversy, as the FAA acknowledged in the ANPRM, because the major evidence of drug abuse in aviation has been attributed to the general aviation sector. However, at this time the FAA does not propose requirements for general aviation pilots.

Based on these considerations, the FAA is proposing that all scheduled and nonscheduled Part 121 and Part 135 certificate holders, "operators" as defined in this notice, and contractors whose employees perform specific sensitive safety and security-related functions for a certificate holder would be required to establish an anti-drug program. This would include those entities who employ individuals to perform the functions of control tower operators and aviation security screeners. The FAA recognized that nonscheduled Part 135 certificate holders and "operators" as defined in this notice may find it difficult to incorporate any anti-drug program because they only have a small number of employees, are self-employed, or operate in remote locations. The FAA invites comments as to what methods might be used to facilitate the inclusion of small entities in the program and whether there are special considerations FAA should take into account in requiring small entities to develop and implement a program. Commenters who believe that the rule should not cover small entities, either in whole or in part, should explain the basis for their views and describe how they would define small entity for this purpose. The proposed rule calls for all employers, including small operators, to file a drug testing plan with the FAA which describes the details of the anti-drug program. In the case of small operators, they may wish to explore the possibility of working with local drug testing programs or with larger certificate holders who might include them in their anti-drug program.

Substances For Which Testing Must Be Conducted

The FAA would require that an employer test for the five most widely abused drugs. These drugs are cocaine, marijuana, opiates, phencyclidine (PCP), and amphetamines. The proposed rule would not prohibit employers from testing for certain other drugs of abuse. The FAA invites comments as to which additional drugs, if any, should be included. Commenters also should provide cost and benefit data regarding additional drug groups.

Who Would Be Tested

The decision regarding who would be tested under the proposed rules was based on those commercial occupations that have the greatest responsibility for safety. The FAA determined that certain individuals employed by Part 121 and Part 135 certificate holders, "operators" as defined in this notice, and other entities who provide contractual services to these employers have such a responsibility and should be tested. Based on safety considerations, the FAA is proposing that all certificated airmen who are required to perform key safety functions should be included in an anti-drug program. The fact that the FAA requires certification of these individuals demonstrates that the occupation requires specific knowledge and skills which are critical to safe aircraft operation. Individuals in this category are:

Pilots, flight engineers, flight navigators, aircraft dispatchers, mechanics, repairmen, parachute riggers, ground instructors, and control tower operators. Noncertified individuals that would be included in an anti-drug program are flight attendants and aviation security screeners and security coordinators. The flight attendants are included because they perform functions sensitive safety and security-related enough to warrant inclusion. Likewise, employees responsible for aviation security are included based on the requirement for vigilance and attention to detail. Consideration was also given to including employees in other occupational categories who might directly or indirectly affect safety, including aircraft servicing personnel, airport firefighters, police and others, but the FAA concluded that these employees do not perform functions senstive safety and security-related enough to warrant inclusion. In the case of personnel exercising the privileges of the Control Tower Operator (CTO) certificate, the FAA determined that those non-Federal entities that operate control towers should have an anti-drug program for personnel performing CTO duties. Excluded from this requirement would be: FAA employees; private employees in FAA contract towers; active-duty, military CTO holders; and civilian CTO holders employed by the U.S. military. To the extent this group of excluded CTO holders would be covered by the drug testing programs already in place by their employers, they would not be covered by this proposal. The list of employees subject to testing under this proposed rule could be changed based on further information and data gathered during the comment period. Comments are requested on how FAA should define sensitive safety and security-related for purposes of this proposal and whether this definition should include non-certificated, individuals, such as flight attendants, aviation security screeners, and security coordinators. Commenters addressing these issues should provide empirical evidence to support their comments.

Goals of Drug Testing

The overall goal of drug testing is to foster a drug-free aviation environment which merits public confidence. Drug

testing serves as a significant deterrent to drug abuse by identifying users or forcing them to seek help based on a fear of detection through drug testing. Reporting the results of these programs would enable the FAA to collect statistically valid and representative data on the extent of drug abuse. In turn, this data would enable the FAA to assist the industry in its rehabilitation, education, training, and efforts to combat drug abuse.

When Testing Would Be Conducted

There are five basic situations when testing would be conducted: before employment, periodically, after an accident, randomly, and based on reasonable cause. The five situations involve different circumstances which form a part of a deterrent or anti-drug prevention program.

1. Preemployment testing would be required of all applicants for specified sensitive safety and security-related positions. The purpose of testing applicants is twofold: One, it would convey a clear message that the employer is serious about establishing and maintaining a drug-free environment; and two, it would help identify those who are either addicted to or so dependent upon drugs that they cannot abstain from drug use. All screens that produce positive results for drugs would be confirmed using a superior method of testing as specified in proposed Appendix I to Part 121. Applicants would be informed that tests will be conducted to determine the presence of drugs. The effectiveness of preemployment testing is flawed to some extent because individuals can avoid detection by abstinence. However, data received in response to the ANPRM indicates that preemployment testing in the air carrier industry still reveals positive test results from some selected carriers. As such, preemployment testing provides a valuable service in the selection of employees.

The FAA specifically requests comment on the proposed requirements that the certificate holder keep no records of an application for employment that has been withdrawn because of a failed drug test and on the proposed requirement that the certificate holder not disclose the results of the test to any other person. We have made these proposals because we believe they are appropriate policies for the implementation of an effective and non-punitive anti-drug program. Comments are invited to the extent to which these proposals are necessary or justified.

2. Periodic testing would be conducted during required physical examinations. Employees who are required by regulation to have periodic medical examinations would be advised that urine specimens submitted during the examinations would be subjected to testing for drugs. Those specimens would be collected and handled in accordance with chain-of-custody procedures. Although advance notice of periodic testing may enable drug users to avoid detection through abstinence, periodic testing is an important component of an effective anti-drug program. The FAA invites comments on alternatives to the proposed periodic testing requirement, such as randomly selecting only a portion of the samples for testing.

3. Random testing is expected to be the primary deterrent method in the anti-drug program. Random testing avoids potential bias toward and selective harassment of an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods such as the use of a random number table or computer-based, random number generator. Both methods select individuals by matching these random numbers against an employee's social security number or payroll account number.

With random testing, abstinence is the only way to avoid the risk of detection of drug use. Random drug testing requires a specific implementation plan to deter drug use. The rules propose to use a sampling rate of up to 125 percent of employees performing specific sensitive safety and security-related functions. The 125 percent sampling rate is based on the Coast Guard testing program. A 125 percent rate for random testing would have certain advantages. This testing rate has been shown to be a viable deterrent in the Coast Guard program to future drug use and has been proven effective in reducing the present incidence of drug use. The Coast Guard's random testing program of its uniformed personnel resulted in reducing detected drug use by 75 percent in the five years since the program was implemented. This testing rate currently is the best evidence available to the FAA regarding a successful random testing program. The FAA is proposing 125 percent as a potential maximum testing rate. At the same time, the FAA recognizes that the higher the sampling rate, the higher the costs of the program. The FAA invites comments on how low a sampling percentage could be adopted while still maintaining a credible deterrent. In particular, the FAA is interested in information on documented, effective random testing programs and the sampling rates that were used as measured against the incidence of drug use on a year-to-year basis, and information that would provide updated estimates of the relative costs and effectiveness associated with various sampling rates. The FAA also requests commenters to address whether the experience of uniformed personnel in the Coast Guard program is a valid indicator of how sensitive safety and security-related aviation employees would respond to a similar program.

A sampling rate of 125 percent would mean that a population of 10,000 would provide 12,500 annual samples. Similarly, a sampling rate of 12.5 percent would provide 1,250 samples from the same population. Using true random selection, employees selected for each weekly or monthly increment would be returned to the pool of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug abuse because an individual selected early in the testing cycle would still be equally subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test. One feature of this plan is that some employees might not be selected at all during the first year and others could be selected more than once. Another issue in this area is the matter of "randomness" among small or isolated populations. What, for example, is the meaning of a random test to an employee population consisting of only one employee, or a few employees? This problem is particularly acute if the owner or manager of the business is also the sole person, or one of only a few persons, subject to testing. Similarly, although surprise is an essential feature of true random selection, how can this be achieved when the employee is located in a remote location and must be transported some distance to provide a sample? This could result in the loss of the element of surprise in many cases. The FAA seeks comments how to deal with these problems.

4. Employers would be required to obtain urine samples from sensitive safety and security-related employees whose performance contributed to an accident. For the purposes of defining "accident," the FAA proposes to use the definition contained in the regulations of the National Transportation Safety Board (NTSB) (49 CFR 830.2). Should this or any other definition of accident be used instead?

In administering a drug test after an accident, the FAA proposes to authorize employers to test sensitive safety and security-related employees for any Schedule I or Schedule II drug, even though many of these substances would not be tested for in a preemployment, random, or periodic test. This is the same practice as would be followed by the FAA in testing its employees under the proposed Department of Health and Human Services (HHS) guidelines.

It could be both wasteful and intrusive to require testing without some indication that the tested person might have been a cause of the accident. Therefore, it may be desirable to establish a mechanism through which determination would be made about who would be required to undergo a drug test after an accident. Testing after some accidents could be unwarranted, either because the damage is so slight that it is not justified economically, or because the circumstances indicate that human error was not a factor. The FAA invites comment on how the decision would be made. Should the employer decide whether testing is necessary? Should there be a presumption that all employees at the scene should be tested, unless, for example, two company officials concur otherwise? Would these officials have to be supervisors? There may be situations where only one supervisor is available or the only persons at the scene are not supervisors. Should at least one official involved in the decision concerning whom to test be trained in detecting drug use? Are there any practical problems to this approach? What about employees such as mechanics, who may have caused the accident, but who may be far from the scene at the time of the accident? In small companies, what if the deciding officials are involved in the accident? Should the FAA be involved in the decision? Again, how would this be put into practice?

It is important that drug tests be administered as promptly as possible following an accident. The decision whether to test employees should be made quickly so that tests can be administered while evidence of drug use, if any, is still in the employee's system. Should all sensitive safety and security-related employees involved in an accident be tested unless deciding officials determine within a given period of time that certain employees could not have contributed to the accident and can be excluded? Within what period of time would the decision to exclude certain employees be made? The Federal Railroad Administration requires post-accident testing within 4 hours. In their experience, this time constraint is difficult to meet. For employees to be tested, the FAA recognizes that there may be serious logistical problems in administering a drug test as quickly as might be desired. We are therefore proposing that post-accident tests be given as soon as possible and in no event later than 24 hours after an accident. This 24-hour period is intended to be an absolute maximum, and any delay, even within this period, could seriously reduce the value of the test.

5. Testing based on reasonable cause would be based on a reasonable and articulable belief that a sensitive safety and security-related employee is using drugs. Even if no mistakes are made at work, the employee may demonstrate a change in character or behavior that could be symptomatic of drug use. Such changes are normally characterized by mood swings and changes in appearance, attitude, and speech. Because of the subjectivity of the criteria and the possibility of employee harassment, at least two of the employee's supervisory personnel would have to concur in the decision to test an employee based on a reasonable suspicion of drug use. At least one of these supervisors would have to be trained in detecting symptoms of drug use. Are there practical problems to this approach? Should the observers have to be supervisors? There may be situations where only one supervisor is available or the only person in a position to observe an employee is the supervisor? The FAA invites comments on whether there should be exceptions to the two-supervisor rule. If so, what other criteria could be used that would protect a disfavored employee from potential harassment through drug testing? Should there be a limit to the number of times an employee can be subjected to reasonable cause testing in order to prevent unwarranted harrassment? Should there be specified circumstances, such as particular rule violations, under which drug testing would be automatic? If so, what kind of rule violations would suggest a drug problem and should trigger reasonable cause testing? We note in this regard that the Federal Railroad Administration has specified, in its existing drug rule, the types of incidents that could justify requiring an employee to undergo drug testing. Could a similar program work in the aviation industry?

FAA proposes to authorize employers to test sensitive safety and security-related employees for any Schedule I or Schedule II drug when there is reasonable cause to believe a particular drug was used, even though many of the Schedule I and II substances would not be tested for in a preemployment, random, or periodic test. This is the same practice as would be followed by the FAA in testing its employees under the proposed HHS guidelines.

Medical Review Officers

Employers would be required to appoint or designate a Medical Review Officer (MRO). The MRO would perform several functions, including review of the results of the employer's drug testing program; interpretation of each confirmed positive test result; and evaluation of an individual for referral to an EAP rehabilitation program. The FAA also seeks comments on the MRO's appropriate role in determining when an individual might be returned to duty. The proposed rule requires that a MRO be a licensed medical doctor. The MRO could be a currently employed company physician or could be a private physician who performs MRO services for the employer on a contractual basis.

EAP Services

The FAA has determined that properly managed EAP's benefit both management and employees and can be a positive factor in anti-drug programs. The FAA recognizes that individually established EAP's may be beyond the fiscal resources of some employers. However, the employer has a responsibility to employees and the public to provide a drug-free environment to the maximum extent practical. As such, in certain circumstances, employers would provide EAP services or make such services available through one of the following means: Company-operated EAP; contractor or consortium arrangement; or arrangements with local community service organizations for voluntary referrals or employer-directed referrals. Other alternatives to the above must be approved by the FAA and would have to provide an equivalent level of EAP service to employees.

The proposed rule would require that an EAP provide education, training for employees and supervisory personnel, and an opportunity for rehabilitation. An employee must successfully complete a rehabilitation program before being returned to his or her previous duties. The FAA is not proposing to require employers to pay the cost of rehabilitation. At this time, the proposed rule does not impose any limits on the amount of time that an employee may use to complete a rehabilitation program. However, the

FAA recognizes that requiring an employer to hold a position open or adjust operations for an indefinite period, while an employee is enrolled in a rehabilitation, may result in inconvenience and hardship for some employers, especially smaller companies. Therefore, the FAA solicits comments on an equitable and appropriate amount of time for an employee to complete a rehabilitation progam to be specified in the rule, and whether the amount of time should be different for smaller companies. The FAA is particularly interested in time frames that have been shown to be appropriate from other documented rehabilitation programs, taking into account how long it may take for an employee to be admitted to a rehabilitation program. Commenters also should address whether employees involved in EAP programs could be employed in nonsensitive safety and security-related positions during the rehabilitation process. The proposed rule does not require the employer to offer these same opportunities to a repeat offender, to persons not currently employed by the employer who fail a preemployment test, or persons who have been found to use illicit drugs on the job.

The NPRM proposes three different options concerning the circumstances under which employees would be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Non-employees given a pre-employment drug test need not be given an opportunity for rehabilitation. Once rehabilitated, the employees would be reinstated into his or her prior position. The second option would provide rehabilitation rights to employees who come forward voluntarily or who are identified as drug users during periodic or random tests; but would not require that the same opportunity be afforded to drug users identified in post-accident or reasonable cause tests; those not afforded the right to rehabilitation could be discharged. In the third option, only volunteers could claim rehabilitation rights. Anyone testing positive for drugs (regardless of the circumstances, e.g., random, periodic, post-accident, reasonable cause) could be fired immediately. In all cases, employers would be free to offer more rehabilitation options than the minimum we proposed. Thus, for example, an employer could voluntarily offer two chances at rehabilitation rather than one.

Each of these approaches has its own merits. For example, the broad rehabilitation program anticipated by the first alternative is likely to maximize both the costs and the benefits to society, by ensuring that more drug users will get the help they need. If users are simply fired, they will often lose access to, and perhaps incentive to use rehabilitation services, and they may continue to be drug users. However, it could be argued that employees who are found to be drug users through post-accident or reasonable cause tests are less deserving of an opportunity for rehabilitation, and the second alternative would therefore exclude them. The third alternative is likely to be the lowest in direct costs, because rehabilitation would be required only for employees who seek it voluntarily, but for the same reason, however, this alternative might produce less in societal benefits. Commenters should address whether, and to what extent the third alternative would encourage drug users to identify themselves before they are tested, in contrast to the first and second alternatives, which appear to provide less incentives for drug users to identify themselves before they are discovered through the testing process.

We specifically invite comment on which of these or other alternatives offer the greatest benefits at the lowest cost.

Under any of these options, if the individual was successfully rehabilitated, the program would require that he or she be offered the opportunity to return to his or her former position. The NPRM does not specify who makes the decision concerning whether the individual has been successfully rehabilitated, however. The FAA seeks comments on whether the final rule should so specify.

If the final rule does specify who makes this decision, who should the decision-maker be? Should it be the medical review officer, the head of the EAP, the head of the drug rehabilitation program in which the employee participated, an independent physician, the FAA (e.g., through the office of the Federal Air Surgeon) for certain types of employees, or some combination of these persons? Are there other individuals that should be permitted or required to make the decision?

The FAA also seeks comments on whether the rule should contain standards for making this determination. If so, what should they be? Should the employer, the FAA, or both have a procedure through which the employee can contest a determination that he or she had not been rehabilitated?

Post-rehabilitation Testing

Once an employee has undergone rehabilitation, there may be a need to conduct tests to ensure continued disassociation from drugs. At the time of the adoption of a final rule in this proceeding, we intend to provide procedures for the conduct of such tests. We invite public comment on what the final rule should contain.

For example, should there be a uniform testing period after rehabilitation, or should this be determined on a case-by-case basis? Who should make such a determination: The medical review officer, the EAP counselor, or both together? Should the employee be involved? How could employee involvement be accomplished? If we adopt a uniform post-rehabilitation period, how long should it be? Is six months reasonable? Would longer periods constitute an unacceptable burden on employees and on the employer? Others might argue that a longer follow-up period, such as one year, is called for. Should the length of the follow-up period depend on the kind of drug that was detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? For example, should someone undergoing inpatient rehabilitation be subject to post-rehabilitation testing for a longer time than someone who needs only abatement counseling?

During the post-rehabilitation period, should we prescribe the minimum and/or maximum number of tests to be administered? We would want to ensure that any necessary tests would be given frequently enough to ensure that the employee is free of drugs. At the same time, however, we do not want drug testing to become an instrument of harassment of the employee or an undue burden on the employer. Here again is the issue of whether the number of tests given should vary with the kind of drug used and the severity of the employee's problem.

One alternative, on which we also invite comments, is a specified post-rehabilitation testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following rehabilitation.

Temporary Employees

Although the rehabilitation of drug users is a cornerstone of this program,

we believe that there may be some employees in the industry whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short-term hire seeks rehabilitation, the end of the scheduled employment term might come before the completion of a rehabilitation program. Therefore, we are considering not requiring employers to offer an opportunity for rehabilitation to temporary employees who are hired for a period of less than 90 days. That is, if such employees are found to be drug users, it would be permissible to dismiss these persons immediately.

However, we recognize that some employees hired on a "temporary" basis are actually regularly reemployed. Some of these employees are recurring seasonal hires, others are continually reemployed at the end of each specified term. These persons are regular members of the industry, and thus, should not be excluded from the opportunity for rehabilitation and reemployment. Under the proposal, an employee would not be considered temporary for the purposes of rehabilitation, if he of she is eligible for reemployment by the same employer within 90 days following the end of the employment term. We specifically request comments on (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employees. Commenters also should address how the rules should be applied to striking employees or employees scheduled for layoffs. Definitions of these terms also should be addressed.

Implementation

The FAA must exercise oversight over the establishment of individual programs to ensure their effectiveness. This oversight can best be implemented by requiring each employer to submit a plan acceptable to the Administrator that would set forth the specific details of an anti-drug program. The employer's proposed anti-drug plan would have to be submitted to the FAA within 120 days after the effective date of the final rule. The FAA would respond only if a plan was considered inadequate. The FAA would complete its review within 60 days after submission of an employer's program and would notify those employers with inadequate plans within that 60-day period. The anti-drug program would be required to be implemented 180 days after the deadline for submitting the program.

Reporting Requirements

Semiannual and annual reports of the results under each program would be required under the proposed rule. The report would contain demographic data of drug abuse by occupational category, drugs detected, and geographic locations.

Those semi-annual and annual progress reports would be sent to FAA. The FAA is proposing that the reports should provide the following summary information for each type of testing performed: Occupational group of tested employees' the specific drugs detected and the disposition of employees (e.g., termination, rehabilitation, resignation, and other categories as applicable, such as leave without pay). Confidentiality must be afforded to all information regarding drug abuse by employees. This data would be used by the FAA only to summarize trends and determine if additional actions or changes may be required to combat drug use and abuse in aviation. We invite comments on the frequency and content of reports to be filed.

Employer Flexibility

The FAA recognizes that drug use is a complex problem that requires dynamic, responsive solutions. The FAA believes that its proposed program meets the agency's statutory mandate to promote the safety of civil aircraft flying in air commerce and that it responds to the public's need for a safe and drug-free aviation environment. The FAA is also interested in comments on whether there are ways to increase flexibility in the program or reduce costs without decreasing safety. For example, should the FAA allow covered employers the option of submitting to the Administrator for approval a company-specific anti-drug program in lieu of complying with the FAA proposed rule?

Would allowing for company-specific anti-drug programs be consistent with the FAA's mandate for ensuring a safe and drug-free aviation environment? In other areas, such as those dealing with aircraft maintenance, flight operations, airport security, and carry-on baggage, the FAA has permitted airlines and other aviation companies to develop and implement safety programs tailored to meet requirements particular to that company. The FAA reviews such programs for their consistency with FAA safety goals. These programs have made it possible to give increased flexibility to companies while continuing to ensure that the programs are carried out in a manner that ensures safety for the travelling public. Is there any way in which the FAA may best afford employers subject to the proposed drug abatement rule similar flexibility? What would be the likely cost savings, if any, associated with a flexible approach?

The FAA recognizes the costs and burdens associated with drug abatement in general, and wants to ensure that aviation anti-drug programs are as cost-effective as practicable. Would providing for company-specific programs encourage the development of innovative solutions that may be less costly and more effective? How? Could similar innovations be developed under the proposal set forth in this notice? How can the FAA ensure that its final rule will promote the development of efficient and more effective solutions?

The proposed FAA program includes a required random sampling rate that could range as high as 125 percent of the tested population. This level has proven to be effective in reducing drug use among Coast Guard personnel, but we have asked for comments on how low a testing percentage could be adopted without undermining the deterrent effect of the testing program. Whatever sampling rate is chosen as the industry-wide norm, would it be possible for a company-specific program to be designed in a way that would allow employers who can justify a need to test at a lower or higher sampling rate to test at that rate. How could this be accomplished?

The FAA also requests comments on whether employers could also limit the size of the population subject to a full range of testing strategies to those sub-groups of employees where an initial round of testing has revealed a more serious drug-use program. In such a case, the employers may be able to rely on a less costly set of requirements to ensure that employees in sub-groups with less serious or more easily determined problems, remain risk-free. In addition, are there ways employers may avail themselves of less costly and less intrusive technologies as such advances are made while ensuring an appropriate-level of safety. Are there other types of flexibility that the FAA should consider? Commenters are requested to submit any empirical data that support their views.

Could the current proposal provide similar flexibility by simply providing a waiver for companies that, for example, ask to use a test they establish achieves an equivalent level of safety? What, if any, fundamental requirements should be present in an acceptable company-specific drug abatement program, and what guidelines would the FAA use in reviewing requests for waivers or amendments if such modifications are

allowed? Should, for example, the FAA be required to approve any modifications that are designed to achieve a safe and drug-free aviation environment? Should these requirements or review guidelines be different from modifications submitted by small companies? Should the FAA be required to act on an application for approval of a company-specific program, an amendment, or a waiver request, within a set time period? What form should the application take? What impact would allowing these alternatives for increasing flexibility have on the FAA?

Access to Employee Drug Use Information

The proposed rule would regulate access to information about an employee's drug testing history under the anti-drug program by subsequent employers or employers in other transportation modes. The FAA specifically requests public comment on what procedures, if any, should be included in the rules to safeguard the privacy of persons tested under the anti-drug program. As noted above, we are considering a variety of options with respect to preemployment drug tests, including mandatory destruction of the documents for employees not hired. The results of drug tests performed for other reasons, however, also raise important privacy questions. Therefore, we specifically invite comments about whether there are circumstances under which we should permit the disclosure of drug test data to persons other than the employer and the employee (such as future employers). If, in the final rule, we were to allow such disclosure, there would appear to be a number of options. First, the data could be released only at the specific requests of the future employer, at either the discretion of the employer conducting the test, or only at the request of the employee. Under another option, a subsequent employer could require that an applicant either disclose prior drug test results or give the employer permission to obtain prior drug test results as a condition of employment. A final option under consideration by the FAA is authorizing the release of test results to future employers only in specified circumstances. For example, confirmed positive test results would be released to subsequent employers where an employee had been discharged for a refusal to participate in a rehabilitation program or an employee had failed a drug test after completing rehabilitation. Interested persons also should comment on whether the proposed rules should treat the privacy issues related to preemployment tests differently from random, reasonable cause, and periodic tests.

The potential release of data highlights the importance of an employee's right to contest the test results. A urine sample that had been subject to tampering could unjustly end an employee's career. An employee should have an opportunity to challenge the integrity of the testing process, for example, by contesting whether the positive test result arose from a tampering incident or other error in the testing process. The FAA, therefore, requests comments on what procedures should be adopted. Commenters also should address whether the types of procedures afforded an employee should vary depending upon the consequences of a positive test and whether the burden or proof on the validity of test results should be borne by the employee or the employer.

In addition to future employers, other individuals may want access to the results of drug tests conducted under the proposed rules. The FAA could prohibit access to test results by the general public, including the news media. Moreover, other government agencies may want the data for statistical, regulatory, or law enforcement purposes. The FAA requests comments on whether the rule can and should prohibit access to the results of the anti-drug program to individuals other than the employer and the employee.

A related issue involves whether the FAA should distinguish between general statistical data (the total number of positive tests at a company in a month or a year) and particularized data (name-specific data). Small operators who employ few individuals will have difficulty concealing the identity of individuals tested under the proposed anti-drug program. Since small operators will have few individuals to test in any given time period, even seemingly neutral statistical data would result in identification of an individual employee who was dismissed as a result of a confirmed positive test result. This potential may be exacerbated if the FAA requires that only a small percentage of employees be tested each year.

HHS Guidelines

On August 14, 1987, the Department of Health and Human Services (HHS) published proposed guidelines for drug testing procedures and standards for certifying drug testing laboratories (52 FR 30638; a final version of the guidelines is expected to be published before the final rule based on this NPRM). As drafted, the guidelines apply to drug testing programs conducted by Federal agencies themselves. This NPRM would direct regulated parties to conduct their drug-testing programs according to these guidelines as well.

The HHS guidelines include proposed solutions to concerns such as the integrity of the sample collection process, maintaining a proper chain of custody, and ensuring that laboratories that do drug testing are qualified to do so.

The HHS guidelines would establish what illegal drugs are to be tested for (e.g., marijuana, cocaine, amphetamines, PCP, and opiates) and the levels of drug metabolites in a sample that would result in a positive test being reported. The guidelines specify the types of tests that would be required for initial screening tests (an immunoassay test) and confirmatory tests (a gas chromatography/mass spectrometry test).

The guidelines also specify collection procedures. These include the use of toilet bluing agents, temperature monitoring, and other steps to ensure the integrity of the sample without requiring observation of the individual while he or she is providing the sample. The sample collection procedures also include filling out a chain-of-custody form to accompany the sample as it goes to the laboratory.

The guidelines for laboratory processing of samples cover both technical and procedural steps designed to ensure that a proper chain of custody is maintained and that the test is conducted accurately. Intralaboratory chain-of-custody forms would be used; only authorized personnel would have access to the sample. Records concerning the calibration of testing instruments would be maintained. Laboratories would report test results to the employer in a timely manner, and statistics on the tests would be retained by the laboratory for 2 years.

In addition to setting forth qualifications for key laboratory personnel and quality control procedures for the laboratories, the guidelines include standards and procedures through which HHS certifies laboratories. Regulated parties would be required to use only those laboratories which HHS has certified pursuant to these standards.

There are a few particulars in which the proposed rule differs from the proposed HHS guidelines. For example, medical review officers (MROs) are assigned duties in Appendix I in addition to those in the guidelines. There are also additional requirements concerning inspections of laboratories by both the employer and the FAA and

concerning employee requests for retesting.

Discussion of Proposed Rules

Performance of Duties by Persons Using Certain Drugs

Proposed §§ 121.455(b) and 135.249(b) would prohibit Part 121 and 135 certificate holders and "operators" as defined in this notice from knowingly using any person to perform, and prohibit any person from performing, a function listed in proposed new Appendix I to Part 121 while that person has a prohibited drug, as defined in Schedules I and II of the Controlled Substances Act, in his or her system. This requirement also would apply to persons performing these functions under contract for the certificate holder or operator. This requirement would not apply if the individual was lawfully using a drug according to a medical prescription unless such use would affect the employee's faculties in any way contrary to safety.

A similar requirement would be added as new § 65.46(c) to apply to an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military.

Use of Persons Failing a Test for Prohibited Drugs

Proposed §§ 121.445(c) and 135.249(c) would prohibit Part 121 and 135 certificate holders and "operators" as defined in this notice from knowingly using any person to perform, and prohibit any person from performing, a function listed in proposed new Appendix I to Part 121, if that person has failed a required drug test specified in that appendix. This rule would also apply to contractors. An Employee who is required to hold a medical certificate issued under Part 67 of this chapter and who fails a drug test under an FAA approved drug program is subject to suspension or revocation of that certificate if the results of the drug test indicate drug use and the tested employee is found to be drug dependent.

The requirement would not apply to persons who have successfully completed an approved rehabilitation program after notification of failing a drug test, who have received a recommendation for return to duty as a result of that rehabilitation program, and who have not subsequently failed another drug test. Similar provisions for air traffic control tower operators would appear in proposed § 65.46.

Drug Testing Program

A new Appendix I would be added to Part 121. It would contain the requirements with respect to who must be tested and what tests must be conducted. It would provide for testing pursuant to the procedures and requirements set out in the proposed HHS guidelines. The proposed appendix would set out the required content of EAP's, including specifying which employees would be given an opportunity for rehabilitation. It would require an education program and a training program, and state what must be included in each.

Required Testing

Proposed §§ 121.457, 135.251, and 65.46 would require Part 121 and Part 135 certificate holders, "operators" as defined in this notice, and air traffic control facilities not operated by, or under contract with, the FAA or the U.S. military to test each of its employees who perform a function specified in proposed Appendix I in accordance with that appendix. None of these employers would be allowed to use any contractor to perform a function specified in the proposed appendix unless that contractor tests each employee performing such a function in accordance with that appendix.

Required Training

Part 121 and Part 135 certificate holders, "operators" as defined in this notice, and air traffic control facilities not operated by, or under contract with, the FAA or the U.S. military would be required to provide specified training to each employee performing a function listed in proposed Appendix I, and his or her supervisor, with the training specified in the appendix. This training would include instructions on the effects and consequences of drug use on personal health, safety, and work environment, as well as the manifestations and behavioral clues that may indicate drug use. None of these employers would be allowed to use any contractor to perform a function specified in that appendix unless that contractor provides the same training to its employees who perform those functions.

Refusal to Submit to a Test

New Provisions would be added to Parts 61, 63, and 65 to provide that refusal to take a required drug test by a person who performs a function listed in Appendix I when requested to do so by his or her employer under that appendix would be grounds for denial of an application for a certificate. Such a refusal would also be grounds for suspension or revocation of a certificate.

Implementation

Appendix I would require the employer to submit a drug testing plan to the FAA for review within 120 days after the effective date of the final rule, or 120 days after issuance of a certificate under Part 121 or Part 135 to the employer, whichever is later. Operators would be required to submit a drug-testing plan to the FAA for review within 120 days after the effective date of the final rule, or 120 days after beginning covered operations listed in § 135.1(b), whichever is later. Each contractor who provides employees who perform a function listed in that appendix would have to submit a drug testing plan within 120 days after the effective date of the final rule or within 120 days after award of a contract, whichever is later. The plan would have to specify, among other things, the methods by which the employer will comply with the FAA rule. It would also have to specify the procedures and personnel the employer will use to ensure that a determination is made as to the veracity of test results and any possible legitimate explanation for an employee failing a test.

The employer would be allowed to consider its drug testing plan to be acceptable to the Administrator unless notified to the contrary by the FAA within 60 days of the implementation date.

Implementation Date

It is proposed to require that an employer's anti-drug program be implemented 180 days after the deadline for submitting the program to the FAA.

Economic Summary

The following is a summary of the preliminary industry cost impact and benefit evaluation for the regulatory changes proposed in this notice to require domestic and supplemental air carriers, commercial operators of large aircraft, air taxi operators, commercial operators, certain contractors to these operators, air traffic control facilities not operated by, or under contract with, the FAA or by the U.S. military, and certain organizations and individuals operating aircraft for compensation or hire under specified categories listed in § 135.1(b) to have an anti-drug program for employees who perform specific sensitive safety and security-related functions. The proposed rules are needed to prohibit, absolutely, the presence of a prohibited drug in an employee's system at any time. The proposed rules are intended to foster a drug-free aviation environment and to

eliminate drug abuse in commercial aviation.

Under these proposed rules, testing would be conducted prior to employment, periodically, randomly, after an accident, and based on reasonable cause. In addition, these proposed rules would require that an employer provide an Employee Assistance Program (EAP) for its employees. The FAA has determined that the proposed rulemaking is a major rule under Executive Order 12291 because the proposed requirements are likely to result in an annual effect on the economy of over $100 million.

In developing its program, the FAA is considering three alternatives concerning requirements for rehabilitation. All three have been analyzed for costs and benefits using 125 percent and 12.5 percent annual sampling rates for random testing. Under the first option, an employee who comes forward voluntarily or tests positive for illicit drug use for the first time would be eligible for rehabilitation. Once rehabilitated, the employee be reinstated into his or her prior position. The second option would afford rehabilitation rights to employees identified as illicit drug users during periodic or random tests, but would not require employers to afford the same opportunity to drug users identified in post-accident or reasonable cause tests. Under the third option, only volunteers who self identify or are referred by a co-worker would be afforded rehabilitation rights. The employer would have the right to dismiss anyone testing positive for drugs (i.e., periodically, randomly, after an accident, and based on reasonable cause).

One basic assumption the FAA used in developing Option 3 is that there would be a greater number of individuals volunteering for rehabilitation at a higher sampling rate than at lower ones based on fear of detection. Of course, employers would be free to offer more rehabilitation options than the minimums required by this notice. A detailed analysis of these options is presented in the Regulatory Impact Analysis and is contained in the docket. Also, the total cost of compliance with the three different rehabilitation options at different sampling rates are shown in Exhibit A of this summary. The assumptions used in preparing the economic impact estimates of the proposed changes have been developed by the FAA. Cost factors were obtained from information received in response to an earlier Advance Notice of Proposed Rulemaking, and additional data furnished by air carrier industry trade associations, public institutions, and major chemical laboratories. These estimates of cost impact may be revised before the final Regulatory Impact Analysis is issued based on public comment and other information that becomes available.

The proposals to amend Part 121 would affect the 146 currently active scheduled and nonscheduled Part 121 certificate holders and certain entities who provide contractual services to them. The notice also affects the 3,614 scheduled-service and on-demand Part 135 operators and certain entities who provide contractual services to them. In addition, these proposals would also affect an undetermined number of organizations engaging in the types of operations listed under § 135.1(b). Because of the highly diversified and multipurpose nature of operations listed in § 135.1(b), it has not been possible to determine the exact number of organizations that engage in these types of operations. Nevertheless, the FAA has used the 850 currently active pilot schools as the basis for estimating the impact of these proposals on those entities listed under § 135.1(b). While the actual number of these organizations may be higher, the FAA believes that the 850 pilot schools selected represent the majority of organizations conducting operations listed in § 135.1(b). Comments are requested on these estimates.

EXHIBIT A.—AGGREGATE COMPLIANCE COSTS, 1989–97

Option 1

	125% sampling rate		12.5% sampling rate
Employee rehabilitation cost	$600,979,772		$75,130,727
Drug testing program cost	245,885,672		64,700,785
Aggregate compliance cost (10 years—1987 dollars)	846,865,444		139,831,512
(10 years 10% present worth)	597,356,865		98,633,513

Option 2

	125% sampling rate		12.5% sampling rate
Employee rehabilitation cost	599,822,204		74,986,015
Drug testing program cost	245,885,672		64,700,785
Aggregate compliance cost (10 years—1987 dollars)	845,707,876		139,686,800
(10 years 10% present worth)	596,304,520		98,497,933

Option 3

	125% sampling rate		
	10% voluntary	20% voluntary	30% voluntary
Employee rehabilitation cost	79,264,722	158,529,444	237,794,166

EXHIBIT A.—AGGREGATE COMPLIANCE COSTS, 1989-97—Continued

Drug testing program cost	245,885,672	245,885,672	245,885,672
Aggregate compliance cost (10 years—1987 dollars)	325,150,394	404,415,116	483,679,838
(10 years 10% present worth)	203,824,979	258,718,344	313,611,710
	12.5% sampling rate		
	1% voluntary	2% voluntary	3% voluntary
Employee rehabilitation cost	980,894	1,961,788	2,942,674
Drug testing program cost	64,700,785	64,700,785	64,700,785
Aggregate compliance cost (10 years—1987 dollars)	65,681,679	66,662,573	67,643,459
(10 years 10% present worth)	44,353,326	45,033,344	45,713,357

These entities will incur additional costs because they will be required to comply with the proposed anti-drug programs specified in proposed Appendix I to Part 121. The FAA believes that three major benefits would accrue from these proposals. First, the proposal could help to prevent potential fatalities and property loss resulting from an accident attributed to neglect or error on the part of an individual whose judgment or motor skills may be impaired by the presence of illicit substances in his or her system. Second, benefits would accrue to affected employers from the potential reduction in absenteeism, lost worker productivity, medical and insurance costs, and improved general safety in the work place. Lastly, the reduction of drug abuse in a vital and socially important industry such a commercial aviation would represent a broad benefit to air commerce. The FAA has been unable to estimate quantitatively the extent to which the proposed rule would reduce drug use in the commercial aviation industry, and thus would enhance aviation safety or directly promote the commercial aviation industry and air commerce. A review of the safety record indicates that there have not been any fatal accidents involving passenger carrying commercial airline pilots where drugs or alcohol were shown to be factors. In the absense of statistical data depicting the extent of drug abuse in commercial aviation, and in light of the potential risks associated with drug use, however, the FAA does not consider this safety record to be the only indicator of the potential threat posed to aviation safety by drug use. The FAA believes that drug use, unless stemmed, could be a major threat to aviation safety in the future. The FAA invites commenters to identify other indicators of the risks associated with the drug use by sensitive safety and security-related aviation employees.

As shown in a June 1984 U.S. Department of Health and Human Services report entitled "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness: 1980", the economic cost to society at large from drug abuse is estimated to be $66 billion annually. Using this annual figure, the total cost to society from drug abuse over the 10-year period following 1988 would be $405.5 billion (discounted) more if corrective measures are not taken. The 1988 GAO Report cited a Research Triangle Institute study, "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness", which estimated that the economic cost of drug abuse to the United States during 1983 was $59.7 billion. This study, prepared for the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), estimated "the costs of drug abuse to society for crime * * *, reduced productivity, treatment, and other items. The estimate did not include items such as social costs (e.g., family conflict, suicide) and the value of the illicit drugs consumed." A copy of the GAO report has been placed in the docket. As the FAA obtains other data on drug use, it will place that data in the docket.

The estimated 511,628 employees in the commercial aviation industry covered by these proposals represent approximately two-tenths of one percent of the United States population of 236,000,000. Thus, if these proposals induce current drug users in the commercial aviation industry to abandon drug use over the 10-year period following enactment of the proposed rules, and if drug use is as prevalent in the aviation industry as society at large, the FAA estimates that there be a discounted savings to society of $879.0 million. Of course, if drug use is not as prevalent among covered aviation employees as it is in society at large, the benefits would be correspondingly smaller. The opposite would be true if drug use is more prevalent. The FAA does not have enough information on which to base an estimate of the incidence of drug use among aviation employees. Absent more accurate data, the FAA assumes, for the purpose of this proposal, that the aviation drug problem is similar to that found among the general population. Should more accurate data become available to the docket, the FAA may revise this analysis as warranted. Commenters are specifically invited to submit data on the incidence of drug use among sensitive safety and security-related aviation employees.

Information available on sampling rates to the FAA indicates that random testing conducted in a work-related environment at a sampling rate of 125 percent of the affected population has been an effective deterrent to drug abuse. Accordingly, the FAA is assuming for the purposes of this analysis that maximum potential benefit to be realized from implementation of any of the proposed options at a rate of 125 percent is $879.0 million. The FAA, however, does not have information on which to base an estimate of the deterrence of a lower sampling rate. However, for purposes of this analysis, the FAA assumed that the potential benefit of testing at 12.5 percent is estimated to be $87.9 million; this is based on the assumption that there would be a tenfold reduction of the overall discounted savings. However, FAA recognizes that lower sampling rates may produce higher or lower benefits. Therefore, the FAA specifically requests comments on this assumption and any relevant data on the

effectiveness of a lower sampling rate. Exhibit B, below, shows a comparison of the benefit to cost relationship of these options and using the assumptions outlined above the rate that each would need to be effective in deterring drug abuse for benefits to equal costs.

EXHIBIT B.—SUMMARY OF BENEFITS AND COSTS

[In millions of dollars]

Option 1

	125% random sampling		12.5% random Sampling
Present value:			
Costs	$597.3		$98.6
Benefits	$879.0		$87.9
Benefit/cost ratio	$1.5		$.89
Effectiveness rate (percent)	68		112

Option 2

	125% random sampling		12.5% random Sampling
Costs	$596.3		$98.4
Benefits	$879.0		$87.9
Benefit/cost ratio	$1.4		$.89
Effectiveness rate (percent)	68		112

Option 3

125% random sampling

	10% voluntary	20% voluntary	30% voluntary
Costs	$203.1	$258.7	$313.6
Benefits	$879.0	$879.0	$879.0
Benefit/cost ratio	$4.3	$3.4	$2.8
Effectiveness rate (percent)	23	29	36

12.5% random sampling

	1% voluntary	2% voluntary	3% voluntary
Costs	$44.3	$45.0	$45.7
Benefits	$87.9	$87.9	$87.9
Benefit/cost ratio	$2.0	$2.0	$1.9
Effectiveness rate (percent)	50	51	52

As shown in Exhibit B, the $597.0 million estimated discounted cost on implementing rehabilitation at a random testing sampling rate of 125 percent would be recovered if this alternative were 68 percent effective in eliminating drug use in the commercial aviation industry over the ensuing ten-year period following enactment of the proposed rule. Conversely, the $44.7 million estimated discounted cost of adopting the least costly rehabilitation option at a 12.5 percent random sampling rate, and a 3 percent voluntary EAP enrollment, would be recovered if this option were 52 percent effective in deterring drug abuse. Depending on the effectiveness of a lower testing rate on reducing drug use, the first option may provide more benefits to society by ensuring that more drug users will obtain needed help. These benefits would be provided, however at a much greater cost. If users are simply fired, they may lose access to rehabilitation services and may be more likely to continue to be drug users. On the other hand, a lower sampling rate of 12.5 percent and voluntary EAP enrollment may see fewer individuals motivate (through fear of detection by random testing) to volunteer for rehabilitation. For this reason, adoption of this option may be less costly but could produce lower societal benefits.

Finally, option 3 will probably induce more drug users to self-identify than do options 1 and 2. To the extent that this happens, would the rule achieve a given level of drug abatement, and therefore provide more benefits at a lower sampling rate than would be required under either option 1 or 2?

The FAA lacks information on which to base an assessment of the deterrent effect of the proposed rehabilitation options presented in the proposed program. The FAA, therefore, specifically seeks comments on the effect on the cost and benefits of the proposed program examined in the regulatory evaluation as follows:

(1) What is the deterrent effect of sampling rates of 125 percent versus 12.5 percent? How would different sampling rates affect the numbers of drug users who volunteer for rehabilitation under each of the rehabilitation options? Is there any evidence to support alternative assumptions regarding the rates at which drug users would volunteer for rehabilitation?

(2) What is the lowest sampling rate for random testing that would be effective in deterring drug use?

(3) Would higher sampling rates in sufficiently higher benefits justify the costs?

(4) Do lower sampling rates necessarily result in lower benefits? Is it reasonable to assume that benefits are directly proportional to the sampling rate?

(5) Would higher sampling rates add sufficient deterrence to reduce the costs of and need for rehabilitation?

(6) Who should be afforded EAP services and under what circumstances?

(7) What is the estimated level of voluntary enrollment in EAP rehabilitation services under each rehabilitation option?

(8) What are the estimated costs of individual EAP services at sampling rates of 125 percent and at 12.5 percent under each rehabilitation option?

(9) To what extent would each of the three alternatives raise or lower costs and benefits? Is it reasonable to assume that more drug users would self-identify under option 3 than under either of the other two options?

(10) Are the costs of required rehabilitation programs warranted by the reduction in societal costs resulting from drug abuse?

(11) Over 50 percent of the $66 billion estimate of the cost of drug abuse in society at large is in the form of reduced income of drug users compared with those who do not use drugs. Is it reasonable to assume that a corresponding percentage of benefits would result from increased productivity of the covered aviation employees? Are there more accurate estimates and estimating methodologies that should be used in estimating the potential benefits associated with this proposal?

The FAA has no statistical data on which to base an assessment on how many individuals will be referred for testing due to reasonable cause. Therefore, the FAA solicits data, views, etc., concerning industry training programs to be provided to supervisors and managers on how to detect drug abuse. Specific comments are requested as follows:

(1) Name and source of training program? Costs of programs?

(2) Identity of methods employed to detect drug abuse?

(3) What is the success rate of these programs? Are success rates different for different classes of illicit drugs? Different types of employees?

(4) Did the number of referrals for testing based on reasonable cause increase after supervisors and employees were trained on how to detect signs of illicit drug abuse, and, what were the referral rates prior to training, and following training?

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of proposed rules to assess their impact on small entities. In consideration of the cost information discussion under the Regulatory Impact Analysis, the FAA concludes that these proposed rules could have a significant economic impact on a substantial

number of small entities. However, the FAA knows of no practicable alternatives for small employers to adopt that would reduce the cost of compliance yet achieve the levels of protection sought by these proposals. A regulatory flexibility analysis discussing this issue in more detail has been placed in the docket.

International Trade Impact Statement

While these proposals would only affect domestic operators, the costs imposed by these proposals may impact on trade opportunities for U.S. firms doing business overseas on foreign firms doing business in the United States insofar as those firms have employees who work both in foreign and domestic markets and administrative programs that bridge domestic and foreign markets. An assessment of those impacts will be placed in the docket.

Paperwork Reduction Act Approval

Proposed Appendix I Part 121 would require the employer to maintain testing records on each employee and to provide the FAA with periodic written reports summarizing test results. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the record keeping and reporting provisions contained in this notice will be submitted for approval to the Office of Management and Budget (OMB). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, DC 20503; Attention: FAA Desk Officer (Telephone 202–395–7340). A copy should be submitted to the FAA Docket. Commenters should especially provide their views on the accuracy of FAA's estimates of the burdens associated with these requirements, the practical utility of the information obtained, and less burdensome reporting alternatives to those proposed in this notice.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Significance

These proposals, if adopted, are likely to result in an annual effect on the economy of $100 million or more and a major increase in costs for consumers, industry, or Federal, State, or local Government agencies. Accordingly, the FAA has determined that this proposal involves proposed regulations that may be major regulations under Executive Order 12291. Since the proposals concern an issue on which there is substantial public interest, the FAA has also determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 2, 1979).

A draft Regulatory Impact Analysis of the proposals has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aviation safety, Drug abuse, Narcotics, Safety.

14 CFR Part 63

Air safety, Air transportation, Airmen, Aviation safety, Drug abuse, Narcotics, Safety, Transportation.

14 CFR Part 65

Air safety, Air transportation, Airmen, Aviation safety, Drug abuse, Narcotics, Safety.

14 CFR Part 121

Aircraft pilots, Airmen, Aviation safety, Drugs, Narcotics, Pilots, Safety.

14 CFR Part 135

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Drugs, Narcotics, Pilots.

Proposed Amendment

Accordingly, the FAA proposes to amend Parts 61, 63, 65, 121, and 135 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, 121, and 135) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for Part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By adding a new § 61.14 to read as follows:

§ 61.14 Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 or 135 certificate holder; and

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a person conducting an operation listed in § 135.1(b) of this part for compensation or hire. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(b) Refusal to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by the employer, by a local law enforcemet officer under his or her own authority, or by an FAA inspector, under the circumstances specified in that appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for Part 63, Subpart A, is revised to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. By adding a new § 63.12b to read as follows:

§ 63.12b Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 or 135 certificate holder; and

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a person conducting an operation listed in § 135.1(b) of this part for compensation or hire. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(b) Refusal to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by the employer, by a local law enforcement officer under his or her own authority, or by an FAA inspector, under the circumstances specified in the appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for Part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

6. By adding a new § 65.23 to read as follows:

§ 65.23 Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 or 135 certificate holder; and

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a person conducting an operation listed in § 135.1(b) of this part for compensation or hire. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(3) An employee of an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by a Part 121 or 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, an employer as defined in § 65.46 of this part, a local law enforcement officer under his or her own authority, or an FAA inspector, under the circumstances specified in that appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

7. By adding a new § 65.46 to read as follows:

§ 65.46 Use of prohibited drugs.

(a) For the purpose of this section:

An "employee" is a person who performs an air traffic control function for an employer.

An "employer" means an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military that employs a person to perform an air traffic control function.

(b) Each employer shall provide each employee and his or her supervisor with the training specified in Appendix I to Part 121 of this chapter. No employer may use any contractor to perform an air traffic control function unless that contractor provides each of its employees performing that function for the employer and his or her supervisor with the training specified in that appendix.

(c) No employer may knowingly use, either directly or by contract, any person to perform, nor may any person perform for an employer, any air traffic control function while that person has a prohibited drug, as defined in Appendix I to Part 121 of this chapter, in his or her system.

(d) Except as provided in paragraph (e) of this section, no employer may knowingly use any person to perform, nor may any person perform for an employer, any air traffic control function, either directly or by contract, if that person failed a test required by Appendix I to Part 121 of this chapter given by an employer or a Part 121 or 135 certificate holder.

(e) Paragraph (d) of this section does not apply to a person listed in section VIII.A.1. of Appendix I to Part 121 of this chapter who has successfully completed a rehabilitation program under that Appendix and has received a recommendation for return to duty as a result of that rehabilitation program, and who has not failed a test required by that appendix for any employer or Part 121 or 135 certificate holder after the first time he or she completed such a program.

(f) Each employer shall test each of its employees in accordance with Appendix I to Part 121 of this chapter. No employer may use any contractor to perform any air traffic control function unless that contractor tests each employee performing such a function for the employer in accordance with that appendix.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

8. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

9. By adding a new § 121.429 to read as follows:

§ 121.429 Prohibited drugs.

(a) Each certificate holder shall provide each employee performing a function listed in Appendix I to this part and his or her supervisor with the training specified in that appendix.

(b) No certificate holder may use any contractor to perform a function listed in Appendix I to this part unless that contractor provides each of its employees performing that function for the certificate holder and his or her supervisor with the training specified in that appendix.

10. By adding a new § 121.455 to read as follows:

§ 121.455 Use of prohibited drugs.

(a) This section applies to persons who perform a function listed in Appendix I to this part for the certificate holder. For the purpose of this section, a person who performs such a function pursuant to a contract with the certificate holder is considered to be performing that function for the certificate holder.

(b) No certificate holder may knowingly use any person to perform, nor may any person perform for a certificate holder, any function listed in Appendix I to this part while that person has a prohibited drug, as defined in that appendix, in his or her system.

(c) Except as provided in paragraph (d) of this section, no certificate holder may knowingly use any person to perform, nor may any person perform for a certificate holder, any function listed in Appendix I to this part if that person failed a test required by that appendix for any employer.

(d) Paragraph (c) of this section does not apply to a person listed in section VIII.A.1. of Appendix I to this part who has successfully completed a rehabilitation program under that appendix and has received a recommendation for return to duty as a result of that rehabilitation program, and who has not failed a test required by that appendix for any employer after the first time he or she completed such a program.

11. By adding a new § 121.457 to read as follows:

§ 121.457 Testing for prohibited drugs.

(a) Each certificate holder shall test each of its employees who perform a

function listed in Appendix I to this part in accordance with that appendix.

(b) No certificate holder may use any contractor to perform a function listed in Appendix I to this part unless that contractor tests each employee performing such a function for the certificate holder in accordance with that appendix.

12. By adding a new Appendix I to Part 121 to read as follows:

Appendix I—Drug Testing Program

This appendix contains the standards and components that must be included in a drug testing program required by this chapter.

I. HHS Guidelines

Drug testing programs subject to this regulation shall be operated consistent with the "Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" proposed by the Department of Health and Human Services (52 FR 30638, August 14, 1987).[1] Terms and concepts referenced in this appendix shall have the same meaning as in those guidelines. Where the guidelines refer to "Federal agencies" or "the agency," this shall mean "the employer" for the purpose of this regulation. This appendix contains requirements for drug testing programs additional to those in the HHS guidelines. Drug testing programs governed by the regulation shall use only drug testing laboratories certified by the Department of Health and Human Services under the guidelines.

II. Definitions

For the purpose of this appendix, the following definitions apply:

"Accident" means an aircraft accident as defined in the regulations of the National Transportation Safety Board (49 CFR 830.2).

"Employee" is a person who performs, either directly or by contract, a function listed in section III of this appendix for a Part 121 or Part 135 certificate holder, a person conducting an operation for compensation or hire that currently is exempt from the requirements of Part 135 except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958, or an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military.

"Employer" is a Part 121 or Part 135 certificate holder, a person conducting an operation for compensation or hire that currently is exempt from the requirements of Part 135 except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958, an air traffic control facility, or a contractor whose employees perform a function listed in section III of this appendix for such a certificate holder, person, or facility.

"Failing a drug test" means that the test result shows positive evidence of the presence of a prohibited drug in an employee's system.

"Passing a drug test" means that the test result does not show any positive evidence of the presence of a prohibited drug in an employee's system.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801, 812 (1981 & 1987 Cum.P.P.), unless the drug is being used as authorized by a legal prescription or other exemption under Federal, state, or local law.

III. Employees Who Must Be Tested

Each person who performs a function listed in this section for an employer must be tested pursuant to the employer's drug testing program:

a. Flight crewmember duties.
b. Flight attendant duties.
c. Flight instruction or ground instruction duties.
d. Flight testing duties.
e. Aircraft dispatcher or ground dispatcher duties.
f. Aircraft maintenance or preventive maintenance duties.
g. Aviation security or screening duties.
h. Parachute rigging duties.
i. Air traffic control duties.

IV. Substances For Which Testing Must Be Conducted

Each employer shall test each employee who performs a function listed in section III of this appendix for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), or amphetamines during each test required by section V of this appendix. An employer may test for any other prohibited drug.

V. Types of Drug Testing Required

Each employer shall conduct the following types of testing:

A. Preemployment Testing

No employer may hire any person to perform a function listed in section III of this appendix unless the applicant passes an initial test or confirmation test as specified in the HHS guidelines. The employer shall advise an applicant that preemployment testing will be conducted to determine the presence of any prohibited drug in the applicant's system. If the applicant fails either test, the applicant may withdraw his or her application for employment and the employer shall not retain records pertaining to the existence of the application or the reasons for its withdrawal.

B. Periodic Testing

Each employee required to undergo a medical examination under Part 67 of this chapter shall, as part of that examination, provide a urine sample to be tested for a prohibited drug in accordance with the procedures set forth in this appendix and the drug testing guidelines established by the Department of Health and Human Services.

C. Random Testing

In addition to periodic testing, each employer annually shall test randomly [a percentage of employees to be determined up to 125 percent] of all employees who perform a function listed in section III of this appendix. The employer shall select employees for random testing for the presence of a prohibited drug in an employee's system using a random number table or a computer-based, number generator that is matched with an employee's social security number or payroll identification number.

D. Post-accident Testing

Each employer shall test each employee who performs a function listed in section III of this appendix if that employee's performance either contributed to an accident or can not be completely discounted as a contributing factor to the accident. The test shall be administered within 24 hours after the accident. The employee shall submit to testing under this section. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the accident, that the employee's performance could not have contributed to the accident.

E. Testing Based on Reasonable Cause

Each employer shall test each employee who performs a function listed in section III of this appendix and who is reasonably suspected of using a prohibited drug. At least two of the employee's supervisors shall substantiate and concur in the decision to test an employee who is reasonably suspected of drug use. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of physical indications of probable drug use (e.g., the employee's manner of speech or physical appearance).

VI. Other Administrative Matters

A. Collection Records

All records related to the collection process, including all logbooks and certification statements, must be kept by the employer for at least 2 years. The employer must permit the Administrator to examine these records.

B. Employee Request To Retest a Specimen

The laboratory must reanalyze a specimen when requested by an employee. Each employee may make one request that a sample of the specimen be provided to another laboratory for testing. The original laboratory must follow chain-of-custody procedures. The employee must pay all handling and shipping costs associated with the transfer of the specimen to another laboratory.

C. Laboratory Inspections

The laboratory must permit pre-award inspections by the employer before the laboratory is awarded a testing contract and unannounced inspections, including

[1] A final version of the guidelines will be referenced in the final rule. FAA will include a notice of availability of the final guidelines in the final rule.

examination of any and all records, at any time, by the employer or the Administrator.

VII. Review of Drug Testing Results

The employer shall designate or appoint a medical review officer (MRO). If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

A. MRO Qualifications

The MRO must be a licensed physician with knowledge of drug abuse disorders.

B. MRO Duties

The MRO shall perform the following functions for the employer:

1. Review the results of the employer's drug testing program before the results are reported to the employer and summarized for the FAA.

2. Evaluate an employee who has failed a confirmation test for referral to an EAP rehabilitation program.

3. Assist in determining when an employee involved in an EAP rehabilitation program should be returned to duty.

4. Review and interpret each confirmed positive test result in order to determine if there is an alternative medical explanation for the confirmed positive test result. The MRO shall perform the following functions as part of the review of a confirmed positive test result:

a. Conduct a medical interview with the employee.

b. Review the employee's medical history and any relevant biomedical factors.

c. Review all medical records made available by the employee to determine if a confirmed positive test resulted from legally prescribed medication.

d. Verify that the laboratory report and assessment are correct. The MRO shall be authorized to request that the original specimen be reanalyzed to determine the accuracy of the reported test result.

C. MRO Determinations

1. If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result that is consistent with legal drug use, the MRO is not required to take further action.

2. If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result that is consistent with legal drug use, the MRO shall refer the employee to an EAP, or to a personnel or administrative officer, for further proceedings in accordance with the employer's anti-drug program.

3. Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug in an employee's system.

VIII. Employee Assistance Program (EAP)

The employer shall provide an EAP for employees The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and the employer's supervisory personnel and an opportunity for rehabilitation as provided in this appendix.

A. EAP Rehabilitation Program (Option 1)

1. Each employer shall provide one rehabilitation opportunity for the following employees:

a. Each employee who voluntarily enrolls in an EAP.

b. Each employee who is identified as a drug user through random, periodic, or post-accident testing, or testing based on reasonable cause.

2. Each employer shall retain or rehire an employee who—

a. Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a drug test;

b. Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

c. Has received a recommendation for return to duty as a result of that rehabilitation program.

3. Employees who are identified as drug users on the job are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

A. EAP Rehabilitation Program (Option 2)

1. Each employer shall provide one rehabilitation opportunity for the following employees:

a. Each employee who voluntarily enrolls in an EAP.

b. Each employee who is identified as a drug user through random or periodic testing.

2. Each employer shall retain or rehire an employee who—

a. Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a random or periodic drug test;

b. Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

c. Has received a recommendation for return to duty as a result of that rehabilitation program.

3. Employees who are identified as drug users on the job or as a result of testing based on reasonable cause or post-accident testing required by this appendix are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

A. EAP Rehabilitation Program (Option 3)

1. Each employer shall provide one rehabilitation opportunity for each employee who voluntarily enrolls in an EAP.

2. Each employer shall retain or rehire an employee who—

a. Has successfully completed his or her first rehabilitation program after voluntary enrollment;

b. Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

c. Has received a recommendation for return to duty as a result of that rehabilitation program.

3. Employees who are identified as drug users on the job or as a result of testing required by this appendix are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

B. EAP Education Program

Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding drug use in the workplace.

C. EAP Training Program

Each EAP training program must be conducted annually for employees and employer's supervisory personnel. The training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. EAP training programs for employees and supervisory personnel must consist of at least 60 minutes for each employee and supervisor each year.

IX. Employer's Drug Testing Plan

A. Each employer shall submit a drug testing plan to the FAA for review by [120 days after the effective date of this rule], 120 days after issuance of a certificate under Part 121 or Part 135 to the employer, or 120 days after beginning operations listed in § 135.1(b) for compensation or hire except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958, whichever is later. Each employer who is a contractor who provides employees who perform a function listed in section II of this appendix for an employer shall submit a drug testing plan by [120 days after the effective date of this rule] or within 120 days after award of a contract, whichever is later.

B. The plan must specify the methods by which the employer will comply with the periodic and random testing requirements of this appendix. The plan must provide the name and address of the laboratory which has been selected by the employer for analysis of the specimens collected during the drug testing program.

C. The plan must specify the procedures and personnel the employer will use to ensure that determination is made as to the veracity of test results and possible legitimate explanation for an employee failing a test.

D. The employer may consider the drug testing plan to be acceptable to the Administrator unless notified to the contrary by the FAA.

E. The employer's drug testing plan must be effective and implemented by 180 days after

the deadline for submitting the program to the FAA.

X. Reporting Results of Drug Testing Program

A. Each employer shall provide a written semiannual report and a written annual report to the FAA summarizing the results of its drug testing program.

B. Each report shall summarize and correlate the following information for each type of testing required, separated as follows:

1. Function performed by the employees tested.

2. Prohibited drug used by the employee.

3. Disposition of employees who failed the test (e.g., termination, rehabilitation, leave without pay).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

13. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

14. By revising the introductory text of § 135.1 (b) and adding a new paragraph (c) to read as follows:

§ 135.1 Applicability.

* * * * *

(b) Except as provided in paragraph (c) of this section, this part does not apply to—

* * * * *

(c) For the purpose of §§ 135.249, 135.251, and 135.353, "operator" means any person conducting an operation listed in paragraph (b) of this section for compensation or hire except operation of foreign civil aircraft navigated within the United States pursuant to Part 375 described in paragraph (b)(8) and emergency mail service operation pursuant to section 405(h) of the Federal Aviation Act of 1958 described in paragraph (b)(9). Each operator and each employee of an operator shall comply with the requirements of §§ 135.249, 135.251, and 135.353 of this part.

15. By adding a new § 135.249 to read as follows:

§ 135.249 Use of prohibited drugs.

(a) This section applies to persons who perform a function listed in Appendix I to Part 121 of this chapter for a certificate holder or an operator. For the purpose of this section, a person who performs such a function pursuant to a contract with the certificate holder or the operator is considered to be performing that function for the certificate holder or the operator.

(b) No certificate holder or operator may knowingly use any person to perform, not may any person perform for a certificate holder or an operator, any function listed in Appendix I to Part 121 of this chapter while that person has a prohibited drug, as defined in that appendix, in his or her system.

(c) Except as provided in paragraph (d) of this section, no certificate holder or operator may knowingly use any person to perform, nor may any person perform for a certificate holder or an operator, any function listed in Appendix I to Part 121 of this chapter if that person has failed a test required by that appendix for any employer.

(d) Paragraph (c) of this section does not apply to a person listed in section VIII.A.1. of Appendix I to Part 121 of this chapter who has successfully completed a rehabilitation program under that appendix and has received a recommendation for return to duty as a result of the rehabilitation program, and who has not failed a test required by that appendix for any employer after the first time he or she completed such a program.

16. By adding a new § 135.251 to read as follows:

§ 135.251 Testing for prohibited drugs.

(a) Each certificate holder or operator shall test each of its employees who perform a function listed in Appendix I to Part 121 of this chapter in accordance with that appendix.

(b) No certificate holder or operator may use any contractor to perform a function listed in Appendix I to Part 121 of this chapter unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that appendix.

17. By adding a new § 135.353 to read as follows:

§ 135.353 Prohibited drugs.

(a) Each certificate holder or operator shall provide each employee performing a function listed in Appendix I to Part 121 of this chapter and his or her supervisor with the training specified in that appendix.

(b) No certificate holder or operator may use any contractor to perform a function specified in Appendix I to Part 121 of this chapter unless that contractor provides each of its employees performing that function for the certificate holder or the operator and his or her supervisor with the training specified in that appendix.

Issued in Washington, DC, on March 3, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–5402 Filed 3–9–88; 11:34 am]

BILLING CODE 4910–13–M

Federal Register

Monday
March 14, 1988

Part V

Department of Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 300

Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Assistance to States for Education of Handicapped Children program authorized by Part B of the Education of the Handicapped Act (Part B).

The amendments are needed to implement amendments to Part B included in the Education of the Handicapped Act Amendments of 1986 (1986 Amendments). These proposed regulations would: Require that State plans include sections dealing with interagency agreements and personnel standards; clarify the responsibility of educational and other agencies to provide special education and related services; add nonsupplanting requirements at the State level; permit the State to use additional Part B set-aside funds for monitoring and complaint investigations; modify the funding formula that the Secretary uses for calculating Part B grants; and alter program requirements for the Secretary of the Interior.

DATE: Comments must be received on or before June 13, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Paul Chassy, Acting Branch Chief, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3620—MES 2313) Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Lucille Sleger, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3622—MES 2313) Washington, DC 20202; Telephone: (202) 732-1104.

SUPPLEMENTARY INFORMATION: Part B of the Education of the Handicapped Act (20 U.S.C. 1411 *et seq.*), as amended, authorizes formula grants to States and, through States, to local educational agencies and intermediate educational units to assist them in the education of handicapped children. The purposes of the Education of the Handicapped Act are: to ensure that all handicapped children have available to them a free appropriate public education which emphasizes special education and related services designed to meet their unique needs; to ensure that the rights of children who are handicapped and their parents or guardians are protected; to assist States and localities to provide for the education of children who are handicapped; and to assess and ensure the effectiveness of efforts to educate children who are handicapped.

The Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457, amended several parts of the Education of the Handicapped Act, including Part B. These proposed regulations implement changes made to Part B by the 1986 Amendments, as described below.

I. Funding and SEA Responsibility

Existing regulations (§ 300.600) require that all relevant programs in a State be under the general supervision of the State educational agency (SEA). In the 1986 Amendments, Congress further clarified the relationship among public agencies in a State, particularly with respect to the provision of a free appropriate public education to children with handicapping conditions. The 1986 Amendments address the availability of services and funding from public agencies other than the SEA. These statutory amendments are reflected in the proposed regulations, as follows.

Prior to the 1986 Amendments, States were prohibited from using Part B funds to supplant State and local funds expended for special education and related services for children who have handicapping conditions. The 1986 Amendments prohibit States from using Part B funds to supplant Federal, as well as State and local, funds expanded for this purpose. This statutory change is reflected in proposed § 300.150. In that section, "Federal" funds is defined to mean Federal funds other than those provided under Part B. For example, it would be impermissible to use Part B funds to supplant Federal funds under the control of agencies other than educational agencies. This proposed nonsupplanting regulation is applicable to State educational agencies and, consistent with the structure of the statute, is distinct from the current § 300.230, which is applicable to local educational agencies. The Secretary particularly invites comment on this provision of the proposed regulations.

Existing regulations at § 300.600 include interagency agreements as a possible way of implementing an SEA's general supervision requirement. The 1986 Amendments require that State plans include policies and procedures for developing and implementing interagency agreements between the SEA and "other appropriate State and local agencies." This is reflected in § 300.152 of the proposed regulations which also reflects the Department's understanding of section 613(a)(13) of the statute that "other appropriate" agencies are all those State and local agencies other than the SEA that provide or pay for special education or related services for children with handicapping conditions. The regulations would require the SEA to describe the role that each of those agencies will play in providing or paying for those services. As required by statute, the proposed regulations would also require that SEA policies and procedures provide for the development and implementation of interagency agreements that define the responsibilities of each agency and establish mechanisms for resolving interagency disputes.

The 1986 Amendments state that Part B shall not be construed to limit the responsibilities of agencies other than educational agencies for providing or paying for services provided to children under Part B. This is reflected in a proposed new § 300.600(c). The 1986 Amendments also state that Part B shall not be construed to permit a State to reduce assistance or alter eligibility under programs supported by Federal Medicaid and Maternal and Child Health programs. A new § 300.601 is added to reflect the statutory amendments. This is intended to ensure that no child is treated differently under these two programs because the child is receiving services under an IEP, or for any other reason related to the existence or applicability of Part B.

II. Preschool Services

A new second paragraph is proposed as an addition to the comment following § 300.552. The propose guideline sets forth the general requirements regarding a public agency's responsibility for the placement of children who have handicapping conditions in the least restrictive environment. The proposed addition to the comment provides suggestions to recipients of Part B funds on how they might meet those requirements when serving preschool children with handicaps if the agency does not generally provide education to nonhandicapped children who are age three, four, or five. This guidance is provided in response to the increased emphasis in Part B, as amended by Pub.

L. 99–457, for extending and expanding programs for preschool children with handicapping conditions.

III. Personnel Standards

Prior to the 1986 Amendments, the regulations required that State plans include a comprehensive system of personnel development, including procedures to ensure that personnel are qualified, as defined in § 300.12. The 1986 Amendments added a statutory provision requiring that State plans include policies and procedures to ensure that necessary personnel are "appropriately and adequately prepared and trained." The regulatory proposal for a new § 300.153 incorporates the statutory requirement for policies and procedures, and the statutory requirement that, where there is an inconsistency between the program standard applicable to persons providing services under the State plan and the highest requirements in the State applicable to a profession or discipline, the State plan must describe the steps to be taken to require the hiring or retraining of persons to meet appropriate standards.

Inconsistencies between the standard for service providers under the Part B program and the highest requirement in the State exist where, for example, the program standard requires a lower academic credential than is required by another State agency for professional practice in a setting other than a school setting, or where a program service can be provided under a temporary certificate issued to a person who does not meet the generally applicable standard.

The statutory provision on personnel standards is virtually the same for both this part and the program for infants and toddlers with handicaps under Part H of the Act. Because the language is so similar, the Secretary originally intended to include virtually identical provisions in the NPRMs for both programs. However, since the Part H NPRM was published, the Department has received numerous comments expressing concerns about a provision in the personnel standards section of that NPRM related to "alternative standards." (See proposed 34 CFR Part 303, at FR 44360, November 18, 1987.)

On the basis of those comments, the Secretary has elected not to include the "alternative standards" provision in the NPRM for this part. The Secretary recognizes that this change does not address all of the concerns raised by commenters on the Part H NPRM. The Secretary will carefully consider all of the comments received both on the Part H NPRM and the NPRM for this part in preparing the final regulations for both parts.

IV. Grants to the Secretary of the Interior

The 1986 Amendments state the terms and conditions of grants to the Secretary of the Interior for the education of handicapped Indian children on reservations served by elementary and secondary schools operated by the Department of the Interior. These conditions have been incorporated into § 300.260 and § 300.709 of the proposed regulations. In interpreting the statutory requirements, § 300.260 of the proposed regulations lists the parts of sections 612 and 613 that apply to applications for grants submitted by the Secretary of the Interior.

The 1986 Amendments also increased the percentage of Part B funds available to the Secretary of the Interior from up to one percent to a fixed 1.25 percent. This is reflected in the proposed revision to § 300.709(b).

V. State Entitlement and Use of Funds

The 1986 Amendments include revisions which allow SEAs to use additional Part B set-aside funds to pay for increases in the costs of State-level monitoring activities and complaint investigations. The authorization for this use of funds and the statutory limitation on it have been added to § 300.370(a)(2) in the proposed regulations.

The 1986 Amendments also state that an SEA may count children who have handicapping conditions aged three through five for funding purposes only if the SEA meets the requirements under section 619 of the Education of the Handicapped Act. (The requirements of section 619 were also amended in the 1986 Amendments.) The treatment of children aged three through five in the calculation of Part B grants is, therefore, revised in § 300.701 of these proposed regulations.

Similarly, a proposed revision of § 300.702 reflects a statutory change in the application of the "12% cap" on counting children with handicapping conditions for Federal funding purposes.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are small local educational agencies (LEAs) receiving Federal financial assistance under this program. However, the regulations would not have a significant economic impact on small LEAs because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 300.152 and 300.153 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503 Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3622, Switzer Building, 330 C Street SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites

comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 300

Administrative practice and procedures, Education, Education of handicapped, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children)

Dated: January 11, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 300 of Title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for Part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

* * * * *

2. Subpart B is amended by adding a new § 300.150 to read as follows:

§ 300.150 State-level nonsupplanting.

Each program plan must provide assurance satisfactory to the Secretary that funds provided under this part will be used so as to supplement and increase the level of Federal (other than funds available under this part), State, and local funds—including funds that are not under the direct control of State or local educational agencies—expended for special education and related services provided to handicapped children under this part and in no case to supplant those Federal (other than funds available under this part), State, and local funds unless a waiver is granted in accordance with § 300.589.

(Authority: 20 U.S.C 1413(a)(9))

Comment. The State must assure that EHA–B funds will be used to supplement and not supplant other Federal, as well as State and local, funds (including funds not under the control of educational agencies) expended for appropriate services provided to handicapped children. States may not use EHA–B funds to satisfy a financial commitment for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in handicapped children's individualized education programs. (H. Rep. 99–860, pp. 21–22 (1986))

3. Subpart B is further amended by adding new §§ 300.152 and 300.153 to read as follows:

§ 300.152 Interagency agreements.

(a) Each State plan must set forth policies and procedures for developing and implementing interagency agreements between—

(1) The State educational agency; and

(2) All other State and local agencies that provide or pay for special education or related services for handicapped children.

(b) The policies and procedures referred to in paragraph (a) of this section must—

(1) Describe the role that each of those agencies plays in providing or paying for special education or related services for handicapped children; and

(2) Provide for the development and implementation of interagency agreements that—

(i) Define the financial responsibility of each agency for providing handicapped children with free appropriate public education;

(ii) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

(iii) Establish procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

(Authority: 20 U.S.C. 1413(a)(13))

§ 300.153 Personnel standards.

(a)(1) Each State plan must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The standards required by paragraph (a)(1) of this section must be consistent with any State approved or recognized certification, licensing, or other comparable requirements which apply to the area in which a person is providing special education or related services.

(b) To the extent that a State's standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the State plan must include the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(c)(1) In meeting the requirements of paragraphs (a) and (b) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information in paragraph (c)(1) of this section must be on file in the State educational agency.

(d) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies must be considered.

(Authority: 20 U.S.C. 1413(a)(14))

Comment. Under this part, States are required to identify the "highest requirements in the State" for the purposes of hiring or retraining personnel. This means, for example, that if standards for physical therapists are issued by both the SEA and a State licensing board, the standards of the SEA and the State licensing board must be compared to identify the "highest requirements in the State."

For instance, if a State has specific certification requirements in the area of seriously emotionally disturbed (SED) but, because of a severe shortage, the SEA in the past has issued emergency certificates to teachers who have not been trained in that area, the SEA's policies and procedures in the State plan would include: (1) A description of the steps the State is taking to retrain or hire persons that meet appropriate professional requirements (e.g., full SEA certification) in that area; and (2) the timelines for accomplishing those steps. In order to address the shortage of teachers in the area of SED, while taking steps that will lead toward full certification of those teachers, one step that the SEA might include in the State plan would be to limit the issuance of temporary certificates for a fixed term (e.g., 3 years), which would be (1) nonrenewable, and (2) given only to teachers who are continuously enrolled in an approved course of study leading toward full certification.

4. Section 300.260 is revised to read as follows:

§ 300.260 Submission of application; approval.

(a) In order to receive a grant under this part, the Secretary of the Interior shall submit an application that—

(1) Meets the requirements in sections 612(1), 612(2)(A), 612(2)(C)–(E), 612(4), 612(5), 612(6), and 612(7) of the Act;

(2) Meets the requirements in sections 613(a), 613(b), 613(c), and 613(e) of the Act;

(3) Meets the requirements of section 614(a) of the Act;

(4) Meets the requirements of this part that implement the sections of the Act

listed in paragraphs (a)(1) through (a)(3) of this section; and

(5) Includes an assurance that there have been public hearings on the application, adequate notice of the public hearings, and an opportunity for members of tribes, tribal governing bodies, and designated local school boards to comment on the application before the adoption of the policies, programs, and procedures required under sections 612, 613, and 614(a) of the Act.

(b) Sections 300.580–300.586 apply to grants available to the Secretary of the Interior under this part.

(Authority: 20 U.S.C. 1411(f))

5. Section 300.370 is amended by revising the section title and paragraph (a) to read as follows:

§ 300.370 Use of State agency allocations.

(a) The State may use the portion of its allocation that it does not use for administration under §§ 300.620 through 300.621—

(1) For support services and direct services in accordance with the priority requirements under §§ 300.320 through 300.324; and

(2) For the administrative costs of the State's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

* * * * *

6. Section 300.552 is amended by adding a new second paragraph in the comment to read as follows:

§ 300.552 Placements.

* * * * *

The requirements of § 300.552, as well as the other requirements of §§ 300.550 through 300.556, apply to all preschool handicapped children who are entitled to receive a free appropriate public education. Public agencies that provide preschool programs for non-handicapped children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for non-handicapped preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the least restrictive environment embodied in §§ 300.550 through 300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550 through 300.556 include:

(1) Linking (even part-time) the program for preschool handicapped children to other preschool programs operated by public agencies (such as Head Start);

(2) Placing handicapped children in private school programs for non-handicapped preschool children or private school preschool programs that integrate handicapped and non-handicapped children; and

(3) Locating classes for handicapped preschool children in regular elementary schools.

In each case, the public agency must ensure that the placement is based upon each child's individualized education program and meets all of the other requirements of § 300.552.

* * * * *

7. The center heading preceding § 300.600 is revised to read as follows:

General

8. Section 300.600 is amended by adding a new paragraph (c) to read as follows:

§ 300.600 Responsibility for all educational programs.

* * * * *

(c) This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a free appropriate public education to handicapped children in the State.

(Authority: 20 U.S.C. 1412(6))

9. Subpart F is amended by adding a new § 300.601 to read as follows:

§ 300.601 Relation of the EHA-B to other Federal programs.

This part may not be construed to permit a State to reduce medical and other assistance available to handicapped children, or to alter a handicapped child's eligibility, under Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, to receive services that are also part of a free appropriate public education.

(Authority: 20 U.S.C. 1413(e))

10. Section 300.701 is amended by revising paragraph (a) to read as follows and removing and reserving paragraph (b).

§ 300.701 State entitlement, formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of handicapped children aged six through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

* * * * *

11. Section 300.702 is amended by revising paragraphs (a)(1), (a)(3), and (b) and adding a new paragraph (a)(2) to read as follows:

§ 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 300.701—

(1) If a State serves all handicapped children aged three through five in the State, the Secretary does not count handicapped children aged three through 17 in the State to the extent that the number of those children is greater than 12 percent of the number of all children aged three through 17 in the State;

(2) If a State does not serve all handicapped children aged three through five in the State, the Secretary does not count handicapped children aged five through 17 to the extent the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State; and

(3) The Secretary does not count handicapped children who are counted under section 146 of Title I of the Elementary and Secondary Education Act, as consolidated by section 554(a)(2)(B) of Chapter 1 of the Education Consolidation and Improvement Act of 1981.

(b) For the purposes of paragraph (a) of this section, the number of children aged three through 17 and five through 17 in any State is determined by the Secretary on the basis of the most recent satisfactory data available.

(Authority: 20 U.S.C. 1411(a)(5))

12. Section 300.709 is amended by revising paragraph (b) to read as follows:

§ 300.709 Payments to the Secretary of Interior.

* * * * *

(b) The amount of those payments for any fiscal year is 1.25 percent of the aggregate amounts available to all States for that fiscal year under this part.

(Authority: 20 U.S.C. 1411(f)(1))

[FR Doc. 88–5545 Filed 3–11–88; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Monday
March 14, 1988

Part VI

Department of Education

34 CFR Part 653

Paul Douglas Teacher Scholarship Program; Withdrawal of Notice of Proposed Rulemaking

Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 653

Paul Douglas Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Secretary withdraws the Notice of Proposed Rulemaking (NPRM) for the Paul Douglas Teacher Scholarship Program. The Secretary takes this action to inform the public that development of final regulations based on this NPRM is unnecessary.

EFFECTIVE DATE: The NPRM is withdrawn effective March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Bonnie Gold, Program Specialist, State Student Incentive Grant Program, Office of Postsecondary Education, U.S. Department of Education (Room 4018, ROB–3), 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 732–4507.

SUPPLEMENTARY INFORMATION: The Secretary of Education published in the **Federal Register** on November 25, 1987 (52 FR 45290), an NPRM governing the interest rates to be charged to scholarship recipients under the Paul Douglas Teacher Scholarship Program.

In the NPRM, interested parties were invited to submit their comments regarding the interest rate formula contained in § 653.42(c) of the regulations to the Secretary by January 11, 1988. The Secretary did not receive any comments. Since the interest rate formula was incorporated in the final regulations for the Paul Douglas Teacher Scholarship Program that were also published in the **Federal Register** on November 25, 1987 (52 FR 45284), the Secretary hereby withdraws the NPRM.

(Catalog of Federal Domestic Assistance Number 84.176: Paul Douglas Teacher Scholarship Program)

Dated: March 9, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–5547 Filed 3–11–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
March 14, 1988

Part VII

Department of Education

Notice Inviting New Applications for the School Dropout Demonstration Assistance Program for Fiscal Year 1988

DEPARTMENT OF EDUCATION

[CFDA No. 84.201]

Notice Inviting New Applications for the School Dropout Demonstration Assistance Program for Fiscal Year 1988

Purpose: To provide Federal financial assistance to local educational agencies, community-based organizations, and educational partnerships to demonstrate effective programs to reduce the number of children who do not complete their elementary and secondary education.

Deadline for Transmittal of Applications: April 25, 1988.

Available Funds: $23,935,000.

Estimated Range of Awards: $50,000 to $500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 125.

Budget Period: 12 months.

Project Period: Up to 24 months.

Important Notes to Applicants: Since this is the first year of the program, the estimates stated above are projections for the guidance of potential applicants. The Department of Education is not bound by these estimates.

This notice is a complete application package containing the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application materials are necessary.

Applicable Regulations: The following regulations apply to the School Dropout Demonstration Assistance Program:

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

Supplementary Information and Requirements

References to the authorizing statute refer to section 137(c) of Pub. L. 100-202 (Continuing Appropriations for Fiscal Year 1988) as referenced to parts A and C of Title VIII of the Senate amendment to H.R. 5.

(a) Selection criteria. (1) The Secretary uses the following criteria under 34 CFR 75.210(b) as adjusted in accordance with 34 CFR 75.210(c), to evaluate an application.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (40 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (B) above will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications, under paragraphs (b)(4)(i)(A) and (B) above the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(c) *Evaluation.* Among other requirements that apply in Part 75 of Title 34 of the Code of Federal Regulations, applicants should be aware of the following requirements:

Section 75.590 Evaluation by the grantee.

A grantee shall evaluate at least annually—

(1) The grantee's progress in achieving the objectives in its approved application;

(2) The effectiveness of the project in meeting the purposes of the program; and

(3) The effect of the project on persons being served by the project, including any persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women; and

(iii) Handicapped persons.

Section 75.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

(d) *Federal evaluaton.* (1) The Secretary announces that the Department intends to conduct a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. All grantees will be asked to provide descriptive information and outcome

data on their projects. A smaller number of grantees will be selected to participate in a more in-depth evaluation. This evaluation will involve use of control or comparison groups and collection of data on student retention, attendance, achievement, and attitudes. Projects selected for in-depth evaluation will receive assistance in conducting activities associated with the evaluation.

(2) Applicants should note that 34 CFR 75.591 requires the cooperation of grantees in any evalution of the program by the Secretary, and that 34 CFR 75.592 states that if a grantee cooperates in a Federal evaluation of a program, the Secretary may determine that the grantee has met the evaluation requirements of the program, including those in 34 CFR 75.590.

(e) *Definition of dropout.* (1) For the purpose of this program, the Secretary makes a general statement of policy that the term "dropout," means a student who—

(i) Was enrolled in the district at some time during the previous regular school year;

(ii) Was not enrolled at the beginning of the current regular school year;

(iii) Has not graduated or completed a program of studies by the maximum age established by a State;

(iv) Has not transferred to another public school district or to a nonpublic school or to a State-approved educational program; and

(v) Has not left school because of illness or a school-approved absence.

(2) For the purpose of paragraph (e)(1)—"completed a program of studies" means received a certificate of completion—or similar designation—conferred by a public or nonpublic educational institution to indicate that the student has completed his or her program of studies, e.g., a certificate of attendance, completion of an individualized educational program (IEP) by a special education student, or completion of a State-approved, full-time, alternative secondary school, including the general education development (GED) certification.

(3) Applicants are encouraged to use this definition. If an applicant plans to use another definition in the design or evaluation of its project, the applicant should describe the definition in its application. Should subsequent legislation require a definition of "dropout," the Secretary will publish a proposed definition and invite public comment.

Authority and Program Description

For fiscal year 1988, a program titled "School Dropout Demonstration Assistance Program" (School Dropout Program) is authorized under Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988). Section 137(c) of Pub. L. 100–202 states that, subject to certain qualifications, the School Dropout Program is to be carried out in accordance with Parts A and C of Title VIII of the Senate Amendment to H.R. 5. While your attention is called to the text of these provisions, the following is a summary of some of the pertinent parts of that legislation. Unless otherwise noted, section numbers in parentheses after each paragraph refer to sections in Title VIII of the Senate Amendment to H.R. 5.

Purpose

The purpose of the program is to reduce the number of children who do not complete their elementary and secondary education by providing Federal assistance to local educational agencies (LEAs), community-based organizations, and educational partnerships to establish and demonstrate: (1) Effective programs to identify potential student dropouts and prevent them from dropping out; (2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education; (3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools; and (4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of children not completing their elementary and secondary education and reasons why they have dropped out of school.

(Section 8002)

Funding Categories

The Secretary will allot the fiscal year (FY) 1988 funds in four categories as follows: (1) LEAs administering schools with a total enrollment of 100,000 or more elementary and secondary school students (25 percent of the amount appropriated, $5,983,750 for FY 1988); (2) LEAs administering schools with a total enrollment of at least 20,000 but less than 100,000 (40 percent of the amount appropriated, $9,574,000 for FY 1988); (3) LEAs administering schools with a total enrollment of less than 20,000 (30 percent of the amount appropriated, $7,180,500 for FY 1988); and (4) community-based organizations (5 percent of the amount appropriated, $1,196,750 for FY 1988). For category (3), grants may be made to intermediate educational units and consortia of not more than 5 LEAs if the total enrollment of the largest such LEA is less than 20,000 elementary and secondary school students. In addition, not less than 20 percent of the funds in category (3) will be awarded to LEAs administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

(Section 8004 as amended by section 137(c) of Pub. L. 100–202)

Educational Partnerships

In each of the first three categories mentioned under *Funding Categories*, the Secretary will allot 25 percent of the funds available to educational partnerships. An educational partnership includes: (1) An LEA; (2) a business concern, business organization, or community-based organization; and (3) one of the following: A private nonprofit organization, an institution of higher education, a State educational agency, a State or local public agency, a private industry council (established under the Job Training Partnership Act), a museum, a library, an educational television or broadcasting station, or a community-based organization.

(Section 8004)

Distribution of Funds

The Secretary will ensure that, to the extent practicable, in approving grant applications: Grants will be equitably distributed on a geographic basis within each enrollment size category; not less than 30 percent of the available funds will be used for activities related to dropout prevention; and not less than 30 percent of the funds will be used for activities related to persuading dropouts to return to school and assisting former dropouts with specialized services once they return to school.

(Section 8007)

Limitation on Costs

Not more than 10 percent of any grant may be used for administrative costs.

(Section 8007)

Federal Funds

The Federal share of grants under this program shall not exceed 90 percent of the total cost of a project for the first year, and 70 percent of such cost for the second year. The "non-Federal" share may be paid from any source except for funds under this program, but not more than 10 percent of the "non-Federal" share may be from other Federal sources. The "non-Federal" share may be in cash or in kind.

(Section 8004)

Applications

Grants may be made only to an LEA, an educational partnership, or a community-based organization that submits an application to the Secretary. The Secretary encourages applicants to submit applications for a two-year period.

Applications must contain: (1) Documentation of the number of children who were enrolled in the schools of the applicant for five academic years prior to the date application is made who have not completed their elementary or secondary education and who are classified as dropouts; (2) documentation of the percentage that such number of children is of the total school-age population in the aplicant's schools; (3) a plan for the development and implementation of a dropout information collection and reporting system for documenting the extent and nature of the problem; and (4) a plan for the development and implementation of a project that will include activities designed to carry out the purpose of the program.

(Section 8005)

Allowable Activities

The plan referred to in paragraph (4) of the *Applications* section may include activities that: (1) Implement identification, prevention, outreach, or reentry projects for dropouts and potential dropouts; (2) address the special needs of school-age parents; (3) disseminate information to students, parents, and the community related to the dropout problem; (4) include coordinated activities involving at least one high school and its feeder junior or middle schools and elementary schools for those local educational agencies having such feeder systems; (5) as appropriate, include coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act; (6) involve the use of educational telecommunications and broadcasting technologies, and educational materials for dropout prevention, outreach, and reentry; (7) focus on developing occupational competencies that link job skill preparation and training with genuine job opportunities; (8) establish annual procedures for (i) evaluating the effectiveness of the project, and (ii) where possible, determining the cost-effectiveness of the particular dropout prevention and reentry methods used and the potential for reproducing such methods in other areas of the country; (9) coordinate, to the extent practicable, with other student dropout activities in the community; or (10) use the resources of the community and parents to help develop and implement solutions to the local dropout problem.

(Section 8005)

Authorized Activities

In addition to the activities mentioned under *Allowable Activities*, grants may also be used for educational, occupational, and basic skills testing services and activities, including, but not limited to: (1) The establishment of systemwide or school-level policies, procedures, and plans for dropout prevention and school reentry; (2) the development and implementation of activities, including extended day or summer programs, designed to address poor achievement, basic skills deficiencies, language deficiencies, or course failures, in order to assist students at risk of dropping out of school and students reentering school; (3) the establishment or expansion of work-study, apprentice, or internship programs; (4) the use of resources of the community, including contracting with public or private entities or community-based organizations of demonstrated performance, to provide services to the grant recipient or the target population; (5) the evaluation and revision of program placement of students at risk; (6) the evaluation of program effectiveness of dropout programs; (7) the development and implementation of programs for traditionally underserved groups of students; (8) the implementation of activities which will improve student motivation and the school learning environment; (9) the provision of training for school staff on strategies and techniques designed to identify children at risk of dropping out, intervene in the instructional program with support and remedial services, develop realistic expectations for student performance, and improve student-staff interactions; (10) the study of the relationship between drugs and dropouts and between youth gangs and dropouts, and the coordination of dropout prevention and reentry programs with appropriate drug prevention and youth gang prevention community organizations; (11) the study of the relationship between handicapping conditions and student dropouts; (12) the study of the relationship between the ratio of dropouts among gifted and talented students compared to the ratio of dropouts among the general student enrollment; (13) the use of educational telecommunications and broadcasting technologies and educational materials designed to extend, motivate, and reinforce school, community, and home dropout prevention and reentry activities; and (14) the provision of other educational, occupational, and testing services and activities that directly relate to the purpose of the program.

(Section 8006)

Activities for Educational Partnerships

Grants under this program may be used by educational partnerships for: (1) Activities that offer jobs and college admissions for successful completion of the program for which assistance is sought; (2) internship, work study or apprenticeship programs; (3) summer employment programs; (4) occupational training programs; (5) career opportunity and skills counseling; (6) job placement services; (7) the development of skill employment competency testing programs; (8) special school staff training projects; and (9) any other activity described under *Authorized Activities.*

(Section 8006)

Priorities

In approving applications, the Secretary will give priority to: (1) Applications that show the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA; or (2) applications that reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

(Section 8005)

Special Considerations

The Secretary will give special consideration to: (1) applications that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; and (2) applications which contain provisions for significant parental involvement in the design and conduct of the program for which the assistance is sought.

(Section 8005)

Continuation

In any application from a local educational agency for a grant to continue a project for a second year, the Secretary reviews the progress being made toward meeting the objectives of the project. The Secretary may refuse to award a grant if the Secretary finds that sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for a hearing.

(Section 8005)

Supplement, not Supplant

LEAs must use Federal funds received under this program only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the activities described above.

(Section 8201)

Coordination and Dissemination

LEAs receiving funds under this program must cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

(Section 8201)

Definition

As used in this program, the term "community-based organization" means a private nonprofit organization that is representative of a community or significant segments of a community, and that provides educational or related services to individuals in the community.

(Section 8202)

Priorities and Special Considerations

(a) Priorities

In accordance with EDGAR, 34 CFR 75.105(c)(3), applications that meet either of the two priorities in paragraphs (1) and (2) below will receive from the Secretary absolute preference over applications that do not. Applications that do not address one of the priorities will not be considered. Applications must propose projects that either:

(1) Replicate successful programs conducted in other local educational agencies or expand successful programs within a local educational agency; or

(2) Reflect very high numbers or very high percentages of school dropouts in the schools of the applicant in each category identified in section 8004(a) of the Act.

(b) Special Considerations

(1) In accordance with EDGAR, 34 CFR 75.105(c)(2), the Secretary will give special consideration to applications that:

(i) Emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; or

(ii) Contain provisions for significant parental involvement in the design and conduct of the program for which assistance is sought.

(2) An application that meets either of these two conditions will receive a competitive preference over an application of comparable merit that does not.

(c) Invitational Priority

(1) In accordance with EDGAR, 34 CFR 75.105(c)(1), the Secretary invites applicants to propose projects that include activities designed to promote and foster—

(i) Strong instructional leadership;

(ii) A safe and orderly climate in schools and related facilities;

(iii) An emphasis on basic skills;

(iv) Frequent assessment of pupil progress;

(v) High teacher expectations for student achievement;

(vi) Opportunities for parents to enroll their children in a school of their choice within the project area;

(vii) Cost-effectiveness for ease of replication or continuation without Federal funding; and

(viii) A positive impact on the family.

(2) An application that meets this invitational priority does not receive from the Secretary competitive or absolute preference over other applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.201), Washington, DC 20202, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.201), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and the title of this program.

(3) The applicant *must* indicate on the envelope the CFDA number of this program.

Application Instructions and Forms

This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Face Sheet (Form SF–424 and instructions).

Part II: Budget Information (form and instructions).

Part III: Application Narrative.

No grants may be awarded unless a completed application form has been received.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE
- a. NUMBER
- b. DATE ASSIGNED Year month day 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code.
- h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER 8 4 * 2 0 1
- MULTIPLE ☐
- b. TITLE School Dropout Demonstration Assistance Program

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) A ☐

12. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ .00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter A ☐

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST U.S. Department of Education
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Application Control Center
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS Washington, D.C. 20202

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

BILLING CODE 4000-01-C

Instructions for Part I—Federal Assistance Face Sheet (SF–424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted in accordance with OMB Circular A–102.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A".

Below is a list of instructions to assist you in completing the applicable items on the form.

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option).

4a-h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. If the applicant's organization has been assigned an ED–CRS number consisting of the IRS employer identification number prefexed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

6b. Program title from CFDA. Abbreviate if necessary.

7. Provide the title and a summary description of the project.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county or city.

10. Indicate the estimated number of persons directly benefiting from the project.

12a. Amount requested or to be contributed during the first funding/budget period by the Federal Government.

12f. Enter the amount shown in Item 12a.

13. Self-explanatory.

15. Self-explanatory.

16. Indicate the estimated number of months to complete project after Federal funds are available.

21. Self-explanatory.

23. Name and title of authorized representatives of legal applicant and signature.

BILLING CODE 4000-01-M

PART II
BUDGET INFORMATION

Section A - Budget Categories for Program Year 1988-89

1.	Salary and Wages	$
2.	Fringe Benefits	
3.	Travel	
4.	Equipment	
5.	Supplies	
6.	Contractual Services	
7.	Other (itemize)	
8.	Total Direct Costs (lines 1 to 7)	
9.	Total Indirect Costs	
10.	Total Project Costs (lines 8 + 9)	

Section B - Cost Sharing

1.	Program Income	$
2.	Non-Federal Funds (State, local, etc.)	
3.	In-Kind Contributions	

Section C - Estimate of Funding Needs

1.	First Fiscal Year	$
2.	Second Fiscal Year	
3.	Third Fiscal Year	N/A

Section D - Estimate of Unobligated Funds

1.	Unobligated Federal Funds from Preceding Fiscal Year	$ N/A
2.	Unobligated Non-Federal Funds from Preceding Fiscal Year	N/A
3.	Total Unobligated Funds from Preceding Fiscal Years (lines 2 + 3)	N/A

Section E - Budget Narrative (see instructions)

BILLING CODE 4000-01-C

Instructions for Part II—Budget Information

Section A—Budget Summary

Enter the Total Fund (Federal) Requirements by Budget Categories

1. Salaries and Wages: Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line 6.

2. Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. Travel: Indicate the amount requested for travel of employees only.

4. Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

5. Supplies: Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $300 per unit with a useful life of less than two years.

6. Contractural Services: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. Other: Indicate all direct costs not clearly covered by lines 1–6 above.

8. Total Direct Costs: Show total for lines 1–7.

9. Total Indirect Costs: Indicate the amount of indirect costs to be charged to the program or project. Indirect costs may not exceed 8 percent of "Total Direct Costs" (See 34 CFR Part 75.562).

10. Total Project Costs: Total lines 8 and 9.

Section B—Cost Sharing

1. Program Income: Enter the dollar amount of estimated program income that will be generated by Federal funds if authorized by the Department of Education.

2. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g. State governments, local governments, private organizations, etc.

3. In-Kind Contributions: Enter the dollar value of donated services and goods to be used to support the program or project.

Section C—Estimate of Funding Needs

1. Enter the amount of Federal funds needed for the first year of the program or project.

2. Enter the amount of Federal funds needed to complete a multi-year program or project in its second year.

3. Enter the amount of Federal funds needed to complete a multi-year program or project in its third year.

Section D—Estimate of Unobligated Funds

1. Unobligated Federal Funds: Indicate the amount of funds remaining from the preceding fiscal year.

2. Unobligated Federal Funds: Indicate the amount of funds remaining from the preceding fiscal year that are from non-federal sources.

3. Total: Show total for lines 1 and 2.

Section E—Budget Narrative

Attach a budget narrative that explains the amounts for individual direct cost categories that may appear to be out of the ordinary, including indirect cost rate and base.

BILLING CODE 4000-01-M

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM
Data Sheet

Please check the appropriate box.

☐ Total enrollment of 100,000 or more elementary and secondary school students.

☐ Total enrollment of at least 20,000 but less than 100,000 elementary and secondary school students.

☐ Total enrollment of less than 20,000 elementary and secondary school students, intermediate educational unit, or consortium. Check here if enrollment is less than 2,000 ____.

*Please check the box below if the applicant is a community-based organization.

☐

**Please check the box below if the applicant is submitting the application as an educational partnership. Then list the three members of the partnership and circle the type of organization.

☐

(A) _____
LEA

(B) _____
business concern, business organization, or community-based organization

(C) _____
any nonprofit private organization, institution of higher education, State educational agency, State and local public agencies, private industry councils (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station, or community-based organization.

*Evidence of the applicant's non-profit status should be attached.

**Evidence of the applicant's non-profit status should be attached if the educational partnership includes a nonprofit private organization.

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Data Sheet

Please provide the information set forth below on the number and percentage of children who were enrolled in the applicants' schools for 5 academic years prior to the date of this application who have not completed their elementary or secondary education and who are classified as dropout students.

School Year	No. Dropout Students	Total Enrollment	Percentage of Dropouts
1986-87			
1985-86			
1984-85			
1983-84			
1982-83			

Applicant's Definition of a Dropout:

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Absolute Priorities

Identify the priority under which you are submitting the application by marking the appropriate box.

☐ Application shows the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA.

☐ Application reflects very high numbers or very high percentages of school dropouts in the applicant's schools.

Competitive Priorities: Special Considerations

Identify the special consideration under which you are submitting the application by marking the appropriate box.

☐ Application contains provisions that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools.

☐ Application contains provisions for significant parental involvement in the design and conduct of the program.

Invitational Priorities

Identify each invitational priority under which you are submitting the application, if applicable.

☐ _____

☐ _____

☐ _____

☐ _____

BILLING CODE 4000-01-C

Instructions for Part III—Application Narratives

Before preparing the Application Narrative, applicants should read carefully the programmatic requirements, the information regarding priorities, and the selection criteria for the School Dropout Demonstration Assistance Act. The information is included in this application notice. In addition, applicants should read the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 74 Administration of Grants and Part 75 Direct Grant Programs.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an abstract—that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice; and

3. Supply necessary data on the data sheets provided. Applicants should record the appropriate priorities, enrollment data, number and percent of dropouts and potential dropouts. Applicants should include the definition of a dropout that they use in collecting data.

Please limit the Application Narrative to no more than 30 double-spaced, typed pages (on one side only). Supplemental documentation may be attached to the program narrative and is not counted as part of the 30 pages of narrative.

(Approved by the Office of Management and Budget under control number 1810–0535)

Assessment of Educational Impact: The Secretary requests comments on whether the information collection requirements in this notice would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

FOR FURTHER INFORMATION CONTACT: Janice Williams-Madison, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732–1924.

Program Authority: Pub. L. 100–202.

Dated: March 9, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–5543 Filed 3–10–88; 3:22 pm]

BILLING CODE 4000–01–M

Reader Aids

Federal Register

Vol. 53, No. 49

Monday, March 14, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

6115-6552.....1
6553-6782.....2
6783-6964.....3
6965-7176.....4
7177-7324.....7
7325-7488.....8
7489-7722.....9
7723-7874.....10
7875-8140.....11
8141-8420.....14

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5774.....7323
5775.....7723

Executive Orders:
12587 (Superseded by EO 12629).....7875
12607 (Amended by EO 12627).....6553
12627.....6553
12628.....7725
12629.....7875

5 CFR

595.....8141
630.....7325, 8301
831.....6555

Proposed Rules:
890.....7763

7 CFR

1.....7177
2.....6783, 7877
272.....6556
273.....6556
301.....6783, 6965, 7877
354.....7489
401.....6559, 6561, 6965, 7878
421.....6563
422.....6115
424.....6564
428.....6565
438.....6565
448.....6566
452.....6567
455.....6115, 6568
719.....6119
907.....6968, 7328, 7879
908.....7328
910.....6969, 7490, 7879
917.....6128
925.....6572
927.....7880
946.....8142
948.....8145
959.....7329
985.....6129
1139.....6916
1240.....8147
1421.....6131
1610.....6969
1823.....7330
1900.....7330
1940.....7330
1942.....6784
1944.....7178, 7491
1951.....7330
1955.....7330
1962.....7330
1965.....7330, 7491
1980.....7330, 8148
3015.....8034
3016.....8034

Proposed Rules:
51.....7531
52.....7532
252.....7188
401.....6652-6654
449.....6655
933.....7194
946.....7369
1030.....8205
1032.....7210
1106.....6158
1126.....7942
1425.....7370
1772.....8219
1924.....7532

8 CFR

292.....7727

9 CFR

51.....7881
97.....7492
317.....7493
318.....7493
381.....7493

Proposed Rules:
92.....6656, 6791, 8301

10 CFR

4.....6137
15.....6137
19.....6137
20.....6137
21.....6137
50.....6137
53.....6137
55.....6137
73.....6137
75.....6137
81.....6137
140.....6137
150.....6137
170.....6137
430.....8304
600.....8034

Proposed Rules:
Ch. 1.....7534
2.....6666
50.....6159, 7534
73.....7534
430.....7110

11 CFR

Proposed Rules:
102.....6916
106.....6916

12 CFR

4.....6573
21.....7881

29 ... 7885
30 ... 7885
34 ... 7885
310 ... 7339
545 ... 6792
561 ... 6792
563 ... 6792
563c ... 6792
564 ... 8167
570 ... 6792
620 ... 7340
621 ... 7340
1101 ... 7340

13 CFR

120 ... 7343
143 ... 8034

14 CFR

21 ... 6793, 7728
36 ... 6793, 7728
39 ... 6793, 6794, 7074, 7346–7348, 7729–7732
71 ... 6140–6142, 6219, 6795, 6796, 6918, 7349–7352, 8172, 8173, 8301
73 ... 6796, 7352, 7353, 8173, 8175
95 ... 6573
97 ... 6592

Proposed Rules:

Ch. 1 ... 6830
27 ... 7479
29 ... 7479
39 ... 7371–7373, 7764, 7765, 8220
61 ... 8368
63 ... 8368
65 ... 8368
71 ... 6160–36162, 6666, 6830, 6832, 7374–7377, 7468
73 ... 7377, 7378
91 ... 7096
121 ... 8368
135 ... 7096, 8368

15 CFR

4 ... 6972
18 ... 6797
24 ... 8034
370 ... 6143
372 ... 6143
399 ... 7733

Proposed Rules:

379 ... 8221

16 CFR

1016 ... 6593

Proposed Rules:

Ch. II ... 6833
13 ... 6667

17 CFR

1 ... 7178, 7179
5 ... 7179
31 ... 7179
211 ... 7892
230 ... 7866

Proposed Rules:

230 ... 7870

18 CFR

154 ... 7495
157 ... 7503, 8176
284 ... 7893
380 ... 8176
389 ... 7354

19 CFR

4 ... 6143

Proposed Rules:

6 ... 7766
146 ... 6996

21 CFR

60 ... 7298
81 ... 6983
172 ... 6595
349 ... 7076
369 ... 7076
524 ... 7504

Proposed Rules:

182 ... 8301
349 ... 6997
357 ... 7073

22 CFR

135 ... 8034
303 ... 8178

23 CFR

Proposed Rules:

659 ... 7943

24 CFR

44 ... 8034
85 ... 8034
111 ... 8034
115 ... 6964
200 ... 6600
201 ... 6922
203 ... 6922
215 ... 6600
221 ... 6600
234 ... 6922
235 ... 6600
236 ... 6600
247 ... 6600
300 ... 6601
511 ... 8034
570 ... 8034
571 ... 8034
575 ... 8034
590 ... 8034
812 ... 6600
850 ... 8034
880 ... 6600
881 ... 6600
882 ... 6600, 7734, 8034
883 ... 6600
884 ... 6600
886 ... 6600
904 ... 6600
905 ... 6600, 8034
912 ... 6600
941 ... 8034
960 ... 6600
968 ... 8034
970 ... 8034
990 ... 8034
3280 ... 6600

25 CFR

176 ... 6145

26 CFR

1 ... 6602, 6603, 6614, 6670, 6800, 7504, 8302
5h ... 6146
41 ... 6625
48 ... 6518, 8302
51 ... 6626
55 ... 6146
602 ... 6146, 6518, 6603, 6614, 6770, 6800, 7504

Proposed Rules:

1 ... 6670, 6681
48 ... 6524

28 CFR

16 ... 7734
66 ... 8034

29 CFR

97 ... 8034
1470 ... 8034
1910 ... 6628, 8322

30 CFR

202 ... 8181
203 ... 8181
206 ... 8181
207 ... 8181
210 ... 8181
241 ... 8181
917 ... 7735
935 ... 7737
946 ... 7180

Proposed Rules:

75 ... 6162, 6512
906 ... 7211
917 ... 7212
918 ... 8222

31 CFR

500 ... 7354
535 ... 7355
540 ... 7355
545 ... 7355
550 ... 7355

Proposed Rules:

103 ... 7948

32 CFR

278 ... 8034
295 ... 7358

33 CFR

117 ... 6984
161 ... 7738
334 ... 6942

Proposed Rules:

110 ... 7949
165 ... 7949

34 CFR

74 ... 8034
80 ... 8034
304 ... 6944
333 ... 6952

Proposed Rules:

300 ... 8390
350 ... 6958
357 ... 6958
612 ... 7312
653 ... 8397
696 ... 7953

35 CFR

60 ... 7894

36 CFR

1207 ... 8034
1256 ... 6821

Proposed Rules:

7 ... 7466

37 CFR

Proposed Rules:

201 ... 7073

38 CFR

2 ... 7183
3 ... 7902
17 ... 7185
21 ... 7183
43 ... 8034

39 CFR

111 ... 6985
946 ... 6986

Proposed Rules:

111 ... 6837

40 CFR

30 ... 8034
31 ... 8034
33 ... 8034
60 ... 7514, 8182
61 ... 8182
81 ... 8182
180 ... 7739
228 ... 6987, 8183
261 ... 6822, 7903
264 ... 7740
265 ... 7740
266 ... 7516
270 ... 7740

Proposed Rules:

52 ... 6842, 6845
81 ... 6845, 7113
86 ... 7676
116 ... 6762
117 ... 6762
122 ... 7642
123 ... 7642
124 ... 7642
180 ... 6671, 7539–7543
300 ... 8223
302 ... 6762, 7073
501 ... 7642

41 CFR

50–201 ... 7741

Proposed Rules:

51–7 ... 8225

42 CFR

405 ... 6525, 6629
406 ... 6629
409 ... 6629
410 ... 6629
413 ... 6525, 6629
416 ... 6629
421 ... 6629
424 ... 6629
441 ... 6525
482 ... 6525
485 ... 6525
489 ... 6629
498 ... 6525, 6629

Proposed Rules:

413 ... 6672

43 CFR

12 ... 8034
20 ... 8186

Public Land Orders:

6664 ... 7186
6665 ... 7187
6666 ... 7520

44 CFR

13 ... 8034
64 ... 6148, 6150
67 ... 7915

Proposed Rules:

67 ... 6676

45 CFR

12 ... 7744
16 ... 7832
74 ... 8034
92 ... 8034
96 ... 6824
402 ... 7832
602 ... 8034
1157 ... 8034
1174 ... 8034
1183 ... 8034
1234 ... 8034
1602 ... 6151
2015 ... 8034

46 CFR

2 ... 7745
31 ... 7745
34 ... 7745
58 ... 7745
71 ... 7745
76 ... 7745
91 ... 7745
95 ... 7745
107 ... 7745
108 ... 7745
109 ... 7745
146 ... 7745
147 ... 7745
167 ... 7745
176 ... 7745
181 ... 7745
189 ... 7745
193 ... 7745
308 ... 8186
572 ... 7520
586 ... 7361

Proposed Rules:

588 ... 7379

47 CFR

0 ... 6916
64 ... 7753
73 ... 6828, 7754, 8189, 8190

Proposed Rules:

2 ... 8225
69 ... 7214
73 ... 6163–6165, 6677, 7216–7218, 8225–8228
74 ... 6677

48 CFR

26 ... 6219
52 ... 6219
222 ... 6155
501 ... 7365
532 ... 7365
552 ... 7365
701 ... 6828
750 ... 6828
752 ... 6828
810 ... 7755
836 ... 7755
852 ... 7755
2401 ... 7187
2402 ... 7187

Proposed Rules:

970 ... 7318

49 CFR

18 ... 8034
571 ... 7931, 8190, 8202
1001 ... 6155
1320 ... 6990

Proposed Rules:

395 ... 8228
571 ... 6998, 7074

50 CFR

10 ... 6649
301 ... 7528
611 ... 7756
653 ... 7368
655 ... 6991
672 ... 6649, 7756, 7938
675 ... 7756, 7941

Proposed Rules:

20 ... 6853, 7702
91 ... 6938
661 ... 8234

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 11, 1988

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
***4**	14.00	Jan. 1, 1988
5 Parts:		
1-1199	25.00	Jan. 1, 1987
1200-End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0-45	25.00	Jan. 1, 1987
46-51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53-209	18.00	Jan. 1, 1987
210-299	22.00	Jan. 1, 1987
300-399	10.00	Jan. 1, 1987
400-699	15.00	Jan. 1, 1987
700-899	22.00	Jan. 1, 1987
900-999	26.00	Jan. 1, 1987
1000-1059	15.00	Jan. 1, 1987
1060-1119	13.00	Jan. 1, 1987
1120-1199	11.00	Jan. 1, 1987
1200-1499	18.00	Jan. 1, 1987
1500-1899	9.50	Jan. 1, 1987
1900-1944	25.00	Jan. 1, 1987
1945-End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
1-199	18.00	Jan. 1, 1987
200-End	16.00	Jan. 1, 1987
10 Parts:		
0-199	29.00	Jan. 1, 1987
200-399	13.00	[2] Jan. 1, 1987
400-499	14.00	Jan. 1, 1987
500-End	24.00	Jan. 1, 1987
11	11.00	July 1, 1987
12 Parts:		
1-199	11.00	Jan. 1, 1987
200-299	27.00	Jan. 1, 1987
300-499	13.00	Jan. 1, 1987
500-End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1-59	21.00	Jan. 1, 1987
60-139	19.00	Jan. 1, 1987
140-199	9.50	Jan. 1, 1987
200-1199	19.00	Jan. 1, 1987
1200-End	11.00	Jan. 1, 1987
15 Parts:		
*0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1987
400-End	14.00	Jan. 1, 1987
16 Parts:		
0-149	12.00	Jan. 1, 1987
150-999	13.00	Jan. 1, 1987
1000-End	19.00	Jan. 1, 1987
17 Parts:		
1-199	14.00	Apr. 1, 1987
200-239	14.00	Apr. 1, 1987
240-End	19.00	Apr. 1, 1987
18 Parts:		
1-149	15.00	Apr. 1, 1987
150-279	14.00	Apr. 1, 1987
280-399	13.00	Apr. 1, 1987
400-End	8.50	Apr. 1, 1987
19 Parts:		
1-199	27.00	Apr. 1, 1987
200-End	5.50	Apr. 1, 1987
20 Parts:		
1-399	12 00	Apr. 1, 1987
400-499	23.00	Apr. 1, 1987
500-End	24.00	Apr. 1, 1987
21 Parts:		
1-99	12.00	Apr. 1, 1987
100-169	14.00	Apr. 1, 1987
170-199	16.00	Apr. 1, 1987
200-299	5.50	Apr. 1, 1987
300-499	26.00	Apr. 1, 1987
500-599	21.00	Apr. 1, 1987
600-799	7.00	Apr. 1, 1987
800-1299	13.00	Apr. 1, 1987
1300-End	6.00	Apr. 1, 1987
22 Parts:		
1-299	19.00	Apr. 1, 1987
300-End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0-199	14.00	Apr. 1, 1987
200-499	26.00	Apr. 1, 1987
500-699	9.00	Apr. 1, 1987
700-1699	18.00	Apr. 1, 1987
1700-End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0-1.60	12.00	Apr. 1, 1987
§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1987
§§ 1.401-1.500	21.00	Apr. 1, 1987
§§ 1.501-1.640	15.00	Apr. 1, 1987
§§ 1.641-1.850	17.00	Apr. 1, 1987
§§ 1.851-1.1000	27.00	Apr. 1, 1987
§§ 1.1001-1.1400	16.00	Apr. 1, 1987
§§ 1.1401-End	20.00	Apr. 1, 1987
2-29	20.00	Apr. 1, 1987
30-39	13.00	Apr. 1, 1987
40-49	12.00	Apr. 1, 1987
50-299	14.00	Apr. 1, 1987
300-499	15.00	Apr. 1, 1987
500-599	8.00	[3] Apr. 1, 1980
600-End	6.00	Apr. 1, 1987
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987
29 Parts:		
0-99	16.00	July 1, 1987
100-499	7.00	July 1, 1987
500-899	24.00	July 1, 1987
900-1899	10.00	July 1, 1987
1900-1910	28.00	July 1, 1987
1911-1925	6.50	July 1, 1987

Title	Price	Revision Date
1926	10.00	July 1, 1987
1927-End	23.00	July 1, 1987
30 Parts:		
0-199	20.00	July 1, 1987
200-699	8.50	July 1, 1987
700-End	18.00	July 1, 1987
31 Parts:		
0-199	12.00	July 1, 1987
200-End	16.00	July 1, 1987
32 Parts:		
1-39, Vol. I	15.00	[4] July 1, 1984
1-39, Vol. II	19.00	[4] July 1, 1984
1-39, Vol. III	18.00	[4] July 1, 1984
1-189	20.00	July 1, 1987
190-399	23.00	July 1, 1987
400-629	21.00	July 1, 1987
630-699	13.00	[5] July 1, 1986
700-799	15.00	July 1, 1987
800-End	16.00	July 1, 1987
33 Parts:		
1-199	27.00	July 1, 1987
200-End	19.00	July 1, 1987
34 Parts:		
1-299	20.00	July 1, 1987
300-399	11.00	July 1, 1987
400-End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
1-199	12.00	July 1, 1987
200-End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
0-17	21.00	July 1, 1987
18-End	16.00	July 1, 1987
39	13.00	July 1, 1987
40 Parts:		
1-51	21.00	July 1, 1987
52	26.00	July 1, 1987
53-60	24.00	July 1, 1987
61-80	12.00	July 1, 1987
81-99	25.00	July 1, 1987
100-149	23.00	July 1, 1987
150-189	18.00	July 1, 1987
190-399	29.00	July 1, 1987
400-424	22.00	July 1, 1987
425-699	21.00	July 1, 1987
700-End	27.00	July 1, 1987
41 Chapters:		
1, 1-1 to 1-10	13.00	[6] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3-6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10-17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1-5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6-19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20-52	13.00	[6] July 1, 1984
19-100	13.00	[6] July 1, 1984
1-100	10.00	July 1, 1987
101	23.00	July 1, 1987
102-200	11.00	July 1, 1987
201-End	8.50	July 1, 1987
42 Parts:		
*1-60	15.00	Oct. 1, 1987
61-399	5.50	Oct. 1, 1987
400-429	21.00	Oct. 1, 1987
430-End	14 00	Oct. 1, 1987

Title	Price	Revision Date
43 Parts:		
1-999	15.00	Oct. 1, 1987
1000-3999	24.00	Oct. 1, 1987
4000-End	11.00	Oct. 1, 1987
44	18.00	Oct. 1, 1987
45 Parts:		
1-199	14.00	Oct. 1, 1987
200-499	9.00	Oct. 1, 1987
*500-1199	18.00	Oct. 1, 1987
1200-End	14.00	Oct. 1, 1987
46 Parts:		
1-40	13.00	Oct. 1, 1987
41-69	13.00	Oct. 1, 1987
70-89	7.00	Oct. 1, 1987
90-139	12.00	Oct. 1, 1987
140-155	12.00	Oct. 1, 1987
156-165	14.00	Oct. 1, 1987
166-199	13.00	Oct. 1, 1987
200-499	19.00	Oct. 1, 1987
500-End	10.00	Oct. 1, 1987
47 Parts:		
0-19	17.00	Oct. 1, 1987
20-39	21.00	Oct. 1, 1987
40-69	10.00	Oct. 1, 1987
70-79	17.00	Oct. 1, 1987
80-End	20.00	Oct. 1, 1987
48 Chapters:		
1 (Parts 1-51)	26.00	Oct. 1, 1987
1 (Parts 52-99)	16.00	Oct. 1, 1987
2 (Parts 201-251)	17.00	Oct. 1, 1987
2 (Parts 252-299)	15.00	Oct. 1, 1987
3-6	17.00	Oct. 1, 1987
7-14	24.00	Oct. 1, 1987
15-End	23.00	Oct. 1, 1987
49 Parts:		
1-99	10.00	Oct. 1, 1987
100-177	25.00	Oct. 1, 1987
178-199	19.00	Oct. 1, 1987
200-399	17.00	Oct. 1, 1987
400-999	22.00	Oct. 1, 1987
1000-1199	17.00	Oct. 1, 1987
1200-End	18.00	Oct. 1, 1987
50 Parts:		
1-199	16.00	Oct. 1, 1987
200-599	12.00	Oct. 1, 1987
600-End	14.00	Oct. 1, 1987
CFR Index and Findings Aids	27.00	Jan. 1, 1987
Complete 1988 CFR set	595.00	1988
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Individual copies	3:75	1988

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

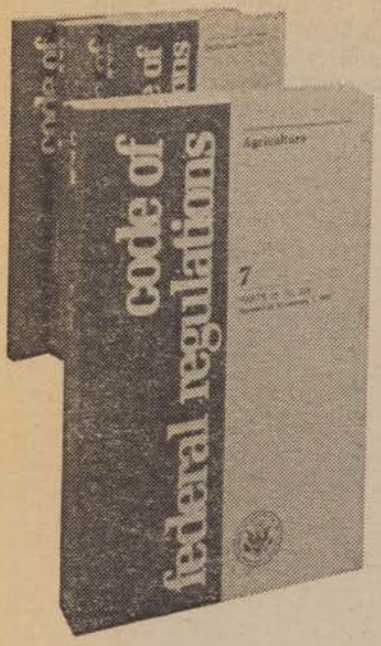
[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



Just Released

Code of Federal Regulations

Revised as of October 1, 1987

Quantity	Volume	Price	Amount
	Title 47—Telecommunication		
_____	(Parts 0–19) (Stock No. 869-001-00164-0)	$17.00	$_____
_____	(Parts 20–39) (Stock No. 869-001-00165-8)	21.00	_____
_____	(Part 80–End) (Stock No. 869-001-00168-2)	20.00	_____
		Total Order	**$**_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA®

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		