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July 11, 1986

Briefings on How To Use the Federal Register—

For information on briefings in Seattle, WA, see announcement on the inside cover of this issue.

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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.

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle	206-442-0570
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 352

Reemployment Rights of Senior Executive Service Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is updating its regulations to permit Federal agencies to grant reemployment rights to Senior Executive Service (SES) employees who take other civilian employment under certain circumstances. The regulations make the reemployment of SES employees comparable to the existing rights of other civilian employees.

EFFECTIVE DATE: August 11, 1986.

FOR FURTHER INFORMATION CONTACT: John Schultz, 202–632–6817.

SUPPLEMENTARY INFORMATION: Part 352 of Title 5 of the Code of Federal Regulations permits a Federal agency to grant reemployment rights to nontemporary Federal employees in both the competitive and excepted service under terms and conditions specified by law when they accept special assignments or other hard to fill positions outside their agencies.

Proposed regulations to bring SES employees within the coverage of Part 352 were published in the **Federal Register** on December 27, 1985 [50 FR 52928]. Only one comment was received, which supported the proposed regulations. Except for minor typographical corrections and the rearrangement of section authorities, no substantive changes have been made in the final regulations.

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, (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to senior executives employed by Federal agencies.

List of Subjects in 5 CFR Part 352

Administrative practice and procedure, Government employees.

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

PART 352—[AMENDED]

Accordingly, OPM is amending Part 352 of Title 5, Code of Federal Regulations, as follows:

1. The authority citation for Subpart B of Part 352 is revised as set forth below and the authority citations following all the sections in Part 352 are removed:

Authority: 5 U.S.C. 3101 note, 3301, 3131 et seq. 3302; E.O. 10577, 3 CFR 1954–1958 Com., p. 218; sec. 352. 209 also issued under 5 U.S.C. 7701, et seq.

2. Section 352.204 is amended by redesignating paragraph (a)(2) as (a)(3), adding a new paragraph (a)(2), and revising paragraph (b)(1) to read as follows:

§ 352.204 Basic eligibility for reemployment rights.

(a) * * *

(2) An employee serving under a career appointment in the Senior Executive Service (SES); or

* * * * *

(b) * * *

(1) An employee who is serving a probationary or trial period under an appointment to a position in the excepted or competitive service or the SES.

* * * * *

3. Section 352.205a is revised to read as follows:

§ 352.205a Authority to return employee to his or her former or successor agency.

The transfer of an employee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency without regard to Parts 351, 752, or 771 of this chapter when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in a position at the same or higher grade in the same occupational field and geographical area as the position he or she last held in the former or successor agency; and

(b) At not less than the rate of pay he or she would have been receiving in the position last held in the former or successor agency if he or she had not been transferred.

4. Section 352.205b is added to read as follows:

§ 352.205b Authority to return an SES employee to his or her former or successor agency.

The transfer of a career SES appointee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in any position in the SES for which the employee is qualified; and

(b) At not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

5. Section 352.208 is amended by revising paragraph (a), redesignating paragraphs (c) and (d) as (d) and (e), respectively, and adding a new paragraph (c), to read as follows:

§ 352.208 Agency's obligation to reemploy.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible but not more than 30 calendar days after receipt of his application. Except as provided in paragraph (c) of this section, the employee is entitled to reemployment in the occupational field and at the same grade or level and in the same geographical area as the position which the employee last held in that agency. If the reemployment would cause the separation or demotion of another employee, the applicant shall then be considered an employee for the purpose

of applying the reduction-in-force regulations (5 CFR Part 351) to determine to what, if any, position, he or she is entitled.

* * * * *

(c) *Reemployment in SES.* When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified.

* * * * *

6. The authority citation for Subpart C of Part 352 is revised to read as follows:

Authority: 5 U.S.C. 3584, E.O. 11552, 3 CFR 1966–1970 Comp., p. 954; Section 352.313 also issued under 5 U.S.C. 7701, et seq.

7. Section 352.305 is revised to read as follows:

§ 352.305 Eligibility for detail.

An employee, including a person serving under a career appointment in the Senior Executive Service (SES), is eligible to be detailed to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart.

8. Section 352.307 is amended by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively, and adding a new paragraph (c), to read as follows:

§ 352.307 Eligibility for transfer.

* * * * *

(c) A person serving under a noncareer, limited emergency, or limited term appointment in the SES.

* * * * *

9. Section 352.311 is revised to read as follows:

§ 352.311 Reemployment.

(a) A transferred employee is entitled to be reemployed in his or her former position or one of like seniority, status, and pay within 30 days of his or her application for reemployment if he or she meets the following conditions:

(1) He or she is separated, either voluntarily or involuntarily, within his or her term of employment with an international organization; and

(2) He or she applies for reemployment to his or her former agency or its successor no later than 90 days after his or her separation.

(b) When an employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

10. In § 352.405, paragraph (a) is revised to read as follows:

§ 352.405 Resumption of Federal service.

(a) *Pay increase.* Except for an employee whose right is to a position in the Senior Executive Service (SES), an officer who is reemployed in the Federal position which he or she left or one of like seniority, status, and pay within 90 days of his or her separation from the agency following a term of employment, is entitled to the rate of basic pay to which he/she would have been entitled had he or she remained in the Federal service. When the employee's right is to a position in the SES, this subpart authorizes reemployment to any position in the SES for which the employee is qualified at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

* * * * *

11. The authority citation for Subpart E of Part 352 is revised to read as follows:

Authority: Sec. 625, 75 Stat. 449; 22 U.S.C. 2385; E.O. 10973; 3 CFR 1959–1963 Comp., p. 493; Section 352.508 also issued under 5 U.S.C. 7701 et seq.

12. Section 352.502 is amended by redesignating paragraphs (b) and (c) as (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 352.502 Coverage.

* * * * *

(b) A person serving under a career appointment in the Senior Executive Service (SES).

* * * * *

13. Section 352.504 is revised to read as follows:

§ 352.504 Basic entitlement.

Subject to the conditions specified in this subpart, an employee who is appointed to a position under authority of section 233(d) or section 625(b) of the Act is entitled, on termination of that appointment for any reason other than his or her own misconduct or delinquency, to be reinstated in his or her former position or in one of like seniority, status, and pay in the same agency. When the employee's right is to a position in the SES, reinstatement may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer. If the functions with which the employee's former position was identified have been transferred to another agency, the employee's right to reinstatement is in the gaining agency.

14. The authority citation for Subpart G of Part 352 is revised to read as follows:

Authority: Sec. 105(i), Pub. L. 93–638, 88 Stat. 2210 (25 U.S.C. 450); E.O. 11899; 41 FR 3459; Section 352.707 also issued under 5 U.S.C. 7701, et seq.

15. Section 352.703 is amended by revising the introductory text of paragraph (a) and adding paragraph (a)(3) to read as follows:

§ 352.703 Basic entitlement to reemployment rights on leaving Federal employment.

(a) *Employees entitled.* The following employees of the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service and the Public Health Service of the Department of Health and Human Services, are granted reemployment rights subject to the conditions of this subpart, to the Bureau of Indian Affairs, the Indian Health Service, or the Public Health Service, as appropriate, if they leave their Federal employment to be employed, with no break in service following separation from their agency, by an Indian tribal organization to work in a function of their respective agency contracted under the Indian Self-Determination Act to be performed by that tribal organization:

* * * * *

(3) An employee serving under a career appointment in the Senior Executive Service (SES) who is not serving a probationary period.

* * * * *

16. Section 352.706 is amended by redesignating paragraphs (d) and (e) as (e) and (f) respectively and adding a new paragraph (d) to read as follows:

§ 352.706 Agency response to reemployment application.

* * * * *

(d) *Reemployment to an SES position.* When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

* * * * *

17. The authority citation for Subpart H of Part 352 is revised to read as follows:

Authority: 22 U.S.C. 3310; E.O. 12143, 44 FR 37191; Section 352.807 also issued under 22 U.S.C. 3310; E.O. 12143, 45 FR 37452.

* * * * *

[FR Doc. 86–15663 Filed 7–10–86; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 371]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 371 establishes the quantity of California-Arizona Valencia oranges that may be shipped to market during the period July 11–17, 1986. The regulation is needed to balance the supply of fresh Valencia oranges with market demand for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 371 (§ 908.671) is effective for the period July 11–17, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

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

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

The purpose of the RFA is to fit regulatory 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 Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on July 8, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

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

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

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

2. Section 908.671 is added to read as follows:

§ 908.671 Valencia Orange Regulation 371.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 11, 1986, through July 17, 1986, are established as follows:

(a) District 1: 322,000 cartons;

(b) District 2: 378,000 cartons;

(c) District 3: Unlimited cartons.

Dated: July 9, 1986.

Joseph A. Gribbin,

Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–15789 Filed 7–10–86; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Wholesale Trade Size Standard

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is amending its size standard, or definition of small business, for the entire wholesale trade industry division from 500 employees to 100 employees for all SBA programs. This action is based on an internal study of the structure of this industry group, which showed that wholesale trade has the highest size standard of any major industry division, in terms of percentage of concerns defined as small. More recent data from the Bureau of the Census confirm this picture. Only two comments were received from the private sector on the proposed rule of October 1, 1985; both favored this reduction. Nearly all Government procurement officials who were queried also concurred with this change.

EFFECTIVE DATE: August 11, 1986.

FOR FURTHER INFORMATION CONTACT: Alan Odendahl, Economist, Size Standards Staff, (202) 653–6373.

SUPPLEMENTARY INFORMATION: On October 1, 1985, SBA published in the **Federal Register** a proposed lowering of the size standard for all wholesale trade industries to 100 employees from its present 500 employees. SBA's proposal was based on a comprehensive internal study of the industry structure of the wholesale trade sector, of the pattern of Federal procurement from wholesalers, and of public comments on previous proposals for wholesale trade size standards.

In 1977, the latest year for which data was available at the time the study was done, there were over 230,000 merchant wholesaler firms in the United States with total sales of about $1.2 trillion. However, the average firm had only 14.6 employees, and the median firm was smaller yet, with only 6.5 employees.

Only 0.13 percent of merchant wholesaler firms (or exactly 309 companies out of 230,234) had more than 500 employees and are defined as large. The other 99.87 percent are defined as small. This is the highest percentage of firms defined as small among all major industry groups; the overall average for all nonfarm industries is 98.70 percent small.

New data for the year 1982 is now available from the U.S. Bureau of the Census. It shows an industry structure pattern that is almost unchanged from

the 1977 picture. By 1982 the number of merchant wholesaler firms had grown to 267,481, but only 366 of them have 500 or more employees. This is 0.14 percent of all firms as compared with 0.13 percent in 1977. Firms with 500 or more employees account for 24.2 percent of all sales by merchant wholesalers as compared to 21.3 percent in 1977.

At a size standard of 100 employees, the 1977 data showed 3,311 concerns or 1.44 percent of the total to be defined as large, and these would account for 40.4 percent of all merchant wholesaler sales. The other 98.56 percent of firms would be defined as small.

The 1982 data show 4,055 firms, or 1.52 percent of the total, with 100 or more employees; these concerns now account for 44.8 percent of industry sales. This leaves 98.48 percent of firms defined as small having 55.2 percent of total sales by merchant wholesalers.

The study emphasized that 100 employees, or any higher size standard through 250 employees, could be justified on the basis of industry structure, with 100 employees resulting in maximum equity across industry sectors. Based on previous public comments, the study recommended a level of 200 employees.

However, SBA's Size Policy Board voted for a proposed rule of 100 employees. The major impact would be in the loan rather than the procurement programs, the Board believed. Information subsequently furnished by the Financial Assistance Division showed only 96 out of 13,406 loans in SBA's wholesale trade portfolio, or 0.72 percent, had gone to firms with 101 to 500 employees.

Only two (2) comments were received on the proposed rule during the public comment period ending December 2, 1985. Both were from wholesalers of Mobile Offices/Utility Buildings, and both favored the proposed reduction.

A special letter was mailed on December 2 to Federal procurement officials in 18 agencies. Eventually 22 replies were received from 13 Federal departments and agencies.

Of the 22 replies, only two opposed the change. The Department of Agriculture said their rate of awards to small business for food items would decline. In poultry 70 percent of supplies instead of the present 50 percent would be classified as large.

One division of one regional office of the General Services Administration opposed the change. Apparently they felt that, at least in chemicals and plumbing equipment, products of small manufacturers are usually, or at least frequently, sold by rather large wholesalers—concerns with 101 to 500 employees. Eight other regions or components of GSA either supported the change or said it would have no real effect on them.

The Department of Defense told us they have no opposition to the proposed reduction. Neither do several units of the Navy Department, the Army, the Departments of Energy, Interior and Treasury, NASA, the EPA, the Veterans Administration, and the Tennessee Valley Authority.

Overall, this is a pattern of near-unanimous support for, or at least lack of opposition to, the proposed rule which is rarely found with proposed changes in size standards.

Accordingly, SBA's Size Policy Board has decided to adopt a final rule setting 100 employees as the size standard for all wholesale trade industries.

Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act.

In theory, this regulation may be a major rule as defined in Executive Order 12291. In this regard, it might have an economic impact in excess of $100,000,000 per year. The number of companies which theoretically would be eliminated from set-aside competition by this reduction in size standard is 3,689 (based on 1982 data). However, it is probable that only a very few of these firms actually receive, or are interested in receiving, set-aside Government contracts. The number of loans in SBA's portfolio which went to firms having 101 to 500 employees is 96 out of 13,406 loans, or 0.72 percent of total loans to wholesalers. Despite the likelihood of the economic impact being under $100 million, SBA cannot certify that this regulation is a nonmajor rule, because of the lack of data in this area.

The economic effect of this regulation would be to channel contracts and loans to smaller firms than at present. The universe of companies eligible for various forms of SBA assistance will contract by about 3,700 firms. Accordingly, this regulation is not likely to result in a major increase in costs or prices or have a significant adverse effect on the United States economy.

The economic benefit of promulgation of this rule is to insure that SBA's size standard properly reflects the make-up of the wholesale industry. In this way, SBA can assure that the benefits of the Government's small business programs go to truly small businesses. There are no costs inherent in the promulgation of this rule. The significant alternatives to the standard proposed by SBA are size standards of 150, 200, and 250 employees. These have been rejected, as indicated above, because each would still leave the percentage of firms defined as small in the wholesale trade industry above the overall percentage of concerns defined as small in all industries combined. In addition, public comments on the proposed rule revealed zero opposition to a reduction to 100 employees and, presumably, no firms which would be significantly injured by the change.

SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

However, this regulation may have a significant economic impact on at least a few currently small firms active in the Federal marketplace and on a few small firms seeking to enter the Federal marketplace. This rule defines the maximum size a firm may be to bid on contracts set aside for small firms in this industry. Therefore, in compliance with the Regulatory Flexibility Act, SBA offers the following analysis:

We have indicated above in this supplementary material a description of the reasons why this action is being considered, a statement of the reasons for the objectives of this proposal, and a description of the significant alternatives to this proposal. The legal basis for this proposal is section 5(b) of the Small Business Act, 15 U.S.C. 634(b). There are no Federal rules which duplicate, overlap, or conflict with the proposed rule. There are no reporting, recordkeeping or other compliance requirements of the proposed rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property. Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, SBA amends Part 121 of 13 CFR as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: 15 U.S.C. 634(b).

2. In § 121.2(c)(2), Division F—Wholesale Trade is revised as follows:

§ 121.2 Standard Industrial Classification and Size Standards.

* * * * *

(c)(2) * * *

		Em-ployees
	Division F—Wholesale Trade	
	Major Group 50—Wholesale Trade—Durable Goods	
5012	Automobiles and Other Motor Vehicles	100
5013	Automotive Parts and Supplies	100
5014	Tires and Tubes	100
5021	Furniture	100
5023	Home Furnishings	100
5031	Lumber, Plywood, and Millwork	100
5039	Construction Materials, N.E.C.	100
5041	Sporting and Recreational Goods and Supplies	100
5042	Toys and Hobby Goods and Supplies	100
5043	Photographic Equipment and Supplies	100
5051	Metals Service Centers and Offices	100
5052	Coal and Other Minerals and Ores	100
5063	Electrical Apparatus and Equipment, Wiring Supplies and Construction Materials	100
5064	Electrical Appliances, Television and Radio Sets	100
5065	Electronic Parts and Equipment	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics	100
5075	Warm Air Heating and Air Conditioning Equipment and Supplies	100
5078	Refrigeration Equipment and Supplies	100
5081	Commercial Machines and Equipment	100
5082	Construction and Mining Machinery and Equipment	100
5083	Farm and Garden Machinery and Equipment	100
5084	Industrial Machinery and Equipment	100
5085	Industrial Supplies	100
5086	Professional Equipment and Supplies	100
5087	Service Establishment Equipment and Supplies	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles	100
5093	Scrap and Waste Materials	100
5094	Jewelry, Watches, Diamonds and Other Precious Stones	100
5099	Durable Goods, N.E.C.	100
	MAJOR GROUP 51—WHOLESALE TRADE—NONDURABLE GOODS	
5111	Printing and Writing Paper	100
5112	Stationery Supplies	100
5113	Industrial and Personal Service Paper	100
5122	Drugs, Drug Proprietaries and Druggists' Sundries	100
5133	Piece Goods (Woven Fabrics)	100
5134	Notions and Other Dry Goods	100
5136	Men's and Boys' Clothing and Furnishings	100
5137	Women's, Children's and Infants' Clothing and Accessories	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Frozen Foods	100
5143	Dairy Products	100
5144	Poultry and Poultry Products	100
5145	Confectionery	100
5146	Fish and Seafoods	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables	100
5149	Groceries and Related Products, N.E.C.	100
5152	Cotton	100
5153	Grain	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C.	100
5161	Chemicals and Allied Products	100
5171	Petroleum Bulk Stations and Terminals	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	100
5181	Beer and Ale	100
5182	Wines and Distilled Alcoholic Beverages	100
5191	Farm Supplies	100
5194	Tobacco and Tobacco Products	100
5198	Paints, Varnishes, and Supplies	100
5199	Nondurable Goods, N.E.C.	100

* * * * *

James C. Sanders,

Administrator.

Date: March 26, 1986.

[FR Doc. 86-15695 Filed 7-10-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-135-AD; Amdt. 39-5355]

Airworthiness Directives; Avion Marcel Dassault-Breguet Aviation Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Avion Marcel Dessault-Breguet Aviation (AMD-BA) Model Mystere-Falcon 50 series airplanes, which requires the modification of the fuel crossfeed valves. This action is prompted by reports of malfunctioning of fuel supply distributor booster pump crossfeed valves, which could cause fuel starvation of two engines if it became necessary to supply fuel from a single fuel feed line.

EFFECTIVE DATE: July 28, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 06708. It may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Generale de l'Aviation Civile (DGAC), which is the civil airworthiness authority of France, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which exists on certain AMD-BA Model Falcon 50 series airplanes. Water accumulation in the crossfeed valve actuator can cause failure of the valve due to seizure of the motor and reduction gearing, or corrosion of the internal electrical system. Failure of the crossfeed valve to function could cause two engines to fail in the event it becomes necessary to supply fuel to two of the three engines from a single supply. AMD-BA issued Service Bulletin F50-28-17 (F50-182), dated April 4, 1985, which describes modification of the valves by replacing the actuators with sealed actuators, and installation of a placard to preclude installation of the unmodified actuators. The DGAC issued Consigne de Navigabilité Number 86-55-4(b) in April 1986, which makes the modification mandatory.

Since this condition is likely to exist on airplanes of the same type design registered in the United States, this AD requires replacement of the actuators in the distributor blocks of crossfeed valves with sealed actuators and the installation of a placard in accordance with the aforementioned service bulletin.

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

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Avion Marcel Dassault-Breguet Aviation: Applies to Model Mystere-Falcon 50 series airplanes, serial numbers 24 through 146, 148 through 158, 160, 161, and 162. Compliance is required as indicated below. To prevent engine failure due to fuel starvation, accomplish the following, unless previously accomplished:

A. Within the next 21 days after the effective date of this AD, replace the actuators in the distributor blocks of the crossfeed valves and install a placard in accordance with Avion Marcel Dassaul-Breguet Aviation Service Bulletin F52-28-17 (AMD-BA F50-182), dated April 4, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive, who have not already received the appropriate service bulletin from the manufacture, may obtain copies upon request to Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 28, 1986.

Issued in Seattle, Washington, on July 2, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-15620 Filed 7-10-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-ANE-17; Amendment 39-5346]

Airworthiness Directives; Rolls-Royce Limited RB211-22B, -535C, and -524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal from service of stage 1 and 2 high pressure compressor (HPC) disk assemblies installed on certain Rolls-Royce RB211 series turbofan engines. The AD is needed to prevent fracture of the stage 1 HPC disk, due to material property deviations induced during the manufacturing process, which could result in uncontained engine failure.

EFFECTIVE DATE: August 14, 1986. Compliance Schedule—As prescribed in the body of the AD. Incorporation by Reference—Approved by the Director of the **Federal Register** on August 14, 1986.

ADDRESSES: The applicable alert service bulletin (ASB) may be obtained from Rolls-Royce Limited, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. A copy of the ASB is contained in Rules Docket Number 85-ANE-17, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring removal from service of stage 1 and 2 HPC disk assemblies installed on certain Rolls-Royce RB211-22B, -535C, and -524 series engines was published in the **Federal Register** on September 4, 1985, (50 FR 35839).

The proposal was prompted by an uncontained stage 1 disk failure in service at 3,188 flight cycles. This failure was precipitated by a non-uniformity in the disk material that occurred during the manufacturing process, resulting in a reduction of the low cycle fatigue life of the stage 1 disk.

Since this condition is likely to exist or develop on other engines of the same type design, the AD requires removal from service of the suspect disk assemblies identified in Appendix 3 of Rolls-Royce ASB RB.211-72-A7774, Revision 1, dated March 21, 1986, at the next 04 module rework but not later than May 31, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. One comment was received. The commenter conducted an industry-wide survey on the proposed rule, and four out of five participants in the survey indicated no objection to the rule.

The remaining participant requested, through the commenter, that a five month extension to the compliance deadline be considered, to facilitate scheduling of two engine removals. Subsequent to issuance of the Notice of Proposed Rulemaking (NPRM), the FAA has determined that 72 disk assemblies listed in Appendix 3 of Rolls-Royce ASB RB.211-72-A7774, dated June 21, 1985, can be deleted. The remaining disk assemblies are now listed in the same appendix of Revision 1, of the ASB, dated March 21, 1986. The scheduling of only one of the participant's engines is now affected, because the recent revision to the ASB eliminated certain disk assemblies from Appendix 3. The request is denied since an equivalent level of safety is not provided for, and the impact of removing the one remaining engine is not considered substantial. The same revision of the ASB also identifies in Appendix 4, additional disk assemblies requiring removal which will be the subject of a new NPRM.

Conclusion

The FAA has determined that this regulation only involves 63 Rolls-Royce RB211-22B, -535C, and -524 series turbofan engines at an approximate total cost of 1.88 million dollars. It has also been determined that less than 11 small entities will be affected by this regulation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is

contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Rolls-Royce Limited: Applies to Rolls-Royce RB211–22B, –535C, and –524 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained stage 1 high pressure compressor (HPC) disk fracture, accomplish the following:

Remove from service stage 1 and 2 HPC disk assemblies identified by serial number in Appendix 3 of Rolls-Royce Alert Service Bulletin (ASB) RB.211–72–A7774, Revision 1, dated March 21, 1986, or FAA approved equivalent, at the next 04 module rework but not later than May 31, 1987.

Note.— Module 04 rework is defined as any work carried out on any part of the 04 module after its removal from an engine for any reason other than use as a spare to transfer to another engine or to permit removal of the 03 module

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Rolls-Royce ASB RB.211–72–A7774, Revision 1, dated March 21, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Rolls-Royce Limited, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 85–ANE–17, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on August 14, 1986.

Issued in Burlington, Massachusetts, on June 20, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–15621 Filed 7–10–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AWP–21]

Revision to the Concord, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This revision to the Concord, California, control zone corrects several errors. It updates the coordinates for Buchanan Field and changes the effective hours for the control zone.

EFFECTIVE DATE: 0901 UTC, October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297–1649.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 71 of the Federal Aviation Regulations corrects several errors in the description of the Concord, California, control zone. It updates the coordinates for Buchanan Field and changes the effective hours for the control zone. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

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/Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

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

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.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Concord, CA—[Revised]

Within a 3-mile radius of Buchanan Field, Concord, California (lat. 37°59'23" N., long. 122°03'21" W.) within 2 miles each side of the Concord VOR 188° radial extending from the 3-mile radius zone to the VOR. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the *Airport/Facility Directory.*

Issued in Los Angeles, California, on June 25, 1986.

James A. Holweger,

Acting Manager, Air Traffic Division.

[FR Doc. 86–15622 Filed 7–10–86; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-62]

Staff Accounting Bulletin No. 62

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding the appropriate accounting and financial reporting when a registrant adopts or changes its policy with respect to discounting certain unpaid claims liabilities related to short-duration insurance contracts.

DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence Salva or Jeremiah J. Harrington, Office of the Chief Accountant (202–272–2130), or Howard P. Hodges, Jr. Division of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal Securities laws.

List of Subjects in 17 CFR Part 211

Accounting, Securities, Reporting and recordkeeping requirements.

Jonathan G. Katz,

Secretary.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 62 to the table found in Subpart B.

Staff Accounting Bulletin No. 62

The staff hereby adds Section N to Topic 5 of the staff accounting bulletin series. Section N discusses the staff's views regarding the appropriate accounting and financial reporting when a registrant adopts or changes its policy with respect to discounting certain unpaid claims liabilities related to short-duration insurance contracts.

Topic 5: Miscellaneous Accounting

* * * * *

N. *Discounting by Property-Casualty Insurance Companies Facts:* A registrant which is an insurance company discounts certain unpaid claims liabilities related to short-duration [1] insurance contracts for purposes of reporting to state regulatory authorities, using discount rates permitted or prescribed by those authorities ("statutory rates") which approximate 3½ percent. The registrant follows the same practice in preparing its financial statements in accordance with generally accepted accounting principles ("GAAP"). It proposes to change for GAAP purposes, to using a discount rate related to the historical yield on its investment portfolio ("investment related rate") which is represented to approximate 7 percent, and to account for the change as a change in accounting estimate, applying the investment related rate to claims settled in the current and subsequent years while the statutory rate would continue to be applied to claims settled in all prior years.

Question 1: What is the staff's position with respect to discounting claims liabilities related to short-duration insurance contracts?

Interpretive Response: The staff is aware of efforts by the accounting profession to assess the circumstances under which discounting may be appropriate in financial statements. Pending authoritative guidance resulting from those efforts however, the staff will raise no objection if a registrant follows a policy for GAAP reporting purposes of:

Discounting liabilities for unpaid claims and claim adjustment expenses at the same rates that it uses for reporting to state regulatory authorities with respect to the same claims liabilities, or

Discounting liabilities with respect to settled claims under the following circumstances:

(1) The payment pattern and ultimate cost are fixed and determinable on an individual claim basis, and

(2) The discount rate used in reasonable based on the facts and circumstances applicable to the registrant at the time the claims are settled.

Question 2: Does the staff agree with the registrant's proposal that the change from a statutory rate to an investment related rate be accounted for as a change in accounting estimate?

Interpretive Response: No. The staff believes that such a change involves a change in the method of applying an accounting principle, i.e., the method of selecting the discount rate was changed. The staff therefore believes that the registrant should reflect the cumulative effect of the change in accounting by applying the new selection method retroactively to liabilities for claims settled in all prior years, in accordance with the requirements of Accounting Principles Board Opinion No. 20, "Accounting Changes." Initial adoption of discounting for GAAP purposes would be treated similarly. In either case, in addition to the disclosures required by APB Opinion No. 20 concerning the change in accounting principle, a preferability letter from the registrant's independent accountant is required.

[FR Doc. 86–15711 Filed 7–10–86; 8:45 am]

BILLING CODE 8010–01–M

[1] The term "short-duration" refers to the period of coverage (see FASB Statement No. 60, paragraph 7), not the period that the liabilities are expected to be outstanding.

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Final Amendment to Rules of Practice and Procedure; Missing Children Information in Commission Mailings

AGENCY: U.S. International Trade Commission.

ACTION: Final amendment of rules.

SUMMARY: This rule amends part 201 of the Commission's *Rules of Practice and Procedure* to add a provision for implementing a policy of including information on missing children in certain mailings made by the Commission. This regulation is issued to comply with the requirement set out in 39 U.S.C 3220 and to implement the Office of Juvenile Justice and Delinquency Prevention (OJJDP) guidelines published in the **Federal Register** on November 8, 1985 (50 FR 46622).

EFFECTIVE DATE: June 26, 1986.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0375.

SUPPLEMENTARY INFORMATION: On February 6, 1986, the Commission issued a notice of proposed amendment to the rules and solicited comments on the proposed amendment. Comments were received from the Department of Justice (DOJ). The DOJ requested that the summary of the regulation amendment note that the amendment is made to implement the OJJDP guidelines. This has been so noted above.

The DOJ also requested that the new regulation specify whether it applies agency-wide or whether subunits of the agency are authorized to establish their own regulations. As originally drafted, the amendment provides, in paragraph (a), that the regulation is applicable on a Commission-wide basis. As a result of this, no subunits are authorized to issue their own regulations.

The DOJ suggested that the new regulation provide greater detail on the procedural aspects of the plan (e.g., types of mailings to be used, identities of coordinators in various offices). This has not been done, since the regulation was drafted in general terms in order to maximize the flexibility of the Commission in implementing the statute.

The DOJ requested that the regulation state that missing children information shall be exclusively obtained from the National Center for Missing and

Exploited Children. This change has been made in the final regulation.

Another suggestion was to discuss the "shelf-life" limitation (the time limit on use of missing children information) and the priority mail provision (priority should be given to mail within United States territory). Both of these topics are covered in the OJJPD guidelines; it was not considered necessary to repeat in the regulation all of the material discussed in those guidelines.

Finally, the DOJ suggested that the notice should note whether the document is classified pursuant to executive order, and whether there is a need for a regulatory analysis or an environmental impact statement. The Commission has determined that the amendment does not constitute a major rule for the purposes of Executive Order 12291, and that neither a regulatory impact analysis nor an environmental impact statement is required.

Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure.

PART 201—[AMEMDED]

Part 201 is amended as set forth below:

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 335, 72 Stat. 680, sec. 401, 76 Stat. 902; 19 U.S.C. 1335, 1802, unless otherwise noted.

2. Section 201.3a, concerning missing children information, is added as follows:

§ 201.3a Missing children information.

(a) Pursuant to 39 U.S.C. 3220, penalty mail sent by the Commission may be used to assist in the location and recovery of missing children. This section establishes procedures for such use and is applicable on a Commission-wide basis. The Program and Planning Branch, Office of Management Services, 202–724–1234, shall be the point of contact for matters related to the implementation of this section.

(b) Missing children information shall be inserted in or affixed to such mailings of Commission monthly calendars, notices, press releases, and other documents as the Commission may direct. Such missing children information shall be obtained exclusively from the National Center for Missing and Exploited Children.

(c) The procedure established in subsection (b) above will result in missing childern information being inserted in an estimated 25 percent of the Commission's penalty mail and will cost an estimated $1,500 for the first year of implementation. The Director of Administration shall make such changes in the procedure as he deems appropriate to maximize the use of missing children information in the Commission's mail.

By order of the Commission.

Issued: July 1, 1986.

Kenneth R. Mason,

Secretary.

FR Doc. 86–15444 Filed 7–10–86; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353

[Docket No. 60610–6110]

Antidumping Duties, Discontinuances; Regulation Deleted

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The International Trade Administration ("ITA") is removing 19 CFR 353.53(e) from the Code of Federal Regulations. The regulation to be deleted provides that, with respect to antidumping investigations concluded by a discontinuance issued prior to January 1, 1980, the ITA will review each discontinuance pursuant to section 751 of the Tariff Act of 1930, as amended. The regulation further states that each discontinuance remains in effect until modified or terminated. Upon re-examining the regulation and considering public comments, the ITA concludes that Congress repealed the statutory authority for discontinuances, effective January 1, 1980. Accordingly, the ITA has no authority to review or maintain such discontinuances.

EFFECTIVE DATE: August 11, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Deputy Chief Counsel for Import Administration, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue at 14th Street, NW., Washington, DC 20230. (202) 377–1411.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking concerning the removal of 19 CFR 353.53(e) was published in the **Federal Register** (48 FR 44587) on September 29, 1983, soliciting public comments due on November 14, 1983. Removal of 19 CFR 353.53(e) is necessary because the ITA has no authority to administer such a rule.

Background

The Department of the Treasury ("Treasury") administered the Antidumping Act, 1921 ("the 1921 Act") prior to its repeal, effective January 1, 1980. Under the 1921 Act, Treasury developed a practice of "discontinuing" antidumping investigations in certain circumstances. Treasury regulations subsequently codified the discontinuance procedure. The appropriate circumstances for discontinuing a pending investigation included (1) minimal potential dumping margins relative to the export volume of the merchandise, price revisions to eliminate any likelihood of current dumping, and assurances given to eliminate any likelihood of future dumping; (2) termination of sales of the merchandise to the United States and assurances that sales would not resume; or (3) other circumstances which made it no longer appropriate to continue the pending investigation. A discontinuance ended the dumping investigation, and Treasury no longer withheld appraisement of merchandise covered by the discontinuance. Treasury then monitored the imports to determine compliance with the assurances. If Treasury subsequently determined that there were, or were likely to be, sales at less then fair value, it would reopen the discontinued investigation and withhold appraisement.

The Trade Act of 1974, Pub. L. 93–618 ("the Trade Act"), ratified the practice and amended section 201(b) of the 1921 Act to give Treasury express authority to issue tentative and final discontinuances. This authority ended on January 1, 1980, the effective date of the Trade Agreements Act of 1979 ("The TAA"), Pub. L. 96–39, which repealed the 1921 Act in its entirety and amended the Tariff Act of 1930 ("the Tariff Act") to include new antidumping provisions.

Reorganization Plan No. 3 of 1979 (44 FR 69273) and Executive Order 12188 (45 FR 989) transferred the authority for administering the antidumping laws to the Secretary of Commerce. Pursuant to this authority, the ITA adopted regulations for implementing the new antidumping provisions (45 FR 8190, Feb. 6, 1980), including 19 CFR 353.53(e), which provides that the ITA will review discontinuances pursuant to section 751 of the Tariff Act and that discontinuances will remain in effect until modified or terminated.

Questions concerning the legality of 19 CFR 353.53(e) arose. The ITA

reviewed the legal status of the regulation in light of the repeal of the 1921 Act. The ITA preliminarily concluded that it had no authority to adopt 19 CFR 353.53(e) and that the regulation was void *ab initio*. Accordingly, the ITA proposed that this regulation be deleted and solicited public comments (48 FR 44587; Sept. 29, 1983). Seven comments were received, four favoring and three opposing the proposal. The ITA has considered each of these comments and has decided that the conclusion expressed in the notice of proposed rulemaking was correct.

Discussion of Comments Received

The opponents of the proposal contend that in enacting the TAA, Congress intended that, except for duty collection and assessment, the ITA would assume all antidumping functions formerly performed by Treasury, including the monitoring of discontinuances. The report of the House Ways and Means Committee which accompanied the TAA states that section 734 of the Tariff Act, which provides for suspension agreements, replaces Treasury's substantive requirements for discontinuances with more specific criteria and "improves the procedural safeguards under present law by providing increased participation by the petitioner and allowing an exporter to demonstrate that he is not dumping." H.R. Rep. No. 317, 96th Cong., 1st Sess. 67 (1979). Two opponents claim that the similarities between the two types of actions and the fact that Congress apparently intended suspension agreements to be a procedural improvement over discontinuances implies that Congress intended that the ITA continue monitoring discontinuances. Another opponent relies on similar language in the Senate Finance Committee report concerning the TAA.

Citing a statement of the Court of International Trade in its opinion in *Matsushita Electric Industrial Co.* v. *United States*, 529 F. Supp. 670, 671, n. 3, 2 CIT 263, 264 (1981) to the effect that although the TAA repealed the 1921 Act, it essentially carried all of the 1921 Act provisions forward in title VII of the Tariff Act, one of the three opponents claims that the *Matsushita* opinion supports the argument that discontinuances survived repeal of the 1921 Act. In addition, the opponent argues that, in strengthening and improving the antidumping remedy, Congress both recodified the discontinuance concept in the TAA and increased the protection afforded petitioners by this procedure.

We are unpersuaded by these arguments for several reasons. First, we note that in 1983 the Congress was apprised of the fact that the ITA was not reviewing Treasury discontinuances under section 751 of the Tariff Act, but that Congress did not, in subsequently passing the Trade and Tariff Act of 1984 (Pub. L. No. 98–573; 98 Stat 2948), act or comment on the suggestion that the ITA's failure to review the discontinuances was contrary to law. See *Options to Improve the Trade Remedy Laws: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 98th Cong., 1st Sess. 655 (1983). Second, there were three distinct types of agency actions or proceedings referred to in the 1921 Act: (1) Antidumping "findings;" (2) pending investigations; and (3) discontinuances. Congress enacted specific transitional provisions addressing only two of these. Section 106(a) of the TAA expressly preserves existing antidumping findings. Section 102(b) describes in detail rules for completing antidumping investigations still pending on January 1, 1980. In contrast, the transitional provisions of the TAA failed even to mention discontinuances, which Congress previously had expressly authorized. The transitional rules, read in light of section 106(a) of the TAA, which states that "[t]he Antidumping Act, 1921 (19 U.S.C. 160 et seq.) is hereby repealed," support our conclusion that Congress intended all discontinuances to cease to exist upon the effective date of repeal of the 1921 Act, the authority under which they were issued.

Third, we are not persuaded that any similarities between discontinuances and suspension agreements imply that Congress intended for the ITA to continue monitoring discontinuances. The Senate Report expressly states that the substantive and procedural provisions of section 734 regarding suspension agreements are intended to implement United States obligations under the *Agreement on Interpretation and Application of Article VI of the General Agreement on Tariffs and Trade* (the "Antidumping Code" or "the Code"). Article 7 of the Antidumping Code and section 734 of the TAA require procedures that were not present under Treasury's discontinuance practice. For example, exporters may now request that the injury aspect of a dumping investigation be continued after a suspension agreement based on a price undertaking has become effective. This opportunity, mandated by the Antidumping Code, was not available for discontinuances. Thus, the differences in statutory language between "discontinuances" and "suspension agreements" reflect deliberate substantive and procedural changes in the antidumpting law rather than mere changes in terminology.

Moreover, because the Antidumping Code requires that exporters be given an opportunity to avoid a suspension agreement if there is a finding of no injury, the United States would be contravening its international obligations if it were to continue to enforce discontinuances. Although section 3(a) of the TAA provides that any conflict between the statute and the Code must be resolved in favor of domestic law, there is no unambiguous statement of Congressional intent to preserve dicontinuances despite their inconsistency with the Code. Therefore, the better view is that Congress intended to repeal the authority for monitoring discontinuances.

One of the three opponents also argues that such action would violate the "general savings" statute, which provides, in relevant part, that:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution of such penalty, forfeiture, or liability. 1 U.S.C. 109.

We do not agree that section 109 has any bearing on our authority to monitor discontinuances. A discontinuance is not a "forefeiture" or a "penalty." Recognizing that discontinuances did not survive the repeal of the 1921 Act does not extinguish any "liability" cognizable under section 109. Although parties to discontinuance usually gave certain assurances and were expected to comply with Treasury's monitoring activities, these obligations themselves were not "liabilities." Arguably, Treasury could have created a liability in a discontinued investigation by resuming the investigation, issuing an antidumping finding and assessing antidumping duties, if a breach of the terms of the discontinuance occurred prior to repeal of the 1921 Act. This argument is academic, however, because the Treasury Department did not do so. Any breach of the terms of a discontinuance occurring after January 1, 1980 would not create a liability that was "incurred under [the repealed] statute," within the meaning of section 109, because the violation would have occurred after the 1921 Act was repealed.

One opponent contends that removing 19 CFR 353.53(e) would violate certain

third party beneficiary rights arising from the discontinuances. It characterizes discontinuances as contracts between Treasury and the foreign parties, because in each discontinuance both parties exchanged mutual promises and gave consideration through the exporters' price assurances and Treasury's decision to discontinue the investigation. The opponent asserts that petitioners in discontinued investigations are the intended beneficiaries of the discontinuance and that nullifying the discontinuances violates their beneficiary rights.

We do not agree that petitioners were intended beneficiaries of discontinuances. The circumstances in which Treasury issued discontinuances (no margins, minimal margins, or no exports to the United States) did not indicate that Treasury intended to give any petitioner the benefit of an exporter's promise regarding price assurance. Even if a petitioner were an intended beneficiary, it would be, at best, a "donee beneficiary," in which case the promisor (exporter) and promisee (government) retain power to discharge or modify the duty to the donee beneficiary by subsequent agreement.

Further, as a result of the repeal of the 1921 Act and approval of the United States' obligations under article 7 of the Antidumping Code, reviewing discontinuances now would be contrary to public policy, which means any third party benefits which might have existed are thereby extinguished. We are unpersuaded by the court cases cited by the opponent advancing the third party beneficiary argument. None concerned situations where the contract is unenforceable as against public policy.

Another opponent also argues that even if the ITA has the authority to remove the regulation at this time, the regulation cannot be considered void *ab initio*. Thus, the ITA is at least obliged to follow its own regulations in reviews begun under section 751(a) of the Tariff Act prior to the effective date of removal.

We disagree. The question is not whether the ITA must follow its own regulation, but whether an agency can administer an *ultra vires* regulation. Upon reexamination of the statute and the legislative history, we have concluded that we lacked the authority to issue the regulation in the first place. Therefore, the regulation has had no legal effect since promulgation and is not binding on ITA.

Finally, two opponents suggest that even if the ITA were not required to monitor discontinuances, it nevertheless has the discretion to do so. One opponent states that removing the regulation would be unwise as a matter of policy because it would mean that, unless Congress expressly saved a particular provision, the provision would not survive a subsequent reenactment or temporary expiration of a statute, creating a risk that large parts of the law could unintentionally become unadministrable.

The other opponent notes that the ITA has often adopted regulations which, although not specifically required by statute or legislative history, the agency deems to be consistent with the general purposes of the statute. It cites as an example the ITA's practice regarding the exporter's sales price offset. This party argues that the regulation should not be removed because monitoring discontinuances furthers the general purposes of the Act.

We do not agree that the ITA has any discretion in regard to monitoring discontinuances, because, in our opinion, no discontinuances survived the repeal of the 1921 Act. In light of this conclusion and our related conclusion that we lack any authority to monitor discontinuances, the arguments advanced as to why such action would be good policy are unpersuasive.

The fact that discontinuances did not survive repeal of the 1921 Act and that 19 CFR 353.53(e) must be repealed does not, however, leave the domestic industry without a remedy for dumping. If a domestic industry has evidence that sales at less than fair value are causing injury, the ITA will of course consider any petition filed by the industry under section 732 of the Tariff Act.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small business entities. No domestic entities will be directly affected by the rule. No small business entities will be required to use any professional skills in complying with the rule, because the rule places no projected reporting, recordkeeping, or other compliance requirements on small entities. Further, the rule will reduce any uncertainty or confusion that the present regulation causes. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

Executive Order 12291

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not 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 United States-based enterprises to compete with foreign-based enterprises in domestic or import markets. Therefore, preparation of a Regulatory Impact analysis is not required and no preliminary or final Regulatory Impact analysis has been or will be prepared.

Paperwork Reduction Act

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 19 CFR Part 353

Business and industry, Foreign trade, Imports, Trade practices.

For these reasons, Part 353 of Chapter III, Title 19, the Code of Federal Regulations, is amended as follows:

PART 353—[AMENDED]

1. The authority citation for Part 353 continues to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts, II, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 93–573, 98 Stat. 2948.

§ 353.53 [Amended]

2. Paragraph (e) of 19 CFR 353.53 is removed.

Dated: May 14, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–15701 Filed 7–10–86; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

21 CFR Part 182

[Docket No. 81N-0314]

Sulfiting Agents; Revocation of GRAS Status for Use on Fruits and Vegetables Intented To Be Served or Sold Raw to Consumer

Correction

In FR Doc. 86-15391 beginning on page 25021 in the issue of Wednesday, July 9, 1986, the "EFFECTIVE DATE" on that page is incorrect and should read "August 8, 1986".

BILLING CODE 1505-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs, Not Subject to Certification; Progesterone and Estradiol Benzoate

Correction

In FR Doc. 86-13441 appearing on page 21746 in the issue of Monday, June 16, 1986, make the following correction:

In the second column, in the SUPPLEMENTARY INFORMATION, fifth line, the third word should read "Synovex®"

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Danger Zones; Restricted Areas and Navigation Regulations; Correction

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule; correction.

SUMMARY: On October 22, 1985 (50 FR 42696), the Corps published final rules which combine all danger zone, restricted area and prohibited area regulations in a new Part 334. The regulations were previously published in Part 207. As a result of the removal of the danger zone/restricted area/prohibited area regulations from Part 207, several of the remaining paragraphs should have been redesignated in numerical order. This correction will not affect the contents of the regulations in Part 207, but will reorganize several of the remaining regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard or Mr. Sam Collinson, at (202) 272-1783.

SUPPLEMENTARY INFORMATION:

§ 207.640 [Amended]

1. Section 207.640 *San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River and connecting waters, Calif.* was amended by the removal of paragraphs (a), (c), (f), (g), (g)(1), (g)(2), (g)(3), (h), (i), (j), (l) and (n). Paragraphs (b), (d), (e), (k), (m), (o), and (p) were designated "Reserved". Only paragraph (q) titled, *"Sacramento Deep Water Ship Channel Barge Lock and Approach Canals; use, administration and navigation"* remained under § 207.640. Accordingly, the reserved paragraphs are removed, the heading is deleted and paragraph (q) is redesignated as § 207.640 and the heading is changed to: *Sacramento Deep Water Ship Channel Barge Lock and Approach Canals; use, administration and navigation.*

§ 207.750 [Amended]

2. Section 207.750, *Puget Sound Area, Wash.*, was similarly amended by removing paragraphs (a), (c), (e), (j), (k), (n), (o) and (p). Paragraphs (b), (d)(1)-(6), (h), (i) and (m) were designated "Reserved". These reserved paragraphs are no longer necessary and are removed. Paragraph (d)(7) *Statistics* is a fragment of a previous paragraph (d) which was removed. The paragraph heading "(d) *Waterway connecting Port Townsend and Oak Bay; use, administration and navigation"* is added and paragraph (d)(1), which defines the area is also added as follows: "(1) *Works to which regulations apply.* The "canal grounds" when used in this paragraph shall mean that area between the south end of the jetties in Oak Bay and the northerly end of the dredge channel approximately 400 yards northwest of Port Townsend Canal Light. The "canal" is the water lying between these limits and the banks containing the same." The paragraph is changed from (d) to (a) and paragraphs (7), (8), (9), (10), and (11) are corrected to read (2) through (6), respectively.

3. In section 207.750, paragraph (f) is removed.

4. In § 207.750, paragraph (g) *Lake Washington Ship Canal; use, administration and navigation"* is designated as paragraph (b), and paragraph (l) *West Waterway, Seattle Harbor, navigation* is redesignated as paragraph (c).

Dated: June 24, 1986.

Approved:

Dennis J. York,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 86-15403 Filed 7-10-86; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3047-7; AL-013]

Approval and Promulgation of Implementation Plans; Alabama; SIP Revision for TSP

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving a State Implementation Plan (SIP) revision for Total Suspended Particulates (TSP), submitted by the Alabama Department of Environmental Management (ADEM). This revision changes the emission limits for four point sources in Talladega County, one of which is a relaxation of the current emission limit. This relaxation will allow Kimberly Clark Corporation to burn more bark at the wood-waste boiler in order to decrease fuel costs. To offset this increase in allowable emissions, the allowable emission limits from three other sources have been tightened.

DATES: This rule will become effective on August 11, 1986.

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

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

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130

Office of the Federal Register, 1100 L Street NW., Washington, DC

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

FOR FURTHER INFORMATION CONTACT: Phillip Burns, EPA, Region IV, Air Programs Branch, at the above listed address and telephone 404/347-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On December 26, 1985, the US Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPR) for the Alabama SIP for TSP which revises certain emission limits in pulp and paper mills in Talladega County. In the NPR, we requested comments on the proposed emission limits, one of which was a relaxation from the previous limit. No adverse public comments were received on the NPR.

On October 23, 1984, ADEM submitted a SIP revision to EPA for review and approval. EPA had several comments and problems with that submittal. All issues were finally resolved with a submittal by ADEM on July 1, 1985. The results of EPA's review of the modeling analysis indicate that the National Ambient Air Quality Standard (NAAQS) for TSP and the Prevention of Significant Deterioration (PSD) increment will be protected.

The SIP revision consists of the relaxation of the allowable emission limit for the wood-waste boiler, and the tightening of the allowable emission limits for three other source categories: recovery boilers, smelt dissolver tanks, and coal-fired boilers up to 300 MMBTU/hr, in Talladega County. The overall result of these changes is to increase allowable emissions slightly; however, actual emissions will remain the same.

For more detailed information, please see EPA's NPR of December 26, 1985 (50 FR 52805), and the Technical Support Document of the same date.

Final Action

EPA is approving the Alabama SIP revision for certain TSP emission limits in Talladega County.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

Incorporation by reference of the SIP for the State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, particulate matter, intergovernmental relations, incorporation by reference.

Dated: July 2, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is hereby amended as follows:

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

Authority: 42 U.S.C 7401–7642.

2. Section 52.50 is amended by adding paragraph (c)(41) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(41) State implementation plan revisions, submitted by the Department of Environmental Management on May 17, 1985.

(i) Incorporation by reference.

(A) Amendments to Alabama Department of Environmental Management's (ADEM) Air Rules and Regulations: addition of Paragraphs 4.3.5, 4.7.6, 4.7.7, 4.8.3(a), 4.8.3(b), 4.8.3(c), revision of Paragraph 4.8.3, adopted on October 10, 1984.

(B) Resolution by the Alabama Environmental Management Commission adopting the proposed regulations into the ADEM's Air Rules and Regulations on October 10, 1984.

(ii) Other material

(A) Dispersion modelling of area around Kimberly Clark Corporation's Talledega County facility.

[FR Doc. 86–15549 Filed 7–10–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[EPA Action IA 2060; A–7–FRL–3046–8]

Approval and Promulgation of Implementation Plans; State of Iowa; New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On December 31, 1985, the State of Iowa submitted revisions to Chapter 22 of its air pollution control regulations. These revisions cure deficiencies in the State's preconstruction review procedures that are applicable in nonattainment areas. Today's notice takes final action to approve these revisions. This action constitutes complete approval of the State's Part D State Implementation Plan (SIP) for carbon monoxide (CO). Consequently, the construction ban for new sources of CO, in effect since July 1, 1979, is rescinded.

EFFECTIVE DATE: This action will be effective September 9, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments should be sent to Mr. Larry A. Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submission is available for inspection during normal business hours at the following locations:

Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, DC 20460

Iowa Department of Water, Air and Waste Management, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319

Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 1980, EPA disapproved a portion of the Iowa Part D SIP because the State had no adequate means of preventing major sources of CO from constructing in violation of section 173 of the Clean Air Act. Consequently, a CO construction ban has been in effect in CO nonattainment areas since July 1, 1979.

In an effort to cure the SIP deficiency and rescind the construction ban, the Iowa Department of Water, Air and Waste Management (IDWAWM) submitted revised new source regulations on July 18, 1984; i.e., Chapter 22. On September 12, 1985, at 50 FR 37176, EPA approved the Chapter 22 regulations with the exception of three subrules, 22.5(4)g, i, and j, and certain other regulations which were not related to the requirements of section 110 of the Clean Air Act. The effect of the September 12 approval was to incorporate, into the SIP, the Iowa permitting rules for sources located in primary and secondary nonattainment areas, with the exception of the three subrules on which EPA is taking final approval action today.

These subrules were not approvable because they did not adequately address EPA requirements concerning federal enforceability of certain emission reduction credits and the crediting of source shutdown and curtailment as emission offsets. On November 20, 1984, EPA presented its complete review of the Chapter 22 regulations in a notice of proposed rulemaking (49 FR 45761). Therefore, the reader is referred to the November 20 notice for a detailed discussion of the previous deficiencies in subrules 22.5(4)g, i, and j.

On May 14, 1985, IDWAWM provided a commitment to adopt and submit appropriate revisions to these three

subrules. This commitment allowed EPA to approve the remainder of the Chapter 22 regulations in the September 12 rulemaking.

II. Review of the State Submittal

On December 31, 1985, in keeping with its commitment, IDWAWM submitted revisions to subrules 22.5(4)g, i, and j. These revisions were adopted by the Iowa Water, Air and Waste Commission on December 17, 1985, after proper notice and public hearing.

Subrule 22.5(4)g allows offset credit for reduced operating hours, if the reduced operating hours are included in the permit and the reduction occurred after January 1, 1978, and the work force is notified of the curtailment. Credit may be given for past curtailments only if the new source is a replacement for the curtailed source. Thus, the State's revised subrule meets the requirements of 40 CFR 51.18(j)(3)(ii)(*c*) relating to curtailment of operating hours.

Subrule 22.5(4)i allows offset credit for closing of an existing source. The source owner or operator must notify the work force of the proposed shutdown. Credit may be given for past shutdowns only if the new source is a replacement for the shutdown source. Source shutdowns prior to January 1, 1978, shall not be acceptable for offset credit. Thus, this revised subrule meets the requirements of 40 CFR 51.18(j)(3)(ii)(*c*) relating to source shutdown.

Subrule 22.5(4)j allows external offsets; i.e., emission reductions from sources not owned or controlled by a source seeking such offsets. Credit may be allowed provided the external source's permit is amended to require the emission reduction or a consent order is entered into by IDWAWM and the existing source. Consent orders for external offsets must be incorporated into the SIP and be approved by EPA before offset credit may be granted. Thus, this subrule meets the requirements of 40 CFR 51.18(j)(3)(ii)(*e*).

The State's December 31 submittal also included two nonsubstantive rule revisions. The CFR citations in subrules 22.5(2) a and b were updated to reference 40 CFR 81.316 as amended through May 1, 1985. The subrules identify the nonattainment areas to which the permit regulations apply.

On July 8, 1985, at 50 FR 27892, EPA promulgated revised stack height requirements which affect new source review permitting procedures. On April 22, 1986, the State submitted a letter of commitment which addressed EPA's stack height requirements with respect to its new source review permit program. The State committed to submit revised stack height regulations by May 30, 1986. Until such time that these regulations are fully approved, the State shall review and issue new source permits in accordance with EPA's stack height requirements. EPA ACTION: In today's notice, EPA takes final action to approve IDWAWM, Department 900, Chapter 22 air pollution subrules 22.5(2) a and b; and 22.5(4) g, i, and j as discussed herein. Today's action constitutes complete approval of the State's Part D SIP for CO. As a result of the complete approval status, the CO construction ban is hereby rescinded.

EPA believes this submission is noncontroversial and is taking final action to approve it without prior proposal. The previously-referenced November 20, 1984, **Federal Register** proposal specifically identified the changes which were necessary to obtain approval of the regulations. No adverse public comments were received, and this final rulemaking is consistent with the options presented in the November 20 notice.

The public should be advised that this action will be effective September 9, 1986. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I hereby certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons.

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

Dated: July 2, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.820 is amended by adding paragraph (c)(45) as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(45) Revised Chapter 22 subrules 22.5(2) a and b; and revised subrules 22.5(4) g, i, and j, all relating to new source review in nonattainment areas, were submitted on December 31, 1985, by the Iowa Department of Water, Air and Waste Management.

(a) Incorporation by reference.

(i) Revised Chapter 22 subrules 22.5(2) a and b; and subrules 22.5(4) g, i, and j, adopted by the State on December 17, 1985.

(ii) April 22, 1986, letter of commitment from the Iowa Department of Water, Air and Waste Management to submit stack height regulations by May 30, 1986, and to implement EPA's stack height requirements until such time that the regulations are fully approved.

§ 52.823 [Removed]

3. Section 52.823 is removed.

[FR Doc. 86–15550 Filed 7–10–86; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52 and Part 81

[KS 1702; A–7–FRL–3045–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Section 107(d) of the Clean Air Act, as amended, provides for the designation of areas as either attainment, nonattainment, or unclassified with respect to the National Ambient Air Quality Standards (NAAQS). Part D of the Act required states to adopt and submit plans to attain one or more of the NAAQS for areas which had recorded violations of the NAAQS. On March 3, 1978 (43 FR

8964). EPA designated Douglas County, Kansas, nonattainment with respect to the primary ozone air quality standard. On April 3, 1981, EPA conditionally approved the plan to attain the ozone standard. Included in the State's ozone State Implementation Plan (SIP) revision was K.A.R. 28–19–69, Cutback Asphalt, which was applicable in designated ozone nonattainment areas.

On February 25, 1985, the State of Kansas requested redesignation of Douglas County to attainment. EPA advised the State that redesignation could not proceed because the cutback asphalt rule only applied in ozone nonattainment areas. Therefore, final redesignation of Douglas County would be a relaxation of the approved ozone SIP. Subsequently, the State revised the applicability section of the cutback asphalt regulation in order for the rule to remain effective after redesignation to attainment.

Today's action approves the State's revised applicability portion of K.A.R. 28–19–69, and approves the State's request to redesignate Douglas County from nonattainment to attainment with respect to the NAAQS for ozone.

EFFECTIVE DATE: This action is effective September 9, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State submission are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; and the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION: The criteria for approval of 1979 SIP revisions were established in the General Preamble for Part D SIPs, published on April 4, 1979. Plans were to be directed toward reducing peak ozone concentrations within the major urbanized areas. This was expected to solve the rural ozone problem by minimizing volatile organic compounds (VOC) emissions and, more importantly, ozone that may be transported from urban to rural areas. Plans for rural nonattainment areas were to provide the necessary legally enforceable procedures for the control of large VOC sources (more than 100 tons per year potential emissions) for which EPA has issued control techniques guidelines (CTG). Since the only CTG applicable in Douglas County concerned cutback asphalt, Kansas rule K.A.R. 28–19–69 was the only rule applicable to existing VOC sources in that County. The Agency established rural ozone nonattainment areas as those with less than 200,000 population as determined by the 1970 census. Douglas County had a population less than 200,000 at the time the plan was submitted and was clearly a rural nonattainment area. The population remains less than 200,000 and is still "rural" under the policy.

K.A.R. 28–19–69 prohibits use of cutback asphalt from April 1 through October 1 of any calendar year and specifies the use of emulsified asphalt during the April 1 through October 1 ozone season. This rule was conditionally approved as part of the State's ozone SIP on April 3, 1981 (46 FR 20164). This and other reasonably available control technology (RACT) regulations were adopted as temporary rules in order to meet the submittal date established under Part D of the Act. The condition required submittal of these rules after they became permanent on May 1, 1981. The condition affecting the Kansas VOC RACT regulations was removed on July 7, 1981 (46 FR 35089). Thus, the State of Kansas had a fully-approved ozone SIP applicable to Douglas County.

On February 25, 1985, the State of Kansas requested that EPA redesignate Douglas County from nonattainment to attainment for ozone. The basis for the request was air quality data showing no violations of the ozone standard from April 1982 through October 1984 and an approved ozone SIP.

EPA's review of the State's VOC RACT regulations found that these rules were applicable only in nonattainment areas. Thus, an ozone redesignation to attainment would result in a SIP relaxation. EPA advised the State it could not redesignate an area if the redesignation would result in a SIP relaxation. In order to approve the redesignation request, the State would have to revise its RACT rules so they would remain effective when a nonattainment area is redesignated attainment.

After notice and a public hearing, the Kansas Department of Health and Environment revised the applicability portion of K.A.R. 28–19–69 so that it will remain in effect after an applicable ozone nonattainment area is redesignated attainment. There was no change to the restrictions placed on the use of cutback asphalt because of this revision. The revision will ensure that the rule will remain effective after an area is redesignated attainment for ozone.

The State of Kansas resubmitted its request for redesignation of Douglas County and revised rule K.A.R. 28–19–69 on February 21, 1986. The submittal includes ozone data from Douglas County from 1982 through 1985. EPA's review of these data found no exceedances for the years 1982 through 1985.

EPA's redesignation policy under section 107 of the Act is summarized in an April 21, 1983, memorandum from Sheldon Meyers. For ozone nonattainment areas, there must be three years with no more than one exceedance per year, or in the absence of three years, there must be two years with no exceedances. In addition, there must be evidence that the improvement in air quality is a result of real and enforceable emissions reductions. EPA's review of the State's submittal found that it satisfied both of the above criteria. The State has demonstrated that the air quality improvement was a result of enforceable emissions reductions.

ACTION: EPA approves the revisions of K.A.R. 28–19–69 and the request to redesignate Douglas County, Kansas, from nonattainment to attainment with respect to the ozone ambient air quality standard.

EPA believes there is good cause to approve the State's request and regulatory revision without prior proposal. The regulation was originally approved by EPA on July 7, 1981 (46 FR 35089). The rule revision merely continues the applicability of the rule after redesignation. The revisions in the rule are minor and EPA believes noncontroversial. EPA also believes redesignation of this rural County to be noncontroversial.

The public should be advised that this action will be effective September 9, 1986. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period.

EPA has examined this redesignation action and finds that it will have no substantive effect on the stringency of the Kansas SIP.

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

Under section 307(b)(1) of the Clean Air Act as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects

40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: June 27, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.870 is amended by adding paragraph (c)(17) as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(17) Revised regulation K.A.R. 28–19–69, applicable to the use of cutback asphalt, was submitted by the Secretary of the Kansas Department of Health and Environment on February 21, 1986.

(i) Incorporation by reference.

(A) Revised regulation K.A.R. 28–19–69 as approved by the Kansas Attorney General on December 5, 1985.

* * * * *

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.317 the Kansas ozone table is amended by revising the entry for Douglas County to read as follows:

§ 81.317 Kansas.

Kansas—O_x

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
Douglas County		X
* * * * *		

* * * * *

[FR Doc. 86–15417 Filed 7–10–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[A–4–FRL–3046–9; KY–023]

Designation of Areas for Air Quality Planning Purposes; Redesignation of SO_2 Area, Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today redesignates Jefferson County, Kentucky to attainment of the primary and secondary sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). Today's notice takes final action on EPA's proposal to redesignate the County to attainment of the SO_2 NAAQS as indicated in the October 16, 1984 **Federal Register** (49 FR 40424).

DATE: This action is effective August 11, 1986.

ADDRESSES: Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

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

Kentucky Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Building #2, Fort Boone Plaza, Frankfort, Kentucky 40601

Air Pollution Control, District of Jefferson County, 914 East Broadway, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Melvin Russell of the EPA Region IV Air Programs Branch at the above address, telephone 404/881–2864 (FTS 257–2864).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962 at 8996), and September 11, 1978 (43 FR 40412 at 40425), EPA designated a number of areas in the Commonwealth of Kentucky as not attaining the NAAQS for SO_2, total suspended particulate (TSP), ozone (O_3), and carbon monoxide (CO). Today's notice relates only to the currently designated SO_2 nonattainment status of the area. In response to the nonattainment designations, the Kentucky Department for Natural Resources and Environmental Protection on June 15, 1979, adopted State Implementation Plans (SIP) revisions designed to comply with the Clean Air Act (CAA) amendments of 1977 and submitted them to EPA. Another major submittal including the Jefferson County regulations, was made on June 29, 1979.

EPA proposed conditional approval of the SO_2 portion of Kentucky's Part D (nonattainment) SIP revisions in the November 15, 1979, **Federal Register**; 44 FR 65781. In the **Federal Register** of October 31, 1980; 45 FR 72153, EPA promulgated final conditional approval action of the State's SO_2 attainment plan. On September 24, 1982, Kentucky submitted the changes to EPA needed to satisfy the conditions of SIP approval. Thus, EPA fully approved Kentucky's SO_2 SIP on March 22, 1983; 48 FR 11945. The reader is referred to the **Federal Register** notices listed above for further information. On February 23, 1983, Kentucky requested EPA to redesignate the area to attainment of the SO_2 NAAQS: On October 16, 1984, 49 FR 40424, EPA proposed to approve the State's request. No public comments were received on EPA's proposed approval.

Discussion

EPA has established certain basic criteria that must be met before redesignation of SO_2 nonattainment areas may be approved. For the subject redesignation the following basic criteria must be met:

1. The attainment of the NAAQS in the area must be based upon emission reductions achieved as a result of implementation of an EPA approved SIP.

2. Ambient air monitoring data for the area must show attainment of the NAAQS for a minimum of eight consective quarters (24 consecutive months).

3. Ambient air quality dispersion modeling must demonstrate that the SO_2 NAAQS will be met in the area.

4. The redesignation must conform to requirements set forth under the Clean Air Act (CAA) section 123 (Stack Height Criteria).

The following outline discussion presents EPA's rationale in determining that the criteria have been met and redesignation is in order.

I. The attainment of the NAAQS in the area must be based upon emission reductions achieved as a result of implementation of an EPA approved and enforceable SIP.

Rationale for Approval

Appendix N to the Kentucky SIP contains regulations developed and duly adopted by the Air Pollution Control District of Jefferson County (the District). Kentucky has incorporated the regulations as part of the SIP. Kentucky submitted the regulations to EPA for approval as part of the SIP on June 15 and 29, 1979. On March 22, 1983, 48 FR 11945, EPA fully approved those portions of Kentucky's SIP for attainment of the SO_2 NAAQS. That approval included District Regulation 6.07. Regulation 6.07 contains the allowable emission limits for existing SO_2 sources in Jefferson County. With EPA approval on March 22, 1983, the regulation became part of Kentucky's EPA enforceable SIP. Pursuant to District Regulation 6.07, applicable sources must comply with an emission limit of 1.2 lbs/MBTU for solid fuel and 0.8 lbs/MBTU for liquid or gaseous fuel. Applicable sources are in compliance with the appropriate emission limits. The approved control strategy for the area included air quality modeling (see III below). The modeled sources represented 92% of the total SO_2 emissions in Jefferson County.

Ambient air quality data submitted by the District indicates that the area has been attaining the SO_2 NAAQS since the last calendar quarter of 1980 (See II below). On February 23, 1983, Kentucky submitted a request to EPA asking that EPA redesignate the area to attainment of the SO_2 NAAQS. Therefore, the first criterion has been met, i.e., an EPA approved SIP is in place, and its implementation has resulted in attainment. The validity of the SIP demonstration of attainment involves the modeling and is addressed in III below.

II. Ambient Air monitoring data for the area must show attainment of the NAAQS for a minimum of two consecutive years (8 consecutive quarters).

Rationale for Approval

The NAAQS for sulfure dioxide are as follows:

1. Primary Standards

a. 80/$\mu g/m^3$ (0.03 ppm)—annual arithmetic mean.

*b. 365$\mu g/m^3$ (0.14 ppm)—24 hour concentration.

2. Secondary Standard

*0 $\mu g/m^3$ (0.5 ppm)—3-hour concentration.

The area has not violated the SO_2 NAAQS for a period of four years, and continues to attain the standards. The area has been attaining the NAAQS since the last quarter of 1980. EPA has reviewed the air quality data, through the first quarter of calendar year 1985, and the area continues to attain the NAAQS.

III. Air Quality Modeling must demonstrate that the SO_2 NAAQS will be attained when the applicable control strategy is implemented.

Rationale for Approval

The air quality analysis that Kentucky submitted, was based upon block averages for the 24-hour and three-hour standards. That analysis demonstrated attainment of the primary and secondary SO_2 NAAQS. EPA's analysis also demonstrated attainment of the NAAQS when the applicable emission limits were applied. Please refer to the Technical Support Document (TSD) of this notice for full discussion of EPA's modeling analysis.

IV. The redesignation must conform to requirements set forth under the Clean Air Act (CAA) section 123 regulations (Stack Height Criteria).

Rationale for Approval

On April 17, 1985, the Air Pollution Control District of Jefferson County (the District) certified in a letter to EPA Region IV that the stack height credits for the District's SO_2 sources would not be affected by EPA's revised section 123 criteria, as set forth in proposed revisions to the stack height regulations. (49 FR 44878 (November 9, 1984).) That letter and its attached source analysis table are part of the TSD to this notice. EPA has reviewed records of the compliance status of the subject sources and found no compliance problems. EPA also reviewed the stack height analysis and confirmed the modeling results provided by the District. (See III above and TSD for modeling results.)

Based upon the District's analysis and letter of certification, and EPA's review and confirmation, EPA concludes that for the purpose of this redesignation the section 123 criteria have been met. EPA's conclusion regarding the stack height credits is based on its review of the District's April submittal as compared with the final revised stack height regulations published on July 8, 1985 (50 FR 27892). The conclusion of this review is that twenty-one of the twenty-three stacks were either "in existence" prior to 1971, or below the de minimis stack height of 65 meters, or both. The two remaining stacks are subject to NSPS under 40 CFR Subpart D and have stack height credit based on the 2.5H formula, with both stacks constructed in 1976. As a result, credits for all of these stacks are judged to be consistent with the 1985 regulations.

As indicated above, the final revised stack height regulations were promulgated after proposal of this action. However, the principal provisions of the regulations that are relevant to these sources, the "in existence" definition and the de minimis height, are unchanged from the 1982 regulations, as well as the 2.5H formula that applies to two stacks. As a result, EPA considers that it is unnecessary to repropose in order to provide an additional opportunity for public comment on these issues, and further delay a decision that has experienced significant delay since proposal. Under these circumstances, EPA judges that it would be contrary to the public interest for further delay this decision while an unnecessary public comment opportunity is offered. Accordingly, EPA finds good cause to dispense with reproposal.

Action

Based on the foregoing EPA today approves Kentucky's request to redesignated Jefferson County, Kentucky to attainment of the primary and secondary SO_2 NAAQS. This final action completes EPA's redesignation of Jefferson County, Kentucky to attainment of the primary and secondary SO_2 NAAQS.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

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

List of Subjects in 40 CFR Part 81

Air pollultion control, National parks, Wilderness areas.

* Maximum value not to be exceeded more than once per year.

Dated: July 2, 1986.

Lee M. Thomas,

Administrator.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart C—Section 107 Attainment Status Designations

§ 81.318 [Amended]

2. In § 81.318 the "Kentucky—SO_2" table is amended by removing the entry for Jefferson County.

[FR Doc. 86–15672 Filed 7–10–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3500, 3510, 3520, 3530, 3540, 3560, 3570, and 3580

Leasing of Solid Minerals Other Than Coal and Oil Shale; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction to final rulemaking.

SUMMARY: A final rulemaking revising the regulations covering leasing of solid minerals other than coal and oil shale was published in the **Federal Register** on April 22, 1986 (51 FR 15204), with an effective date of May 22, 1986. This document makes corrections to that final rulemaking.

FOR FURTHER INFORMATION CONTACT: Robert Bruce, (202) 343–8735.

1. Page 15213, first column, the index is corrected by removing from where it appears the phrase "3502.2–3 Associations, including partnerships and trust" and replacing it with the phrase "3502.–2–3 Associations, including partnerships and trusts.".

§ 3500.0–3 [Corrected]

2. On page 15214, first column, § 3500.0–3(c)(3) is corrected by adding after the parenthetical phrase "(16 U.S.C. 460n et seq.)" the figure "(ii)" and by adding after the parenthetical phrase "(16 U.S.C. 90c et seq.)" the figure "(iv)".

§ 3501.1–2 [Corrected]

3. On page 15216, first column, § 3501.1–2(a), in the seventh line, the word "of" is corrected to read "or".

§ 3508.2 [Corrected]

4. On page 15221, first column, § 3508.2(a), in the fourth line, the word "or" is corrected to read "of".

§ 3512.3–3 [Corrected]

5. On page 15224, third column, § 3512.3–3, the opening paragraph is corrected to read "After an initial review and clearance of the application, but prior to the issuance of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:".

§ 3521.6 [Corrected]

6. On page 15229, third column, in § 3521.6 paragraphs (c) and (d) are corrected by removing from where it appears, the word "part" and replacing it with the word "subpart".

§ 3527.1–2 [Corrected]

7. On page 15233, first column, § 3527.1–2(a) is corrected by removing the phrase "than $1 an acre" and replacing it with the phrase "than $1 per acre".

PART 3530—[CORRECTED]

8. In the authority citation for Part 3530, on page 15234, first column, the first line of that column is corrected by removing from where it appears, the parenthetical phrase "(47 Stat. 1487)".

§ 3531.7 [Corrected]

9. On page 15235, first column, § 3531.7(d) is corrected by removing from where it appears, the phrase "Subpart 3500" and replacing it with the phrase "Subpart 3509".

§ 3544.4–4 [Corrected]

10. On page 15242, first column, § 3544.4–4 is corrected by removing from where it appears, the phrase "between exploration plans" and replacing it with the phrase "between proposed exploration plans".

§ 3564.5 [Corrected]

11. On page 15243, second column, § 3564.5 is corrected by removing from where it appears the figure "(a)".

§ 3560.0–3 [Corrected]

12. On page 15249, second column, § 3560.0–3 is corrected by removing from where it appears, the word "are" and replacing it with the word "is".

§ 3560.5 [Corrected]

13. On page 15250, first column, § 3560.5 is corrected by removing from where it appears, the phrase "Subpart 3563 and 3565" and replacing it with the phrase "Subparts 3563 and 3565".

§ 3562.1 [Corrected]

14. On page 15250, third column, § 3562.1 is corrected by removing from where it appears, the figure "(A)" and replacing it with the letter "A".

§ 3565.3 [Corrected]

15. On page 15253, third column, § 3565.3(c)(1) is corrected by removing from where it appears, the word "land" and replacing it with the word "lands".

Subpart 3576—[Corrected]

16. On page 15254, second column, the index under Subpart 3576 is corrected by removing from where it appears, the phrase "3576.4 Least terms and conditions." and replacing it with the phrase "3576.4 Lease terms and conditions.".

§ 3574.3–3 [Corrected]

17. On page 15255, third column, § 3574.3–3(f) is corrected by removing from where it appears, the phrase "bidder in the successful bidder" and replacing it with the phrase "bidder if the successful bidder".

§ 3581.4–1 [Corrected]

18. On page 15257, second column, § 3581.4–1 is corrected by removing from where it appears, the phrase "right in the lease to renew" and replacing it with the phrase "right in the lessee to renew".

§ 3582.2–1 [Corrected]

19. On page 15257, third column, § 3582.2–1 is corrected by correcting paragraph (b) by removing from where it appears, the phrase "BOR–WEST 1004" and replacing it with the phrase "BOR–WST 1004" and by correcting paragraph (c) by removing from where it appears, the phrase "numbered MP–CAS–7002," and replacing it with the phrase "numbered NP–CAS–7002,".

§ 3582.2–2 [Corrected]

20. On page 15258, first and second columns, § 3582.2–2 is corrected by correcting paragraph (b)(1) by removing from where it appears, the phrase "Lake an all lands" and replacing it with the phrase "Lake and all lands" and by correcting paragraph (d) by removing from where it appears, the phrase "and the Office of the State Directors," and replacing it with the phrase "and the Offices of the State Directors,".

§ 3583.5 [Corrected]

21. On page 15259, second column, § 3583.5 is corrected by removing from where it appears, the phrase "Material

Act of 1947," and replacing it with the phrase "Materials Act of 1947,".

§ 3584.3 [Corrected]

22. On page 15259, second column, § 3584.3 is corrected by removing from where it appears, the phrase "hardrock minerals within this area" and replacing it with the phrase "hardrock minerals within the area".

§ 3585.4-1 [Corrected]

23. On page 15260, first column, § 3585.4-1 is corrected by removing from where it appears, the phrase "under their subpart," and replacing it with the phrase "under this subpart,".

§ 3585.5-8 [Corrected]

24. On page 15260, third column, § 3585.5-8(a) is corrected by removing from where it appears, the phrase "between the exploration plan" and replacing it with the phrase "between proposed exploration plans".

J. Steven Griles,

Assistant Secretary of the Interior.

July 3, 1986.

[FR Doc. 86-15628 Filed 7-11-86; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6616

[NM-64057]

New Mexico; Withdrawal of Public Lands For Administrative Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 16.45 acres of public land from surface entry and mining for 20 years to construct an addition to the Bureau of Land Management's Farmington Administrative Office Headquarters. The addition will consist of an office building, warehouse, and wareyard. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 11, 1986.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, P.O Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6589.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management administrative site:

New Mexico Principal Meridian

T. 29 N., R. 13 W.,
sec. 7, lots 5, 11, and 12.

The area described contains 16.45 acres in San Juan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended

June 3, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-15668 Filed 7-10-86; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6618

[AA-55135]

Alaska; Revocation of Public Land Order No. 5548

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order which withdrew 46,080 acres of national forest lands for selection by Goldbelt, Inc. Of this acreage, 5,219 acres will be available for selection by the State of Alaska, but if not selected will be opened to mining and mineral leasing. The remaining 40,861 acres have either been transferred to a Native Corporation, or are within the Admiralty Island National Monument and will remain closed to mining and mineral leasing.

EFFECTIVE DATE: July 11, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 13 Anchorage, Alaska 99513, (907) 271-5060.

By virtue of the authority vested in the Secretary of the Interior, by section 22(h)(4) of the Alaska Native Claims Settlement Act of 1971, 85 Stat. 713, 714, 43 U.S.C. 1621(h)(4), it is ordered as follows:

1. Public Land Order No. 5548 of November 21, 1975, which withdrew lands for selection under section 14(h)(3) of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. 1613(h)(3) is hereby revoked.

2. As provided in subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the following described lands for a period of ninety-one (91) days from the date of publication of this order. After that date, any of the lands described herein that were not selected by the State of Alaska will immediately become subject to the terms and conditions of withdrawals of record.

Copper River Meridian

U.S. Survey No. 1096, that portion lying within T. 37 S., R. 64 E., secs. 19 and 20, excluding U.S. Survey No. 1555.
U.S. Survey No. 2170.

Copper River Meridian (Unsurveyed)

T. 37 S., R. 64 E.,
Sec. 7, SW¼NE¼, NE¼NW¼, NW¼SE¼;
Sec. 17, SW¼NE¼, S½NW¼, N½SW¼.
T. 41 S., R. 66 E.,
Sec. 29, NE¼, E½NW¼, NW¼SW¼, SE¼;
Sec. 32, E½NE¼;
Sec. 33, W½NE¼, SE¼NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼.
T. 42 S., R. 66 E.,
Sec. 3, W½;
Sec. 4, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 10, W½NE¼, N½NW¼, N½SE¼, SE¼SE¼;
Sec. 11, SW¼SW¼;
Sec. 12, SE¼;
Sec. 13, N½;
Sec. 14, N½, excluding lands lying within Interim Conveyance Nos. 408 and 409;
Sec. 15, NE¼, excluding lands lying within Interim Conveyance Nos. 408 and 409.
T. 42 S., R. 67 E.,
Sec. 7, S½;
Sec. 8, S½S½;
Sec. 9, S½SE¼;
Sec. 15, SW¼NE¼, W½, SE¼;
Sec. 16, N½NE¼, SE¼NE¼, N½NW¼;
Sec. 17, N½N½;
Sec. 18, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 23, N½N½;
Sec. 24, SW¼NE¼, W½, SE¼.

The areas described aggregate approximately 5,219 acres.

3. At 10 a.m. on October 10, 1986, subject to valid existing rights, the provisions of existing withdrawals and the requirement of applicable laws, the lands described in paragraph 2 above will be opened to applications and offers under the mineral leasing laws and location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and the time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United

States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local Courts.

4. The remaining 40,861 acres have either been transferred to a Native Corporation or are within the Admiralty Island National Monument as established by section 503(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2399. Accordingly, these lands remain closed to the mining and mineral leasing laws. Pursuant to section 22(h)(4) of the Alaska Native Claims Settlement Act, we have determined that this withdrawal is no longer necessary to accomplish the purposes of this act.

J. Steven Griles,

Assistant Secretary of the Interior.

July 1, 1986.

[FR Doc. 86-15629 Filed 7-10-86; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1085

ICC Regional and Field Office Locations; Technical Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendments to final rules.

SUMMARY: Part 1085 of Title 49 contains a list of ICC Regional Office locations and telephone numbers that will become out of date due to the reorganization of the Commission's Office of Compliance and Consumer Assistance (OCCA) which will become effective on August 1, 1986. The purpose of this notice is to update that list.

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Love (202) 275-7849.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1085

Freight forwarders, Moving of household goods.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1085—[AMENDED]

1. The authority citation for 49 CFR Part 1085 continues to read as follows:

Authority: 49 U.S.C. 1010.

§ 1085.1 [Amended]

2. The list of Interstate Commerce Commission Regional Office locations and Telephone numbers that follows § 1085.1 is revised to read as follows:

* * * * *

INTERSTATE COMMERCE COMMISSION
REGIONAL OFFICE LOCATIONS

Address and telephone No.	States served
Eastern Region	
Interstate Commerce Commission, Gateway Building, 3535 Market Street, Room 16400, Philadelphia, PA 19104 (215) 596-4040.	MA, NY, MD, NC, GA, FL, OH, CT, ME, NH, NJ, RI, VT, DE, DC, PA, VA, WV, AL, KY, MS, SC, TN
Central Region	
Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1304, Chicago, Illinois 60604 (312) 353-6204.	ID, MN, NE, MO, KS, TX, LA, IL, MI, ND, SD, WI, AR, IA, OK
Western Region	
Interstate Commerce Commission, 211 Main Street, Suite 500, San Francisco, CA 94105 (415) 974-7125.	CA, AZ, CO, UT, WA, AK, HI, ID, MT, NV, NM, OR, WY

Field Office Locations

Eastern Region

Boston Massachusetts 02114, 150 Causeway Street, Room 501 (617) 223-2372

New York, New York 10278, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 1807 (212) 264-1072

Baltimore, Maryland 21201, 1025 Federal Building, Charles Center 31, Hopkins Plaza (301) 962-0809

Charlotte, North Carolina 28205, Room CC-516 Mart Office Building, 800 Briar Creek Road (704) 371-6115

Atlanta, Georgia 30309, Peachtree Twenty-Fifth Bldg., 1718 Peachtree Street NW. (404) 881-4371

Jacksonville, Florida 32207, 4057 Carmichael Avenue, Suite 233 (904) 791-2551

Cleveland, Ohio 44119, Celebrezze Federal Building, Room 913, 1240 E. 9th Street (216) 522-4000

Central Region

Indianapolis, Indiana 46204, 429 Federal Building & U.S. Courthouse, 46 East Ohio Street (317) 269-7701

Omaha, Nebraska 68102, Room 728, Federal Office Bldg., 106 South 15th Street (402) 221-4644

Kansas City, Missouri 64106, 2111 Federal Building, 911 Walnut Street (816) 374-5562

Minneapolis, Minnesota 55401, 475 Federal Building & U.S. Courthouse, 110 South Fourth St. Baldinger (612) 349-3271

St. Louis, Missouri 63101, 210 North 12th Street, Room 1761 (314) 425-4104

Fort Worth, Texas 76102 411 West 7th Street, Suite 500 (817) 334-3101

New Orleans, Louisiana 70113, T-9038 Federal Building & U.S. Post Office, 701 Loyola Avenue (504) 589-6101

Western Region

Los Angeles, California 90012, 1321 Federal Building, 300 North Los Angeles Street (213) 894-4008

Phoenix, Arizona 85025, 2028 Federal Building, 230 North First Avenue (602) 261-3834

Denver, Colorado 80202, 142 U.S. Customs House, 721—19th Street (303) 844-3162

Salt Lake City, Utah 84138, 2419 Federal Building, 125 State Street (801) 524-5680

Seattle, Washington 98174, 858 Federal Building, 915 Second Avenue (206) 442-5421

Noreta R. McGee,

Secretary.

[FR Doc. 86-15658 Field 7-10-86; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1105, 1150, and 1180

[Ex Parte No. 274 (Sub-No. 10)] [1]

Environmental Notices in Abandonment and Rail Exemption Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has modified its rules to require that notices of environmental and energy matters be served when filing notices of exemption under 49 CFR 1150.31 and 1180.2(d); and to require carriers to certify that a notice of environmental and energy matters has been served on the designated State agency on agencies. Under § 1105.11, a carrier is required to serve a notice of environmental or energy matters on the designated State agency or agencies when filing a notice of exemption under various of our class exemptions. Ex Parte No. 274 (Sub-No. 8), *Exemption of Out of Service Rail Lines, et al.* (not printed), served December 31, 1985, *rev'd on other grounds* in *Illinois Commerce Commission* v. *ICC*, U.S.C.A., D.C. Cir. No. 83-1836, *et al.*, April 4, 1986. We noted there that uncertainty has existed as to whether environmental notices are required in connection with notices of exemption and made procedural amendments to remove that uncertainty. We are making the additional procedural amendments set forth in the appendix to remove any continuing uncertainty in regard to the regulations previously adopted in these proceedings.

EFFECTIVE DATE: These modifications are effective on August 11, 1986.

[1] Embraces Ex Parte No. 282 (Sub-No. 3), *Railroad Consolidation Procedures*, and Ex Parte No. 392 (Sub-No. 1), *Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901.*

FOR FURTHER INFORMATION CONTACT:
Donald J. Shaw, Jr. (202) 275–7245.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect the quality of the human environment or energy conservation. This action is exempt from the requirements of 5 U.S.C. 603. However, the Commission has certified that this action will not have a significant economic impact on a substantial number of small entities, because it merely affects the service and filing of environment notice.

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Parts 1150 and 1180

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Dated: July 2, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1105—[AMENDED]

1. The authority citation for 49 CFR Part 1105 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, and 10903–10906; 16 U.S.C. 1247(d); 42 U.S.C. 4332; and 5 U.S.C. 553 and 559.

2. Section 1105.11 is revised to read as follows:

§ 1105.11 Environmental notice.

A carrier filing a notice of intent to abandon a line under 49 CFR 1152.20(d), a notice of exemption under 49 CFR 1150.31, 1152.50, or 1180.2(d) or a petition for examption pursuant to 49 U.S.C. 10505 (except when exemption is sought for an action normally not subject to environmental review under § 1105.6(c) of this part) shall serve upon the designated agency in each State a notice of environmental and the energy matters, together with its notice of petition, a carrier must certify to the Commission that this environmental notice requirement has been satisfied.

PART 1150—[AMENDED]

3. The authority citation for 49 CFR Part 1150 continues to read as follows:

Authority: 49 U.S.C. 10321, 10326, 10901, 10903, and 10505; 5 U.S.C. 553 and 559.

4. A new paragraph (g) is added to § 1150.33 to read as follows:

§ 1150.33 Information to be contained in the notice.

* * * * *

(g) A certificate that applicant has complied with the notice requirements of 49 CFR 1105.11.

PART 1180—[AMENDED]

5. The authority citation for 49 CFR Part 1180 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903–10906, 11341, 11343–11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

6. A new paragraph (g)(3) is added to § 1180.4 to read as follows:

§ 1180.4 Procedures.

* * * * *

(g) * * *

(3) The railroad must certify that it has complied with the notice requirements of 49 CFR 1105.11.

* * * * *

[FR Doc. 86–15659 Filed 7–10–86; 8:45 am]
BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 51, No. 133
Friday, July 11, 1986

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ANE-12]

Airworthiness Directives; General Electric CF6-80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would impose a life limit on certain forward engine mount thrust links installed on General Electric CF6-80C2 series turbofan engines. The proposed AD is required to prevent fracture of forward mount thrust links which could result in the mount's inability to carry design loads.

EFFECTIVE DATE: Comments must be received on or before September 16, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-12, 12 New England Executive Park, Burlington, Massachusetts 01803

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86-ANE-12".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7085.

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 the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, 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 Number 86-ANE-12". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain forward engine mount frame and platform thrust links installed on General Electric CF6-80C2 series turbofan engines have a finite low cycle fatigue life limit. This determination is based on fatigue test results. Since this condition is likely to exist or develop in other engines of the same type design, the proposed AD would require that certain forward engine mount thrust links be retired on or prior to accumulating 5,000 service cycles since new.

Conclusion

The FAA has determined that this proposed regulation involves approximately 170 engines, and the cost per engine would be negligible. 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 on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

General Electric Company:

Applies to General Electric CF6-80C2 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent fracture of forward engine mount thrust links accomplish the following:

(a) Remove from service forward engine mount frame thrust links, Part Numbers 9383M45G01 and 9383M45G02, on or prior to accumulating 5,000 service cycles since new.

(b) Remove from service forward engine mount platform thrust links, Part Numbers 9383M45G03 and 9383M45G04, on or prior to accumulating 5,000 service cyles since new.

Note.—These life limits are incorporated into General Electric CF6-80C2 Maintenance Manual GEK92450, Chapter 5, by Revision 1.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and

21.199 to a base where the AD can be accomplished.

Issued in Burlington, Massachusetts, on June 25, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-15623 Filed 7-10-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-20]

Proposed Revocation of the Red Bluff, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Red Bluff, California, control zone. One of the requirements to have a control zone is that hourly and special weather observations must be taken at the airport upon which the control zone is designated. Weather observations must be taken during the times and dates a control zone is effective. Red Bluff, California, will not meet the criteria for retention of the control zone since the Red Bluff Weather Service Office (WSO) will be closed and its functions transferred to the Redding, California, WSO. This action will raise the floor of controlled airspace in the vicinity of Red Bluff Municipal Airport from the surface to 700 feet above ground level.

DATE: Comments must be received on or before August 22, 1986.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 86-AWP-20, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, at 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, P.O. Box 92007, Worlday Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Red Bluff, California, control zone. One of the requirements to have a control zone is that hourly and special weather observations must be taken at the airport upon which the control zone is designated. Weather observations must be taken during the times and dates a control zone is designated. Red Bluff, California, will not meet the criteria for retention of the control zone since the Red Bluff Weather Service Office (WSO) will be closed and its functions transferred to the Redding, California, WSO. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

The FAA has determined that this proposed 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, Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

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

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.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Red Bluff, CA—[Revoked]

Issued in Los Angeles, California, on June 25, 1986.

James A. Holweger,

Acting Manager, Air Traffic Division.

[FR Doc. 86-15624 Filed 7-10-86; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3047-7]

Approval and Promulgation of Implementation Plans, Connecticut; Reasonably Available Control Technology for King Industries, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from King Industries, Inc. (King) in Norwalk, Connecticut. King produces oil corrosion inhibitors. The required RACT control methods are add-on control equipment, process modifications, and recordkeeping. The intended effect of this action is to propose approval of a source-specific RACT determination made by the State in accordance with commitments from its Ozone Attainment Plan approved by EPA on March 21, 1984 (49 FR 10542).

DATES: Comments must be received on or before August 11, 1986.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Bldg., 165 Capitol Ave., Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David Conroy, (617) 223–4869; FTS 223–4869 or Lynne Naroian, (617) 223–4873; FTS 223–4873.

SUPPLEMENTARY INFORMATION: Regulation 22a–174–20(ee), "Reasonably Available Control Technology for Large Sources," was approved by EPA on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. This regulation requires the Connecticut Department of Environmental Protection (DEP) to determine and impose RACT on all stationary sources with potential VOC emissions of one hundred tons per year (TPY) or more that are not already subject to Connecticut's regulations developed pursuant to the Control Techniques Guideline (CTG) documents. All RACT determinations must be submitted to the EPA for approval as sources-specific SIP revisions. On February 28, 1986, EPA received a SIP revision from the Connecticut DEP. This revision is Connecticut proposed State Order #944 to be issued to King in Norwalk, Connecticut. This Order defines and imposes RACT for all of the emission points identified. It requires full compliance by December 1, 1986.

King is a major VOC source (potential emissions over 100 TPY) and is subject to RACT under Connecticut's Regulation 22a–174–20(ee).

King utilizes three processes which emit VOC's at its Norwalk facility. The three processes are an alkylation process, an alkylate sulfonation process, and an overbase metal sulfonate process. The processes include a combination of the following: chemical reaction, distillation, condensation, and extraction.

On February 28, 1986, the DEP submitted proposed State Order #944 to be issued to King Industries, Inc. of Norwalk, Connecticut. That Order contains operating requirements that King must fulfill by the dates indicated in a Compliance Table (specified in the Order) to achieve RACT. The requirements in the Order are summarized below:

(1) Continue to maintain VOC emission reductions realized in preceding years as noted by the September 6, 1985 RACT Compliance Plan under "major plant improvements."

(2) Maintain continuous use of carbon canisters on the alkylation and the distillation systems of the alkylation process. Each system is subject to the following: (1) Weekly measurements of system performance using a hydrocarbon detection meter (to analyze breakthrough, which is the point in which the carbon loses its effectiveness), and (2) replacement of carbon canisters every three months or whenever measurements indicate that breakthrough has occurred.

(3) Perform daily leak detection inspections visually and with Lower Explosive Limit (LEL) detection meters. Record results and perform repairs immediately.

(4) Complete installation of various control equipment (i.e., chilled water condensers, vent condensers, scrubber).

(5) Initiate certain modifications to specified reactors, vessels, and storage tanks.

(6) Submit applications to construct/operate for any new equipment or modifications pursuant to Connecticut's Regulation No. 22a–174–3, "Permits for Construction and Operation of Stationary Sources."

(7) Submit documentation and progress reports for modification of equipment or the addition of controls.

(8) Document all emission reductions realized through implementation of the proposals of the RACT Compliance Plan.

(9) Develop and maintain operating logs and work practice manuals which define the operating parameters necessary for continued compliance.

EPA has reviewed these requirements and their compliance dates. EPA is proposing to approve Connecticut's proposed State Order as RACT for the VOC emission points identified at King. The DEP's Order also requires King to submit additional emissions data. EPA and the DEP will determine if further reductions are appropriate based upon this information. Any such additional reductions will be incorporated into the Order prior to final rulemaking by EPA approving it as a SIP revision.

EPA is proposing to approve this revision proposed by the DEP, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

This revision is being proposed under a procedure called parallel-processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to the proposed revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State of Connecticut and submitted for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Connecticut State Order #944 as a revision to the Connecticut SIP. The provisions of Connecticut State Order #944 define and impose RACT for the VOC emission points identified at King as required by Regulation 22a–174–20(ee) of the Connecticut Ozone Attainment Plan. The Order requires full compliance by December 1, 1986. EPA is proposing approval with the understanding that King will submit additional emissions data as required by the DEP. EPA and the DEP will determine if further reductions are appropriate based upon this

information. Any such further reductions will be incorporated into the Order prior to final rulemaking approving it as a SIP revision.

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

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

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulaions in 40 CFR Part 51. This revision is being proposed pursuant to sections 110(a) and 301(a) of the Clean Air Act, as amended (42 USC 7410(a) and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: March 20, 1986.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 86–15674 Filed 7–10–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–1– FRL–3046–2]

Approval and Promulgation of Implementation Plans, Massachusetts; Sulfur-in-Fuel Revision for Three Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan revisions submitted by the Commonwealth of Massachusetts. These revisions will revise the sulfur-in-fuel limits for three sources from 0.55 pounds per million Btu heat release potential (approximately equivalent to 1% sulfur content fuel oil) to 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2% sulfur content fuel oil) while imposing maximum fuel use limits at each source. The intended effect of this action is to approve the higher suflur-in-fuel limits and the fuel use limitations at each source under the federally approved State Implementation Plan.

DATES: Comments must be received on or before August 11, 1986.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Bldg., Boston, MA 02203 and at the Division of Air Quality Control of the Massachusetts Department of Environmental Quality Engineering, 1 Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jon Pollack (617) 223–4867, FTS: 223–4867.

SUPPLEMENTARY INFORMATION: On July 18, 1984 and on April 17, 1985, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted revisions to the Massachusetts State Implementation Plan (SIP). These revisions would allow an increase in the sulfur in-fuel limits from 0.55 pounds per million Btu heat release potential (lbs/mBtu), approximately equivalent to 1% sulfur (S) content fuel oil, to 1.21 lbs/mBtu, approximately equivalent to 2.2% S content fuel oil, at the following three sources under the accompanying maximum fuel use limitations:

1. Kendall Company, Colrain, at firing rates up to 580 gallons per hour;
2. Erving Paper Company, Erving, at firing rates up to 647 gallons per hour;
3. Westfield River Paper Company, Russell, at firing rates up to 652 gallons per hour.

Background

On January 3, 1979, DEQE approved amendments to 310 CMR 7.05(1) of the "Regulations for the Control of Air Pollution in the Pioneer Valley Air Pollution Control District" that allowed eligible sources to increase their sulfur-in-fuel limits from 0.55 lbs/mBtu to 1.21 lbs/mBtu. DEQE submitted these amendments to EPA as a SIP revision and included a list of specific sources for which DEQE was proposing the relaxation of sulfur-in-oil limits from 1% to 2.2%. As part of EPA's notice of proposed rulemaking (NPR) on June 27, 1979 (44 FR 37513), EPA proposed to deny permission to relax suflur-in-fuel limits at Kendall Company (Kendall), Erving Paper Company (Erving), and Westfield River Paper Company (Westfield) due to violations of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) predicted by EPA's VALLEY model in the complex terrrain surrounding each source. EPA indicated in the NPR that it would "consider additional data or documentation, such as monitoring data that refutes model predictions" that might be submitted in support of the disapproved sources. In EPA's final rulemaking notice of October 2, 1979 (44 FR 56694), EPA withheld final action on these three sources pending the resolution of the involved concerning the modeled violations and the results of monitoring programs which were being established.

EPA, DEQE, and the three sources met to discuss methods other than the VALLEY model which could be used to demonstrate that the NAAQS would be met in the complex terrain surrounding each source. All three sources are located in deep, narrow river valleys with nearby complex terrain, and previous experience with modeling and monitoring for other sources in similar complex terrain settings in western Massachusetts led EPA and DEQE to believe that the VALLEY model predictions did not accurately represent worst case conditions at these sources. Agreements were reached among EPA, DEQE, and each source to use monitoring data in lieu of VALLEY modeling to demonstrate attainment of the NAAQS in the complex terrain.

Under the provisions of Massachusetts Regulation 310 CMR 7.05(1)(e)(3) (the "equivalent emission regulation"), DEQE and EPA agreed to allow the sources to burn 2.2% S oil with operation restricted to no more then 45% of full load at all times. This restriction ensured that allowable emissions did not exceed those already approved in the SIP. The sources were required to have the monitoring networks in place prior to this switch to 2.2% S oil.

New Technical Support

A network of ambient SO_2 monitors were designed for each source based on the results of the VALLEY modeling. The monitoring networks were designed in consultation with and approved by EPA and DEQE. The monitoring data were then subjected to a roll-up analysis in which impacts attributable to each source were scaled up to account for actual operation during the monitoring period at load levels below the requested maximum allowable limit and for sulfur-in-oil content less than the requested maximum allowable limit of 2.2%. Data were collected from May 1980 to March 1982 at Kendall, from July 1980 to December 1983 at Erving and from July 1980 to December 1982 at Westfield. At least one year of

representative monitoring data were analyzed for each source.

EPA's review of the roll-up analyses indicated that the NAAQS would not be threatened by the approval of these proposed revisions in the complex terrain surrounding Kendall, Erving, and Westfield. Screening modeling was also performed which demonstrated that the NAAQS would be met in the flat terrain areas along the valley floors. These revisions are not subject to Prevention of Significant Deterioration provisions because the baseline has not been triggered in these areas. In addition, an analysis of interstae impact showed that approval of these revisions will not interfere with the attainment or maintenance of the NAAQS in any other state.

EPA's stack height regulations are not an issue here as the stacks are all less than 65 meters in height and each source emits less than 5,000 tons per year of SO_2.

The monitoring program conducted in support of these revisions does not meet all of the precise requirements set forth in EPA's current guidance on the use of monitored data in lieu of modeled estimates. However, EPA is proposing to accept the attainment demonstrations on the basis of the following mitigating factors. First, the sources are small (each with less than 1000 tons per year of allowable SO_2 emissions) and have been burning the higher sulfur fuel since 1980. Thus, there will be no degradation of the existing air quality, which shows attainment of the NAAQS. Second, the agreements on the modeling program and the initiation of data collection predate EPA's guidance on the use of monitoring in lieu of modeling.

These sources have been burning higher sulfur fuel since 1980 with restricted operating conditions. Since the operation of these plants is unlikely to change in the foreseeable future, no actual increases in SO_2 emissions are expected. The increases in allowable emissions at Kendall, Erving, and Westfield are approximately 310, 350, and 350 tons per year respectively.

EPA's detailed review and approval of the technical support submitted for these revisions is contained in a Technical Support Document. Copies of EPA's Technical Support Document and the technical support submitted by DEQE are available for public inspection at the locations listed in the **ADDRESSES** section.

Proposed Action

EPA is proposing to approve revisions to the Massachusetts SIP for SO_2 that will revise sulfur-in-fuel limits for Kendall Company, Erving Paper Company, and Westfield River Paper Company from 0.55 lbs/mBtu to 1.21 lbs/mBtu while imposing maximum hourly fuel use limitations for each source.

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

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

List of Subjects in 49 CFR Part 52

Air pollution control, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642

Dated: February 14, 1986.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 86–15675 Filed 7–10–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-3045-3]

Standards of Performance for New Stationary Sources; Sulfur Emissions From Sulfur Recovery Plants at Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add Method 15A to Appendix A of 40 CFR Part 60 for use as an alternative method to Method 15 for the determination of total reduced sulfur (TRS). The intended effect is to increase the flexibility in choice of testing procedures for performance testing at applicable sources.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before September 24, 1986.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 1, 1986, a public hearing will be held on August 25, 1986, beginning at 10:00 a.m. Persons interested in attending the hearing should call Foston Curtis at (919) 541–2237 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by August 1, 1986.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket number A–86–06, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

Docket. Docket No. A–86–06, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The rulemaking

Method 15A incorporates the Method 6 analysis procedure for determining TRS compounds that have been oxidized to sulfur dioxide.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

Mention of trade name or commercial products in this publication does not constitute the endorsement or recommendation for use by the Environmental Protection Agency.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed test method in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations

should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or othewise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more: it will not result in a major increase in costs or prices; and there will be no 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 regulation was not submitted to the Office of Management and Budget (OMB) for review because it amends a regulation already in place and does not contain cost implications nor impose additional burdens.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

List of Subjects in 40 CFR Part 60

Air pollution control, intergovernmental relations, reporting and recordkeeping requirements, and incorporation by reference.

Dated: June 27, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

PART 60—(AMENDED)

It is proposed that 40 CFR Part 60 be amended as follows:

1. The authority for 40 CFR Part 60 continues to read as follows:

Authority: Secs. 111, 114, 116, and 301(a) of the Clean Air Act as amended [42 U.S.C. 7411, 7414, 7416, 7601(a)].

2. Section 60.106 is amended by adding a sentence to paragraph (d) introductory text and by revising paragraph (d)(2) to read as follows:

§ 60.106 Test methods and procedures.

* * * * *

(d) * * *

"Method 15A may be used as an alternative method for determining reduced sulfur compounds."

* * * * *

(2) If Method 15 is used, each run shall consist of 16 samples taken over a minimum of 3 hours. If Method 15A is used, each run shall consist of one 3-hour sample or three 1-hour samples. The sampling point shall be at the centroid of the cross section of the duct if the cross sectional area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 in.) if the cross sectional area is 5 m^2 or more and the centroid is more than 1 m from the wall. For Method 15, to ensure minimum residence time for the sample inside the sample lines, the sampling rate shall be at least 3 liters/min (0.1 ft^3/min). The SO_2 equivalent for each run shall be calculated as the arithmetic average of the SO_2 equivalent of each sample during the run. Method 4 shall be used to determine the moisture content of the gases when using Method 15. The sampling point for Method 4 shall be adjacent to the sampling point for Method 15.

The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. Each run shall span a minimum of 4 consecutive hours of continuous sampling. A number of separate samples may be taken for each run provided the total sampling time of these samples adds up to a minimum of 4 consecutive hours. Where more than one sample is used, the average moisture content for the run shall be calculated as the time weighted average of the moisture content of each sample according to the formula:

$$B_{wo} = \sum_{v=1}^{N} B_{si} \frac{t_{si}}{T}$$

where:

B_{wo} = Proportion by volume of water vapor in the gas stream for the run.

N = Number of samples.

B_{si} = Proportion by volume of water vapor in the gas stream for the sample i.

t_{si} = Continuous sampling time for sample i.

T = Total continuous sampling time of all N samples.

* * * * *

3. Appendix A is amended by adding Method 15A to read as follows:

Appendix A—Reference Methods

* * * * *

Method 15A—Determination of Total Sulfur Emissions from Sulfur Recovery Plants in Petroleum Refineries

1. Applicability, Principle, Interferences, Precision, and Bias

1.1 Applicability. This method is applicable to the determination of total reduced sulfur (TRS) emissions from sulfur recovery plants where the emissions are in a reducing atmosphere, such as in Stretford units. The lower detectable limit is 0.1 ppm sulfur dioxide (SO_2) when sampling at 2 liters/min for 3 hours of 0.3 ppm when sampling at 2 liters/min for 1 hour. The upper concentration limit of the method exceeds TRS levels generally encountered in sulfur recovery plants.

1.2 Principle. An integrated gas sample is extracted from the stack, and combustion air is added to the oxygen (O_2) -deficient gas at a known rate. The TRS compounds (hydrogen sulfide, carbonyl sulfide, and carbon disulfide) are thermally oxidized to sulfur dioxide, collected in hydrogen peroxide as sulfate on, and then analyzed according to the Method 6 barium-thorin titration procedure.

1.3 Interferences. Reduced sulfur compounds, other than TRS, that are present in the emissions will also be oxidized to SO_2. For example, thiophene has been identified in emissions from a Stretford unit and produced a positive bias of 30 percent in the Method 15A result. However, these biases may not affect the outcome of the test at units where emissions are low relative to the standard.

Calcium and aluminum have been shown to interfere in the Method 6 titration procedure. Since these metals have been identified in particulate matter emissions from Stretford units, a Teflon filter is required to remove this interference.

When used to sample emissions containing 7 percent moisture or less, the midget impingers have sufficient volume to contain the condensate collected during sampling. Dilution of the H_2O_2 does not affect the collection of SO_2. At higher moisture contents, the potassium citrate-citric acid

buffer system used with Method 16A should be used to collect the condensate.

1.4 Precision and Bias. Relative standard deviations of 2.8 and 6.9 percent at 41 ppm TRS have been obtained when sampling for 1 and 3 hours, respectively. Results obtained with this method are likely to contain a positive bias due to the presence of nonregulated sulfur compounds (that are present in petroleum) in the emissions.

2. Apparatus

2.1 Sampling. The sampling train is shown in Figure 15A–1, and component parts are discussed below. Modifications to this sampling train are acceptable provided that the system performance check is met.

2.1.1 Probe. 0.6-cm (¼-in.) OD Teflon tubing sequentially wrapped with heat-resistant fiber strips, a rubberized heating tape (with a plug at one end), and heat-resistant adhesive tape. A flexible thermocouple or some other suitable temperature/measuring device shall be placed between the Teflon tubing and the fiber strips so that the temperature can be monitored. The probe should be sheathed in stainless steel to provide in-stack rigidity. A series of bored-out stainless steel fittings placed at the front of the sheath will prevent flue gas from entering between the probe and sheath. The sampling probe is depicted in Figure 15A–2.

2.1.2 Particulate Filter. A 50-mm Teflon filter holder and a 1- to 2-μm porosity Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55345). The filter holder must be maintained in a hot box at a high enough temperature to prevent condensation.

2.1.3 Combustion Air Delivery System. As shown in the schematic diagram in Figure 15A–3. The rotameter should be selected to measure an air flow rate of 0.5 liter/min.

2.1.4 Combustion Tube. Quartz glass tubing with an expanded combustion chamber 2.54 cm (1 in.) in diameter and at least 30.5 cm (12 in.) long. The tube ends should have an outside diameter of 0.6 cm (¼ in.) and be at least 15.3 cm (6 in.) long. This length is necessary to maintain the quartz-glass connector at ambient temperature and thereby avoid leaks. Alternatively, the outlet may be constructed with a 90-degree glass elbow and socket that would fit directly onto the inlet of the first peroxide impinger.

2.1.5 Furnace. Of sufficient size to enclose the combustion tube. The furnace shall have a temperature regulator capable of maintaining the temperature at 1100±50 °C. The furnace operating temperature shall be checked with a thermocouple to ensure accuracy. Lindberg furnaces have been found to be satisfactory.

2.1.6 Peroxide Impingers, Stopcock Grease, Thermometer, Drying Tube, Valve, Pump, Barometer, and Vacuum Gauge. Same as in Method 6, Sections 2.1.2, 2.1.4, 2.1.5, 2.1.6, 2.1.7, 2.1.8, 2.1.11, and 2.1.12, respectively.

2.1.7 Rate Meters. Rotameters (or equivalent) capable of measuring flow rate to within 5 percent of the selected flow rate and calibrated as in section 5.2.

2.1.8 Volume Meter. Dry gas meter capable of measuring the sample volume under the particular sampling conditions with an accuracy of ± 2 percent.

2.1.9 U-Tube Manometer. To measure the pressure at the exit of the combustion gas dry gas meter.

2.2 Sample Recovery and Analysis. Same as in Method 6, Sections 2.2 and 2.3, except a 10-ml buret with 0.05-ml graduations is required for titrant volumes of less than 10.0 ml, and the spectrophotometer is not needed.

BILLING CODE 6560-50-M

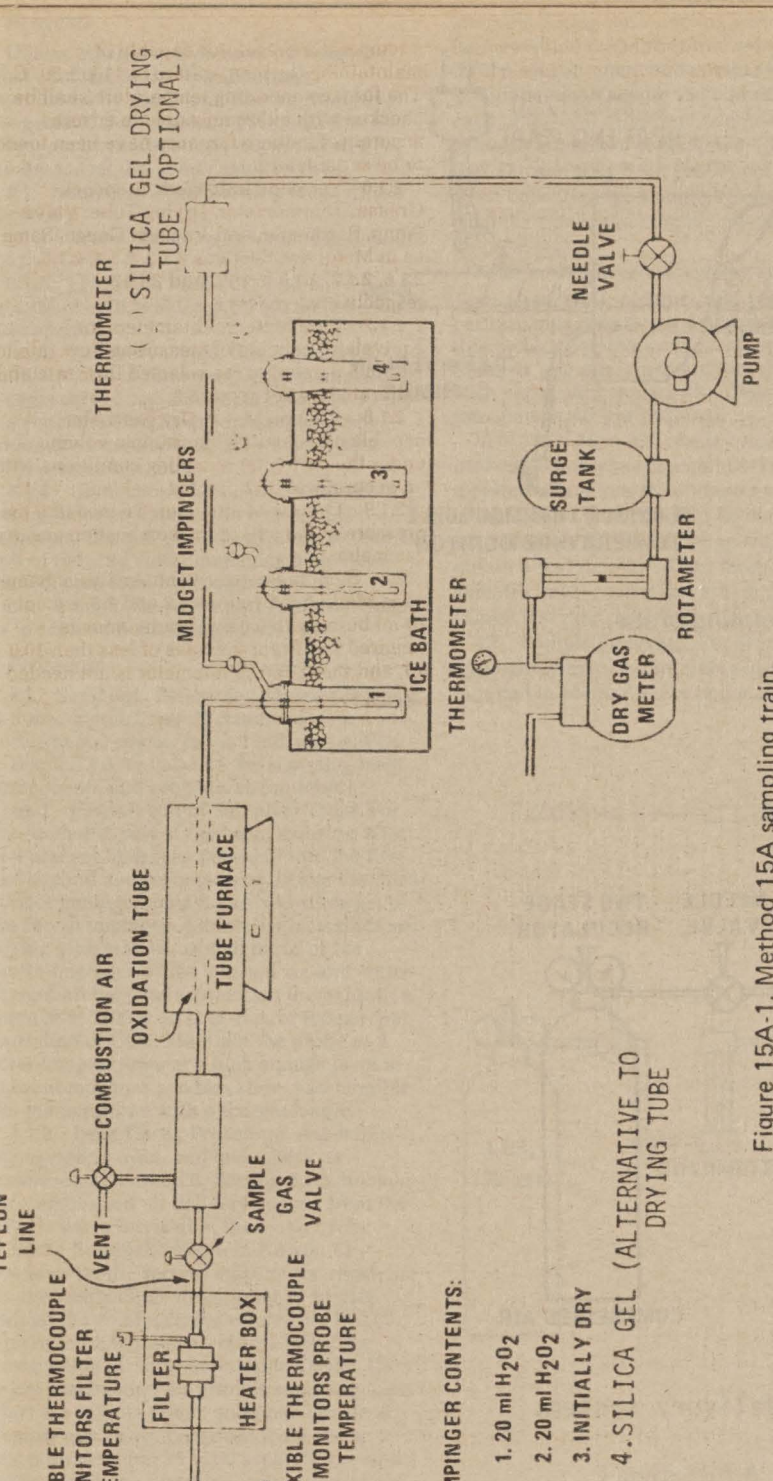

Figure 15A-1. Method 15A sampling train.

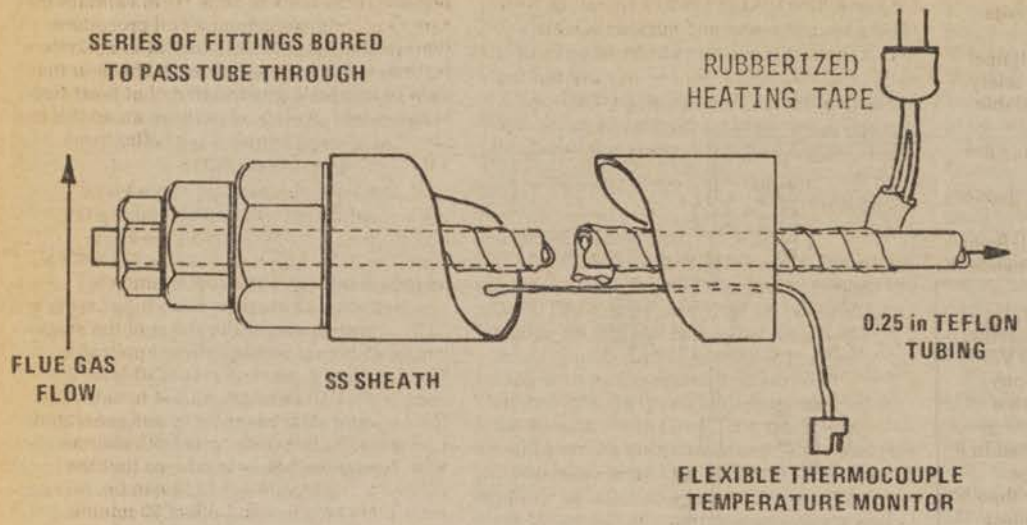

Figure 15A-2. Method 15A sampling probe.

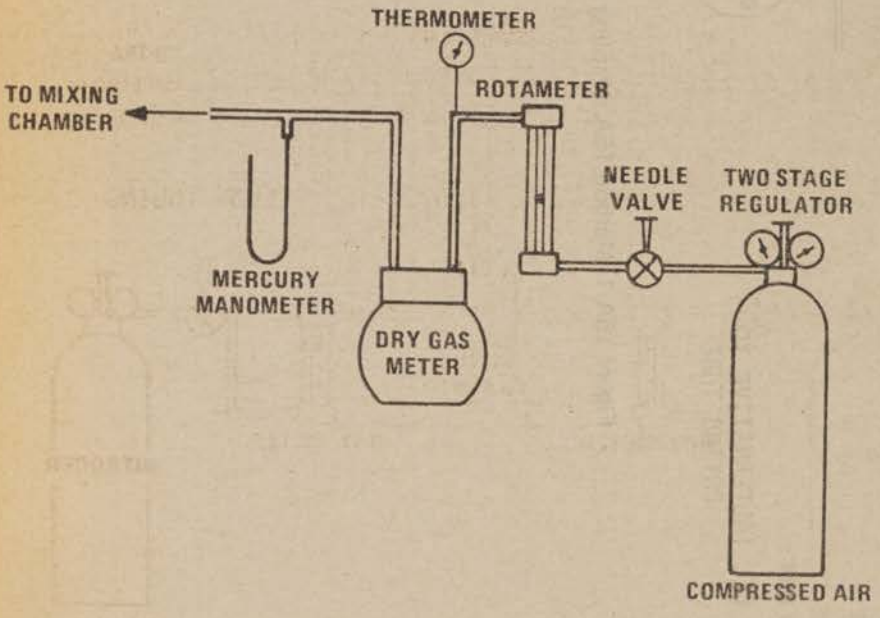

Figure 15A-3. Combustion air delivery system.

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3. Reagents

Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. When such specifications are not available, the best available grade shall be used.

3.1 Sampling. The following reagents are needed:

3.1.1 Water. Same as in Method 6, Section 3.1.1.

3.1.2 Hydrogen Peroxide, 3 percent. Same as in Method 6, Section 3.1.5 (40 ml is needed per sample).

3.1.3 Recovery Check Gas. Carbonyl sulfide (COS) in nitrogen (100 ppm or greater, if necessary) in an aluminum cylinder. Verify the concentration by gas chromatography where the instrument is calibrated with a COS permeation tube.

3.1.4 Combustion Gas. Air, contained in a gas cylinder equipped with a two-stage regulator. The gas should contain less than 50 ppb of reduced sulfur compounds and less than 10 ppm total hydrocarbons.

3.2 Sample Recovery and Analysis. Same as in Method 6, Sections 3.2 and 3.3.

4. Procedure

4.1 Sampling. Before any source sampling is done, conduct two 30-minute system performance checks in the field, as detailed in Section 4.3, to validate the sampling train components and procedures (optional).

4.1.1 Preparation of Sampling Train. For the Method 6 part of the train, measure 20 ml of 3 percent hydrogen peroxide into the first and second midget impingers. Leave the third midget impinger empty, and add silica gel to the fourth impinger. Alternatively, a silica gel drying tube may be used in place of the fourth impinger. Place crushed ice and water around all impingers. Maintain the oxidation furnace at 1100 ±50°C to ensure 100 percent oxidation of COS. Maintain the probe and filter temperatures at a high enough level to prevent moisture condensation, and monitor the temperatures with a thermocouple.

4.1.2 Leak-Check Procedure. Assemble the sampling train, and leak-check as described in Method 6, Section 4.1.2. Include the combustion air delivery system from the needle valve forward in the leak-check.

4.1.3 Sample Collection. Adjust the pressure on the second stage of the regulator on the combustion air cylinder to 10 psig. Adjust the combustion air flow rate to 0.50 liter/min (±10 percent) before injecting combustion air into the sampling train. Then inject combustion air into the sampling train, start the sample pump, and open the stack sample gas valve. Carry out these three operations within 15 to 30 seconds to avoid pressurizing the sampling train. Adjust the total sample flow rate to 2.0 liters/min (±10 percent). The combustion air flow rate of 0.50 liter/min and the total sample flow rate of 2.0 liters/min produce an O_2 concentration of 5.0 percent in the stack gas. This to SO_2 concentration must be maintained constantly to allow oxidation of TRS to SO_2. Adjust these flow rates during sampling as necessary. Monitor and record the combustion air manometer reading at regular intervals during the sampling period. Sample for 1 or 3 hours. At the end of sampling, turn off the sample pump and combustion air simultaneously (within 15 to 30 seconds of each other). All other procedures are the same as in Method 6, Section 4.1.3, except that the sampling train should not be purged. After collecting the sample, remove the probe from the stack, and conduct a leak-check (mandatory).

After each 3-hour test run (or after three 1-hour samples), conduct one system performance check (see Section 4.3). After this system performance check and before the next test run, rinse and brush the probe with water, and replace the filter (recommended but optional).

In Method 15, a test run is composed of 16 individual analyses (injects) performed over a period of not less than 3 hours or more than 6 hours. For Method 15A to be consistent with Method 15, the following may be used to obtain a test run: (1) collect three 60-minute samples or (2) collect one 3-hour sample. (Three test runs constitute a test.)

4.2 Sample Recovery. Recover the hydrogen peroxide-containing impingers as detailed in Method 6, Section 4.2.

4.3 System Performance Check. A system performance check is done (1) to validate the sampling train components and procedure (before testing, optional) and (2) to validate a test run (after a run). Perform a check in the field before testing consisting of at least two samples (optional), and perform an additional check after each 3-hour run or after three 1-hour samples (mandatory).

The checks involve sampling a know concentration of COS and comparing the analyzed concentration with the know concentration. Mix the recovery gas with N_2 as shown in Figure 15A–4 if dilution is required. Adjust the flow rates to generate a COS concentration in the range of the stack gas or within 20 percent of the applicable standard at a total flow rate of at least 2.5 liters/min. Use Equation 15A–4 to calculate the concentration of recovery gas generated. Calibrate the flow rate from both sources with a soap bubble flow tube so that the diluted concentration of COS can be accurately calculated. Collect 30-minute samples, and analyze in the normal manner. Collect the samples through the probe of the sampling train using a manifold or some other suitable device that will ensure extraction of a representative sample.

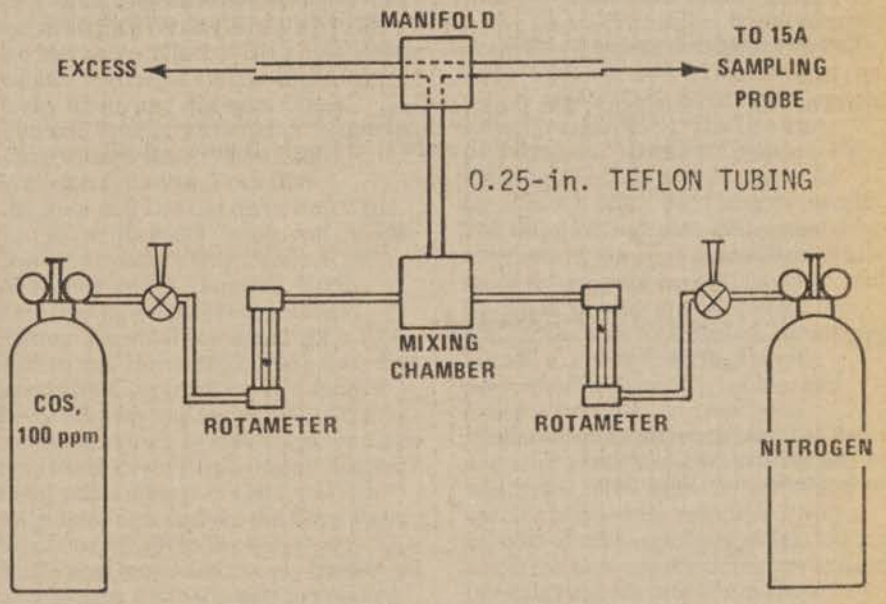

Figure 15A-4. COS recovery gas generator system.

The recovery check must be performed in the field before replacing the particulate filter and before cleaning the probe. A sample recovery of 100±20 percent must be obtained for the data to be valid and should be reported with the emission data, but should not be used to correct the data. However, if the performance check results do not affect the compliance or noncompliance status of the affected facility, the Administrator may decide to accept the results of the compliance test. Use Equation 15A–5 to calculate the recovery efficiency.

4.4 Sample Analysis. Same as in Method 6, Section 4.3. For compliance tests only, an EPA SO_2 field audit sample shall be analyzed with each set of samples. Such audit samples are available from the Quality Assurance Division, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

5. Calibration

5.1 Metering System, Thermometers, Barometer, and Barium Perchlorate Solution. Calibration procedures are presented in Method 6, Section 5.1, 5.2, 5.4, and 5.5.

5.2 Rotameters. Calibrate with a bubble flow tube.

6. Calculations

In the calculations, retain at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculations.

6.1 Nomenclature. C_{TRS} = Concentration of TRS as SO_2, dry basis, corrected to standard conditions, ppm.

N = Normality of barium perchlorate titrant, milliequivalents/ml.

P_{bar} = Barometric pressure at exit orifice of the dry gas meter, mm Hg.

P_{std} = Standard absolute pressure, 760 mm Hg.

T_m = Average dry gas meter absolute temperature, °K.

T_{std} = Standard absolute temperature, 293°K.

V_a = Volume of sample aliquot titrated, ml.

V_{ms} = Dry gas volume as measured by the sample train dry gas meter, liters.

V_{mc} = Dry gas volume as measured by the combustion air dry gas meter, liters.

$V_{ms(std)}$ = Dry gas volume measured by the sample train dry gas meter, corrected to standard conditions, liters.

$V_{mc(std)}$ = Dry gas volume measured by the combustion air dry gas meter, corrected to standard conditions, liters.

V_{soln} = Total volume of solution in which the sulfur dioxide sample is contained, 100 ml.

V_t = Volume of barium perchlorate titrant used for the sample (average of replicate titrations), ml.

V_{tb} = Volume of barium perchlorate titrant for the blank, ml.

Y = Calibration factor for sampling train dry gas meter.

Y_c = Calibration factor for combustion air dry gas meter.

C_{RG} = Concentration of generated recovery gas, ppm.

C_{COS} = Concentration of COS recovery gas, ppm.

Q_{COS} = Flow rate of COS recovery gas, liters/min.

Q_{N2} = Flow rate of dilutent N_2, liters/min.

R = Recovery efficiency for the system performance check, percent.

32.03 = Equivalent weight of sulfur dioxide, mg/meq.

$$12025\ \frac{\mu l}{meq} = \frac{(32.03\ mg)\ (24.05\ liters)\ (1\ mole)\ (1g)\ (10^3\ ml)\ (10^3 \mu l)}{(meq)\ (mole)\ (64.06\ g)\ (10^3\ mg)\ (1\ liter)\ (1\ ml)}$$

6.2 Dry Sample Gas Volume, Corrected to Standard Conditions.

$$V_{ms(std)} = \frac{V_{ms}\ Y\ (T_{std})(P_{bar})}{(T_m)(P_{std})} = \frac{K_1\ Y\ (V_m)(P_{bar})}{T_m} \qquad \text{Eq. 15A-1}$$

where: $K_1 = 0.3858$ °K/mm Hg for metric units.

6.3 Combustion Air Gas Volume, Corrected to Standard Conditions.

$$V_{mc(std)} = \frac{K_1\ Y_c\ (V_{mc})(P_{bar})}{T_m} \qquad \text{Eq. 15A-2}$$

Note.—Correct P_{bar} for the average pressure of the manometer during the sampling period.

6.4 Concentration of TRS as ppm SO_2.

$$C_{TRS} = \frac{K_2\ (V_t - V_{tb})\ N\ (V_{soln}/V_a)}{V_{ms(std)} - V_{mc(std)}} \qquad \text{Eq. 15A-3}$$

where: $K_2 = 12025\ \mu l/meq$ for metric units.

6.5 Concentration of Generated Recovery Gas.

$$C_{RG} = \frac{(C_{cos})(Q_{cos})}{Q_{cos} + Q_{N2}} \qquad \text{Eq. 15A-3}$$

6.6 Recovery Efficiency.

$$R = \frac{C_{TRS}}{C_{RG}} \times 100 \quad \text{Eq. 15A-A}$$

7. Bibliography

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[FR Doc. 86–15268 Filed 7–10–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal to List the Cape Fear Shiner as an Endangered Species with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Cape Fear shiner (*Notropis mekistocholas*) as an endangered species with critical habitat under the Endangered Species Act of 1973, as amended. This fish has recently undergone a reduction in range and population. It is currently known from only three small populations in the Cape Fear River drainage in Randolph, Moore, Lee, and Chatham Counties, North Carolina. Due to the species' limited distribution, any factor that degrades habitat or water quality in the short river reaches it inhabits—e.g., land use changes, chemical spills, wastewater discharges, impoundments, changes in stream flow, or increases in agricultural runoff—could threaten the species' survivial. Comments and information pertaining to this proposal are sought from the public.

DATES: Comments from all interested parties must be received by September 9, 1986. Public hearing requests must be received by August 25, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins, at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The Cape Fear shiner (*Noropis mekistocholas*), the only endemic fish known from North Carolina's Cape Fear River drainage, was discovered in 1962 and described by Snelson (1971). This fish has been collected from nine stream reaches in North Carolina (Bear Creek, Rocky River, and Robeson Creek, Chatham County; Fork Creek, Randolph County; Deep River, Moore and Randolph Counties; Deep River, Chatham and Lee Counties; and Cape Fear River, Kenneth Creek, and Parkers Creek, Harnett County (Snelson 1971, W. Palmer and A. Braswell, North Carolina State Museum of Natural History, personal communication 1985, Pottern and Huish 1985, 1986). Based on a recently completed Service-funded study (Pottern and Huish 1985, 1986) involving extensive surveys in the Cape Fear River Basin (including all historic sites) and a review of historical fish collection records from the Cape Fear, Neuse, and Yadkin River systems, the fish is now restricted to only three populations. The strongest population (101 individuals collected in 1984 and 1985) is located around the junction of the Rocky River and Deep River in Chatham and Lee Counties where the fish inhabits the Deep River from the upstream limits of the backwaters of Locksville Dam upstream to the Rocky River then upstream from the Rocky River to Bear Creek and upstream from Bear Creek to the Chatham County Road 2156 Bridge. A few individuals were collected just downstream of the Locksville Dam, but because of the limited extent of Cape Fear shiner habitat at this site, it is not believed this is a separate population. Instead, it is thought these fish represent a small number of individuals that periodically drop down from the population above Locksville Dam pool.

The second population, represented by the collection of a specimen near State Highway Bridge 902 in Chatham County, is located above the Rocky River Hydroelectric Dam. This population was historically the best, but the area yielded only the one specimen after extensive surveys by Pottern and Huish (1985). The third population was found in the Deep River system in Randolph and Moore Counties. This population is believed to be small (Pottern and Huish 1985, 1986). Three individuals were found above the Highfalls Hydroelectric Reservoir; one in Fork Creek, Randolph County, and two in the Deep River, Moore County. The species was also found downstream of the highfalls Dam. However, the extent of suitable habitat in this stream reach is limited, and it is thought that these individuals likely result from downstream movement from above the reservoir where Cape Fear shiner habitat is more extensive.

The Caper Fear shiner is small, rarely exceeding 2 inches in length. The fish's body is flushed with a pale silvery yellow, and a black band runs along its sides (Snelson 1971). The fins are yellowish and somewhat pointed. The upper lip is black, and the lower lip bears a thin black bar along its margin. The Cape Fear shiner, unlike most other members of the large genus *Notropis*, feeds extensively in plant material, and its digestive tract is modified for this diet by having an elongated, convoluted intestine. The species is generally associated with gravel, cobble, and boulder substates and has been observed to inhabit slow pools, riffles, and slow runs (Snelson 1971, Pottern and Huish 1985). In these habitats, the species is typically associated with schools of other related species, but it is never the numerically dominant species. Juveniles are often found in slackwater, among large rock outcrops in mid-stream, and in flooded side channels and pools (Pottern and Huish 1985). No information is presently available on breeding behavior, fecundity, or longevity.

The Cape Fear shiner may always have existed in low numbers. However, its recent reduction in range and its small population size (Pottern and Huish 1985, 1986) increases the species' vulnerability to a catastrophic event, such as a toxic chemical spill. Dam construction in the Cape Fear system has probably had the most serious impact on the species by inundating the species' rocky riverine habitat. Dams

presently under study by the U.S. Department of the Army, Corps of Engineers (COE), for the Deep River and changes in flow regulation at existing hydroelectic facilities could further threaten the species. The deterioration of water quality has likely been another factor in the species' decline. The North Carolina Department of Natural Resources and Community Development (1983) classified water quality in the Deep River, Rocky River, and Bear Creek as good to fair, and referred to the Rocky river below Siler City as an area where their sampling indicates degradation. That report also stated: "Within the Cape Fear Basin, estimated average annual soil losses from cropland ranged from 3 tons per acre in the lower basin to 12 tons in the headwaters." The North Carolina State Division of Soil and Water Conservation considers 5 tons of soil loss per acre as the maximum allowable.

The Cape Fear shiner was one of 29 fish species included in a March 18, 1975, Notice of Review published by the Service in the **Federal Register** (40 FR 12297). On December 30, 1982, the Service announced in the Federal **Register** (47 FR 58454) that the Cape Fear shiner, along with 147 other fish species, was being considered for possible addition to the list of Endangered and Threatened Wildlife. On April 4, 1985, the Service notified Federal, State, and local governmental agencies and interested parties that the Asheville Endangered Species Field Station was reviewing the species' status. That notification requested information on the species' status and threats to its continued existence. Twelve responses to the April 4, 1985, notification were received. The COE, Wilmington District; North Carolina Division of Parks and recreation, Natural Heritage Program; and the North Carolina State Museum of Natrual History provided for the species. Concern for the species' welfare was also expressed by private individuals. The other respondents provided no information on threats, and did not take a position on the species' status. The Cape Fear shiner was included in the Services' September 18, 1985, Notice of review of Vertebrate Wildlife (50 FR 37958) as a category 1 species, indicating that the Service had substantial biological data to support a proposal to list the species as endangered or threatened.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cape Fear shiner (*Notropis mekistocholas*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A review of historic collection records (Snelson 1971, W. Palmer and A. Braswell personal communication 1985), along with recent survey results (Pottern and Huish 1985, 1986), indicates that the Cape Fear shiner is presently restricted to only three populations (see "Background" section). Three historic populations have apparently been extirpated (Pottern and Huish 1985, 1986). Robeson Creek, Chatham County, was believed lost when Jordan Lake flooded part of the creek. The reasons for the loss of populations from Parkers Creek and Kenneth Creek in Harnett County are not known. The shiner has also not been recollected (Pottern and Huish 1985) from the Cape Fear River in Harnett County. However, review of historical and current collection records reveals that only one specimen has ever been collected from this river, and the fish likely was a stray individual from an upstream or tributary population. Since much of the Deep, Haw, and Cape Fear Rivers and their major tributaries has been impounded for hydroelectric power, and much of the rocky shoal habitat inundated, other populations and population segments that were never discovered have likely been lost to these reservoirs.

Of the three remaining populations, only the one located around the confluence of the Deep and Rocky Rivers in Chatham and Lee Counties (inhabiting a total of about 7.3 river miles) appears strong (Pottern and Huish 1985). The second population in the Rocky River, above the Rocky River hydroelectric facility, was the source of the type specimens used to describe the species (Snelson 1971). Historic records (W. Palmer and A. Braswell, personal communication 1985) reveal that collections of 15 to 30 specimens could be expected in this stretch of the Rocky River (State Route 902 or Chatham County Road 1010 Bridge) during a sampling visit in the late 1960s and early 1970s. Pottern and Huish (1985) sampled the Rocky River throughout this reach on numerous occasions and were able to collect only one specimen. The reason for the apparent decline in this population is unknown. The third population, located in the Deep River system in Moore and Randolph Counties, is represented by the collection of six individuals (Pottern and Huish 1986). Three individuals were taken from below the dam. As the available habitat below the dam is limited, it is believed these fish are migrants from the upstream population.

Potential threats to the species and its habitat could come from such activities as road construction, stream channel modification, changes in stream flows for hydroelectric power, impoundments, land use changes, wastewater discharges, and other projects in the watershed if such activities are not planned and implement with the survival of the species and the protection of its habitat in mind. The species is also potentially threatened by two U.S. Army Corps of Engineers projects presently under review for the Deep River. The Randleman Dam project would consist of a reservoir of the Deep River in Randolph County, above known Cape Fear shiner habitat. The Howards Mill Reservoir would be on the Deep River in Moore and Randolph Counties and would flood presently used Cape Fear shiner habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Most of the present range of the Cape Fear shiner is relatively inaccessible and overutilization of the species has not been and is not expected to be a problem.

C. *Disease or predation.* Although the Cape Fear shiner is undoubtedly consumed by predatory animals, there is no evidence that this predation is a threat to the species.

D. *The inadequacy of existing regulatory mechanisms.* North Carolina State law (Subsection 113–272.4) prohibits collecting wildlife and fish for scientific purposes without a State permit. However, this State law does not protect the species' habitat from the potential impacts of Federal actions. Federal listing will provide protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The major portion of the best Cape Fear shiner population is located at the junction of the Deep and Rocky Rivers in Chatham and Lee Counties. A major toxic chemical spill at the U.S. Highway 15–105 Bridge upstream of this site on

the Rocky River could jeopardize this population, and as the other populations are extremely small and tenuous, the species' survival could be threatened.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Cape Fear shiner (*Notropis mekistocholas*) as an endangered species. Because of the species' restricted range and vulnerability of these isolated populations to a single catastrophic accident, threatened status does not appear to be appropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is being proposed for the Cape Fear shiner).

Critical Habitat

Critical habitat, as defined by section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for the Cape Fear shiner to include: (1) Approximately 5 miles of the Rocky River in Chatham County, North Carolina; (2) approximately 8 miles of Bear Creek, Rocky River, and Deep River in Chatham and Lee Counties, North Carolina; (3) approximately 6 miles of Fork Creek and Deep River in Randolph and Moore Counties, North Carolina.

(See "Regulation Promulgation" section for this proposed rule for the precise description of critical habitat.) These stream sections contain gravel, cobble, and boulder substrates with pools, riffles, and shallow runs for adult fish and slackwater areas with large rock outcrops and side channels and pools for juveniles. These areas also provide water of good quality with relatively low silt loads.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Activities which presently occur within the designated critical habitat include, in part, fishing, boating, scientific research, and nature study. These activities, at their present use level, do not appear to be adversely impacting the area.

There are also Federal activities that do or could occur within the Deep River Basin and that may be affected by protection of critical habitat. These activities include, construction of impoundments (in particular, U.S. Army Corps of Engineers reservoirs under study for the upper Deep River), stream alterations, bridge and road construction, and discharges of municipal and industrial wastes, and hydroelectric facilities. These activities could, if not carried out with the protection of the species in mind, degrade the water and substrate quality of the Deep River, Rocky River, Bear Creek, and Fork Creek by increasing siltation, water temperatures, organic pollutants, and extremes in water flow. If any of these activities may affect the critical habitat area and are the result of a Federal action, section 7(a)(2) of the Act, as amended, requires the agency to consult with the Service to ensure that actions they authorize, fund, or carry out, are not likely to destroy or adversely modify critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained at the time of final rule.

Available to Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to it critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. The Service is presently aware of only two Federal actions under consideration (Randleman and Howards Mill Reservoirs) that may affect the species and the proposed critical habitat. The Service has been in contact with the U.S. Army Corps of Engineers concerning the potential impacts of these projects on the species and its habitat. The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to prossess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) current or planned activities in the subject area and their possible impacts on this species; and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Endangered Species Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

North Carolina Department of Natural Resources and Community Development. 1983. Status of Water Resources in the Cape Fear River Basin. 135 pp.

Pottern, G.B., and M.T. Huish. 1985. Status survey of the Cape Fear shiner (*Notropis mekistocholas*). U.S. Fish and Wildlife Service Contract No. 14-16-0009-1522. 44 pp.

Pottern, G.B., and M.T. Huish. 1986. Supplement to the status survey of the Cape Fear shiner (*Notropis mekistocholas*). U.S. Fish and Wildlife Service Contract No. 14-16-0009-1522. 11 pp.

Snelson, F.F. 1971. *Notropis mekistocholas*, a new cyprinid fish endemic to the Cape Fear River basin, North Carolina. Copeia 1971:449-462.

Author

The primary author of this proposed rule is Richard G. Biggins, Endangered Species Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation.

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Shiner, Cape Fear	*Notropis mekistocholas*	U.S.A. (NC)	Entire	E		17.95(e)	NA

3. It is further proposed to amend § 17.95(e) by adding critical habitat of the "Cape Fear shiner," in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

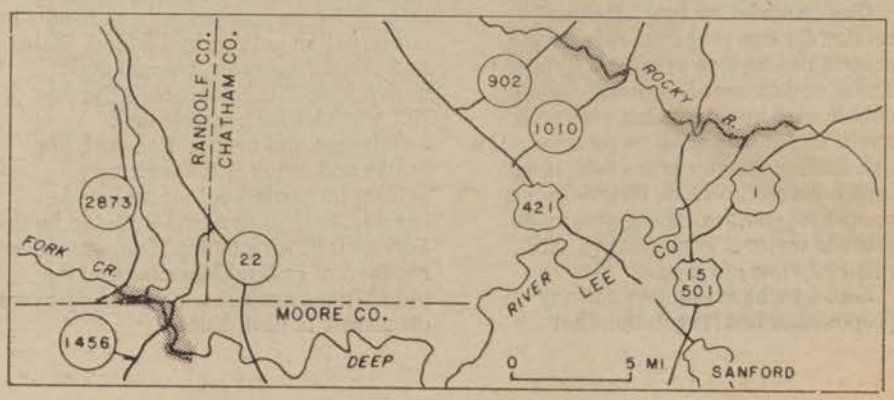
Cape Fear Shiner

(Notropis mekistocholas)

(1) *North Carolina.* Chatham County. Approximately 4.1 miles of the Rocky River from North Carolina State Highway 902 Bridge downstream to Chatham County Road 1010 Bridge;

(2) *North Carolina.* Chatham and Lee Counties. Approximately 0.5 miles of Bear Creek, from Chatham County Road 2156 Bridge downstream to the Rocky River, then downstream in the Rocky River (approximately 4.2 miles) to the Deep River, then downstream in the Deep River (approximately 2.6) in Chatham and Lee Counties, to a point 0.3 river miles below the Moncure, North Carolina, U.S. Geological Survey Gaging Station; and

(3) *North Carolina.* Randolph and Moore Counties. Approximately 1.5 miles of Fork Creek, from a point 0.1 creek miles upstream of Randolph County Road 2873 Bridge downstream to the Deep River then downstream appoximately 4.1 miles to the Deep River in Randolph and Moore Counties, North Carolina, to a point 2.5 river miles below Moore County Road 1456 Bridge.



Constituent elements include clean streams with gravel, cobble, and boulder substrates with pools, riffles, shallow runs and slackwater areas with large rock outcrops and side channels and pools with water of good quality with relatively low silt loads.

* * * * *

Dated: May 30, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-15643 Filed 7-10-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 133
Friday, July 11, 1986

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

Food and Nutrition Service

National Average Minimum Value of Donated Foods for the Period July 1, 1986, Through June 30, 1987

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof, to be given in the 1987 school year for each lunch served by schools participating in the National School Lunch Program or by commodity schools and for each lunch and supper served by institutions participating in the Child Care Food Program.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22303, (703) 756–3660.

SUPPLEMENTARY INFORMATION: This action, which implements mandatory provisions of section 6(e), 14(f), and 17(h) of the National School Lunch Act (the Act), has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512. It has been classified as "nonmajor", because it meets none of the three criteria in the Executive Order: the action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs; and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete.

The action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act of 1980. Robert E. Leard, Administrator of the Food and Nutrition Service, has determined that it will not have a significant economic impact on a substantial number of small entities. The purpose of the action is to notify States of the level of donated-food assistance to be provided during the 1987 school year.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

Section 6(e) of the Act establishes the national average value of donated-food assistance to be given to States for each lunch served in the National School Lunch Program at 11.00 cents per meal. This amount is subject to annual adjustment as of July 1 of each year to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 17(h) of the Act provides that the same value of assistance in donated foods for school lunches shall also be established for lunches and suppers served in the Child Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the National School Lunch Program (7 CFR Part 210) and per lunch and supper under the Child Care Food Program (CFR Part 226) shall be 11.25 cents for the period July 1, 1986, through June 30, 1987.

The Price Index for Food Used in Schools and Institutions is computed on the basis of five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oil). Each component is weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month simple average value of this Price Index for March, April and May. The three month average of the Price Index decreased by 3.0 percent from 260.8 for March, April and May of 1985 to 252.9 for the same three months in 1986. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1986, through June 30, 1987, will be 11.25 cents per meal. This constitutes a .50 cent per lunch decrease over the rate in effect for the 1986 school year.

Section 14(f) of the Act provides that commodity schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and national average payment established under section 4 of the Act. Such schools are eligible to receive up to 5 cents of this value in cash for processing and handling expenses related to use of such foods. Commodity schools are defined in section 12(d)(8) of the Act as "schools which do not participate in the school lunch program under this Act but which receive commodities made available by the Secretary for use in nonprofit lunch programs".

For the 1987 school year, commodity schools shall be eligible to receive donated-food assistance valued at 24.25 cents for each lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1987 announced by the Department on June 30, 1986. The section 4 factor for commodity schools does not include the 2-cents per lunch increase for lunches served in the second preceding year free or at reduced prices, since the increase in applicable only to schools participating in the National School Lunch Program.

(Catalog of Federal Domestic Assistance Nos. 10.550, 10.555, and 10.558.)

Authority: Sections 6, 14 and 17 of the National School Lunch Act, as amended, 43 U.S.C. 1755, 1762a, 1766.

Dated: July 7, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86–15642 Filed 7–10–86; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

Delegation of Authority; Deputy Administrator, Program Operations, et al.

Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.), and §§ 2.7 and 2.72, Title 7, Code of Federal Regulations, the following delegations of authority are hereby made by the Administrator of the Rural

Electrification Administration and the Governor of the Rural Telephone Bank:

1. The Deputy Administrator, Program Operations, or the Acting Deputy Administrator, Program Operations, of the Rural Electrification Administration is delegated authority, to be exercised only during the absence or unavailability of the Administrator, to perform or redelegate performance of all the duties and exercise all the powers which are now, or which may hereafter be delegated to the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank.

2. The Deputy Administrator, Policy and Program Support, or the Acting Deputy Administrator, Policy and Program Support, of the Rural Electrification Administration is delegated authority, to be exercised only during the absence or unavailability of the Deputy Administrator, Program Operations, to perform or redelegate performance of all the duties and exercise all the powers which are now, or which may hereafter be delegated to the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank.

3. The Assistant Administrator, Telephone; the Assistant Administrator, Electric; the Assistant Administrator, Management; and any officer or employee of the Rural Electrification Administration designated in writing by the Administrator; Deputy Administrator, Program Operations; or Deputy Administrator, Policy and Program Support; in the order previously set forth, are authorized to serve as Acting Deputy Administrator during the absence or unavailability of the Deputy Administrator, and as Acting Deputy Governor of the Rural Telephone Bank during the absence or unavailability of the Deputy Governor, or during vacancies occurring in such offices.

These delegations of authority shall be effective immediately and supersede all other delegations.

Dated: July 2, 1986.

Harold V. Hunter,

Administrator, Rural Electrification Administration, Governor, Rural Telephone Bank.

[FR Doc. 86-15665 Filed 7-10-86; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1985 Annual Survey of Communications Services
Form number: Agency—B-516, 517, 518, 519, 520, 521; OMB—NA
Type of request: New collection
Burden: 750 respondents; 1,488 reporting hours
Needs and Uses: This survey is the only annual source of data for the universe of employer firms providing communication services. These data will be used by the Federal Government for computation of the national accounts and for monitoring the course of continued deregulation.
Affected public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: July 7, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-15699 Filed 7-10-86 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 23-86]

Foreign-Trade Zone 65—Panama City, FL; Application for Extension Berg Steel Pipe Corp., Zone Manufacturing Operation

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Panama City Port Authority, grantee of FTZ 65, Panama City, Florida, requesting an extension of Berg Steel Pipe Corporation's (BSPC) authority to use zone procedures for its manufacturing operations at its steel pipe plant in the Port Authority's foreign-trade zone. The application was formally filed on June 27, 1986.

In January 1981, the Board authorized the Port Authority to establish a foreign-trade zone in Panama City within its Port complex (Board Order 171, 46 FR 8072, 1-26-81). The order included authorization for BSPC's new steel pipe plant for five years, subject to extension. This authority will expire on March 1, 1987. The Port Authority has requested an indefinite extension.

BSPC is a producer of large diameter steel pipe with outer diameters of 24 to 64 inches, employing over 200 persons. Foreign sourcing of its carbon steel plate requirements has ranged from about 50 percent at the outset to some 10 percent in recent years. Exports have declined from 40 percent of shipments in 1982 to less than 2 percent, due to changed circumstances.

Zone procedures exempt BSPC from duty payments on the foreign steel used in its exports. On its domestic sales, the company is able to take advantage of the same duty rate available to importers of finished pipe, which is 1.9 percent compared with the 6.3 percent duty rate on steel plate. BSPC contends the savings help them compete against imports of finished steel pipe.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Copperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th St., Miami, FL 33131; and Colonel Carroll H. Dunn, District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, AL 36628.

Comments concerning the proposed extension are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 5, 1986.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, James H. Moore Bldg., 30 W. Government St., Panama City, FL 32402

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm 1529, 14th & Pennsylvania, NW., Washington, DC 20230.

Dated: July 8, 1986.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 86-15700 Filed 7-10-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

High Power Microwave Amplifiers and Components Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on high power microwave amplifiers and components thereof from Japan. The review covers the one known exporter of this merchandise to the United States and two consecutive periods from July 1, 1983 through June 30, 1985. The review indicates the existence of no dumping margins during the period July 1, 1983 through June 30, 1984. There were no shipments during the period July 1, 1984 through June 30, 1985. As a result of the review, the Department has tentatively determined to revoke the antidumping duty order. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: July 11, 1986.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 1260) the final results of its last administrative review of the antidumping duty order on high power microwave amplifiers and components thereof from Japan (47 FR 31413, July 20, 1982). We began the current review of the order under our old regulations. After the promulgation of our new regulations, the petitioner, MCL, Inc., on October 4, 1985 requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We subsequently published notices of initiation of antidumping duty administrative review on November 27, 1985 (50 FR 48825) and February 12, 1986 (51 FR 5219).

Scope of the Review

Imports covered by the review are shipments of Japanese high power microwave amplifiers and components thereof. High power microwave amplifiers are radio-frequency power amplifier assemblies, and components thereof, specifically designed for uplink transmission in C, X, and Ku bands from fixed earth stations to communications satellites and having a power output of one kilowatt or more. High power microwave amplifiers may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). This merchandise is currently classifiable under item 685.3277 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Japanese high power microwave amplifiers and components thereof to the United States, NEC Corporation ("NEC"), and two consecutive periods from July 1, 1983 through June 30, 1985. During the period July 1, 1983 through June 30, 1984, NEC shipped only components. NEC made no shipments to the United States during the period July 1, 1984 through June 30, 1985.

United States Price

In calculating United States price for shipments during the period July 1, 1983 through June 30, 1984, the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the f.o.b. Japan price with deductions, where applicable, for inland freight and f.o.b. charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value for the period July 1, 1983 through June 30, 1984, the Department used constructed value, as defined in section 773(e) of the Tariff Act, since there were no sales in the home market or to purchasers in third countries during the period. Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and the cost of packing.

For general expenses the Department used the actual general expenses because they were higher than statutory minimum of ten percent of the sum of materials and fabrication costs. Because the actual profit was lower than the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses, the Department used the statutory minimum.

Preliminary Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that no dumping margins exist for the period July 1, 1983 through June 30, 1984. There were no shipments during the period July 1, 1984 through June 30, 1985.

Based on the final results of our last administrative review for the period July 1, 1982 through June 30, 1983 and these preliminary results, the Department has concluded that all sales to the United States of high power microwave amplifiers and components thereof by NEC were made at not less than fair value for at least a two-year period. As provided for in § 353.54(e) of the Commerce Regulations, NEC has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances specified in the written agreement.

Therefore, we tentatively determine to revoke the order on high power microwave amplifiers and components thereof from Japan. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries. Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in section 751(a)(1) of the Tariff Act, on shipment of Japanese high power microwave amplifiers and components thereof entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and sections 353.53a and

353.54 of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985; 353.54).

Dated: July 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86-15702 Filed 7-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Negative Antidumping Duty Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that critical circumstances do not exist in the antidumping duty investigation of porcelain-on-steel cooking ware from the People's Republic of China (PRC). We will notify the U.S. International Trade Commission (ITC) of this determination.

EFFECTIVE DATE: July 11, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 377-3174 or 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that critical circumstances do not exist in the antidumping duty investigation on porcelain-on-steel cooking ware from PRC, as provided in section 733(e) of the Tariff Act of 1930, as amended [19 U.S.C. 1673b(e)] (the Act).

Case History

On December 4, 1985, we received a petition from the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 24, 1985 (50 FR 53352). On January 26, 1986, the ITC determined that there is reasonable indication that imports of porcelain-on-steel cooking ware from the PRC are materially injuring a U.S. industry (51 FR 3862).

On January 27, 1986, we presented an antidumping duty questionnaire to China National Light Industrial Products Import and Export Corporation (CNLIP). Respondent was requested to answer the questionnaire in 30 days. On March 5, 1986, we amended our questionnaire and, at the request of the respondent, orally granted an extension of time for CNLIP to submit its response. Subsequently, an additional extension was granted, also at the respondent's request. We received a questionnaire response from CNLIP and its related partner in the United States, Excel United Corporation, on April 7, 1986.

On May 8, 1986, we requested additional information, as well as a reformulation of certain types of product information, from the companies under investigation. Supplemental information was received on May 12, 1986. Also on May 8, we requested that factors of production information be submitted by May 27, 1986.

On May 13, 1986, the Department preliminarily determined that porcelain-on-steel cooking ware from the PRC is being, or is likely to be, sold in the United States at less that fair value (51 FR 18469). The notice stated that we would issue our final determination by July 28, 1986. On May 16, 1986, respondents requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. The respondents were qualified to make this request because they are exporters who account for a significant proportion of exports to the United States of the merchandise under investigation. Accordingly, the period for the final determination was extended until no later than October 2, 1986 (51 FR 20862).

On May 23, 1986, petitioners amended the December 4, 1985, petition to allege that critical circumstances exist in the antidumping duty investigation of porcelain-on-steel cooking ware from the PRC, pursuant to section 733(e) of the Act. During a telephone conversation on June 3, 1986, we informed petitioners that we needed evidence to support their allegation that critical circumstances exist. On June 4, 1986, petitioners submitted additional information to support their allegation, and the Department subsequently decided to investigate the allegation.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchenware, currently reported under item 654.0828 of the TSUSA, is not subject to this investigation. We investigated sales of porcelain-on-steel cooking ware during the period July 1 through December 31, 1985.

Preliminary Negative Determination of Critical Circumstances

Petitioners have alleged that critical circumstances exist with respect to imports of porcelain-on-steel cooking ware from the PRC.

Under section 733(e)(1) of the Act, critical circumstances exist if we find that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonable trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that there is no reasonable basis to believe that imports of the subject merchandise from the PRC have been massive over a relatively short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies in this case. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of

porcelain-on-steel cooking ware from the PRC.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Joseph A. Septrini,

Acting Deputy Assistant Secretary for Import Administration.

July 7, 1986.

[FR Doc. 86-15703 Filed 7-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Preliminary Negative Antidumping Duty Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that critical circumstances do not exist in the antidumping duty investigation of porcelain-on-steel cooking ware from Mexico. We will notifify the U.S. International Trade Commission (ITC) of this determination.

EFFECTIVE DATE: July 11, 1986.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0167.

SUPPLEMENTARY INFORMATION:

Preliminary Information

We preliminarily determine that critical circumstances do not exist in the antidumping duty investigation on porcelain-on-steel cooking ware from Mexico, as provided in section 733(e) of the Tariff Act of 1930, as amended [19 U.S.C. 1673(e)] (the Act).

Case History

On December 4, 1985, we received a petition from the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filling requirement of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports meterially injure, or threaten material injury to, a U.S. industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 24, 1985 (50 FR 53352). On January 26, 1986, the ITC determined that there is reasonable indication that imports of porcelain-on-steel cooking ware from Mexico are materially injuring a U.S. industry (51 FR 3862).

On January 27, 1986, we presented antidumping duty questionnaires to Cinsa, S.A. (Cinsa) and Troqueles y Esmaltes, S.A. (TRES). Respondents were requested to answer the questionnaire in 30 days. On February 18, 1986, the Embassy of Mexico and the Mexican exporters requested an extension for response submissions. We orally granted the respondents a two-week extension. On March 7, 1986, we amended our questionnaire and, at the request of the companies and of the Embassy of Mexico, granted a second two-week extension of time (from March 7) for response submissions. Subsequently, a third two-week extension was granted, also at the respondents' request. The companies submitted responses on March 31, (Cinsa) and April 2 (TRES), 1986. The Department sent out supplemental questionnaires to Cinsa on April 12, and to TRES on April 14, 1986. We received additional information from both companies on April 21, 1986. On May 9, 1986, a letter requesting correction of deficient information as well as a reformulation of certain types of information was presented to the companies under investigation. We requested that the responses to our deficiency letter be submitted prior to verification. On June 11 and 16, 1986, we received the second supplemental responses of Cinsa and TRES, respectively.

On May 13, 1986, the Department preliminarily determined that porcelain-on-steel cooking ware from Mexico is being, or is likely to be, sold in the United States at less than fair value (51 FR 18470). The notice stated that we would issue our final determination by July 28, 1986. On May 16, 1986, respondents requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. The respondents were qualified to make this request because they are exporters who account for a significant proportion of exports to the United States of the merchandise under investigation. Accordingly, the period for the final determination was extended until no later than October 2, 1986 (51 FR 20862).

On May 23, 1986, petitioners amended the December 4, 1985, petition to allege that critical circumstances exist in the antidumping duty investigation of porcelain-on-steel cooking ware from Mexico, pursuant to section 733(e) of the Act. During a telephone conversation on June 3, 1986, we informed petitioners that we needed evidence to support their allegation that critical circumstances exist. On June 4, 1986, petitioners submitted additional information to support their allegation, and the Department subsequently decided to investigate the allegation.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchenware, currently reported under item 654.0828 of the TSUSA, is not subject to this investigation. We investigated sales of porcelain-on-steel cooking ware during the period July 1 through December 31, 1985.

Preliminary Negative Determination of Critical Circumstances

Petitioners have alleged that critical circumstances exist with respect to imports of porcelain-on-steel cooking ware from Mexico. Under section 733(e)(1) of the Act, critical circumstances exist if we find that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject

of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that there is no reasonable basis to believe that imports of the subject merchandise from Mexico have been massive over a relatively short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies in this case. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of porcelain-on-steel cooking ware from Mexico.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will alllow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

July, 7, 1986.

[FR Doc. 86-15704 Filed 7-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-508]

Porcelain-on-Steel Cooking Ware From Taiwan; Preliminary Negative Antidumping Duty Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that critical circumstances do not exist in the antidumping duty investigation of porcelain-on-steel cooking ware from Taiwan. We will notify the U.S. International Trade Commission (ITC) of this determination.

EFFECTIVE DATE: July 11, 1986.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Laurel LaCivita, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0167 or 377-0189.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that critical circumstances do not exist in the antidumping duty investigation on porcelain-on-steel cooking ware from Taiwan, as provided in section 733(e) of the Tariff Act of 1930, as amended [19 U.S.C. 1673b(e)] (the Act).

Case History

On December 4, 1985, we received a petition from the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. After reviewing the petition, we detemined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 24, 1985 (50 FR 53353). On January 26, 1986, the ITC determined that there is reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan are materially injuring a U.S. industry (51 FR 3862).

On February 6, 1986, we presented antidumping duty questionnaires to First Enamel Industrial Corp. (First Enamel), Tian Shine Enterprise Co., Ltd. (Tian Shine), Li-Fong Industrial Co., Ltd. (Li-Fong), Tou Tien Metal (Taiwan) Co., Ltd. (Tou Tien), Li-Mow Enamelling Co., Ltd. (Li-Mow), and Receive Will Industry Co. (Receive Will). Respondents were requested to answer the questionnaire in 30 days. On March 7, 1986, we amended our questionnaire and, at the request of the respondents, granted a two-week extension of time for response submissions. Subsequently, a second two-week extension was granted, also at the respondents' request. The companies submitted responses on March 28 (Tian Shine), April 11 (Tou Tien), April 14 (Li-Fong, Li-Mow and First Enamel), and May 9 (Receive Will), 1986.

The Department sent out supplemental questionnaires to Tian Shine on April 15, to Tou Tien, Li-Fong, Li-Mow and First Enamel on April 28, and to Receive Will on May 16, 1986. We received additional information from Tian Shine on April 14 and from Li-Fong and Li-Mow on April 21, 1986. We received responses to our supplemental questionnaires on April 22 (Tain Shine), June 6 (Receive Will), June 9 (Receive Will), June 13 (First Enamel, Tian Shine, Li-Fong, Tou Tien, and Li-Mow), June 20 (Li-Fong), and June 30 (Li-Fong), 1986.

On May 13, 1986, the Department preliminarily determined that porcelain-on-steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value (51 FR 18472). The notice stated that we would issue our final detemination by July 28, 1986. On May 16, 1986, respondents requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. The respondents were qualified to make this request because they are exporters who account for a significant proportion of exports to the United States of the merchandise under investigation. Accordingly, the period for the final detemination was extended until no later than October 2, 1986 (51 FR 20862).

On May 23, 1986, petitioners amended the December 4, 1985, petition to allege that critical circumstances exist in the antidumping duty investigation of porcelain-on-steel cooking ware from Taiwan, pursuant to section 733(e) of the Act. During a telephone conversation on June 3, 1986, we informed petitioners that we needed evidence to support their allegation that critical circumstances exist. On June 4, 1986, petitioners submitted additional information to support their allegation, and the Department subsequently decided to investigate the allegation.

Scope of Investigation

The products covered by this investigation are porcelain-on steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of*

the United States Annotated (TSUSA). Kitchenware, currently reported under 654.0828 of the TSUSA, is not subject to this investigation. We nvestigated sales of porcelain-on-steel cooking ware during the period July 1 through December 31, 1985.

Preliminary Negative Determination of Critical Circumstances

Petitioners have alleged that critical circumstances exist with respect to imports of porcelain-on-steel cooking ware from Taiwan. Under section 733(e)(1) of the Act, critical circumstances exist if we find that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) the volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that there is no reasonable basis to believe that imports of the subject merchandise from Taiwan have been massive over a relatively short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies in this case. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of porcelain-on-steel cooking ware from Taiwan.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and cofidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

July 7, 1986.

[FR Doc. 86-15705 Filed 7-10-86; 8:45 am]

BILLING CODE 3510-DS-M

Sodium Nitrate From Chile; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 4, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on sodium nitrate from Chile. The review covers the one known exporter of this merchandise to the United States and the period March 16, 1983 through February 29, 1984.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on the correction of clerical errors, the final results of review have changed from those presented in the preliminary results of review.

EFFECTIVE DATE: July 11, 1986.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 7480) the preliminary results of administrative review of the antidumping duty order on sodium nitrate from Chile (48 FR 12580, March 25, 1983). We began this review under our old regulations. After the promulgation of our new regulations, the petitioner and the respondent requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of industrial grade sodium nitrate (98 percent or more pure), currently classifiable under item 480.2500 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter, Sociedad Quimica y Minera de Chile, S.A. and the period March 16, 1983 through February 29, 1984.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. After correction of certain clerical errors, we have changed the margin from 0.07 to 0.05 percent, and we determine that a *de minimis* margin still exists for the period March 16, 1983 through February 29, 1984.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, since the margin is less than 0.5 percent and, therefore, *de minimis*, the Department waives the estimated cash deposit requirement. The waiver applies to shipments of Chilean sodium nitrate entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-15706 Filed 7-10-86; 8:45 am]

BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) L&W Wood Products, Inc., P.O. Box 428, Crescent City, Florida 32012, producer of wood furniture parts (May 2, 1986); (2) Plastic Technologies, Inc., 2555 Oak Industrial Drive, N.E., Grand Rapids, Michigan 49505, producer of computer cabinets and parts for trucks and agricultural equipment (May 13, 1986); (3) McGill Manufacturing Company, Inc., 909 North Lafayette Street, Valparaiso, Indiana 46383, producer of ball and roller

bearings; electronic and electrical components (May 13, 1986); (4) General Split Corporation, P.O. Box 1086, Sheboygan, Wisconsin 53082–1086, producer of leather (May 20, 1986); (5) Masterwork, Inc., 4011 North Ravenswood Avenue, Chicago, Illinois 60613, producer of clock pendulums and dials (June 9, 1986); and (6) Temco, Inc., 1345 SE., 27th Place, Bellevue, Washington 98007, producer of food processing equipment and parts (June 20, 1986).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

S. Cassin Muir,

Acting Chief, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 86–15708 Filed 7–10–86; 8:45 am]

BILLING CODE 3510-DR-M

Full Council Meeting President's Export Council; Open Meeting

A meeting of the President's Export Council will be held July 30, 1986, 9:30 a.m.—12:15 p.m. and 2:00 p.m.—4:00 p.m. in the Congressional Room of the Capital Hilton Hotel, 16th and K Streets, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Opening remarks; Administration's legislative agenda; Subcommittee reports, including topics, such as export financing, trade expansion programs, foreign trade barriers, export controls, trade negotiations, future projects, and briefings by Administration officials.

The meeting will be open to the public with a limited number of seats available. For further information, reservations to attend the meeting, or copies of the minutes, contact Laureen Daly (202) 377–1125.

Dated: July 7, 1986.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 86–15707 Filed 7–10–86; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects To Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico

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

ACTION: Notice of availability of financial assistance.

SUMMARY: For fiscal year 1986, Marine Fisheries Initiative (MARFIN) funds are available to assist persons in carrying out research and development projects which optimize the use of a U.S. Gulf of Mexico fishery involving the U.S. fishing industry (recreational or commercial) including but not limited to harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

DATE: Applications should be sent to the NMFS Office given below by August 11, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Donald R. Ekberg, Southeast Regional Office, National Marine Fisheries Service, St. Petersburg, Florida 33702, Telephone: 813–893–3720.

SUPPLEMENTARY INFORMATION:

Classification

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Commerce Department guidelines implementing that Order. This solicitation is not "major" within the context of the Order or its implementing guidelines because the solicitation does not significantly affect the economy, costs or prices, competition, employment, investment, or puductivity. Because the solicitation is issued without prior opportunity for public comment, it is not subject to the provisions of the Regulatory Flexibility Act. Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB clearance No. 06480175—expires 12/31/86) under the provisions of the Paperwork Reduction Act. This program is subject to the provisions of Executive Order 12372.

Introduction

Section 304(e) of the Magnuson Act (16 U.S.C. 1854(e)) authorizes the Secretary to conduct research to enhance U.S. fisheries. The Department of Commerce, Justice, and State, the Judiciary, and related Agencies Appropriation Act of 1986 (99 Stat. 1136, Pub. L. 99–180) makes funds available to the Secretary of Commerce for fiscal year 1986. This solicitation makes available $1.6M for financial assistance under the MARFIN program to enhance the use of fishery resources in the Gulf of Mexico. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

Funding Priorities

Fisheries research and development proposals should be related to one or more of the priority areas listed below (in no rank order):

1. *Shrimp.* (1) Inshore stock sampling of brown, white, and pink shrimp by taggings east of Mississippi River, (2) development of improved on-board handling, grading, sorting and preservation methods, (3) regulatory impact analyses, (4) economic evaluation of alternative harvesting, handling, and processing systems, and (5) determination of the effectiveness of specialized harvesting gear such as wing nets, trawl efficiency devices (TED), etc.

2. *Coastal Pelagics.* (1) Improved estimates of king mackerel year-class strengths and harvest levels, (2) identification of king mackerel management units, (3) forecast king

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Gulf of Mexico shrimp, groundfish, menhaden, etc.

mackerel trends in abundance, (4) regulatory impact analyses, and (5) determination of recreational fishing participation (non-party or charter boat).

3 *Reef Fish.* (1) Competition between commercial and recreational fishermen and methods to solve problems, and (2) Gulf-wide charter and party boat study of the structure and economics of the recreational paying passenger vessel fleet (includes coastal pelagics as well as reef fish).

4 *Coastal Herrings.* (1) Handling and processing on-board as well as shoreside methods, (2) exploratory fishing and gear development (3) economic analysis of harvesting, handling, and processing systems, (4) regulatory impact analysis, and (5) predator-prey relationships—particularly recreational and commercial impacts.

5. *Ocean Pelagics.* (1) Economic analysis of harvesting, handling, and processing systems, and (2) regulatory impact analysis.

6. *Marine Mollusks.* (1) Squid harvesting and on-board handling, and (2) squid product preparation.

7. *Crabs and Lobsters.* (1) Determine safe harvest potential, handling and processing techniques for deepwater crab, and (2) develop limited access system for spiny lobster fishery.

8. *Bottomfish.* (1) Access impact of Trawling Efficiency Device (TED) on bottomfish stocks, and (2) determine yield potentials and harvesting and processing requirements for Gulf butterfish.

9. *Estuarine Fish.* (1) Stock assessment (occurrence of separate stocks) of red drum, (2) identification of safe levels of mullet exploration and economic assessment of the mullet fishery including seasonability, locality, and dependence on other species such as trout and drum, (3) improve estimates of year-class strengths and catch of red and black drum, and (4) enhance knowledge of red drum life history including age and length and mortalities.

10. *General.* (1) Develop population models using both commercial and recreational efforts plus other significant factors, and (2) conduct economic research applicable to all Gulf of Mexico fisheries.

How-To-Apply

A. Eligible-Applicants

Applicants for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;

2. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. The NMFS encourages women and minority individuals and groups to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funds

For fiscal year 1986 the NMFS will have an estimated $1.6 million available to fund fishery research and development projects. Although grants or cooperative agreements will generally be awarded for a period of 1 year, multi-year projects may be approved. Once approved, multi-year projects would not compete for funding in subsequent years. For multi-year projects, funding beyond the first year will be contingent on the availability of new fiscal year program funds and the extent to which project objectives are met during the prior year.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available. Funding for successful applications generally will be provided by October 1986.

C. Cost-Sharing Requirements

Cost sharing is not required for the MARFIN project. However, cost sharing is encouraged.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to enhancing the use of Gulf of Mexico fishery resources and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by line item with appropriate justification. Applicants should not assume prior knowledge on the aprt of the NMFS as to the relative merits of the project described in the application. Applications must be submitted in the following format:

1. Cover Sheet

An applicant must use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Office, NMFS Washington Office, or Department of Commerce Regional Administrative Support Center (RASC); addresses are listed under the "Application Submission" section which follows.

2. Project Summary

Each project within the application must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing).

c. Project duration: (beginning and ending dates).

d. Name, address, and telephone number of applicant.

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own not less than 75 percent of the interest in the entity or, in the case of non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more its board of directors than a majority of the number necessary to constitute quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI: (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI: (iii) Through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI: or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

e. Principal Investigator(s).

f. Project objective.

g. Summary of work to be performed.

For continuing projects the applicant is to briefly describe progress to date in addition to work proposed with the additional funds.

h. Total Federal funds requested (initial and total amount and percentage of total project costs).

i. Project costs to be provided from non-Federal Government and total amount and percentage of total projects costs).

j. Total project costs.

3. Project Description

Each project within the application must be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will not guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

a. Identification of Problem(s). For new projects describe how existing conditions prevent the full use of Gulf of Mexico fishery resources. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishery resources.

b. Project Goals and Objectives. State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. Need for Government Financial Assistance. Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. Participation by Persons or Groups Other Than the Applicant. Describe the level of participation required in the project(s) by NOAA or other Government and non-Government entities.

e. Federal, State, and Local Government Activities. List any existing Federal, State, or Local government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. Project Outline. Describe the work to be performed during the project starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. For multi-year projects, major project tasks and milestones must be identified. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the applications for funding and will return it to the applicant.

g. Project Management. Describe how the project will be organized and managed. List all persons, directly employed by the applicant, who will be involved in the project, their qualifications, and their level of involvement in the project. If any tasks will be conducted through subcontracts, provide copies of any agreements between the applicant and the proposed subcontractors which describe the specific tasks they will perform. If no subcontractor has been chosen, indicate this. All subcontracts must be awarded on a competitive basis. If a subcontractor is chosen prior to application submission, the competitive process used must be documented.

h. Monitoring of Project Performance. Identify who will participate in monitoring the project.

i. Project Impacts. Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

j. Evaluation of Project Impacts. The applicant is required to provide an evaluation of project accomplishments. Describe the methodology or procedures to be followed to determine, as appropriate, technical or economic feasibility, to evaluate consumer acceptability, or to quantify the impact of the project in promoting increased landings, production, sales exports, product quality, safety, or other measurable factors.

k. Project Costs. Itemized costs for the following must be provided: (1) Personnel salaries by position title, (2) total personnel benefits, (3) consultant and contract services, (4) travel, (5) space costs and rentals, and (6) other costs. A standard budget form is available from the offices listed in Section E. A separate budget must be submitted for each project within an application. For multi-year projects, funds will be provided as specified tasks are completed. Therefore, applicants submitting multi-year projects must submit two budgets: one covering total project costs and one covering its initial funding request. Initial funding requests should cover only funds required during the first 12-month period. Ordinarily, funds will not be granted for the purchase of capital equipment. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget the applicant must describe briefly the basis for estimating the value of any matching funds derived from inkind contributions.

4. Project Consolidation

Applicants may submit two or more related projects under one proposal but must identify project costs including administrative costs, separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. Supporting Documentation

This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries use may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline.

1. Deadline

The NMFS will accept applications for funding under this program between July 11, 1986, and August 11, 1986. An application will be accepted if the

application is received by the office listed below on or before August 11, 1986.

2. Submission of Applications to the NMFS

Applications are not to be bound in any manner. Applicants must submit one signed original and two (2) copies of the complete application to the address set forth below:

Regional Director
Attn: D. Ekberg
National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, FLorida 33702, Telephone No.: (813) 893–3142.

Questions of an administrative nature should be referred to:

NOAA/RAS/CC31
Attn: Jean West
Central Administration Support Center, Federal Bldg., Room 1758, 601 East 12th Street, Kansas City, Missouri 64106, Telephone No.: (816) 374–7267.

Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects.

For applications meeting the requirements of this solicitation, NMFS will evaluate the project(s) contained in the application in consultation with the MARFIN Board, representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, public and private research and development organizations, and other fisheries interests, as necessary. NMFS will make project descriptions available for review as follows:

1. Public Review and Comment

Applications may be inspected at the National Marine Fisheries Service Regional Office in St. Petersburg, FL from August 12, 1986 to August 19, 1986.

2. Consultation with Members of the MARFIN Board

Applications will be reviewed by the MARFIN Board, which is made up of members from NMFS, Sea Grant, commercial industry, recreational industry, Gulf Fishery Management Council, Gulf and South Atlantic Fisheries Development Foundation, Inc., Gulf States (FL, AL, MS, LA, TX), and the Gulf States Marine Fisheries Commission.

3. Consultation with Members of the Fishing Industry

The NMFS shall, at its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

4. Consultation with Government Agencies

Applications will be reviewed in consultation with the NMFS Southeast Research Center and Utilization Laboratories, RASC Grants Officer and, as appropriate, Department of Commerce and other federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

The NMFS will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will give people point scores based on the following evaluation criteria:

Evaluation Criteria

a. Adequacy of research/development/demonstration for enhancing Gulf of Mexico marine fisheries resources possibilities of securing productive results (30 points).

b. Soundness of design/technical approach for enhancing the use of Gulf of Mexico marine fisheries resources (25 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

e. Justification and allocation of the budget in terms of the work to be performed (10 points).

After the technical evaluation, the MARFIN Board will rank the projects filed, considering the significance of the problem addressed in the project along with the technical evaluation and need for funding. This evaluation and ranking will enable NMFS to determine the appropriate level of funding for each project.

B. Funding Awards

After projects have been evaluated, the MARFIN Board will develop recommendations for project funding. They will submit the recommendations to the MARFIN Program Coordinator in the NMFS Southeast Regional Office for review who will determine the number of projects to be funded based on the recommendations provided, and the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant and NOAA/NMFS Program and grants management representatives. The Department of Commerce (DOC) will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by RASC Grants Officer. Projects may not be initiated until a notice of award document is received.

Administrative Requirements

A. Obligations of the Applicant

An applicant must—

1. Meet all applications requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives. NMFS may provide a proportionate share of funds as part of the financial award to pay for an audit.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within thirty days after the end of each calendar quarter to the individual specified as the technical monitor in the funding agreement. The content of these reports will include, at a minimum:

a. A summary of work conducted which includes a description of specific accomplishments and milestones achieved. NMFS will provide a summary format to standardize tracking of milestone achievements and budget plans;

b. The degree to which goals or objectives were achieved as originally projected;

c. Where necessary, the reasons why goals or objectives are not being met; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefor.

6. If a project is funded, submit an original and 2 copies of a final report within 90 days after completion of each project. The report must describe the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments and be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to make productive use of project results should be identified.

7. If a project is funded by grant or cooperative agreement, comply with Office of Management and Budget (OMB) Circulars, and Department of Commerce, and NOAA policies. Copies of all circulars are available from the RASC Office listed above. Circulars will be provided to all awardees.

8. Submit two copies of all publications or reports printed with grant funds.

B. Obligations of the National Marine Fisheries Service

The NMFS will—

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects;

2. Provide advice, through the NMFS Southeast Regional Office to inform applicants of NMFS fisheries development policies and goals.

3. Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

C. RASC Grants Officer Responsibility

The RASC Grants Officer is responsible for the administrative processing of NOAA federal assistance awards. Questions from the recipient of an administrative nature will be referred to the Grants Office. The official grant file will be maintained by the Grants Officer who will ensure that OMB, DOC, and NOAA policies are met.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable local, State and Federal Laws.

This program is not included in the Catalogue of Federal Domestic Assistance.

Dated: July 8, 1986.

William J. Jordan,

Assistant Administration for Fisheries.

[FR Doc. 86-15696 Filed 7-10-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Energy Information Administration

Energy Surveys of the Manufacturing Sector: The Manufacturing Energy Consumption Survey, Form EIA-846(F) and the Industrial Energy Efficiency Improvement and Recovered Materials Survey, Forms CE-189P, C, and S

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of intent to conduct the Manufacturing Energy Consumption Survey and the Industrial Energy Efficiency Improvement and Recovered Materials Survey.

SUMMARY: The purpose of this notice is to inform interested parties of the status of the Industrial Energy Efficiency Improvement and Recovered Materials Survey Forms CE-189P, C, and S (CE-189) and the Manufacturing Energy Consumption Survey (MECS) Form EIA-846(F) data collections and to explain why both surveys will be conducted this summer. In order to facilitate an orderly transition, both data collections will take place for calendar year 1985 data only.

DATES: Although the Department of Energy (DOE) is not requesting comments at this time, any comments which are filed with DOE within 30 days of the publication of this notice will be considered in formulating a proposed rule on future CE-189 data collections.

FOR FURTHER INFORMATION CONTACT: Matters relating to information collections should be addressed to: Mr. John Gross, Director of Data Collection Services, Energy Information Administration, EI-73, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/252-2308.

Matters relating to proposed rulemaking on CE-189 data collections should be addressed to: Mr. James P. Demetrops, Office of Industrial Programs, CE-14, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/252-9495.

SUPPLEMENTARY INFORMATION: DOE collects CE-189 data under the provisions of Part E of Title III of the Energy Policy and Conservation Act (EPCA), as amended (42 U.S.C. 6341-6346). DOE recognizes that currently H.R. 4609, the "Energy Conservation Simplification Act," seeks to repeal Part E. While supporting this bill as a useful reform in the energy conservation area, DOE notes that the introduction of the bill was recent, May 22, 1986, and, in the absence of the proposal being enacted, DOE will gather CE-189 data for the calendar year 1985 in accordance with Part E. Additionally, in reports acocmpanying the Energy Information Administration (EIA) appropriations for fiscal years 1985 and 1986, Congress has directed EIA to conduct the MECS. In light of the existing legislation and congressional direction, DOE submitted two sets of forms to the Office of Management and Budget (OMB) for approval of data collections for calendar year 1985. Although similar, one form was in the area of industrial energy conservation (CE-189) and the other covered industrial energy consumption (MECS).

In a notice dated June 4, 1986, OMB informed DOE that it was extending the current approval of the CE-189 until September 30, 1986. Respondents to the CE-189 collection have been informed that they should submit data for 1985. On June 10, 1986, OMB also gave its approval to EIA to conduct a reduced version of the MECS. This survey will collect, from the manufacturing sector, data on the consumption of energy for fuel and nonfuel purposes, and related data on electricity generation and energy prices. The survey will be mailed by the Bureau of the Census, acting as EIA's agent, to a representative national sample of 12,000 manufacturing establishments classified in SIC's 20-39. This mailing will be completed by July 15, 1986, and the completed questionnaires are to be returned by August 15, 1986.

In its letter concerning the CE-189, OMB urged that ". . . DOE initiate as soon as practicable, proposals to change the current rules [under which the data are collected], with a [view] to discontinue these collections." OMB also stated that, if the collections cannot be legally terminated, ". . . DOE can and should reduce their contents to those strictly necessary to comply with . . . ." the requirements of law. The DOE is fully in agreement with the need to reduce burden associated with the CE-189 and will initiate the rulemaking process needed to comply with OMB's request to reduce or terminate the CE-189 collection.

The DOE decided to conduct both surveys concurrently for the following reasons. First, much of the CE-189 data have already been voluntarily submitted to DOE and to change the existing forms

or procedures for collecting 1985 data would create confusion and additional burden. Secondly, the time required to conduct a rulemaking to change the form would delay collection of data for calendar year 1985 to such a late date that respondents could have difficulty in assembling that data.

Finally, the availability of data for 1985 from both surveys will make it possible to link the two series and to understand differences and similarities between them. The overlapping collection of 1985 data insures that, in addition to functioning as a basic benchmarking statistical data set, the DOE will be able to demonstrate that it can use the MECS to replace the CE–189 series in measuring energy efficiency improvements.

When shifting from one method of data collection to another, it is generally good statistical practice to have a year of over-lapping data. This overlap will enable DOE to work out any deficiencies and anomalies in the new data collection and propose analytic procedures for estimating efficiency improvements. The overlap will also make it possible to identify reasons for differences between CE–189 and MECS data. Such identification of differences is necessary if the MECS data set is to be used to continue the trend information provided by the CE–189. In addition, procedures will be developed which will permit analysis and correction of any problems that might occur in relating the two series. A report will be provided for interested parties that will document the procedures utilized. Both data providers and users also will be given time to plan for the transition to the MECS as the basic source of information on industrial energy efficiency.

Proposed Actions: The DOE intends to initiate a review of the current regulations for the CE–189 program as requested by OMB, with the objective of reducing information collected to the minimum. The DOE anticipates that a Notice of Proposed Rulemaking (NOPR) on the CE–189 data collections will be published within the next several months. The NOPR will outline the procedures under which the public will be afforded an opportunity to provide written comments and participate in a public hearing. The DOE expects that the rulemaking process will be completed and any resultant changes will be made to the CE–189 program before the next data collection cycle.

Issued in Washington, DC, on July 9, 1986.

Yvonne Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86–15804 Filed 7–10–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order; MGPC, Inc. and MCO Holdings, Inc.

AGENCY: Economic Regulatory Administration, Department Of Energy.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration [ERA] of the Department of Energy [DOE] announces a proposed Consent Order with MGPC, Inc. and its parent MCO Holdings, Inc. [MPGC/MCOH] concerning sales of natural gas liquids, natural gas liquid products and crude oil condensate by the firm, and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by: August 11, 1986.

ADDRESS: Send Comments to: MGPC/MCOH Consent Order Comments, Carl A. Carrallo, Solicitor, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Room 3H–017; Mail Code RG–43, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Associate Solicitor, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Room 3H–017; Mail Code RG–43, Washington, DC 20585 (202) 252–4235. (Copies of the Consent Order may be obtained free of charge by writing or calling this office).

SUPPLEMENTARY INFORMATION: On May 23, 1986, the ERA executed a proposed Consent Order with MGPC/MCOH for $700,000. Under 10 CFR 205.199(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. Background

MGPC, Inc. and MCO Holdings, Inc. (MGPC/MCOH) were involved in the production and sale of natural gas liquids (NGLs), natural gas liquid products (NGLPs) and crude oil condensate during the period August 19, 1973 through February 28, 1975 (the audit period). ERA's audit concluded that MGPC/MCOH made sales of condensate which exceeded the firm's maximum allowable selling prices by $124,310.81, plus interest, over the entire audit period, and sales of NGLs and NGLPs which exceeded the firm's maximum allowable selling prices by $390,093, plus interest, during the period January 1, 1975 through February 28, 1975.

There are several factual and legal issues relating to these sales of crude oil condensate and NGLs and NGLPs under 6 CFR 150.1 *et seq.* and 10 CFR 212.161 *et seq.*, that have not been finally resolved. ERA has preliminarily agreed to the settlement amount after consideration of these factual and legal issues and after its assessment of the litigation risks related to these issues and associated with establishing the alleged overcharges. It is the opinion of ERA that a lump sum payment of $700,000, which includes interest, is a satisfactory compromise of the issues raised in this audit.

II. The Consent Order

The proposed Consent Order has been entered into to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to MGPC/MCOH's compliance in its sales of NGLs, NGLPs and crude oil condensate during the audit period. Although MGPC/MCOH contends that in all respects it correctly construed and applied the applicable regulations, MGPC/MCOH has entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by its audit.

III. Refunds

Under the Consent Order, MGPC/MCOH will pay the sum of $700,000 within thirty days of the effective date of the Consent Order. The administrator (or his designee) of ERA shall direct that these monies be deposited in a suitable account and ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute the monies.

In consideration for MGPC/MCOH's performance under the Consent Order, the DOE agrees not to pursue any civil claims against MGPC/MCOH's that the DOE may have arising out of the matters covered by the Consent Order.

The foregoing provisions for payment of the refund amount were established because ERA was unable to readily identify the ultimate injured parties due to the nature of the alleged violations.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation "Comments on MGPC/MCOH Consent Order." The ERA will consider all comments it receives by 4:30 p.m. CST, thirty (30) days after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, DC, on the 30th day of June, 1986.

Carl A. Corrallo,

Solicitor, Economic Regulatory Administration.

[FR Doc. 86-15635 Filed 7-10-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-36; OFP Case No. 55118-9316-20-24]

General Electric Co.; Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order granting to General Electric Company an exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to General Electric Company (GE) a permanent site limitation exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"). The exemption granted permits the use of natural gas as the primary energy source for its proposed Martinez Cogen Plant.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on September 9, 1986.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585. Telephone (202)252-8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202)252-6947.

SUPPLEMENTARY INFORMATION: All cogeneration equipment will be located within the cogeneration facility boundaries, which will be located east of the existing PG&E Cogeneration Facility. The Cogeneration Facility will be approximately 150 feet by 250 feet.

The new cogeneration facility will house all of the cogeneration equipment including a gas turbine-generator, heat recovery steam generator, steam turbine-generator, and most of the auxiliary equipment. Some of the existing PG&E auxiliary equipment will be used to complete the facility.

One General Electric Model G6501(b) gas turbine-generator, rated at 38,210 kW under site conditions, will be supplied as a package unit. The gas turbine will be supplied with a sound attenuating enclosure, a CO_2 fire protection system, electric starter, and a steam injection system for NO_x control. The gas turbine-generator will be equipped to burn either natural gas or refinery gas.

GE has certified that due to the specific physical limitations enumerated below, the criteria for a permanent exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned facility has been furnished.

The physical limitations addressed by the petitioner are, coal fired boilers along with handling equipment, ash removal equipment and a coal pile must be located in the vicinity of the powerhouse.

GE certified that: 1. One or more specific physical limitations relevant to the location or operation of the proposed facility exists which, despite good faith efforts, cannot reasonably be expected to be overcome within five years after commencement of operation (10 CFR 503.33(a)(1)).

2. There is an unavailability of adequate land or facilities for handling, using, and storing coal and that this problem cannot be overcome in five years.

3. The use of oil and coal or natural gas and coal will not be technically feasible for the Gas Turbine at the proposed Martinez Cogen Facility.

4. The use of fluidized bed combustion is not economically or technically feasible at the proposed Martinez Cogen Facility.

5. An alternative site is not economically or technically feasible at the proposed Martinez Cogen Facility.

6. A fuel search was made to the extent necessary for the proposed Martinez Cogen Facility.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed unit in the **Federal Register** on May 14, 1986 (51 FR 17665), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701 (f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency and the Federal Trade Commission, respectively, for comments. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on June 30, 1986. No comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that General Electric has satisfied the

eligibility requirements for the requested exemption as set forth in 10 CFR 503.33. Therefore, pursuant to section 212(a) of FUA, ERA hereby grants a permanent site limitation exemption to General Electric to permit the use of natural gas as the primary energy source for its proposed Martinez Cogen Plant.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this action may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on July 1, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-15669 Filed 7-10-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 8862-001 et al.]

Hydroelectric Applications (Coffeeville Hydroelectric Partners et al.); Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: License (Over 5 MW).

b. Project No: 8862-001.

c. Date Filed: May 21, 1985.

d. Applicant: Coffeeville Hydroelectric Partners.

e. Name of Project: Coffeeville Hydro Project.

f. Location: On the Tombigbee River near Coffeeville, Clarke and Choctaw Counties, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Michael G. LaRow, 91 Newbury Street, Boston, MA 02116, (617) 424-1888.

i. Comment Date: August 4, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Coffeeville Lock and Dam and existing 1850-foot-long and 200-foot-wide diversion channel and would consist of: (1) A proposed reinforced concrete powerhouse which would be located on the north side of the river in the diversion channel, and which would contain two 12-MW generators for a total installed capacity of 24 MW; (2) a proposed 46-kV transmission line approximately 2 miles long; and (3) appurtenent facilities. The Applicant estimates that the average annual generation would be 93.7 GWh. All project energy would be sold to a local public utility.

k. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

2. a. Type of Application: Minor License.

b. Project No: 7932-001.

c. Date Filed: December 20, 1985.

d. Applicant: Warren H. Taylor.

e. Name of Project: Tolles Hill.

f. Location: At the U.S. Army Corps of Engineers' Tolles Hill Dam on the Black River in Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Warren H. Taylor, RFD 1, Rutland, VT 05701, (802) 775-5327.

i. Comment Date: August 4, 1986.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Tolles Hill Dam and Reservoir and would consist of: (1) New headgates; (2) trashracks; (3) 4-foot-high flashboards; (4) a new powerhouse adjacent to the right abutment with 4 turbine-generator units with a total installed capacity of 500 kW; (5) a new 4.16-kV and 1,200-foot-long transmission line; and other appurtenances. Applicant estimates an average annual generation of 1,500,000 kWh.

k. Purpose of Project: Project energy would be sold to the Central Vermont Public Service Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C. and D1.

3. a. Type of Application: License (5MW or less).

b. Project No: 9869-000.

c. Date Filed: December 9, 1985.

d. Applicant: Michiana Hydro Electric Power Corporation.

e. Name of Project: Goshen.

f. Location: On the Elkhart River in Elkhart County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Douglas A. Hunt, 915 Weber Square West, South Bend, IN 46617, (219) 234-9916.

Mr. Charles S. Hayes, 1634 E. Jefferson Blvd., South Bend, IN 46617, (219) 233-1296.

i. Comment Date: August 4, 1986.

j. Description of Project: The Applicant would utilize an existing dam owned by the Elkhart County Park Board. The proposed project would consist of: (1) An earth-fill dam with a height of 15.9 feet and a length of 800 feet; (2) an existing reservoir with a surface area of 200 acres and a storage capacity of 930 acre-feet at powerpool elevation of 791.2 feet m.s.l.; (3) an existing 50-foot-wide by 2-mile-long powercanal containing water control gates; (4) an existing concrete and brick powerhouse containing two generating units rated at 150 kW and 300 kW, respectively. The powerhouse and generating units are proposed to be refurbished; (5) an existing transmission system which includes the 0.44 generator leads, the 0.44/12.5, 500-kVA transformer, the 10-foot-long, 12.5-kV service connection; and (6) appurtenant facilities. The estimated average annual energy output for the project is 2,000,000 kWh.

k. Purpose of Project: Power produced at the project would be sold to the Northern Indiana Public Service Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

4. a. Type of Application: Major License.

b. Project No: 4644-001.

c. Date Filed: November 8, 1985.

d. Applicant: Stevens and Thompson Paper Company, Inc.

e. Name of Project: Dahowa Project.

f. Location: On the Batten Kill in Washington County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Stephen F. Burke, James Besha Associates, One Washington Square, Albany, NY 12205, (518) 456-7712.

i. Comment Date: August 6, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 6-foot-high, 163-foot-long concrete ogee dam; (2) a reservoir with a surface area of 2.7 acres, no usable storage capacity, and a normal water surface elevation of 240.0 feet USGS with; (3) 5-foot-high flashboards; (4) an existing 8-foot-high, 228-foot-long concrete headrace wall with; (5) 3-foot-high flashboards; (6) new intake gates integral with; (7) a new powerhouse containing two generating units with a capacity of 5,250 kW for a total installed capacity of 10,500 kW; (8) a new 50-foot-long tailrace tunnel; (9) a new transmission line, 700 feet long; and (10) appurtenant facilities. The applicant estimates that the average annual generation would be 30,700,000 kWh. The existing dam is owned by the Stevens and Thompson Paper Company, Inc., Greenwich, New York.

Stevens and Thompson Paper Company, Inc. presently holds an exemption for this project. The applicant, if granted a license, intends to surrender its exemption.

k. Purpose of Project: Project power would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

5 a. Type of Application: Minor License.

b. Project No.: 8142–001.

c. Date Filed: January 29, 1986.

d. Applicant: Henwood Associates, Inc.

e. Name of Project: Dynamo Pond.

f. Location: On Hatchet Creek, near Bridgeport, within land administered by the Bureau of Land Management, in Mono County, California (In Section 4 of T3N, R25E, and Sections 28, 29, and 33 of T4N, R25E, M.D.M. & B.)

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)—825(r).

h. Contact Person: Mr. Mark Henwood, Henwood Associates, Inc., 2555 3rd Street, Suite 110, Sacramento, CA 95818, (916) 447–3497.

i. Comment Date: August 4, 1986.

j. Description of Project: The proposed project would consist of: (1) A repaired and refurbished 20-foot-high Sario Livestock Company Dynamo Pond Dam at elevation 7,583 feet msl; (2) a reservoir with a storage capacity of 28.1 acre-feet and a surface area of 3.6 acres; (3) a 26-inch-diameter, 8,975-foot-long steel penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity of 900 kW operating under a head of 690 feet; and (5) a 16–kV, 7,166-foot-long transmission line interconnecting the project to an existing Southern California Edison Company (SCE) line. The estimated average annual generation of 4.18 GWh would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9979–000.

c. Date Filed: April 21, 1986.

d. Applicant: Adirondack Hydro Development Corporation.

e. Name of Project: Fall Island Hydro.

f. Location: On the Raquette River in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)—825(r).

h. Contact Person: Mr. Alan W. Rothe, Ayres, Lewis, Norris & May, Inc., 2330 East Stadium Boulevard, Ann Arbor, MI 48104, (313) 971–7800.

i. Comment Date: August 8, 1986.

j. Description of Project: The Applicant proposed to develop the presently unutilized capacity at the East and West Dams, owned and which an exemption has been previously issued to, the Village of Potsdam for the existing Potsdam Hydroelectric Project No. 2869 which consists of: (1) An existing 165-foot-long, 7-foot-high concrete and masonry dam with an existing spillway at elevation 405 feet msl; (2) a second existing 130-foot-long, 6-foot-high dam with an existing spillway at elevation 404.8 feet msl; (3) an existing 300-acre surface area reservoir with a storage capacity of 750 acre-feet with a maximum surface elevation of 405.3 feet msl; (4) an existing penstock; (5) an existing powerhouse with two turbine/generators for an installed capacity of 800 kW located next to the East Dam; (6) an existing tailrace; (7) an existing transmission line; and (8) appurtenant facilities.

The proposed project would consist of: (1) A proposed penstock approximately 30 feet long to convey water to; (2) a new powerhouse to contain one turbine/generator with an installed capacity of 650 kW located downstream of the West Dam; (3) a proposed tailrace approximately 100 feet long; (4) a new 13.2-kV transmission line approximately 200 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 2,300,000 kWh operating under a net hydraulic head of 9.5 feet.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary plans, and a study of environmental impacts. Based on results of these studies. Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $85,000.

7 a. Type of Application: New License (Over 5MW).

b. Project No., 2512–002.

c. Date Filed: December 18, 1984.

d. Applicant: Elkem Metals Company.

e. Name of Project: Hawks Nest—Glen Ferris.

f. Location: On the New and Kanawha Rivers in Fayette County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roland R. Gamroth, General Manager, Elkem Metals Company, Park West Office Center, P.O. Box 266, Pittsburgh, PA 12230, (802) 878–5274.

i. Comment Date: Aug 13, 1986.

j. Description of Project: The existing project consists of the Hawks Nest Development on the New River and the Glen Ferris Development on the Kanawha River as described below:

A. The Hawks Nest Development consists of: (1) A 65-foot-high, 948-foot-long concrete spillway dam with 14 spillway bays with a 25-foot by 50-foot steel crest gate each; (2) an impoundment with a surface area of 243 acres at normal maximum surface elevation of 820 feet U.S.G.C.; (3) a concrete intake structure with trashracks, located at the west abutment; (4) a 16,240-foot-long tunnel; (5) a 116-foot-diameter surge tank; (6) a 107-foot-long, 30-foot-diameter steel penstock; (7) a manifold connection leading to five 14-foot-diameter steel penstocks varying in length from 42 to 132 feet; (8) a concrete powerhouse with four identical 25.5-NW turbo-generator sets (one of the 5 penstocks is not being used); (9) 6.9-kV generator leads; (10) a 6.9/69-kV step-up transformer; (11) two 5.5-mile-long, 69–kV transmission lines; (12) a tailrace channel; and (13) other appurtenances.

B. The Glenn Ferris Development consists of: (1) A 2,850-foot-long, 12-foot-high concrete gravity dam; (2) a reservoir with a normal surface elevation of 651 feet U.S.G.S. and storage capacity of 1,500 acre-feet; (3) 2 intake structures with trashracks and 2 separate powerhouses at the west side of the dam with a total installed capacity of 5.45 MW (8 units); (4) 110-volt generator leads; (5) two 110/2,200-volt generator leads; (6) a 69/13.5/6.9-kV transformer; and (8) other appurtenances.

The project generates an average annual energy of 34,412, 385 kWh.

k. Purpose of Project: The Applicant utilizes the project energy in the operation of its Ferroalloy plant, at Alloy, West Virginia.

l. This notice also consists of the following standard paragraphs: B and C.

8 a. Type of Application: Preliminary Permit.

b. Project No: 9986–000.

c. Date Filed: May 1, 1986.

d. Applicant: City of Milton-Freewater.

e. Name of Project: Elk Creek Lake.

f. Location: At the Corps of Engineer's Elk Creek Dam in Jackson County, Oregon. Township 33S and Range 1E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: James Swayne, City Hall, Milton-Freewater, OR 97862, (503) 938–5531.

i. Comment Date: August 8, 1986.

j. Description of Project: The project would utilize the Corps of Engineer's Elk Creek Dam and Reservoir and would consist of a powerhouse containing two generating units with a combined capacity of 7.0 MW and an average annual generation of 21.7 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $200,000. No new roads would be constructed or drilling conducted the feasibility study.

k. Purpose of Project: Project power would be used by the applicant.

l. This notice also consists of the following paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: License (Over 5MW).

b. Project No.: 7105–001.

c. Date Filed: February 25, 1985.

d. Applicant: Davenport-Rock Island Associates.

e. Name of Project: Davenport Hydro Project.

f. Location: On the Mississippi River near Davenport, Scott County, Iowa and Arsenal Island, Rock Island County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. E.J. Garceau, Davenport-Rock Island Associates, P.O. Box 1011, Portland, NH 03801, (207) 439–5900.

i. Comment Date: August 11, 1986.

j. Description of Project: The proposed run-of-river project would utilize the existing U.S. Army Corps of Engineers' Mississippi River Lock and Dam No. 15 and would consist of: (1) A proposed reinforced concrete gated forebay connecting the dam and proposed powerhouse; (2) a proposed powerhouse approximately 180 feet wide and 140 feet long and containing four 7–MW generators for a total installed capacity of 28 MW; (3) a proposed tailrace channel approximately 250 feet wide and 160 feet long; (4) a proposed 1.5-mile-long 69-kV transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 170 GWh. Project energy generated would be sold to a local public utility company. The Applicant is the Permittee for Project No. 7105.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C.

10 a. Type of Application: Preliminary Permit.

b. Project No: 9720–000.

c. Date Filed: December 24, 1985.

d. Applicant: Bondsville Hydropower Incorporated.

e. Name of Project: Textile Printing Company Lower Dam Project.

f. Location: On the Swift River in Hampden and Hampshire Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Kenneth P. Lewis, President, Massachusetts Hydropower Incorporated, 104 Charles Street, #101, Boston, Massachusetts 02114, (617) 734–6389.

i. Comment Date: Aug 83, 1986.

j. Description of Project: The proposed project would consist of: (1) An approximately 125-foot-long existing dam with a height of approximately 14 feet; (2) the proposed reinstallation of 1.5-foot-high flashboards; (3) an existing 5.5-acre reservoir with a storage capacity of 33 acre-feet, at the normal surface elevation of 338.6 feet (NGVD) which will be enlarged to a 6.5-acre reservoir with a storage capacity of 44 acre-feet at the normal surface elevation of 340.1 acre-feet at the normal surface elevation of 340.1 feet (NGVD) with the flashboards installed; (4) a proposed powerhouse which will contain an installed generating capacity of 150 kW; (5) a proposed 400-foot-long, 13.2 kV transmission line; and (6) appurtenant facilities.

The Applicant estimates that the average annual energy generation will be 750 MWh. The owners of the dam are Mr. Barry Endelson of White Plains, New York and Mr. Benjamin Surner of Amherst, Massachusetts.

k. Purpose of Project: The Applicant anticipates selling the power available to either the New England Power Company, the Commonwealth Electric Company, the Fitchburg Gas & Electric Company, or the Mass, Municipal Wholesale Electric Company.

l. This notice also consists of the following standards paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $10,000.00.

11 a. Type of Application: Preliminary Permit.

b. Project No: 9969–000.

c. Date Filed: April 14, 1986.

d. Applicant: Frog Hollow Hydro Associates.

e. Name of Project: Frog Hollow.

f. Location: Otter Creek, Addison County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert Evans King, 170 Barretts Mill Road, Concord, MA 01742, (603) 244–8333.

i. Comment Date: August 8, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing natural water feature, known as Middlebury Falls, to be topped by a proposed concrete cap less than 1 foot high and 130 feet long with a crest elevation of 337 feet mean sea level; (2) a proposed impoundment of negligible volume and surface area at a normal maximum surface elevation of 337 feet mean sea level; (3) an existing intake on the northeast bank, to be expanded by excavation, or alternately a new excavated forebay and intake structure on the northwest bank; (4) an existing masonry powerhoue on the northeast bank, to house a single new turbine-generator of 1,440-kW capacity, or alternately a new concrete powerhouse on the northwest bank, to house two new turbine-generators of 1,750-kW combined capacity; (5) a proposed excavated tailrace; (6) a proposed 3,000-foot-long transmission line; and (7) appurtenant facilities.

The estimated annual energy production is 6.9 million kWh or 8.1 million kWh for the northeast bank and northwest bank configurations, respectively. The net hydraulic head is 22 feet. Project power would be sold to Central Vermont Public Service Corporation. The existing facilities are owned by the Town of Middlebury, Vermont.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with

more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $40,000.

12 a. Type of Application: License (5MW or Less).

b. Project No.: 9010–001.

c. Date Filed: December 30, 1985.

d. Applicant: Benjamin Falls Hydroelectric Company.

e. Name of Project: Benjamin Falls.

f. Location: Benjamin Falls in Washington, County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h . Contact Person: Mr. John L. Warshow, Benjamin Falls Hydroelectric Company, 26 State Street, Montpelier, VT 05602, (802) 223–7141.

i. Comment Date: August 8, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 40-foot-long dam owned by the City of Montpelier with a crest elevation of 880 feet msl; (2) an existing reservoir with a surface area of 5.1. acres and a gross storage capacity of 40 acre-feet; (3) a proposed 8-foot-high, 10-foot-long intake; (4) a proposed 30-inch-diameter, 2,150-foot-long penstock; (5) a proposed powerhouse containing a generating unit with a rated capacity of 900 kW; (6) a proposed 300-foot-long transmission line tying into the existing Green Mountain Power Company system; and (7) appurtenant facilities. The applicant estimates a 2,000,000 kWh average annual energy production.

k. Purpose of Project: Power would be sold to the Vermont Power Exchange.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

13. a. Type of Application: Major License (under 5MW).

b. Project No.: 9787–000.

c. Date Filed: December 30, 1985.

d. Applicant: Scott Paper Company and Washington Hydro Associates.

e. Name of Project: Jordan Creek.

f. Location: On Jordan Creek in Skagit County, Washington near the town of Marblemount, T35N, R11E, WM, Sections 17, 18, 19, 20, 29, 32 & 33.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Nicholas J. DeBenedictis, Esquire, Scott Paper Company, Scott Plaza Two, Philadelphia, PA 19113 (215) 521–5000, Nancy J. Skancke, Ross, Marsh & Foster, 888 Sixteenth St. NW., Washington, DC 20006, (202) 822–8888, and Mr. Dick Minter, Washington Hydro Associates, P.O. Box 654, Columbus, Georgia 31902, (404) 327–7258.

i. Comment Date: August 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A division structure approximately 4 feet high and 45 feet long constructed of concrete and native rock, with a broad crest weir at elevation 2,080 feet; (2) a concrete intake structure with a 4-foot by 20-foot trashrack; (3) a 48-inch-diameter intake pipe discharging flows into the fish screen box; (4) a fish screen box approximately 20 feet long constructed of concrete and steel with stainless steel vertical fish screens and an 8-inch-diameter fish bypass pipe; (5) a 28-inch-diameter steel penstock approximately 15,232 feet long which bifurcates into two 20-inch-diameter pen-stocks; (6) a powerhouse approximately 30 feet long and 20 feet wide containing two pelton turbines with a combined plant capacity of 3,800 kW, producing approximately 15.26 GWh of energy annually; (7) a tailrace channel approximately 15 feet long with a fishrack discharging project flows back into Jordan Creek; (8) an access road approximately 1,800 feet long from the powerhouse to an existing Scott Paper Company road; (9) a 3,200-foot-long, 34-kV underground transmission line tying into an existing Puget Sound Power & Light Company line at the Washington Fish Hatchery; and (10) appurtenant facilities.

The proposed project would cost approximately $4,600,000.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION," "PROTEST or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's

regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 8, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–15687 Filed 7–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER81–649–001 et al.]

Central Vermont Public Service Corporation et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Central Vermont Public Service Corporation

[Docket No. ER81–649–001]

July 1, 1986.

Take notice that on May 30, 1986, Central Vermont Public Service Corporation ("CVPS") tendered for filing its actual cost report for 1985 service year billings for Electric Rate Schedule FERC No. 108. CVPS states in its filing that the filing is made in accordance with Paragraph Q–1 of Rate Schedule FERC No. 108, under which CVPS provides reserve system capacity service to Connecticut Valley Electric Company Inc.

Comment date: July 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket No. ER86–564–000]

July 2, 1986.

Take notice that on June 27, 1986, Florida Power Corporation (Florida Power) tendered for filing revisions to Florida Power's FPC Electric Tariff, First Revised Volume No. 1, Rate Schedule FPC No. 74, and Rate Schedule FPC No. 77. The revisions eliminated the surcharge for spent nuclear fuel disposal costs applicable to various municipal wholesale customers, Reedy Creek Utilities Company, and the City of Wauchula, Florida.

Florida Power requests that the revisions be permitted to become effective sixty (60) days after the date of filing. Copies of this filing have been served upon the affected municipal customers, Reedy Creek Utilities Company, the City of Wauchula, Florida, and the Florida Public Service Commission.

Comment date: July 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER86–563–000]

July 2, 1986.

Take notice that on June 27, 1986, Pacific Gas and Electric Company [PGandE] tendered for filing amendments to its contracts covering services rendered by PGandE to the Shasta Dam Area Public Utility District (Shasta Dam) and to the City of Redding (Redding).

The Agreement with Shasta Dam was initially filed under FERC Docket No. ER81–11 and was designated as FERC Rate Schedule No. 89. The Redding Agreement was initially filed under Docket No. ER80–577 and is served under Rate Schedule R–1. PGandE, Shasta Dam and Redding have agreed to reduce the transmission loss factor to be applied for billing purposes. This revision will result in a reduction in revenues collected by PGandE from Shasta Dam and Redding.

Shasta Dam and Redding are connected to the Western Area Power Administration's (Western) electrical system. Power sales by PGandE are delivered to Western for transmission by Western to Shasta Dam and Redding under customer-Western agreements. The loss factor applicable to PGandE sales is being reduced from 6.0 percent to 4.5 percent to track the loss factor in Western's contract with Shasta Dam. The loss factor applicable to PGandE sales is being reduced from 6.0 percent to 4.5 percent to track the loss factor in the contract with Redding.

The proposed effective date for this filing is June 1, 1986. Pursuant to § 35.11 of the Commission's Regulations, PGandE respectfully requests a waiver of the Commission's notice requirements so as to permit an effective date of June 1, 1986. No customers under any other rate schedules are affected if such a waiver is granted.

Comment date: July 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Bangor Hydro-Electric Company

[Docket No. ER86–501–000]

July 8, 1986.

Take notice that on July 1, 1986, Bangor Hydro-Electric Company (Bangor Hydro) tendered for filing additional information supplementing its filing of May 22, 1986 in this docket. Bangor Hydro states that it has sent copies of this additional information to all parties and to all persons required by the Commission's regulations to be served with the filing initiating this docket.

Comment date: July 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Delmarva Power & Light Company

[Docket No. ER86–568–000]

July 8, 1986.

Take notice that on July 1, 1986, Delmarva Power & Light Company ("Delmarva") tendered for filing proposed Supplement No. 6 to its FERC Rate Schedule No. 62. This Supplement, filed at the request of the City of Seaford, Delaware, ("Seaford") increases the maximum level of parallel generation under the provisions of the Service Agreement between Delmarva and Seaford from 4500 kW to 7000 kW. Copies of the filing were served upon

Seaford and the Delaware Public Service Commission.

Comment date: July 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Company

[Docket No. ER86-567-000]

July 8, 1986.

Take notice that on July 1, 1986, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed Generating Municipal Electric Service Agreement superseding FERC Rate Schedule No. 159 between KG&E and the City of Erie, Kansas (City).

This filing is necessary because the City desires to cancel its existing Agreement which provides for full requirements service and to begin receiving service as a partial requirements customer. KG&E has requested an effective date of June 30, 1986.

Copies of this filing have been served on the City of Erie, Kansas and the Utilities Division of the Kansas Corporation Commission.

Comment date: July 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Oklahoma Gas and Electric Company

[Docket No. ER86-566-000]

July 8, 1986.

Take notice that on July 1, 1986, Oklahoma Gas and Electric Company (OG&E) tendered for filing a set of three Amendatory Agreements dated June 26, 1986, between OG&E and Oklahoma Municipal Power Authority (OMPA).

The amendments modify the (1) Power Sales Agreement, (2) Transmission Service Agreement, and (3) Dispatch and Load Regulation Agreement (previously filed in Docket No. ER85-378-000) to add four municipalities as new Participants.

Copies of the filing were served upon OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: July 18, 1986, in accordance with Standard Paragraph E at the end of this document.

8. Public Service Co. of New Hampshire

[Docket No. ER86-565-000]

July 8, 1986.

Take notice that on June 30, 1986, Public Service Company of New Hampshire (PSHN) tendered for filing firm transmission rate schedules superseding its currently effective Rate Schedules FPC Nos. 24 and 25 for all requirements service to Concord Electric Company and Exeter & Hampton Electric Company, respectively. In addition to changing the service from all requirements service to firm transmission service, the rate schedules increases the charges for firm transmission service above the level embedded in the present all requirements rates by $218,449 on a Period I 1985 test year basis. The existing all requirements service is scheduled to terminate on September 30, 1986. Therefore, PSNH requests that the transmission rate schedules be made effective as of October 1, 1986.

PSNH states that this filing has been posted and that copies of the filing have been served upon the two affected customers and on the New Hampshire Public Utilities Commission.

Comment date: July 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. The Washington Water Power Company

[Docket No. ER86-570-000]

July 8, 1986.

Take notice that on July 1, 1986, the Washington Water Power Company (Washington) tendered for filing a change of transmission rates pursuant to the First Amendment to the Intercompany Pool Agreement (Revised). Changes in transmission rates have made pursuant to Part III, section 8.

Washington requests that the requirements of prior notice be waived for an effective date as of July 1, 1986, for the filing parties, which include: The Washington Water Power Company, The Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, Utah Power & Light Company and Sierra Pacific Power Company, adding that there would be no effect upon purchasers under other rates schedules. Washington further requests that the effective date as to non-filing parties to the Intercompany Pool Agreement (Revised) be September 1, 1986.

Comment date: July 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15686 Filed 7-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-138-000]

Mid Louisiana Gas Co.; Petition for Authority To Institute Direct Billing Procedures

July 8, 1986.

Take notice that on July 1, 1986, Mid Louisiana Gas Company (Mid-La) filed a petition for authority to institute direct billing procedures for the recovery of prices established under the Natural Gas Policy Act of 1978 (NGPA) for its pipeline production for the periods December 1, 1978 through January 31, 1982, and February 1, 1982 through December 31, 1982. Under the proposed procedure, Mid-La will bill its jurisdictional customers for: (1) The difference between NGPA pricing and cost-of-service pricing for the subject production plus (2) interest on such amounts calculated in accordance with the Commission's regulations for both of the above-mentioned periods. Unless a customer elects to pay such an amount in a lump sum, such payments shall be made in equal monthly installments commencing January, 1987, and ending in December 1991.

Mid-La in its petition in support of this direct billing mechanism states that its proposal: (1) Is necessary to keep Mid-La whole; (2) is in accordance with current Commission precedent and policy; (3) charges customers for their share of the costs actually incurred on their behalf; and (4) is necessary to prevent distortions in current gas prices.

Any person desiring to be heard or to protest this 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 18 CFR 385.211 and 385.214. All such motions or protests must be filed on or before July 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15689 Filed 7-10-86; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RP86-136-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

July 8, 1986.

Take notice that National Fuel Gas Supply Corporation ("National"), on July 1, 1986, tendered for filing proposed changes in its FERC Gas Tariffs, First Revised Volume Nos. 1 and 2. The proposed changes would increase revenues from jurisdictional sales and service by approximately $8,800,000 based on the twelve-month period ended April 30, 1986, as adjusted.

National states that its sales have declined to a level that prohibits its opportunity to earn its allowed return on equity. Further, National states that the increased rates are required to recoup increased costs incurred in operating and maintaining its system, including, but not limited to, increased cost of capital, increased wages and increased taxes.

The rates proposed reflect an overall rate of return of 11.95 percent which is required, National states, by its cost of capital, business risk and the need to attract capital.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, New Jersey, and Massachusetts.

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 July 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15690 Filed 7-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-97-001]

Natural Gas Pipeline Company of America; Compliance Filing

July 8, 1986.

Take notice that on July 2, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1:

Substitute Original Sheet No. 5F
Substitute Original Sheet No. 5G
Substitute Second Revised Sheet No. 81
Substitute First Revise Sheet No. 82
Substitute First Revise Sheet No. 84
Substitute First Revise Sheet No. 86
Substitute Original Sheet No. 91
Substitute Original Sheet No. 92
Substitute Original Sheet No. 93

Natural states this filing is in compliance with the Commission's order issued June 27, 1986 in Docket No. RP86-97-000 and reflects (i) the elimination of any difference in rates for similar services to different types of customers; and (ii) modification of the language providing for advance payment of fees, to provide that Natural shall be reimbursed for fees actually incurred.

Natural requests waiver of the Commission's regulations to the extent necessary to permit these tariff sheets to become effective July 1, 1986.

Natural has mailed copies of this filing to its jurisdictional customers, interested state regulatory agencies and all parties on the official service list in Docket No. RP86-97-000.

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 July 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15691 Filed 7-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP73-331-003 et al.]

Northwest Pipeline Corporation et al.; Natural Gas Certificate Filings

July 3, 1986.

Take notice that the followings filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP73-331-003]

Take notice that on June 17, 1986, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0900, and El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978 (Applicants), filed in Docket Nos. CP73-331-003 and CP74-14-005, respectively, a joint motion pursuant to section 7(c) of the Natural Gas Act to amend the Commission order issued January 22, 1974, so as to authorize waiver of a gathering charge established under the January 31, 1974 San Juan Gathering Agreement (agreement), and to make clear that the parties can mutually gather and exchange gas (under this agreement) which was owned by or dedicated to one of them, but which was temporarily released for sale to a third-party, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The instant joint motion explains that by order issued January 22, 1974 in Docket Nos. CP73-331, CP73-332, CP73-333, and CP74-14 (51 FPC 392 (1974)), Northwest and El Paso received permanent certificate authorization to implement their agreement. Applicants indicate that they concluded this agreement to implement a part of the court-ordered divestiture of El Paso's former Northwest Division system to Northwest (which became effective on January 31, 1974). Said agreement has the stated purposes of 1) enabling Northwest and El Paso to attach reserves produced in the San Juan Basin area of southwest Colorado and northwest New Mexico that were affected by the court-ordered divestiture, without unnecessarily duplicating Applicants' facilities, and 2) of allowing Applicants to equalize volumes that are attributed to each party's reserves, when facilities

attached to said reserves belong to the other company.

The instant joint motion states further that, under the agreement (*inter alia*), each party would use its best efforts to take the well allowables assigned for the account of the other company, but neither company would be obligated to use its gathering system to receive volumes in a way that would be detrimental to the optional operation of that system (as determined by contract obligations, market requirements, sound operating practices, and the applicable regulations of governmental authorities).

Section 3 of Article VII (Operation of Properties) of the agreement reportedly permits the party whose system is connected to a well to regulate the flow of gas at the point of delivery in response to the fluctuating demands of that company's market. As a result, it is stated, Applicants recognize that imbalances could periodically develop between the volumes of gas that they received for each other's accounts. In response, the Applicants state, the agreement provides that the party receiving the greater volumes of gas would compensate for it by delivering "balancing gas" to the other company (on a reasonally concurrent basis) at certain specified points of interconnection between their respective facilities.

Applicants report that in recent years they have had to schedule reduced production from their sources in the San Juan Basin area because of major decreases in market demand on their respective interstate pipeline systems; in addition, they state, they have had to vary their production requirements in that area on a daily basis because of the disparity of the demand on each party's interstate system. To try to rectify this situation, Applicants report that they concluded a letter agreement on December 27, 1985 (letter agreement), which provided that each party would schedule production from wells in which it owns a majority interest for delivery into the other company's gathering system, in accordance with their respective market requirements. Applicants state that they also agreed to waive the gathering charge during the term of the letter agreement, which would commence on the first day of the month that follows the month in which the letter agreement is implemented in accordance with all requisite Commission approvals, and would continue for a year thereafter, then month-to-month until either party terminated it by giving thirty days' written notice to the other.

Applicants contend that their revised production scheduling would not require regulatory approvals before implementation, but request approval for their proposed waivers of the gathering charges, and request a clarification of the Commission's order as indicated above.

Comment date: July 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP86-548-000]

Take notice that on June 9, 1986, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-548-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 135,885 Mcf of natural gas per day on an interruptible basis for Mountain Industrial Gas Company (MIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, volumes of natural gas which MIG would cause to be delivered to Applicant at specified existing interconnections on Applicant's system. Such gas would be transported for MIG on behalf of the following local distribution companies and would be limited to the following volumes:

Local Distribution Company	Maximum Daily Volumes (Mcf)
City of Colorado Springs	40,000
Public Service Company of Colorado	60,000
Peoples Natural Gas Company	3,185
Cheyenne Light, Fuel and Power Company	10,000
Western Gas Supply Company	20,000
Citizens Utilities Company	2,700

Applicant would deliver thermally equivalent volumes, less any fuel and unaccounted-for gas, to the local distribution companies for MIG's account at existing delivery points. Applicant also proposes to sell volumes of fuel and unaccounted-for gas to MIG instead of reducing the returned volume of gas. Applicant proposes to sell such gas at its then current weighted average cost of gas. Applicant's proposed transportation rate is 62.70 cents per Mcf. In addition to the transportation rate, Applicant proposes to charge a Gas Research Institute funding fee of 1.35 cents per Mcf.

Applicant further requests authority to add and delete gas suply receipt points and to file tariff revisions on or before January 31 of each year to keep the Commission informed of any receipt point changes.

Comment date: July 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. North Penn Gas Company

[Docket No. CP86-545-000]

Take notice that on June 6, 1986, North Penn Gas Company (North Penn), 76-80 Mill Street, Port Allegany, Pennsylvania 16743, filed in Docket No. CP86-545-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing North Penn to provide storage service, and firm and interruptible transportation service for Corning Natural Gas Company (Corning), and to establish an authorized overrun rate schedule, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

North Penn requests authorization to provide these services pursuant to the rates, terms and conditions of the Stipulation and Agreement in Docket No. RP85-193-000 and the related rate schedules and agreements which are incorporated herein by reference.

Specifically, North Penn requests authorization to transport up to 20,522 Mcf of natural gas per day for Corning on a firm basis. North Penn states in its June 24, 1986, response to staff's informal data request (supplement), that this transportation volume would be divided into 2 components. It is indicated that the first component, or 18,272 Mcf, is derived from the standby service provision in North Penn's firm sale service agreement with Corning. It is pursuant to North Penn's Rate Schedule P-1. North Penn explains that this standby service would allow Corning to use up to 30 percent of its sales entitlements for the transportation of gas purchased from sources other than North Penn.

It is indicated in the supplement that the second component, or 2,250 Mcf, is derived from North Penn's firm transportation service agreement with Corning. It is stated that this service is rendered under North Penn's Rate Schedule FT.

It is stated in the supplement that the rates for the firm transportation service would differ depending upon the category of the firm transportation entitlement. North Penn indicates that for transportation provided pursuant to the standby service provision in the firm sales service agreement, Corning would pay the Rate Schedule P-1 demand charge in lieu of the Rate Schedule FT demand charge, and that Corning would

then pay all other charges as provided for in Rate Schedule FT. It is indicated that for those volumes transported under the firm transportation service agreement, Corning would pay all charges as provided for under Rate Schedule FT.

North Penn also requests authorization to transport an unspecified volume of natural gas for Corning on an interruptible basis. North Penn states that it would provide this service pursuant to its interruptible transportation service rate schedule (Rate Schedule IT) and that the proposed rate would be $.24886 per Mcf.

North Penn further proposes to provide storage service for Corning for up to 5,000 Mcf per day or 500,000 Mcf per season. It is stated in the supplement that North Penn would use its storage facilities at the Palmer and Meeker Fields in Tioga County, Pennsylvania. North Penn states that it would provide this service pursuant to its storage service rate schedule (Rate Schedule SS) and that it would charge Corning a rate of $4.95876 per Mcf.

Lastly, North Penn requests authorization to establish an authorized overrun rate schedule (Rate Schedule AOS). It is stated that this rate schedule would be available to any buyer under its Rate Schedule P–1 for purchase of natural gas for resale in excess of buyer's total D–1 or D–2 demand entitlements when North Penn, in its sole discretion, has authorized such overruns. It is further stated that service under Rate Schedule AOS would be on an interruptible basis. North Penn indicates that it would charge $3.18353 per Mcf for this service.

In its supplement, North Penn indicates that Corning is currently North Penn's only P–1 customer and that it would be North Penn's intent to have service under the AOS rate schedule available to any future P–1 sales customer.

Comment date: July 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP86–570–000]

Take notice that on June 17, 1986, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86–570–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, (18 CFR 157.205) for authorization to construct and operate new sales taps for the direct interruptible sale of natural gas to two customers under the certificate issued in Docket No. CP82–479–001 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant requests authorization to conduct and operate new sales taps for the direct interruptible sale of natural gas to the Buffalo Feed Yards, Inc. (Buffalo), in Harper County, Oklahoma for use in a feed yard, office and shop and to Supreme Feeders, Inc. (Supreme) in Seward County, Kansas, for use in irrigation operations. Applicant states that these sales would not significantly affect its overall gas supply or have any detrimental effect on existing customers. It is stated that a copy of this request is being sent to the Kansas Corporation Commission and the Oklahoma Corporation Commission.

Applicant states that the projected volume of delivery to Buffalo would be approximately 25,000 Mcf annually and 160 Mcf on a peak day and the volume of delivery to Supreme would be approximately 3,960 Mcf annually and 60 Mcf on a peak day. Applicant estimates the cost of the proposed facilities to serve Buffalo would be $6,030 and to serve Supreme would be $5,630 which cost would be paid from treasury cash, it is stated.

Comment date: August 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86–536–000]

Take notice that on June 4, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86–536–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport 25,000 dt equivalent of natural gas per day for Tenngasco Corporation (Tenngasco) which is acting as agent for Valley Gas Company (Valley Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to provide an interruptible long-term transportation service for Tenngasco from the date service commences until November 1, 2000, and year-to-year thereafter. Applicant would provide such service pursuant to a gas transportation agreement between Applicant and Tenngasco dated June, 3, 1986.

Pursuant to the provisions of the agreement, Applicant has agreed to receive on an interruptible basis up to 25,000 dt equivalent of natural gas per day from the following receipt points:

1. The existing interconnection between the facilities of Tennessee and Tenneco Oil Company (TOC) at Tennessee's Meter No. 1–1119 located at TOC's South Marsh Island Block 61–C platform, offshore Louisiana.

2. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1–1220 located at Texaco Inc.'s Eugene Island Block 365–A platform, offshore Louisiana.

3. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1–1180 located at TOC's Ship Shoal Block 198–H platform, offshore Louisiana.

4. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1–1802 located at TOC's Ship Shoal Block 198–J platform, offshore Louisiana.

5. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1–1740 located at TOC's Eugene Island Block 215–D platform, offshore Louisiana.

6. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1–1182 located at TOC's Ship Shoal Block 182–c platform, offshore Louisiana.

7. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1–0955 located at TOC's Vermilion Block 250–B platform, offshore Louisiana.

Tennessee would then transport equivalent quantities (less fuel, lost and unaccounted for gas, and Plant Thermal Reduction due to processing) to the following delivery points for the account of Tenngasco.

1. The existing interconnection between the facilities of Tennessee and Valley at Tennessee's Meter No. 2–0135 at TGP Valve No. 266A–124 at the Pawtucket Sales Point, Providence County, Rhode Island (Pawtucket).

2. The existing interconnection between the facilities of Tennessee and Algonquin Gas Transmission Company (Algonquin) at Tennessee's Meter No. 2–0207 at TGP Main Line Valve No. 328–1 plus 4.22 miles at Mahwah, Bergen County, New Jersey (Mahwah).

3. The existing interconnection between the facilities of Tennessee and Algonquin at Tennessee's Meter No. 2–0285 at TGP Valve No. 266A–112 at Mendon, Worcester County, Massachusetts (Mendon).

Applicant would also transport the liquids and liquefiable hydrocarbons associated with the natural gas tendered for transportation.

Applicant proposes to charge Tenngasco each month a quantity charge equal to the product of the applicable rate multiplied by the total quantity in dekatherms of gas delivered by Applicant for the account of Tenngasco at each delivery point during the month. Rates would vary from 66.45 cents to 78.30 cents for each dt equivalent of gas received depending upon which delivery and receipt points are utilized in each transaction. Applicant would also collect the GRI surcharge and also requests authorization to add and delete additional receipt points.

Comment date: July 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-537-000]

Take notice that on June 4, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-537-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport 25,000 dt equivalent of natural gas per day for Tenngasco Corporation (Tenngasco) which is acting as agent for EnergyNorth, Inc. (EnergyNorth), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to provide an interruptible long-term transportation service for Tenngasco from the date service commences until November 1, 2000, and a year-to-year thereafter. Applicant would provide such service pursuant to a gas transportation agreement between Applicant and Tenngasco dated June 3, 1986.

Pursuant to the provisions of the agreement, Applicant has agreed to receive on an interruptible basis up to 25,000 dt equivalent of natural gas per day from the following receipt points;

1. The existing interconnection between the facilities of Tennessee and Tenneco Oil Company (TOC) at Tennessee's Meter No. 1-1119 located at TOC's South Marsh Island Block 61-C platform, offshore Louisiana.

2. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1220 located at Texaco Inc.'s Eugene Island Block 365-A platform, offshore Louisiana.

3. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1180 located at TOC's Ship Shoal Block 198-H platform, offshore Louisiana.

4. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1802 located at TOC's Ship Shoal Block 198-J platform, offshore Louisiana.

5. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1740 located at TOC's Eugene Island Block 215-D platform, offshore Louisiana.

6. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1182 located at TOC's Ship Shoal Block 182-C platform, offshore Louisiana.

7. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-0955 located at TOC's Vermilion Block 250-B platform, offshore Louisiana.

Tennessee would then transport equivalent quantities (less fuel, lost and unaccounted for gas, and Plant Thermal Reduction due to processing) to the following delivery points for the account of Tenngasco.

1. The existing interconnection between the facilities of EnergyNorth at Tennessee's Meter No. 2-0132 located at TGP Main Line Valve No. 270-B plus 512 miles at the Nashua Sales Point in Hillsboro County, New Hampshire (Nashua).

2. The existing interconnection between the facilities of Tennessee and EnergyNorth at Tennessee's Meter No. 2-0426 located at TGP Main Line Valve No. 270B-115 plus 14.96 miles at the Laconia Sales Point in Merrimack County, New Hampshire (Laconia).

3. The existing interconnection between the facilities of Tennessee and EnergyNorth at Tennessee's Meter No. 2-0133 located at TGP Main Line Valve No. 270B-621 plus 611 miles at the Manchester Sales Point in Hillsboro County, New Hampshire (Manchester).

4. The existing interconnection between the facilities of Tennessee and EnergyNorth at Tennessee's Meter No. 20254 at TGP Valve No. 270B-901 at the Hooksett Sales Point in Merrimack County, New Hampshire (Hooksett).

5. The existing interconnection between the facilities of Tennessee and Algonguin Gas Transmission Company (Algonquin) at Tennessee's Meter No. 2-0207 at TGP Main Line Valve No. 328-1 plus 4.22 miles at Mahwah, Bergen County, New Jersey (Mahwah).

6. The existing interconnection between the facilities of Tennessee and Algonquin at Tennessee's Meter No. 266A-112 at Mendon, Worcester County, Massachusetts (Mendon).

Applicant would also transport the liquids and liquefiable hydrocarbons associated with the natural gas tendered for transportation.

Applicant proposes to charge Tenngasco each month a rate equal to the product of the applicable rate multiplied by the total quantity in dekatherms of gas delivered by Applicant for the account of Tenngasco at each delivery point during the month. Rates would vary from 66.45 cents to 80.88 cents for each dt equivalent of gas received depending upon which delivery and receipt points are utilized in each transaction. Applicant would also collect the GRI surcharge, and also requests authorization to add and delete additional receipt points.

Comment date: July 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipeline Company

[Docket No. CP86-549-000]

Take notice that on June 11, 1986, as supplemented June 18, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-549-000, a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a sales tap to deliver approximately a 656 Mcf maximum daily quantity (MDQ) of natural gas to the Town of Flomaton (Flomaton), Alabama and to relocate its existing delivery station, serving the City of Atmore, Alabama, from Escambia County to Baldwin County, Alabama, under the certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United contends, that the sales tap would be located on its 8-inch Container Corporation line in section 32 of the same county as the original sales tap that is currently serving Flomaton in conjunction with nearby City of Brewton (Brewton). However, the proposed sales tap would enable United to render separate service without disadvantage of its existing customers and Flomaton and Brewton would divide the total MDQ applicable. United states that the service will continue to be provided under its Rate Schedule G-N.

United indicates that relocating its present delivery station serving Atmore would enable Atmore to achieve a more efficient operation of its system. Atmore would also reimburse United for any costs incurred, it is stated.

Comment date: August 18, 1986, 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 intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15688 Filed 7-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-52-000 001]

Western Gas Interstate Co. Tariff Filing

July 8, 1986.

Take notice that on July 1, 1986, Western Gas Interstate Company ("Western") submitted for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 10
Fifth Revised Sheet No. 11
Fifth Revised Sheet No. 216

The proposed effective date is August 1, 1986.

Western states that the proposed change in rates is being filed in accordance with its Tariff's PGA clause which permits the recovery of changes in the cost of gas and of unrecovered purchased gas costs. Western further states that the proposed change provides for a decrease in its cost of gas under Western's Rate Schedule G-N of 16.78 cents per Mcf and a decrease in the cost of gas under its Rate Schedule G-S of 30.27 cents per Mcf.

Further, Western states that as to its calculation of the cost of gas under its Rate Schedule G-S, it is using a weighted average cost method in calculating the cost of spot market gas purchases from El Paso Gas Marketing Company. Western asserts that this method of calculation provides a more accurate reflection of the cost of such gas purchases than the method currently in its tariff and provides overall pricing stability to its customers. Consequently, Western seeks a waiver of its PGA clause provisions and the Commission's PGA Regulations in order to effect the proposed method of calculating the cost of spot purchases.

Western states that copies of this filing were served upon its transmission customers and the 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 Capital Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedures (18 CFR sections 385.211 and 385.214). All such motions or protests should be filed on or before July 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15692 Filed 7-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-10-008]

Williston Basin Interstate Pipeline Co.; Proposed Change in FERC Gas Tariff

July 8, 1986.

Take notice that Williston Basin Interstate Pipeline Company (Williston Basin), on July 1, 1986, tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, the Original Volume No. 2 of its FERC Gas Tariff. Williston Basin states that these tariff sheets with supporting workpapers are filed in compliance with the Commission's Orders of May 29, 1986, in Docket Nos. RP86-10-007, *et al.*, and June 30, 1986, in Docket No. CP86-110-000.

Copies of the filing were served upon Williston Basin's jurisdictional customers, interested state regulatory agencies, and intervenors herein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before 7-16-86. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15693 Filed 7-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-89-003]

Williston Basin Interstate Pipeline Co.; Tariff Change

July 8, 1986.

Taken notice that on July 3, 1986, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, submitted the following tariff sheets for filing as part of its FERC Gas Tariff, Original Volume No. 1-A:

Original Volume No. 1-A

Substitute First Revised Sheet No. 12
Second Substitute First Revised Sheet No. 95
Substitute Original Sheet No. 97A
First Revised Sheet No. 236

The revised sheets reflect language changes required by the Commission's "Order Accepting for Filing and Suspending Proposed Tariff Sheets Subject to Refund and Conditions" issued June 30, 1986 and the modification to the Company's cost of service as required by ordering paragraph A of the Commission's Order issued May 29, 1986 in Docket Nos. RP86-10-007, TA86-2-49-000, SA85-33-000 and TC85-17-000. These tariff sheets with supporting workpapers are filed in compliance with the above noted Commission's orders.

Pursuant to § 375.307(j) of the Commission's Regulations, Williston Basin respectfully requests waiver of section 4(d) of the Natural Gas Act and the Commission's Regulations thereunder, so that the attached tariff sheets may become effective on July 1, 1986, as authorized by the Commission.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before July 16, 1986, 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 Rule 214 or 211 of the Commission's Rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15694 Filed 7-10-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3047-4]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed June 30, 1986 Through July 3, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860257, Final, FWS, HI, Hawaiian Island National Wildlife Refuge Management Plan, Honolulu County, Due: August 11, 1986, Contact: Dick Wass (808) 546-5608.

EIS No. 860258, Draft, BIA, AZ, San Xavier/Tucson Planned Community Development, Lease Approval, San Xavier District of the Tohono O'odham Nation (Papago) Indian Reservation, Pima County, Due: September 3, 1986, Contact: C. Randall Morrison (602) 241-2261.

EIS No. 860259, Final, COE, NY, NJ, Arthur Kill Channel Navigation Improvements, Howland Hook Marine Terminal Vicinity, Union County, NJ and Richmond County, NY, Due: August 11, 1986, Contact: Joseph Debler (212) 264-4663.

EIS No. 860260, Final, AFS, MO, Mark Twain National Forest, Land and Resource Management Plan, Due: August 11, 1986, Contact: Eric Morse (314) 364-4621.

EIS No. 860261, Draft, AFS, MT, Gallatin National Forest, Noxious Weed Control, Management and Treatment, Due: August 25, 1986, Contact: Richard Inman (406) 587-6705.

EIS No. 860262, Draft, SCS, MO, IA, Upper Locust Creek Watershed, Protection and Flood Prevention, Due: August 25, 1986, Contact: Paul Larson (314) 875-5214.

EIS No. 860263, Draft, USA, AL, AR, CO, IN, KY, MD, OR, UT, Continental United States Unitary Lethal Chemical Agents and Munitions Stockpile Disposal Program, Due: September 23, 1986, Contact: Charles Baronian (301) 671-2659.

EIS No. 860264, Draft, COE, WA, Grays Harbor Refinery Construction, Molybdenum Processing, Grays Harbor County, Due: August 25, 1986, Roger Yankoupe (206) 764-3624.

EIS No. 860265, D Revised, AFS, CO, Wolf Creek Valley Ski Area Development, Special Use Permit, Mineral County, Due: August 25, 1986, Contact: Sam Scanga (303) 264-2268.

EIS No. 860266, Draft, FERC, WA, Snohomish River Basin, 7 Hydroelectric Development Projects, Construction, Operation and Maintenance, License, King and Snohomish Counties, Due: August 25, 1986, Contact: Frank Karwoski (202) 376-1761.

EIS No. 860267, Report, COE, MD, VA, Baltimore Harbor and Channels 42-Foot Project, Brewerton Channel Eastern Extension Dredging Completion, Contact: Richard Makinen (202) 272-0121.

EIS No. 860268, Final, BLM, WY, Buffalo Resource Area, Wilderness Designation or Non-Designation, Campbell, Johnson and Sheridan Counties, Due: August 11, 1986, Contact: Glenn Bessinger (307) 684-5586.

EIS No. 860269, FSuppl, FWS, REG, Migratory Bird Hunting in the United States, Use of Lead Shotgun Pellets, Regulations, Due: August 11, 1986, Contact: Rollin Sparrowe (202) 254-3207.

Amended Notice

EIS No. 860226, Final, COE, AK, Togiak National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, Published FR 6-20-86—Officially Withdrawn.

Dated: July 8, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-15714 Filed 7-10-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3047-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 23, 1986 through June 27, 1986 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-J82006-MT, Rating EC1, Kootenai Nat'l. Forest, Noxious Weed Treatment Program, MT.

SUMMARY: EPA endorses control of noxious weeds and supports the

integrated pest management alternative described in this draft EIS. EPA stresses that technical comments and recommendations provided by the Montana Department of Agriculture, Environmental Management Division, should be carefully followed and pesticide application must be made only by certified applicators or operators.

ERP No. D–BLM–G60006–NM, Rating LO, Southern Rio Grande Plan, State Land Exchange and Dona Ana County Land Tenure Adjustments, NM. **SUMMARY:** EPA has no objection to the proposed action as described.

ERP No. D–BLM–L70005–OR, Rating EO2, Baker Resource Area, Resource Mgmt. Plan, OR. **SUMMARY:** EPA's major concern was for potential nonpoint degradation of water quality and impacts to beneficial uses as a result of the proposed activities. Several of the Standard Design Features of the Bureau of Land Management (BLM) preferred alternative failed to ensure that unnecessary and undue degradation would not occur. EPA supported redesignation of the Natural Environmental Protection Alternative as the preferred alternative which would best protect environmental quality while providing high levels of commodity outputs.

ERP No. D–FHW–D40201–WV, Rating EC1, Chelyan Bridge and Approach Roads Replacement, US 60 to WV 61, Kanawha River, 404 and Coast Guard Permit, WV. **SUMMARY:** EPA generally has no objection to this specific bridge reconstruction project. EPA did request that a supplemental EIS be prepared for Route 60 due to the need to change the previously approved alignment. The supplemental EIS will need to discuss both wetland and stream relocation impacts and mitigation where appropriate.

ERP No. D–FRC–K05049–CA, Rating EC2—Preferred Alternative/EO2—Alter. 1 and 2, Owens R. Basin Hydroelectric Projects, Construction, Operation and Maintenance, Licenses, CA. **SUMMARY:** EPA expressed concerns that the analysis of the preferred alternative fails to present adequate information on water quality and project impacts. EPA expressed objections to alternatives 1 and 2 because of significant impacts to beneficial uses such as fisheries, riparian habitat and recreation, and recommended that FERC not select alternatives 1 or 2.

ERP No. D–NRC–G06007–TX, Rating EC2, S. Texas Nuclear Plant, Units 1 and 2, Operating Licenses, Colorado R., TX. **SUMMARY:** EPA determined that the final EIS should provide additional information on solid waste management, decommissioning and various radiological system descriptions to fully assess the related impacts associated with operating this nuclear power plant. EPA will express environmental concerns until more information is submitted and reviewed to assure that the environment and the public will be adequately protected.

Final EISs

ERP No. F–AFS–J82002–MT, Deerlodge Nat'l Forest, Individual Lodgepole Pine Trees Protection From Mtn. Pine Beetle Attacks, MT. **SUMMARY:** EPA completed its review and has no objection to the project as proposed.

ERP No. F–BLM–K08013–00, Mead-McCollough—Victorville/Adelante 500 kV Transmission Line, Design, Construction, Operation and Maintenance, Right-of-Way Grants, Temporary Use and Borrow Pit, Permits, NV and CO. **SUMMARY:** The final EIS addressed EPA's prior concerns relative to the draft EIS.

ERP No. F–DOE–C22001–NY, Niagara Falls Storage Site, Long Term Mgmt. of Existing Active Wastes and Residue, NY. **SUMMARY:** EPA believes the final EIS is inadequate for determining the environmental acceptability of the proposed project (i.e., on-site containment) because it lacks sufficient detail concerning technical/engineering/design requirements and groundwater data. EPA proposed a federal facilities agreement with the Department of Energy (DOE) as a means to work out these issues, and recommended that the DOE issue supplemental NEPA documentation prior to the final selection of an on-site containment option.

ERP No. F–IBR–J31017–CO, Grand Valley Unit, Stage II Development, Construction and Operation, Colorado R. Basin Salinity Control Project, CO. **SUMMARY:** EPA's previous concerns were adequately addressed in the final EIS.

ERP No. F–JUS–A82113–00, Cannabis Eradication Program on Non-Federal and Indian Lands in Hawaii and the United States. **SUMMARY:** EPA is satisfied that the previously raised concerns have been adequately addressed. EPA concurs with the preferred alternative, with the mitigation measures as described, where the method of cannabis removed is based on site and situation-specific conditions.

Dated: July 8, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–15715 Filed 7–10–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–50038] (FRC–3047–9)

Toxic and Hazardous Substances; Premanufacture Notice Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Section 26(b) of the Toxic Substances Control Act (TSCA) authorized EPA to require, by rule, the payment of a reasonable fee from any person required to submit data under section 4 or 5 of TSCA. EPA is considering the possibililty of requiring a Premanufacture Notice (PMN) fee under this authority for PMNs submitted under TSCA section 5(a). The Agency has prepared a paper that discusses options for setting such a fee and provides preliminary estimates of the economic impact of a fee. EPA is making the paper available to the public and solicits comments on the options discussed in this paper. Copies of the EPA paper, "Options for PMN Fees," are available from the contact person given below. EPA is also considering the possibility of setting fees for other section 5 data submissions but is not now considering the possibility of requiring fees in connection with data submitted to EPA under TSCA section 4.

DATE: Comments on the EPA paper, "Options for PMN Fees," should be submitted by September 9, 1986.

ADDRESS: Comments on the paper should be sent to: Document Control Officer (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. E–209, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Toll free: (800–424–9065), In Washington, DC.: (554–1404), Outside the USA: (Operator—202–554–1404).

Comments should include the docket number OPTS–50038. Comments will be available for review and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E–107, at the address given above.

Dated: July 1, 1986

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–15680 Filed 7–10–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-59774; FRL-3044-7]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule prohibited in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides a summary of each.

DATES: Close of Review Period:
Y 86-176 and 86-177—July 14, 1986.
Y 86-178—July 16, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hammett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y-86-176

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y-86-177

Importer. Celanese Specialty Chemicals.
Chemical. (G) Starch grafted sodium polyacrylate.
Use/Import. (S) Industrial absorbent polymer for use in nonwoven products and soil conditioner. Import range: Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y-86-178

Importer. Confidential.
Chemical. (G) Acrylic modified polyester.
Use/Import. (G) Resin for paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: June 27, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-15174 Filed 7-10-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51630; FRL-3045-1]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 31 such PMNs and provides a summary of each.

DATE: Close of Review Period:
P-86-1193 and 86-1194—September 17, 1986.
P-86-1195—September 20, 1986.
P-86-1196, 86-1197, 86-1198—September 21, 1986.
P-86-1199, 86-1200, 86-1201, 86-1202, 86-1203, 86-1204, 86-1205, 86-1206, 86-1207, 86-1208, 86-1209, 86-1210, 86-1211, 86-1212, 86-1213, 86-1214, 86-1215 and 86-1216, 86-1217, 86-1218 and 86-1219—September 22, 1986
P-86-1220, 86-1221, 86-1222—September 23, 1986.
P-86-1223—September 24, 1986.

Written comments by:
P-86-1193 and 86-1194—August 18, 1986.
P-86-1195—August 21, 1986.
P-86-1196, 86-1197, 86-1198—August 22, 1986.
P-86-1199, 86-1200, 86-1201, 86-1202, 86-1203, 86-1204, 86-1205, 86-1206, 86-1207, 86-1208, 86-1209, 86-1210, 86-1211, 86-1212, 86-1213, 86-1214, 86-1215 and 86-1216, 86-1217, 86-1218 and 86-1219—August 23, 1986
P-86-1220, 86-1221, 86-1222 and 86-1223—August 24, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51630]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401, M Street SW Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P-86-1193

Importer. American Hoechst Corporation.
Chemical. (S) Sodium salt.
Use/Import. (S) Industrial processing aid for various polymers.
Import range: 10,000—40,000 kg.yr.
Toxicity Data. No data submitted.
Exposure. Dermal and inhalation.
Environmental Release/Disposal. No data submitted.

P-86-1194

Manufacturer. Confidential.
Chemical. (G) Alkanoic anhydride.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral >5,000 mg/kg; Acute dermal: 20 ml/kg; Irritation; Skin-moderate, Eye-slight.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. No release.

P–86–1195

Manufacturer. Synthetic Products Company.
Chemical. (G) Zinc carboxylate.
Use/Production. (G) Processing aid for elastomer. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. 50 kg/batch released to air and land. Disposal by approved landfill and dust collector.

P–86–1196

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Copolyester.
Use/Production. (S) Fiberfill, nonwovens and wet-lay. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P–86–1197

Manufacturer. Confidential.
Chemical. (G) Alkyl amine.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Confidential.

P–86–1198

Manufacturer. Confidential.
Chemical. (G) Alkyl quaternary ammonium salt.
Use/Production. (G) Texitile softener. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Disposal by publicly owned treatment works (POTW).

P–86–1199

Manufacturer. Confidential.
Chemical. (G) Alkyl amine.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release known.

P–86–1200

Manufacturer. Confidential.
Chemical. (G) Alkyl imine.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release known.

P–86–1201

Manufacturer. Milliken Chemical.
Chemical. (G) Substituted poly(oxyalkylene)aniline, carboxylic acid ester.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P–86–1202

Manufacturer. Milliken Chemical.
Chemical. (G) Poly(oxyalkylene)aniline, carboxylic acid ester.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P–86–1203

Manufacturer. Milliken Chemical.
Chemical. (G) Substituted polyoxyethylene aniline diacetylester.
Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P–86–1204

Manufacturer. Milliken Chemical.
Chemical. (G) Chromophore substituted polyoxyalkylene.
Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P–86–1205

Manufacturer. Milliken Chemical
Chemical. (G) Substituted aniline.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P–86–1206

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (S) Site-limited and industrial isolated intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 30 workers, up to 8 hrs/da, up to 14 da/yr.
Environmental Release/Disposal. Trace to 20 kg/batch released to land. Disposal by incineration and approved landfill.

P–86–1207

Manufacturer. Confidential.
Chemical. (G) Phenolic antioxidant reaction product.
Use/Production. (G) For use as an antioxidant. Prod. range: Confidential.
Toxicity Data. Acute > 5 g/kg; Acute dermal: > 2 g/kg; Irritation: Skin-Not irritant, Eye-Slight;
Ames Test: Not mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. < ½ to < 10 gal released to land.

P–86–1208

Importer. Confidential.
Chemical. (G) Perfluorinated hydrocarbon.
Use/Import. (G) Used to test microelectronic equipment for the presence of imperfections. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P–86–1209

Manufacturer. Milliken Chemical.
Chemical. (G) Trisubstitutedethoxylatedanilineazosubstituted benzoheterocycle.
Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P–86–1210

Manufacturer. Milliken Chemical.
Chemical. (G) Tri-substitutedphenyl-azo-substitutedethoxylated-anilinediacetate.
Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P–86–1211

Manufacturer. Milliken Chemical.
Chemical. (G) Substituted poloxyethyleneaniline, carboxylic acid ester.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P–86–1212

Manufacturer. Confidential.

Chemical. (G) Carboxylic acid salt of fatty acid polyamine amides.

Use/Production. (G) Paint additive, open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: > 10.0 g/kg; Irritation: Skin-Slight, Eye-Not irritant.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. No release.

P-86-1213

Manufacturer. National Starch and Chemical Corporation.

Chemical. (G) Acrylate copolymers; sulfonated acrylate co-polymer; sulfonated acrylate telomer.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by POTW.

P-86-1214

Manufacturer. Confidential.

Chemical. (G) Modified maleated metal resinate.

Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. <0.2 to 20 kg/batch released to air, water and land. Disposal by sanitary landfill, burned on site as fuel and by plant oxidation lagoon.

P-86-1215

Manufacturer. King Industries, Inc.

Chemical. (G) Alkyl naphthalene sulfonic acid, compound with amine.

Use/Production. (G) Coatings and lubricant additives. Prod. range: Confidential.

Toxicity Data. Acute oral: <5.0 g/kg; Acute dermal: <2.0 g/kg; Irritation: Skin-moderate, Eye-severe; LC_{50}: 28.8 mg/1.

Exposure. Manufacture: a total of 2 workers, up to 2 hrs/da, and up to 50 da/yr.

Environmental Release/Disposal. 1 kg/batch released to land. Disposal by incineration.

P-86-1216

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymer of polyethyleneamines with formaldehyde monobasic fatty acid dibasic fatty acid, a lactam, substituted phenol and a substituted oxirane.

Use/Import. (S) Curing agent for epoxy resin coating systems. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Dermal, a total of 40 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 200 kg/batch released.

P-86-1217

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane.

Use/Production. (G) Used in preparation of coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 45 workers, up to 8 hrs/da, up to 47 da/yr.

Environmental Release/Disposal. 2 to 325 kg/batch released to land. Disposal by incineration and approval landfill.

P-86-1218

Importer. Confidential.

Chemical. (G) Benzenedicarboxylic acid, substituted.

Use/Import. (G) Colorant for plastics. Import range: Confidential.

Toxicity Data. Accute oral: >2,500 mg/kg; Irritation: Skin-Not irritant, Eye-Not irritant; Ames test: Not mutagenic.

Exposure. Processing: dermal and inhalation, a total of 4 workers, up to 3 hrs/da, less than 30 da/yr.

Environmental Release/Disposal. 20 kg/batch released to air.

P-86-1219

Manufacturer. Confidential.

Chemical. (G) Reaction mixture of carbomonocyclic acid, sulfonated carbomoncyclic ester, alkylene glycol and cycloalkylene glycol.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal.

Environmental Release/Disposal. Release to water. Disposal by biological treatment system.

P-86-1220

Importer. Ciba-Geigy Corporation.

Chemical. (G) Triazine substituted naphthalene disulfonic acid.

Use/Import. (G) For use as textile dye. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/1; Acute dermal: >2,000 mg/kg; Irritation: Skin-Not irritant, Eye-Not irritant; Ames test: Not mutagenic; Skin sensitization-Not a sensitizer; LC_{50} 96 hr (zebra fish): >1,000 mg/1; EC_{50} 24 hr (daphniamagna): 1,000 mg/1; COD test: 665.4 mg/g; BOD test: 2 mg/g; IC_{50} test (bacteria): >100 mg/1; Biodegradability test: Not readily biodegradable; Micronucleus test: Not mutagenic; Subacute dermal: 200 mg/kg/da.

Exposure. Processing: dermal, a total of 1 workers, up to .5 hr/da, up to 3 da/yr.

Environmental Release/Disposal. 0.4 kg/batch released to water. Disposal by POTW.

P-86-1221

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (G) Resin used in industrial coating. Prod. range: Confidential.

Toxicity Data.

Exposure. Manufacture and processing: dermal, a total of 30 workers, up to 8 hrs/da, up to 67 da/yr.

Environmental Release/Disposal. 1 to 70 kg/batch released to land. Disposal by incineration and approved landfill.

P-86-1222

Manufacturer. Confidential.

Chemical. (G) Isocyanante terminated urethane prepolymer.

Use/Production. (G) Hot melt (solvent-free)adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P-86-1223

Manufacturer. Confidential.

Chemical. (G) Ethoxypropene derivative.

Use/Production. (G) Chemical intermediate. Prod. range: 150 to 750 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 12 workers, up to 1.5 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. No release. <27 kg/batch disposal by incineration.

Dated: June 27, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-15175 Filed 7-10-86 8:45 am]

BILLING CODE 6560-50-M

[FRL-3047-3]

Guidelines for the Administration of the Lead Phasedown Regulations; Revision of Penalty Calculations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice establishes a new valuation of lead for calculation of

penalties under the "lead phasedown" regulations, 40 CFR 80.20, to apply to any violation thereof which may occur in the second calendar quarter of 1986 and any calendar quarter thereafter. This Notice also clarifies several aspects of the applicability of the lead phasedown penalty policy.

DATES: The revised lead valuation is effective starting on the date of publication. However, comments received on or before August 11, 1986 will be considered with regard to possible revisions of the lead valuation to be effective on October 1, 1986.

ADDRESS: Comments and other information relevant to this revision of the guidelines should be addressed to Docket No. EN-85-08 and sent to Central Docket Section (LE-131), West Tower Lobby, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A second copy of any document submitted to the Docket should be sent to: Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Alan P. Loeb, Esq., Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Telephone (202) 382-3231.

SUPPLEMENTARY INFORMATION:

I. Background

On October 12, 1979, the Environmental Protection Agency ("EPA") published "Guidelines for the Administration of the Lead Phasedown Regulations and Ban on the Use of MMT" ("guidelines") (44 FR 58953). The guidelines established a method for calculating mitigated penalties for violation of the lead phasedown standards under 40 CFR Part 80.

The lead phasedown regulations were promulgated under section 211(c)(1)(A) of the Clean Air Act ("Act"), 42 U.S.C. 7545(c)(1)(A), which authorizes the Administrator of the EPA to regulate the use of certain fuels and fuel additives. Under section 211(c)(1)(A) of the Act, the Administrator of the EPA may regulate a fuel additive if, in his judgment, it may reasonably be anticipated to endanger the public health or welfare. Because airborne lead from auto emissions was determined to present such a danger, on December 6, 1973 EPA promulgated regulations at 38 FR 33734 requiring the phased reduction of lead from gasoline.[1]

Generally, the regulations, at 40 CFR 80.20, set out maximum lead content standards for gasoline and provide for refineries to report data to EPA on a quarterly basis for determining compliance with the standards.

On October 29, 1982 (47 FR 49322), EPA amended § 80.20 to make the lead phasedown standards applicable only to the lead in leaded gasoline, rather than to the average lead content of both leaded and unleaded gasoline.[2] The standards defining unleaded gasoline at 40 CFR 80.2(g) continue to apply. As a flexibility device, EPA also added provisions to § 80.20 to allow inter-refinery averaging of lead usage ("constructive allocation"). In addition, the amendments also made the lead standards applicable to imported leaded gasoline for the first time.

On March 7, 1985 (50 FR 9386), EPA amended § 80.20 to establish new lower lead content standards for leaded gasoline to take effect on July 1, 1985 and January 1, 1986. Further amendments to § 80.20 were published on April 2, 1985 (50 FR 13116) to allow "banking" of lead rights.

Thus, since the original promulgation of § 80.20, and especially since the publication of EPA's penalty guidelines in 1979, EPA has made a number of changes in the regulations which have affected the lead standards, the fuels to which they apply, and the alternative means of complying with them. Because of those changes and the changes in petroleum economics which have occurred during this period, EPA has reviewed the penalty calculation formula from the guidelines to determine whether assumptions contained in it remain valid. Based on this review, the details of which are set out below, EPA has decided to revise the valuation of lead used in the penalty calculation, and announces today a new lead valuation to be used in calculating lead phasedown penalties effective immediately. EPA has also decided to clarify several aspects of the penalty policy.

II. The 1979 Penalty Calculation

Section 211(d) of the Act provides for a civil penalty of $10,000 per day for violation of regulations under section 211(c). Pursuant to section 211(d), EPA published the aforementioned guidelines for lead phasedown in 1979.

In EPA's 1979 penalty guidelines, the penalty was designed to be the sum of two components, the deterrent factor ("DF") and the noncompliance factor ("NCF"). The DF is a flat penalty for each violation; it increases for second-time or repeat violations. The NCF is a variable penalty calculated on an estimation of the amount of benefit to the refinery from the violation. As a sum of the NCF and DF, the total penalty should be larger than the savings the regulated party derived from the violation. It is EPA's policy that to achieve deterrence no party should be allowed to derive an economic gain from violating.

In the 1979 guidelines, the NCF is calculated by multiplying three factors: (1) The amount (in grams per gallon) by which the lead content exceeds the applicable lead content standard, that is, the difference between the reported lead usage by a refinery and the standard; (2) the number of gallons of gasoline production subject to the standard; and (3) $0.0075, which is the savings EPA estimated would be realized at an average refinery as a result of adding a gram of lead to a gallon of gasoline in excess of the standard. EPA derived the $0.0075 lead valuation from refining of the time showing that to be the margin by which refining costs exceed the cost of using lead for an additional equal octane increase. (*See* Appendix B to the 1979 penalty guidelines.) The voided refining cost is the amount of net benefit from use of lead above the standard.

III. Analysis of Current Lead Valuation

On July 1, 1985 the allowable lead content average decreased from 1.10 gram per leaded gallon ("gplg") to 0.50 gplg, and on January 1, 1986 it decreased again to 0.10 gplg. EPA has become concerned that these changes in the regulations, as well as other economic factors, could increase the value of lead and thereby create incentives to violate.

The first factor is the change in cost savings associated with lower lead standards. When a gram of lead is blended into gasoline having a low lead content or no lead at all, its economic benefit is greater than when it is blended into gasoline already containing a significant amount of lead. This is because a given lead increment has a larger octane boost at low lead concentrations than at higher lead concentrations. Thus, the value of a 0.10 gram increase in lead content is greater

[1] These regulations were amended on September 28, 1976 (41 FR 42675) to provide additional time for compliance, on September 12, 1979 (44 FR 53144) to provide flexibility in compliance for refineries producing a certain percentage of unleaded gasoline, and on August 7, 1979 (44 FR 46275) to provide standards for small refineries.

[2] The regulations promulgated October 29, 1982 were amended on February 8, 1983 (48 FR 5724) and on November 1, 1983 (48 FR 50482) to make certain changes affecting small refineries.

at a 0.50 gplg standard than at a 1.10 gplg standard, and still greater at a 0.10 gplg standard, so that with each decrease in the standard the value of the marginal lead usage above the standard increases. If the penalty is not increased as the intrinsic value of excess lead rises, it may become cheaper for the party to report the violation and pay the penalty than to comply. This would create an incentive to violate, and could cause total lead usage to rise.

A second factor affecting the ability of penalties to deter violations is the market value of lead usage rights (allocated or banked under § 80.20(d) or (e)). When refining costs increase, the cost of lead rights for an equal octane boost may also increase. (Of course, the market price may also be affected by extraneous market forces or perceptions.) If the value of the lead rights becomes greater than EPA's penalty for violating, then it would be cheaper for parties to report a violation and pay the penalty than to use the banked rights or buy them from others. This creates an incentive to violate rather than to use banked lead rights, and could result in an increase in lead usage prior to January 1, 1988, as well as a competitive advantage to those companies who use such tactics. EPA has noted with concern, therefore, that the price of a gram of lead rights purchased through such averaging has recently risen while the lead valuation in the 1979 guidelines has remained unchanged at $0.0075.

Thus, to prevent increases in lead usage, it is necessary to increase the penalty for a violation, as calculated by the NCF, to equal or exceed the actual value of lead or its lead rights equivalent. To determine these values after December 31, 1985, EPA analyzed these factors to determine what valuation a gram of lead in gasoline should have for calculating the NCF under the lead standard implemented on January 1, 1986. EPA looked at the production cost differentials under the new lead standard, as well as the value of lead for banking; adjustments were made for inflation. EPA used data from the regulatory impact analysis prepared in conjunction with its recent lead rulemaking. *See* 50 FR 9386 (March 7, 1985). A summary of the findings has been filed in EPA Docket No. EN–85–08.

The analysis indicated that the intrinsic value of lead rises significantly with the decrease in allowed lead. Our conservative estimate is that lead has a theoretical value of approximately $0.027 per gram in the two calendar quarters in which the 0.50 gplg standard applies, accounting for the effects of banking, and values of approximately $0.031 per gram in 1986, $0.038 in 1987 and $0.047 in 1988. These values were derived from estimates of values from cost savings and lead rights.

Separately, EPA also investigated the cost of "EPA lead rights" by surveying various commodity brokers and traders. EPA was quoted trading in lead rights as high as $0.045 per gram during the third quarter of 1985, and as low as about $0.02 in the first quarter of 1986. A summary of these findings has been filed in EPA Docket No. EN–85–08. The initially high price indicates to EPA that the price for trading anticipated a future rise in the value of lead rights; the later price shows trading below lead's inherent value, as EPA calculated it, reflecting the decline in petroleum prices. Since this trading range reflects two extremes, it is likely that the price will stay within this trading range. Thus, EPA believes lead rights will keep a value between $0.02 and $0.045, depending on fluctuations of the market.

IV. Revision of Lead Valuation

EPA has decided that it is appropriate to establish a lead valuation of $0.05 per gram for use in the calculation of mitigated penalties effective immediately and in any calendar quarters hereafter. However, EPA will calculate penalties for violations which occurred in any calendar quarters prior to the end of 1985 using the valuation from the 1979 penalty guidelines.

EPA reached this conclusion by considering the value of lead from the economic analyses and the market survey in light of two principles.

First, EPA finds it important to keep a single lead valuation at least through the fourth quarter of 1987 because the same banked lead rights can be used during any of the periods through 1987, and we believe that it is appropriate for the penalties to have the same value over the entire time frame during which banked lead credits can be used. EPA considered incremental increases in the valuation over a period of time to match the increase in intrinsic value of lead, as our analysis estimated it, but found market forces having a greater influence on the price than intrinsic value, and thus rejected that alternative.

Second, EPA is setting the lead valuation marginally higher than either the theoretical or market value of lead to conform to EPA's policy that a penalty should be at least as large as the benefit from the violation, so that an entity which reports a violation cannot derive a benefit from doing so. To attain this objective, the lead valuation used in the NCF calculations must be as high as or higher than the uper end of the range of costs to the refinery or importer to produce an equal octane boost without lead. To adopt a lead valuation which is no greater than the average value of lead in gasoline would allow a certain number of entities, particularly those whose costs are highest, to reduce their gasoline costs with lead and improve their competitive positions. If that occurred, EPA would be in the position of "subsidizing" industry with the use of a toxic substance. To avoid that occurrence, EPA chose a lead valuation of $0.05 per gram that is marginally higher than both the theoretical and actual trading values of lead, as determined by the two studies.

To illustrate hypothetically, under the policy which is effective today, where in a given calendar quarter there is a reported lead usage of 0.20 gplg on a leaded volume of 20 million gallons, the NCF component of the penalty would be calculated as follows:

$$(0.20-0.10)\times 20{,}000{,}000\times 0.05=\$100{,}000$$

The total penalty for a first violation with this amount of excess lead usage would be $150,000, based on the $100,000 NCF plus $50,000 DF for a first violation.

V. Applicability of Revised Penalty Guidelines

These penalty guidelines are applicable to administrative proceedings at EPA for mitigation of penalties associated with violations of the lead phasedown prohibitions in 40 CFR 80.20. In addition to adopting this lead valuation today, EPA is also clarifying certain other provisions of the 1979 penalty guidelines to make them consistent with changes in the lead phasedown regulations and with EPA's practices under those rules.

A. Type of Fuels Regulated

The 1979 guidelines expressly applied to the pooled lead standards which governed gasoline production at that time, which the guidelines stated were based on the average lead content of the "total gasoline production (both leaded and unleaded)." EPA calculated the NCF for a violation by multiplying the number of excess grams of lead above the standard, i.e., the pooled gasoline production times the amount by which the standard was exceeded, by the lead valuation at $0.0075 (a constant). When EPA changed the form of the maximum lead content standard in the 1982 amendments from a pooled standard to a leaded-only standard, which applied only to the average lead content of leaded gasoline produced (or imported), it was not necessary to change the calculation method in the guidelines

because the method continued to calculate the NCF appropriately from the number of excess grams of lead times the valuation. Thus, EPA continued to use the same calculation method, but it did not change the language in the guidelines regarding its application to "total gasoline production." EPA now wishes to make clear that the guidelines apply, as they have been applied in practice since the post-1982 standards took effect, only to the average lead content of leaded gasoline.

B. Type of Parties Regulated

The 1979 guidelines specifically addressed the application of the penalty calculations to violations of a lead standard by refineries. For example, the 1979 guidelines based the lead valuation on the marginal difference in processing costs at a refinery with and without lead in excess of the standards. When lead standards became applicable to imported leaded gasoline in 1982, EPA began applying the guidelines to violations by importers, finding no basis for distinguishing them from refineries in the method of calculating penalties. EPA now wishes to make clear that the guidelines apply to importers and refineries without distinction. EPA is supported in this by economic considerations which make the marginal value of a gram of lead above the standard, as well as the value of traded lead rights, equal in value for the importer and for the refiner, and by legal considerations, especially under the General Agreement on Tariffs and Trade.

C. Type of Administrative Proceedings

When the 1979 guidelines were published, EPA contemplated that the penalties would be assessed in civil administrative proceedings before hearing officers. The regulations at 40 CFR Part 80, Subpart C set out procedures for such adjudications (which were supplanted in 1980 by the consolidated EPA rules at 40 CFR Part 22 and deleted from later CFR editions). As a result of the administrative opinion in the case, *In re: Transportation, Inc.*, Docket No. CAA(211)–27, EPA ceased its administrative hearing process for enforcing the regulations under Part 80, and in 1982 adopted new procedures to implement section 211(d) of the Act.

Under these procedures, EPA issues a notice of violation letter ("NOV") to parties it believes have violated the Act or the regulations. the NOV explains the allegations and the party's liability for them under section 211(d) of the Act, and offers to settle the matter in lieu of litigation.[3] The amount of the mitigated penalty offered in settlement in lead phasedown NOVs is the amount calculated from the guidelines. In the course of negotiations, a party may request that EPA mitigate its settlement offer further based on the grounds listed in the guidelines, and EPA may in its discretion mitigate this penalty further based on the guidelines. If a settlement is not reached through this informal process, EPA may, through the U.S. Department of Justice ("DOJ"), file in federal district court for the full statutory forfeiture of $10,000 per day of violation. Penalties mitigated according to the calculation method of the guidelines do not bind EPA once a case is referred to DOJ or during litigation, and these guidelines specifically do not apply to applications for mitigation or remission after a finding of liability in federal court. EPA wishes to clarify that the guidelines apply to the calculation of mitigated penalties as settlement offers only as part of the pre-DOJ referral in the process described here.

D. Future Revisions

Comments received on or before August 11, 1986 will be considered with regard to possible revisions of the lead valuation to be effective on July 1, 1986. In addition, EPA may in the future initiate proceedings to reconsider the revision of the lead phasedown penalty guidelines as a whole or as to certain issues. Such proceedings would be used to consider the lead phasedown penalties in light of EPA policies, as well as to make certain changes specific to lead phasedown. If such should occur, we will consider public comments on those issues at that time, but will not now consider comments on issues not relating directly to the lead valuation or any other issue addressed in this Notice.

For the reasons discussed above, EPA believes that it is necessary to make this policy change effective immediately to remove any incentives to violate. Unless the valuation is changed in the current quarter, regulated parties could be induced to take advantage of the prior valuation and violate the lead phasedown standards in this quarter. Therefore, it would be contrary to the public interest to allow the prior valuation to remain in effect through the end of this calendar quarter. Since this Notice is being published well before the end of the calendar quarter, it will give regulated parties an adequate and reasonable amount of time to adjust their operations or to obtain additional lead rights (based on past experience under the lead rights banking system), so these revisions should cause no significant adverse impact upon those who may have been relying on prior policy.

Dated: June 30, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86–15676 Filed 7–10–86; 8:45 am]

BILLING CODE 6560–50–M

[3] Section 211(d) of the Act imposes a mandatory forfeiture of $10,000 "for each and every day of the continuance of such violation." EPA interprets this provision as imposing the statutory penalty for each day of a compliance period in which a lead phasedown standard is violated. Section 211(d) also authorizes the Administrator to remit or mitigate the statutory penalty. This authority is delegated to the Assistant Administrator for Air and Radiation and redelegated to the Director, Field Operations and Support Division.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Information Collection.

Title: Superfund Cost Share Eligibility Regulation for Permanent and Temporary Relocation.

Abstract: This information is required by FEMA from the states as documentation of in-kind contributions submitted by the sttes. The documentation is used by FEMA to substantiate the states' completed work an in-kind contribution under cost-sharing, 44 CFR Part 222. There is a 90% Federal/10% State cost share relationship, unless otherwise specified.

Type of Respondents: State or local governments.

Number of Respondents: 12.

Burden Hours: 300.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to David Reed, (202) 395–7231, Office of Management and Budget, 3235 NEOB,

Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86-15636 Filed 7-10-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

BTB Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The company listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 30, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BTB Corp.*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Boston Trade Bank, Boston, Massachusetts.

2. *Martha's Vineyard Bancorp, Inc.*, Vineyard Haven, Massachusetts; to become a bank holding company by acquiring 70 percent of the voting shares of The Martha's Vineyard National Bank, Vineyard Haven, Massachusetts.

B. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Cortland First Financial Corporation*, Cortland, New York; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of Cortland, Cortland, New York.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Central National Corporation*, Sarasota, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Central National Bank, Sarasota, Florida.

2. *Midcontinental Holding Corporation*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Richland Banking Company, Richland, Georgia.

D. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Waukegan Corporation*, Waukegan, Illinois; to acquire 80 percent of the voting shares of First Glenview Bancorp, Inc., Glenview, Illinois, and thereby indirectly acquire The First Trust and Savings Bank, Glenview, Illinois.

2. *Hampton Park Corporation*, Romeoville, Illinois; to acquire 100 percent of the voting shares of Northern Illinois Bancorp, Inc., Joliet, Illinois, and thereby indirectly acquire Louis Joliet Bank and Trust Company, Joliet, Illinois.

3. *Harbor Country Banking Corporation*, Three Oaks, Michigan; to acquire 80 percent or more of the voting shares of Heritage Bank, Berrien Springs, Michigan.

4. *Heritage Financial Services, Inc.*, Blue Island, Illinois; to acquire 100 percent of the voting shares of Bremen Bank and Trust Company, Tinley Park, Illinois

5. H.P. Holding Company, Oak Park, Illinois; to become a bank holding company by acquiring 90 percent of the voting shares of Heritage/Pullman Bank and Trust Company, Chicago, Illinois.

6. *Merchants National Corporation*, Indianapolis, Indiana; to acquire Farmers State Corporation, Zionsville, Indiana and thereby indirectly acquire Mid State Bank; Zionsville, Indiana; to acquire Alliance Bancorp, Danville, Indiana and thereby indirectly acquire Mid State Bank of Hendricks County, Danville, Indiana; to acquire U.S. Bancorp, Carmel, Indiana; and to acquire Anderson Banking Company, Anderson, Indiana.

7. *Peoples Bank Corporation of Indianapolis*, Indianapolis, Indiana; to become a bank holding company by acquiring Peoples Bank & Trust Company, Indianapolis, Indiana.

Board of Governors of the Federal Reserve System, July 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-15638 Filed 7-10-86; 8:45 am]

BILLING CODE 6210-01-M

ONB Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *ONB Corporation*, Spokane, Washington; to expand the geographic scope served by Bancshares Mortgage

Company, Spokane, Washington, to now include the United States and thereby to continue to engaged in the making, acquiring or servicing of loans or extension of credit pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-15639 Filed 7-10-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Week the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 7, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

National Institutes of Health

Subject: Assessment of Leukemia and Thyroid Disease in Relation to Fallout in Utah. Ascertainment of Life Style of Thyroid Subjects—NEW
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)
Subject: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving AFDC Payments in Excess of the Poverty Income Level—Extension—(0960-0150)
Respondents: State or local governments
Subject: Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—Extension—(0960-0103)
Respondents: Individuals or households; Farms
OMB Desk Officer: Judy A. McIntosh

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)
Subject: Information Collection Requirements Contained in §§ 405.1121, 405.1123, 405.1124, 405.1125, 405.1126, 405.1127, 405.1128, 405.1136, and 405.1137—Conditions of Participation for Skilled Nursing Facilities—Extension—(0938-0364); HCFA-R-46
Respondents: Businesses or other for-profit; Small businesses or organizations
Subject: Information Collection Requirements Contained in §§ 442.307, 442.308, 442.309, 442.313, 442.314, 442.318, 442.319, 442.320, 442.311—Conditions of Participation for Intermediate Care Facilities—Extension—(0938-0370)—HCFA-R-45
Respondents: Businesses or other for-profit; Small businesses or organization
Subject: Information Collection Requirements Included in "Conditions of Participation for Home Health Agencies"—Extension—(0938-0365)—HCFA-R-39
Respondents: Businesses or other for-profit; Small businesses or organizations
Subject: Information Collections Associated with the Systems Performance Review—Existing—HCFA-R-86
Respondents: States
Subject: Medicaid Management Information System—Extension—(0938-0247)—HCFA-R-4
Respondents: States
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (Name of OMB Desk Officer)

Dated: July 8, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-15717 Filed 7-10-86; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Cooperative Agreement; Preventive Health Services Epidemiologic Study of Human T-lymphotropic Virus/Lymphadenopathy Associated Virus (HTLV-III/LAV) Infections in Children Acquiring the Virus From Their Mothers; Program Announcement and Availability of Funds for Fiscal Year 1986

Introduction

The Centers for Disease Control (CDC) announces that competitive applications are being accepted to assist the pediatric health-care community to determine the natural history of Human T-lymphotropic Virus/Lymphadenopathy Associated Virus (HTLV-III/LAV) infections in children acquiring the virus from their mothers. The Catalog of Federal Domestic Assistance Number is 13.118.

Program Objectives

The objectives of this cooperative agreement are to:

1. Assist the pediatric health-care community which includes public and private physicians, hospitals, and medical research centers in determining the natural history of Human T-lymphotropic Virus/Lymphadenopathy Associated Virus (HTLV-III/LAV) infection in children acquiring the virus from their mothers. Some of the issues of concern to the pediatric health care community are measuring outcomes in this population including frequency and type of signs and symptoms attributable to HTLV-III/LAV infection; immunologic function over time; reasons for and frequency of hospitalization; mortality rates; frequency and type of social problems encountered, such as need for foster care or institutionalized care; and risk factors associated with these outcomes.

2. Assist in determining the effect of childhoold vaccines in this group of infected children.

Authority

This program is authorized under section 301(a) of the Public Health Service Act, as amended.

Eligibility Requirements

Eligible applicants are the official health departments of any State or local government, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, and other public and private organizations which are able to enroll and follow children born to

women at risk for HTLV–III/LAV infection.

Cooperative Activities

The collaborative and programmatic involvement of the recipient of funds and CDC is as follows:

1. *Recipient Activities:* a. Design and conduct a study of infants born to mothers at risk for HTLV–III/LAV infection.

b. Identify, enroll, and follow a group of 200 neonates (100 infected and 100 noninfected) born to women at high risk for HTLV–III/LAV infection for at least 5 years.

c. Interview mothers, provide physical examinations, and obtain biological specimens from all study participants. Review clinical and immunization records, as necessary.

d. Perform all or a part of the laboratory tests including HTLV–III/LAV ELISA, HTLV–III/LAV confirmatory tests, viral cultures, immunologic function tests, and tests for infectious organisms that may serve as cofactors for progression of HTLV–III/LAV disease.

e. Design and establish a data management system for the study.

f. Provide or arrange for counseling and other social service needs of the study participants.

g. Analyze data and publish study findings.

2. *Centers for Disease Control Activities:* a. Provide technical guidance in the development of the study protocol and the design of the interview instrument, including training and pretesting as necessary by individual applicants.

b. Perform a portion of the laboratory tests including HTLV–III/LAV ELISA, HTLV–III/LAV confirmatory tests, viral cultures, immunologic function tests, and tests for infectious organisms that may serve as cofactors for progression of HTLV–III/LAV disease.

c. Provide technical guidance in designing and establishing a data management system for the study.

d. Provide technical assistance in planning and evaluating study activities.

e. Assist in data analysis and in the presentation of study findings.

Availability of Funds

Approximately $200,000 is available in Fiscal Year 1986 to fund one collaborative study. Applications should be submitted for a 1-year budget period and a 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate outlined above may vary and is subject to change, depending upon the availability of funds.

Type of Assistance

Awards resulting from this announcement will be a cooperative agreement.

Reporting Requirement

Annual performance and financial status reports are required no later than 90 days after the end of each budget period: Final financial status and performance reports are required 90 days after the end of each project period.

Applications

1. *Copies—Place of Submission:* The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before August 1, 1986: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, Atlanta, GA 30305.

Application forms should be available in the institution's business office or from the above address.

2. *Deadlines:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date.

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. *Late Applications:* Applications which do not meet the criteria in either paragraph 2a or 2b immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. *Reviews:* Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

5. *Content:* Applications must include a narrative which details the following:

a. The background and need for project support including information that relates to factors by which the applications will be evaluated.

b. The objective of the proposed project which are consistent with the purpose of the cooperative agreement and which are measureable and time-phased.

c. The methods that will be used to accomplish the objectives of the study. Of special importance in Study No. 2 will be the applicant's plan to identify and enroll mothers at risk for HTLY–III/LAV infection.

d. The methods that will be used to evaluate the success of the study.

e. Fiscal information pursuant to utilization of awarded funds in a manner consistent with the purpose and objectives of the project.

f. Any other information that will support the request for assistance. Cooperative agreement funds may be used to support personnel and to purchase supplies, services, and equipment directly related to the study. Funds may not be used to supplant funds supporting existing AIDS activities provided by the health department or to support construction costs.

Review Criteria

1. Initial applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

a. The ability of the applicant to enroll and follow approximately 100 infected and 100 noninfected infants born to mothers at increased risk for HTLV–III/LAV infection. These mothers include women who have used intravenous drugs; women born in Haiti; women who are sexual partners of intravenous drug uses, bisexual men, men with hemophilia, men born in Haiti, or other infected men; and any other women who are known to be infected. Although infants of mothers of any risk group would be acceptable, it is preferable that both the infected and noninfected infant cohorts be homogeneous with respect to maternal risk factor, or at least matched for risk group proportions. Ideally, enrollment should be completed in one year.

b. The details of how the applicant plans to develop and implement a study of these infants, describing how both infected and non-infected infants will be identified, enrolled, and followed.

c. A plan that will protect the rights and confidentiality of all participants and ensure adequate participation.

d. The applicant's understanding of the study objectives and spirit of the cooperative agreement with CDC.

e. The applicant's current activities in HTLV–III/LAV research and how current activities will relate to achieving the objectives of the study.

f. The size, qualifications, and time allocation of the proposed staff and the

availability of facilities to be used during the study.

g. How the project will be administered.

h. A proposed schedule for accomplishing the activities of the cooperative agreement including time frames.

i. The quality of an evaluation plan which specifies the methods and instruments of measurement to be used.

j. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

2. Continuation awards within the project period will be made on the basis of the following criteria: a. The accomplishments of the current budget period show that the applicant is meeting its objectives.

b. The objectives for the new budget period are realistic, specific, and measureable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will enable the recipient to matters whether the methods are effective.

e. The budget requested is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggins, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 252-6575, FTS 236-6375. Technical information may be obtained from Martha Rogers, M.D., AIDS Program, CID, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-3162, FTS 236-3162.

Dated: July 7, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-15637 Filed 7-10-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Cincinnati District Office, chaired by James C. Simmons, District Director. The topics to be discussed are Cholesterol and Fat Labeling of Packaged Foods, Labeling of Fast Foods, and Product Tampering.

DATE: Wednesday, July 23, 1986, 10 a.m.

ADDRESS: Apollo Career Center, 2225 Shawnee Rd., Lima, OH 45806.

FOR FURTHER INFORMATION CONTACT: Theresa C. Hoog, Consumer Affairs Officer, Food and Drug Administration, 1141 Central Parkway, Cincinnati, OH 45202, 513-684-3501.

New Orleans District Office, chaired by Robert O. Bartz, District Director. The topics to be discussed are Irradiated Foods, Health Fraud, and Product Tampering.

DATE: Tuesday, July 29, 1986, 1 p.m. to 3 p.m.

ADDRESS: Arkansas State Department of Health, Conference Room, 4815 West Markham St., Little Rock, AR 72205.

FOR FURTHER INFORMATION CONTACT: Barbara L. Lloyd, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504-589-2420.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 7, 1986.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-15633 Filed 7-10-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0266]

Medtronic, Inc.; Premarket Approval of ACTIVITRAX™ Models 8400, 8402, and 8403 Pulse Generator and Model 9710 Programmer With Model 9725 MemoryMod™ Program Module

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under the Medical Device Amendments of 1976, of ACTIVITRAX ™ Models 8400, 8402, and 8403 Pulse Generator and Model 9710 Programmer with Model 9725 MemoryMod ™ Program Module. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by August 11, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

SUPPLEMENTARY INFORMATION: On July 19, 1985, Medtronic, Inc., Minneapolis, MN 55432, submitted to CDRH an application for premarket approval of ACTIVITRAX ™ Models 8400, 8402, and 8403 Pulse Generator and Model 9710 Programmer with Model 9725 MemoryMod ™ Program Module. The device is indicated for use as a cardiac pacing system.

On April 21, 1986, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 10, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's

action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 11, 1986, file with the Documents Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 2, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–15632 Filed 7–10–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84N–0241]

Availability of Second Draft of National Shellfish Sanitation Program Manual of Operations, Part II, "Sanitation of the Harvesting and Processing of Shellfish"

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a second draft of the updated version of the National Shellfish Sanitation Program Manual of Operations, Part II, "Sanitation of the Harvesting and Processing of Shellfish." FDA is distributing this draft to State shellfish control officials, shellfish industry members, and other interested persons associated with the Interstate Shellfish Sanitation Conference (ISSC). The agency will provide the draft to other interested persons for review upon request.

DATE: Comments by August 11, 1986.

ADDRESSES: The second draft entitled "National Shellfish Sanitation Manual of Operations, Part II, Sanitation of the Harvesting and Processing of Shellfish," is available for review at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies are available from and written comments should be sent to the Center for Food Safety and Applied Nutrition, Shellfish Sanitation Branch (HFF–344), Food and Drug Administration, Washington, DC 20204, 202–485–0149. Requests should identify the document as "Second Draft of National Shellfish Sanitation Manual of Operations, Part II, 'Sanitation of the Harvesting and Processing of Shellfish.' "

FOR FURTHER INFORMATION CONTACT: J. David Clem, Center for Food Safety and Applied Nutrition (HFF–344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0149.

SUPPLEMENTARY INFORMATION: FDA is responsible for the Federal administration of the National Shellfish Sanitation Program (NSSP). The NSSP is the voluntary program involving State shellfish control agencies, the shellfish industry, and FDA. Seven foreign countries also participate in the NSSP through international bilateral agreements.

The NSSP is concerned with the sanitary control of fresh and fresh frozen molluscan shellfish (oysters, clams, and mussels) offered for sale in interstate commerce. The program has been in existence since 1925. In the interest of assuring uniform administrative and technical controls, the NSSP has developed and maintained recommended shellfish control practices. These control practices have been published in the form of a three part manual of operations. The last NSSP Manual of Operations was published in 1965.

In 1982, interested State officials and members of the shellfish industry formed the ISSC. Its purpose is to provide a formal structure wherein State regulatory authorities can establish updated guidelines for shellfish controls that will ensure sources of safe and sanitary shellfish. The ISSC has established procedures for the uniform application of these guidelines.

FDA and the ISSC entered into a memorandum of understanding in March 1984 (see 49 FR 12751; March 30, 1984). This agreement provides, among other things, that FDA will publish revisions of the NSSP Manual of Operations. Based on this agreement, FDA is providing the second draft of the NSSP Manual of Operations, Part II, "Sanitation of the Harvesting and Processing of Shellfish," to the ISSC for review and comment. FDA will also welcome comments from any interested party.

The initial draft revision of Part II was announced in the **Federal Register** of September 11, 1985 (50 FR 37055). This second draft is based on review of the comments that FDA received during the public comment period, further review by the agency, and a review by an ISSC committee composed of State regulatory officials and industry representatives.

The ISSC has scheduled its fourth annual meeting for August 12 through 14, 1986, in Seattle, WA. FDA has submitted the second draft to the ISSC for consideration, and this draft is likely to be one of the topics discussed at the August meeting. Those persons interested in obtaining additional information about this meeting should contact Mr. Richard Thompson, Chairman, Interstate Shellfish Sanitation Conference, 2902 Dillionhill Dr., Austin, TX 78475, phone c/o Texas Department of Health, 512–458–7510.

Dated: July 8, 1986.

James W. Swanson,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–15726 Filed 7–9–86; 10:12 am]

BILLING CODE 4160–01–M

[Docket No. 85N–0474]

Federation of American Societies for Experimental Biology; Closed Meeting

Correction

In FR Doc. 86–13343 beginning on page 21625 in the issue of Friday, June 13, 1986, make the following corrections:

On page 21625, in the third column, second line from the bottom, and on page 21626, in the first column, fifth, line, "9650" should read "9560".

BILLING CODE 1505–01–M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency holding the meeting: Federal Council on the Aging.

Time and date: Meeting begins at 9:00 AM and ends at 5:00 PM on Wednesday, August 6, 1986 and begins at 9:00 AM

and ends at 3:00 PM on Thursday, August 7, 1986.

Place: Department of Health and Human Services, HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, OIG Conference Room, 5542 (Fifth Floor).

Status: Meeting is open to the public.

Contact person: Pete Conroy, Room 4243, HHS North Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on August 6 and 7, 1986 from 9:00 AM-5:00 PM and from 9:00 AM-3:00 PM on August 7. The Council will be meeting with Members of Congress from 9 AM to 12:30 PM on August 6. All other meetings will be held in Room 5542, in the Health and Human Services North Building, 330 Independence Avenue, SW., (C Street Entrance), Washington, DC 20201.

The agenda will include: Meeting with Members of Congress involved in authorizing or overseeing legislation involving older Americans. A substantial amount of time will be devoted to the Federal Council on the Aging Committee meetings, reports from individual members. A presentation by Linda K. Harootyan of the Gerontological Society of America on The Interdependence of Generations, and a status report by Acting Commissioner on Aging, Carol Fraser Fisk will complete the meeting.

Dated: July 2, 1986.

Ingrid Azvedo,

Chairman, Federal Council on the Aging.

[FR Doc. 86-15718 Filed 7-10-86; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action; Exchange of Public and Private Lands in Riverside County, CA

Correction

In FR Doc. 86-4434 appearing on page 7340 in the issue of Monday, March 3, 1986, make the following correction:

In the first column, in the second land description for "San Bernardino Meridian", "Sec. 2", second line, "W¼" should read "W½". Add a comma at the end of the second line, and at the end of the third line, add "SE¼.".

BILLING CODE 1505-01-M

[AA-431-06-4333-02]

Iditarod Trail; Availability of Final National Historic Trail Comprehensive Management Plan

AGENCY: Bureau of Land Management.

ACTION: Notice of availability of final comprehensive management plan for the Iditarod National Historic Trail in Alaska.

SUMMARY: Pub. L. 95-625 amended the National Trails System Act (16 U.S.C. 1244) by adding the Iditarod National Historic Trail to the National Trails System. Section 5(f) of the National Trails System Act requires that a comprehensive management plan be developed for National Historic Trails and that a copy of the plan be submitted to Congress.

DATE: The final Iditarod National Historic Trail Comprehensive Management Plan was submitted to Congress on July 3, 1986.

Copies of the Final National Historic Trail Comprehensive Management Plan are available upon request.

ADDRESS: Requests for copies of the Iditarod National Historic Trail Comprehensive Management Plan should be sent to: Bureau of Land Management (930), 701 C Street, Box, 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Delmar Price at (202) 343-9353, Washington, DC, or Richard Hagan at, (907) 271-3474, Anchorage, Alaska.

Robert F. Burford,

Director.

July 7, 1986.

[FR Doc. 86-15630 Filed 7-10-86; 8:45 am]

BILLING CODE 4310-84-M

[CA 3599]

Partial Termination of Proposed Withdrawal and Termination of Land; CA

Correction

In FR Doc. 86-12177 appearing on page 19618 in the issue of Friday, May 30, 1986, make the following correction in the first column under **Mount Diablo Meridian** in the third line: Insert a comma before "S½".

BILLING CODE 1505-01-M

[FES 86-17; (WY 060 06 4332 09)

Availability of Final Environmental Impact Statement; Buffalo Resource Area Wilderness

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement (EIS) for the Buffalo Resource Area Wilderness proposals.

SUMMARY: This EIS assesses the environmental consequences of managing three wilderness study areas (WSAs) as wilderness or nonwilderness. The alternatives assessed in this EIS include: (1) A "no wilderness" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) a "no action" alternative for the WSAs.

The names of the three WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

Gardner Mountain—6,423 acres, all nonsuitable
North Fork—10,089 acres, all nonsuitable
Fortification Creek—12,419 acres, all nonsuitable

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Casper District, Buffalo Resource Area, 300 Spruce Street, Buffalo, Wyoming 82834. Copies are also available for inspection at the following locations.

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20420

or

Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001

or

Bureau of Land Management, Casper District Office, 951 North Poplar, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Glenn Bessinger, Area Manager, Buffalo

Resource Area, 300 Spruce Street, Buffalo, Wyoming 82834. Telephone: (307) 684–5586.

Dated: July 3, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 85–15684 Filed 7–10–85; 8:45 am]

BILLING CODE 4310–GG–M

[CA–940–06–4220–10; CA 3599]

California; Partial Termination of Proposed Withdrawal and Termination of Land; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: This document corrects the legal description that appeared at page 19618 in the **Federal Register** of Friday, May 30, 1986 (FR Doc. 86–12177).

FOR FURTHER INFORMATION CONTACT: Annisteen Pack-Lovelace, California State Office, (916) 978–4815.

The following correction is made: On page 19618, column one, the legal description is corrected to read:

From: T. 14., R 14 E.,
To: T. 14 N., R. 14 E.,

Nancy J. Alex,

Chief, Lands Section, Branch Lands and Minerals Operations.

July 2, 1986.

[FR Doc. 86–15667 Filed 7–10–86; 8:45 am]

BILLING CODE 4310–40–M

[ID–030–06–4212–14; I–22289, I–22290, and I–22939]

Idaho Falls District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public land in Bingham County, Idaho.

DATE AND ADDRESS: The sale offering will be held on Tuesday, September 23, 1986, at 1:00 p.m. at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401. Unsold parcels where no bids are received will be offered every Tuesday through October 28, 1986, on which date this sale offering will be suspended.

SUMMARY: The following-described lands have been examined and through the public-supported land use planning process have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal:

Parcel	Legal description	Market value	Sale type
I–22289	T. 4 S., R. 31 E., B.M., Sec. 11, E½NW¼ (80.00 acres).	$6,000	Competitive.
I–22290	T. 2 S., R. 32 E., B.M., Sec. 25, NW¼NW¼, B.M. (40.00 acres).	3,000	Competitive.
I–22939	T. 4 S., R. 31 E., B.M., Sec. 2, S½SW¼ (80.00 acres).	6,000	Competitive.

When patented, the lands will be subject to the following reservations:

Parcel	Reservations
I–22289	Ditches and canals, Oil and Gas to U.S., Road Right-of-Ways in conjunction with the Bingham County Road Network.
I–22290	Ditches and Canals, Oil and Gas to U.S., Road Right-of-Ways in conjunction with the Bingham County Road Network.
I–22939	Ditches and Canals, Oil and Gas to U.S., Road Right-of-Ways in conjunction with the Bingham County Road Network.

Continued use of the land by valid right-of-way holders is proper subject to terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

The previously-described lands are hereby segregated from appropriation under the public land laws, including the mining laws, for a period of 270 days or until patent is issued, whichever comes first.

Sale Procedures:

Sale parcels will be sold by competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of sale in the Idaho Falls District located at 940 Lincoln Road, Idaho Falls, Idaho. The bid must be sealed in an envelope with the envelope specifying the serial number and the sale date in the lower left hand corner (i.e. "Sealed bid-public land sale I–22289—September 23, 1986"). If two or more valid sealed bids are received for the same amount and are the high bid, a supplemental bidding of the high bidders will be held.

Bids must be submitted for at least fair market value and will constitute an application to purchase that portion of the mineral estate of no known value for each parcel. A thirty percent (30%) deposit and an additional $50 non-returnable mineral conveyance processing fee must accompany each bid. The filing fee and deposit must be paid by certified check, money order, bank draft or cashier's check. Bids will be rejected if accompanied by a personal check.

SUPPLEMENTARY INFORMATION: Detailed information concerning conditions of the sale can be obtained by contacting Barbara Klingenberg, Realty Specialist at (208) 529–1020.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 1, 1986.

O'dell A. Frandsen,

District Manager.

[FR Doc. 86–15666 Filed 7–10–86; 8:45 am]

BILLING CODE 4310–GG–M

Nevada; Filing of Plats of Survey

July 1, 1986.

The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on June 12, 1986:

Mount Diablo Meridian, Nevada

T. 18 S., R. 49 E.,
Supplmental Plats (3)
T. 33 N., R. 70 E.,
Supplmental Plat

These surveys were executed to meet certain administrative needs of this Bureau.

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning these surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86–15698 Filed 7–10–86; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Reclamation

[INT–FES 86–18]

Coordinated Operation Agreement, Central Valley Project/State Water Project; Availability of Final Joint Environmental Impact Statement/ Environmental Report

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation, Department of the Interior, and the

California Department of Water Resources have prepared a final joint environmental impact statement-environmental impact report (EIS–EIR).

The EIS–EIR addresses the impacts associated with executing the May 20, 1985, Coordinated Operation Agreement for the State Water Project and Federal Central Valley Project.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, U.S. Bureau of Reclamation, Room 7425. Washington, DC 20240, Telephone: (202) 343–4991

Document Systems Management Branch, Library Section, Code D–823, Engineering and Research Center Library, Room 450, Denver, CO 80225, Telephone: (303) 236–6963

James U. McDaniel, California Department of Water Resources, 3251 S Street, P.O. Box 160088, Sacramento, CA 95816, Telephone: (916) 445–5631

Regional Director, U.S. Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825, Telephone: (916) 460–5116

Single copies of the statement may be obtained on request to the above-listed offices. Copies may be reviewed at the following libraries in the project vicinity:

Shasta County Library, 1855 Shasta Street, Redding, CA 96001

Beale Memorial Library, 1315 Truxton Avenue, Bakersfield, CA 93305

Sacramento Public Library, 828 I Street, Sacramento, CA 95814

Public Library of Stockton and San Joaquin County, 605 North El Dorado Street, Stockton, CA 95202

Fresno County Free Library, 2420 Mariposa Street, Fresno, CA 93721

Concord Public Library, 2900 Salvio Street, Concord, CA 94519

Dated: July 7, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86–15528 Filed 7–10–86; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Intention To Negotiate Concession Contract; Hi Country Stables Corp.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Hi Country Stables, Corporation authorizing it to provide a saddle livery and related services for the public in the Moraine Park and Glacier Creek areas of Rocky Mountain National Park for a period of five (5) years from January 1, 1986, through December 31, 1990.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

Dated: January 29, 1986.

Jack Neckels,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 86–15681 Filed 7–10–86; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore; Analysis of Management Alternatives for Three Sisters Lighthouses Relocation With Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of analysis of management alternatives for Three Sisters Lighthouses relocation with environmental assessment.

SUMMARY: The National Park Service has prepared an Analysis of Management Alternatives for the Three Sisters Lighthouses relocation at Cape Cod National Seashore. The Environmental Assessment includes a detailed description of each alternative, selects a preferred alternative and describes the mitigating actions for the proposed relocation and the consequences of a no action alternative.

With this Notice of Availability the National Park Service is seeking comments on the Analysis of Management Alternatives. These comments will assist the National Park Service in selecting an alternative for future relocation of the Three Sisters Lighthouses.

DATES: Written comments will be accepted until August 11, 1986.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Copies of the Analysis of Management Alternatives are available at the Cape Cod National Seashore Headquarters Office in South Wellfleet, Massachusetts 02663.

Dated: June 20, 1986.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

[FR Doc. 86–15682 Filed 7–10–86; 8:45 am]

BILLING CODE 4310–70–M

Jedediah Smith National Trail Study and Environmental Assessment; Availability of Draft Document

SUMMARY: This notice announces the availability of the draft Jedediah Smith National Trail Study and Environmental Assessment. The document was prepared by the National Park Service pursuant to The National Trails System Act.

The purpose of the study is to provide Congress with information regarding the feasibility, suitability, and desirability of designating the Jedediah Smith trail as a component of the National Trails System. The study examines the historic significance of the authorized study route and evaluates the economic feasibility and environmental consequences of implementing several alternative plans of action. The study route extends through portions of the States of Idaho, Utah, Arizona, Nevada, California, Oregon, and Washington.

Copies of the document have been sent to various Federal, State, and local agencies, and to a number of private organizations and individuals with an expressed interest in the study.

Copies of the draft document are available from the following address:

Western Regional Office, National Park Service, Philip Burton Office Building, Attn: Park Planning, Room 14033, 450 Golden Gate Ave., P.O. Box 36063, San Francisco, CA 94102.

Comments on the study are solicited from the public and from Federal, State, and local government agencies. Comments should be sent to the above address and must be received by August 31, 1986 in order to be considered in the preparation of the final document to be transmitted to Congress.

Dated: June 30, 1986.

W. Lowell White,

Acting Regional Director, Western Region, National Park Service.

[FR Doc. 86-15683 Filed 7-10-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principle office:

Burnham Corporation, 1245 Manheim Pike, P.O. Box 3079, Lancaster, PA 17604

2. Wholly-owned subsidiary which will participate in the operations, and

New Yorker Steel Boiler Co., Inc., Rt. 309, Bethlehem Pike, Colmar, PA 18915, (Pennsylvania corporation)

B. 1. Parent corporation and address of principle office:

Cady Bag Co., Inc.—Georgia Corporation, P.O. Box 68, Pearson, GA 31642

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

Ricketts Bag Corporation—Florida Corporation, P.O. Box 15085, Tampa, FL 33684

C. 1. Parent corporation and address of principle office:

Intermet Corporation, Suite 700, 2840 West Paces Ferry Road, Atlanta, Georgia 30309

2. Applicant:

Intermet Transportation, Inc., 1600 Northside Industrial Boulevard, Columbus, Georgia 31904

3. Wholly owned Subsidiaries which will participate in the operations and *state of incorporation:*

(1) Columbus Foundries, Inc., Georgia
(2) Columbus Standard, Inc., Georgia
(3) Commercial Precision Machines, Georgia
(4) Intermet Corporation, Georgia
(5) Lynchburg Foundry Company, Virginia
(6) Pennsylvania Malleable & Ductile, Inc., Pennsylvania

D. 1. Parent corporation and address of principle office: Rosen Industries Limited, P.O. Box 188, 61 Balzer Road, Kitchener, Ontario, Canada N2G 3P3.

2. Wholly-owned subsidiary which will participate in the operations, and state of incorporation: G & Q Trucking Ltd., P.O. Box 188, 61 Balzer Road, Kitchener, Ontario, Canada N2G 3P3, incorporated under the Laws of the Province of Ontario, Canada.

E. 1. Parent corporation and address of principle office:

Sing Oil Company, 211 Industrial Boulevard, Thomasville, Georgia 31792

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: (i) SHC, Inc., a Georgia corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 86-15660 Filed 7-10-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30854]

Chicago South Shore and South Bend Railroad; Trackage Rights; the Baltimore and Ohio Railroad Co.; Exemption

The Baltimore and Ohio Railroad Company (B&O) has agreed to grant local trackage rights to Chicago South Shore and South Bend Railroad (South Shore) between Curtis Yard, IN, and Miller Station, IN. The trackage rights will be effective on June 18, 1986. These rights amend an existing agreement dated November 13, 1978 whereby overhead trackage rights between East Chicago, IN and Miller Station, IN were granted to South Shore by B&O.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western RY. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast RY. Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).[1]

This notice is filed under 49 CFR 1180.20(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 27, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-15662 Filed 7-10-86; 8:45 am]

BILLING CODE 7035-01-M

[1] While South Shore maintains that there is no need for labor protection in this case because it is already operating over the line segment in question and only new traffic is involved, the imposition of labor protective conditions is mandated by 49 U.S.C. 11347.

Changes to Regional and Field Office Structure

Effective August 1, 1986, the Interstate Commerce Commission's field operations will be directed by three regional offices. Previously, there were six regional offices. Complaints and all applications for Emergency Temporary Authority (ETA) and Temporary Authority (TA) from carriers should be sent to the regions listed below according to their states of domicile. The states under each office's jurisidiction are listed below the regional location and address:

1. Interstate Commerce Commission, Eastern Region, 3535 Market Street, Room 16400, Philadelphia, Pennsylvania 19102

States

Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia.

Any questions concerning the change can be directed to the following offices in the Philadelphia Regional Office.

Office of the Regional Director, (215) 596-4062.

Complaint and Authority Center, (215) 596-4040.

In addition to the Regional Office at Philadelphia, the Commission will maintain offices in the Eastern Region at the following locations:

Location and Telephone Number
Atlanta, GA, (404) 881-4371
Baltimore, MD, (301) 962-0890
Boston, MA, (617) 223-2372
Charlotte, NC, (704) 371-6115
Cleveland, OH, (216) 522-4000
Jacksonville, FL, (904) 791-2551
New York City, NY, (212) 264-1072

2. Interstate Commerce Commission, Central Region, Everett McKinley Dirksen Building, 219 South Dearborn Street, Rm. 1304, Chicago, Illinois 60604

States

Arkansas, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin.

Any questions concerning the change can be directed to the following offices in the Chicago Office.

Office of the Regional Director, (312) 353-6204.

Complaint and Authority Center, (312) 353-6204.

In addition to the Regional Office at Chicago, the Commission will maintain offices in the Central Region at the following locations:

Location and Telephone Number
Fort Worth, TX, (817) 334–3101
Indianapolis, ID, (317) 269–7701
Kansas City, MO, (816) 374–5562
Minneapolis, MN, (612) 349–3271
New Orleans, LA, (505) 589–6101
Omaha, NE, (402) 221–4644
St. Louis, MO, (314) 425–4104

3. Interstate Commerce Commission, Western Region, 211 Main Street, Suite 500, San Francisco, California 94105

States

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.

Any questions concerning the change can be directed to the following offices in the San Francisco Office.

Office of the Regional Director, (415) 974–7125.

Complaint and Authority Center, (415) 974–7125.

In addition to the Regional Office at San Francisco, the Commission will maintain offices in the Western Region at the following locations:

Location and Telephone Number
Denver, CO, (303) 844–3162
Los Angeles, CA, (213) 894–4008
Phoenix, AZ, (602) 261–3834
Salt Lake City, UT, (801) 524–5680
Seattle, WA, (206) 442–5421.

Noreta R. McGee,

Secretary.

[FR Doc. 86–15661 Filed 7–10–86; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 30852]

Castile Corp. Filing of Notice of Exemption To Acquire Great Western Railway Company

Castile Corporation has filed a notice of exemption to acquire Great Western Railway Company's line between Longmont and Eaton CO, including branch lines to Loveland, Welty, and Milliken, CO, a distance of approximately 56.8 miles. Any comments must be filed with the Commission and serve on Walter L. Weart, 5007 Brummel Street, Skokie, IL 60077.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 8, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–15744 Filed 7–10–86; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3504, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT86–1 (Jan. 3, 1986) ..... pp. 66–69. p. 73.
District of Columbia:
DC86–1 (Jan. 3, 1986) ..... p. 83.
Massachussetts:
MA86–1 (Jan. 3, 1986) ..... pp. 347–351.
MA86–2 (Jan. 3, 1986) ..... pp. 362–365.
MA86–3 (Jan. 3, 1986) ..... pp. 375–377.
Maryland:
MD86–1 (Jan. 3, 1986) ..... p. 384.

Pennsylvania:
PA86-5 (Jan. 3, 1986) ..... p. 830.
PA86-22 (Jan. 3, 1986) ..... pp. 937-938.
Virginia:
VA86-5 (Jan. 3, 1986)..... p. 1065.
VA86-15 (Jan. 3, 1986)..... p. 1089.
Listing by Location (index), pp. xl, xli.

Volume II

Michigan:
MI86-4 (Jan. 3, 1986)..... pp. 423-424.
MI86-6 (Jan. 3, 1986)..... p. 443.
MI86-12 (Jan. 3, 1986)..... pp. 471, 473.
MI86-17 (Jan. 3, 1986)..... p. 486.
Missouri:
MO86-2 (Jan. 3, 1986)..... pp. 561-562.
MO86-3 (Jan. 3, 1986)..... p. 570.
MO86-4 (Jan. 3, 1986)..... p. 576.
MO86-5 (Jan. 3, 1986)..... p. 579.
MO86-6 (Jan. 3, 1986)..... pp. 583-584, p. 586
MO86-7 (Jan. 3, 1986)..... p. 590.
MO86-9 (Jan. 3, 1986)..... pp. 599, 602.
MO86-10 (Jan. 3, 1986)..... pp. 606-607.
Wisconsin:
WI86-1 (Jan. 3, 1986)..... p. 946.
WI86-3 (Jan. 3, 1986)..... p. 953.
WI86-4 (Jan. 3, 1986)..... p. 956.
WI86-5 (Jan. 3, 1986)..... pp. 959-960.
WI86-7 (Jan. 3, 1986)..... p. 966.
WI86-8 (Jan. 3, 1986)..... pp. 969-970, p. 973.
WI86-9 (Jan. 3, 1986)..... p.986.
WI86-10 (Jan. 3, 1986)..... pp.989-990, pp.992, 997.
WI86-11 (Jan. 3, 1986)..... p. 999.
WI86-12 (Jan. 3, 1986)..... p. 1002.
WI86-13 (Jan. 3, 1986)..... p. 1005.
WI86-14 (Jan. 3, 1986)..... p. 1008.
WI86-15 (Jan. 3, 1986)..... p. 1011.

Volume III

Washington:
WA86-1 (Jan. 3, 1986)..... p. 308.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 7th day of July 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-15575 Filed 7-10-86; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-81; Exemption Application No. D-5893 et al.]

Grant of Individual Exemptions: Casard Furniture Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have compiled with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Profit Sharing Retirement Plan of Casard Furniture Corporation (the Plan) Located in High Point, North Carolina

[Prohibited Transaction Exemption 86-81; Exemption Application No. D-5893]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease of certain real property by the Plan to Casard Furniture Corporation provided all of the terms of such lease are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date of the consummation of the transaction.

Effective Date: This exemption is effective September 10, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 8, 1986 at 51 FR 11996.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

(Prohibited Transaction Exemption 86-82) Gene Fryar, D.D.S., Inc. Employees Assumed Target Benefit Pension Plan (the Plan) Located in Michigan City, Indiana

[Exemption Application No. D-6402]

Exemption

The restrictions of section 406 (a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application

of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase on behalf of the individual account in the Plan of Gene Fryar, D.D.S (Fryar) from Fryar of up to 5,270 shares of common stock of the LaPorte Bancorp., provided (1) the Plan will pay no more than fair market value for the stock at the time of purchase and (2) at the time of purchase the stock will not represent more than 25 percent of the assets of Fryar's individual account.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 29, 1986, at 51 FR 15978.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Watson Clinic Employees Profit Sharing Plan and Watson Clinic Partners Profit Sharing Plan (the Plans) Located in Lakeland, Florida

[Prohibited Transaction Exemption 86–83; Exemption Application Nos. D–6422 and D–6423]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to loans of money from the Plans to Watson Clinic, the sponsor of the Plans, provided the terms of the loans are at least as favorable as the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 29, 1986, at 51 FR 15978.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

[Prohibited Transaction Exemption 86–84; Exemption Application No. D–6485]

Fred A. Loe, D.D.S., P.A. Profit-Sharing Plan (the Plan) Located in Las Cruces, New Mexico

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, [1] shall not apply to (1) the purchase by the Plan of approximately 10.03 acres of vacant land located in Las Cruces, New Mexico, from Fred A. Loe, D.D.S. (Loe) for Loe's segregated account in the Plan, provided the Plan pays no more than fair market value for the property and the transaction represents no more than 25 percent of the assets in Loe's account at the time of purchase; and (2) the transfer to the Plan in connection with the Plan's purchase of the real property of a real estate contract executed by Loe with unrelated third parties.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 6, 1986, at 51 FR 16753.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Union Gas Systems, Inc. and Affiliates Pension Trust Agreement (the Plan) Located in Independence, Kansas

[Prohibited Transaction Exemption 86–85; Exemption Application No. D–6489]

Exemption

The restriction of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale of 216 shares of common stock (the Stock) of the Citizens National Bank, Independence, Kansas by the Plan to William H. Reeder, a party in interest with respect to the Plan, provided that the consideration paid for the Stock is not less than the higher of either $600 per share or the fair market value of the Stock on the date of the sale.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 6, 1986, at 51 FR 16759.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Aerosol Services Company, Inc. Profit Sharing Plan (the Plan) Located in Industry, California

[Prohibited Transaction Exemption 86–86; Exemption Application No. D–6490]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale of a parcel of real property (the Property) by the Plan to Aerosol Services Company, Inc., or to Howard and Walter Lim, parties in interest with respect to the Plan, for the greater of $725,000 or the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 6, 1986 at 51 FR 16760.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Michigan Lithographing Retirement Plan (the Plan) Located in Grand Rapids, Michigan

[Prohibited Transaction Exemption 86–87; Exemption Application No. D–6498]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of improved real property (the Property) to the Michigan Lithographing Company, the sponsor of the Plan, provided that the sales price is no less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 6, 1986 at 51 FR 16760.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[1] Because Fred A. Low is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

Michigan National Bank Pooled Fund for Qualified Retirement Plans (MNB Grand Rapids Pooled Fund) and Michigan National Bank of Detroit Pooled Trust Fund A (MNB Detroit Pooled Fund) Located in Grand Repids and Detroit, Michigan

[Prohibited Transaction Exemption 86–88; Exemption Application No. D–6506]

Exemption

The restrictions of section 406 (b) (2) of the Act shall not apply to the merger of the MNB Detroit Pooled Fund into the MNB Grand Rapids Pooled Fund, provided that the aggregate fair market value of the interests of each plan participating in these two funds (collectively, the Funds), upon completion of the merger transaction, equals the aggregate fair market value of such plan's interest in the Funds immediately preceding the merger.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 6, 1986 at 51 FR 16761.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

M&M Metals, Inc. Profit Sharing Plan (the Profit Sharing Plan) and Beryl Merritt Money Purchase Plan (collectively, the Plans) Located in Cincinnati, Ohio

[Prohibited Transaction Exemption 86–89; Exemption Application Nos. D–6572 and D–6573]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed lease of a certain portion of a parcel of improved real property (the Property) by the Plans to M&M Metals International, Inc. (M&M Metals), the sponsor of the Profit Sharing Plan, provided that the terms of the lease are at least as favorable to the Plans as an arm's-length transaction with an unrelated party; and (2) the proposed sale of the Property to M&M Metals pursuant to an option to purchase the Property under the lease, provided that the sales price is no less than the fair market value of the Property on the date of sale.

For a more complete statement of the facts and represenatations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 23, 1986 at 51 FR 18973.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Pincus, Schissel, Barricks and Alexander, M.D. Self Employed Retirement Plan (the Plan) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 86–90; Exemption Application No. D–6652]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of $45,000 to Dr. Robert L. Barricks (Dr. Barricks) from his individually directed account in the Plan, under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party. Dr. Barricks is an owner-employee with respect to the Plan as defined in section 401(c)(3) of the Code. Section 408(d)(1) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the lending of any part of the corpus or the income of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject loan. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975(c)(2) of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 23, 1986 at 51 FR 18977.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of July, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–15720 Filed 7–10–86:45 am]

BILLING CODE 4510–29–M

[Application No. D–6379 et al.]

Proposed Exemptions: Sherwin-Williams Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Sherwin-Williams Company Salaried Employees Retirement Plan (the Plan) Located in Cleveland, Ohio

[Application No. D–6379]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to a proposed series of loans, originated within a six-year period, by the Plan to the Sherwin-Williams Company and its wholly owned subsidiaries (the Employer), the sponsor of the Plan; provided that all terms and conditions of such loans are at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties.

Temporary Nature of Exemption

This exemption, if granted, will be effective as to loans originated within six years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register.**

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 8,615 participants and total assets of $254,362,739 as of January 1, 1985. The sole trustee of the Plan is the AmeriTrust Company N.A. (the Trustee), a federally-chartered national banking corporation. The Plan's trust participates in the Sherwin-Williams Company Collective Investment Trust, which is also held by the Trustee. The sponsor of the Plan is the Employer, an Ohio corporation engaged in the manufacture and sale of paint and paint products. The Employer proposes to enter into a credit agreement (the Agreement) with the Plan under which the Employer may borrow sums from the Plan for purposes of working capital, capital acquisitions and improvements, capital formation, corporate acquisitions, debt refinancing and corporate expansion. The Employer is requesting an exemption to permit the making of such loans (the Loans) under the Agreement.

2. Under the Agreement the Employer will have the right, subject to the approval of an independent loan fiduciary, to borrow funds in increments of $1 million up to $65 million or twenty-five percent of the Plan's assets at the time of each Loan, whichever is less. The independent loan fiduciary representing the Plan for all purposes under the Agreement is the Huntington National Bank (the Fiduciary) in Cleveland, Ohio. The Fiduciary represents itself to have substantial fiduciary experience under the Act, serving as trustee or custodian of approximately 500 qualified plans. In addition, the Fiduciary represents that it is independent of the Employer, having no existing commercial or trust relationship. Under the Agreement the Fiduciary will be required to approve each of the Loans and the Loans will be as follows:

(1) Six-year installment loans, bearing interest at a rate per annum equal to the Treasury Base rate (Treasury Base rate is defined in the Agreement as the rate per annum at which U.S. Treasury Notes for a period corresponding with the length of the subject Loan are offered by New York government securities dealers of recognized standing for purchase in an amount corresponding to the amount of the subject Loan) plus five-eighths of one percent, with required quarterly payments of interest and principal amortized over six years.

(2) Revolving credit loans not extending beyond December 31, 1991, bearing interest at a rate per annum equal to the Treasury Base rate plus five-eighths of one percent, with required quarterly payments of interest and principal. After repayment has commenced, additional advances of principal may be made in amounts up to, but not in excess of, the Loan's original principal amount, but all such Loans must be repaid in full by December 31, 1991.

(3) Six-year term loans, bearing interest at a rate per annum equal to the Treasury Base rate plus five-eighths of one percent, with required quarterly payments of interest. Principal is due upon maturity.

(4) Five-year term loans, bearing interest at a rate per annum equal to the Treasury Base rate plus five-eighths of one percent, with required quarterly payments of interest. Principal is due upon maturity.

(5) Ten-year term loans, bearing interest at a rate pre annum equal to the Treasury Base rate plus seven-eighths of one percent, with required quarterly payments of interest. Principal is due upon maturity.

All Loans will be originated within a six-year period commencing with the date on which this exemption, if granted, is published in the **Federal Register.** The Agreement provides that upon default of any Loan, the Employer will pay, in addition to the outstanding principal and the interest then due, an amount equal to the amount of interest that would have been due for the next six months according to the terms of the particular Loan in default. The Agreement requires each Loan to be secured by an irrevocable letter of credit in favor of the Plan from a bank acceptable to the Fiduciary in the principal amount of the Loan plus six months of interest. The irrevocable letter of credit will be an agreement

between the issuing bank and the Fiduciary which permits the Fiduciary to quickly and immediately draw drafts on the issuing bank which the issuing bank will unconditionally agree to pay. Each letter of credit shall have a maturity date not less than 30 days beyond the maturity date of the underlying Loan. The Employer will bear the cost of providing each such letter of credit. In the event of default of any Loan, the Fiduciary represents that it will draw on the letter of credit before its expiration to ensure that the Plan will not suffer any loss of principal or interest. Terms and coditions for prepayment of principal of the Loans will be established by the Fiduciary.

3. Pursuant to its appointment to represent the interests of the Plan for all purposes with respect to the proposed Loans, the Fiduciary has undertaken a review and analysis of the proposed arrangement under the Agreement in order to determine whether the Loans constitute a prudent investment for the Plan, whether the Loans are to be adequately secured, and whether the arrangement is in the best interests of the Plan participants. Toward this end the Fiduciary has reviewed and examined the Agreement, the financial statements of the Employer, the Plan's overall investment portfolio, the funding policy of the Plan, liquidity needs of the Plan and the diversification of Plan assets. Based on this analysis, the Fiduciary represents that the Plan's extension of credit by means of the Loans will not adversely affect the liquidity needs of the Plan and that the Employer, including its subsidiaries, constitutes a financially sound and able borrower. The Employer represents that it has been able to borrow funds from commercial lenders at less than the prime rate of interest.

The Fiduciary maintains that an irrevocable letter of credit for each Loan provides adequate security for each Loan, finding such collateral superior to other alternative forms of security. The Fiduciary represents that it will not issue any letters of credit to the Employer for any loan from the Plan or from any other party of the duration of the transactions described herein. The Fiduciary further represents that it and other commercial lenders would loan funds to the Employer with the same terms and conditions as set forth in the Agreement. The Fiduciary concludes that the proposed Loans pursuant to the Agreement constitute a prudent investment which is in the best interests of the Plan and its participants.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan with respect to the Loans are represented by an independent fiduciary, the approval of which will be required prior to any Loan under the Agreement; (2) The Fiduciary has determined that the Employer would be able to obtain loans from commercial lenders on the same terms as set forth in the Agreement; (3) The Loans will be limited to a total of $65 million or twenty-five percent of Plan assets at the time of each Loan, whichever is less; (4) The Fiduciary has analyzed the Agreement and all surrounding circumstances of the proposed Loans thereunder and has determined that it will be in the best interests of the Plan participants to proceed with the proposed Loans; and (5) Each Loan will be secured by an irrevocable letter of credit in favor of the Plan in the amount of the Loan's principal plus six months of interest, a form of security which the Fiduciary has determined is superior to other forms of collateral.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Emanuel Klimpl Pension Plan (the Plan) Located in New York, NY

[Application No. D–6462]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the contribution to the Plan of certain promissory notes by Emanuel Klimpl (Mr. Klimpl), a disqualified person with respect to the Plan, provided that 1) the notes are valued at their fair market value at the time contributed, and 2) the notes represent no more than 10% of the total assets of the Plan at the time of contribution.

Summary of Facts and Representations

1. The Plan is a defined benefit plan covering only Mr. Klimpl, who is the Plan's sponsor, administrator and trustee. Mr. Klimpl is a sole proprietor engaged in the business of being a corporate director and consultant.[1]

2. Mr. Klimpl is a director of the Arlen Corporation (Arlen). Mr. Klimpl received a promissory note from Arlen (the Arlen Note) in 1985 as compensation for services rendered to Arlen as a director and consultant. The Arlen Note is non-interest bearing, makes no provision for amortization or a sinking fund prior to maturity, and is an unsecured, uncollateralized obligation of Arlen. The principal amount of the Arlen Note is $250,000 with a maturity date of June 30, 1995. The applicant represents that the Arlen Note is marketable to independent third parties.

3. The Arlen Note was appraised on January 13, 1986 by Arthur E. Lee (Mr. Lee), the Vice-President-Risk Arbitrage of Loeb Partners Corporation, an independent qualified appraiser experienced in the valuation of such securities. Mr. Lee represents that the fair market value of the Arlen Note is $18,000. Mr. Lee's appraised value of the Arlen Note is based on a yield to maturity of 30%. In valuing the Arlen Note, Mr. Lee considered the financial condition of Arlen and the market price of other Arlen debt obligations. He notes, among other items, that Arlen has had cash flow problems for over seven years and has been required to exchange assets or other securities to retire indebtedness. In addition, he states that publicly held debentures of Arlen were trading at a price to yield 35% to maturity.

4. Mr. Klimpl proposes to contribute his entire interest in the Arlen Note to the Plan. Mr. Klimpl has arranged to have the Arlen Note split into two or more notes (the Note or Notes) having a cumulative face amount of $250,000 and containing the same features as the Arlen Note. Mr. Klimpl will contribute at least one of the Notes to the Plan. The Note will have a face value of $150,000 and a fair market value of approximately $10,800, based on Mr. Lee's appraisal of the Arlen Note. Mr. Klimpl states that when the Note is contributed, the total assets of the Plan will be approximately $109,000. Thus, the Note will represent less than 10% of the Plan's assets. Mr. Klimpl states further that the remaining Note or Notes, with a cumulative face value of $100,000, will be contributed in subsequent Plan years only to the extent that the fair market value of all the Notes in the Plan will not exceed 10% of the total value of the Plan's assets at the time of contribution of any such Note or Notes.

5. The applicant states that his Federal income tax deduction for

[1] Since Mr. Klimpl is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

contribution of any Note to the Plan will not exceed the fair market value of such Note at the time of contribution. In addition, the Plan will not incure any sales commissions or other expenses in connection with the contribution of the Notes.

6. Mr. Klimpl believes that the proposed contributions are in the best interests of the Plan. Mr. Klimpl expects that the Notes will appreciate in value and provide an excellent opportunity for increased earnings by the Plan.

7. Mr. Klimpl represents that there is little chance of there being a Plan participant other than himself. However, if there is ever another participant, Mr. Klimpl will establish a separate defined benefit plan for such employee containing provisions comparable to those contained in the Plan.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The Notes will be valued at their fair market value on the date contributed by Mr. Klimpl; (b) no sales commissions or other expenses will be incurred by the Plan with respect to the contributions; (c) the total value of the Notes will not exceed 10% of Plan assets at the time of contribution of any such Note; and (d) Mr. Klimpl, who is the only person affected by the transactions, believes that the transactions are appropriate for the Plan and desires that the transactions be consummated.

Notice to Interested Persons: Because Mr. Klimpl is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to other persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (TREET)

[Application No. D–6671]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, effective May 20, 1986, to the loan of $58.5 million by Equitable Life Assurance Society of the United States (Equitable) to TREET, provided that the terms of the transaction were no less favorable to TREET than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction was consummated.

Effective date: The effective date of the proposed exemption, if granted, will be May 20, 1986.

Summary of Facts and Representations

1. TREET is a tax-exempt trust originally established under the name of the Bell System Trust pursuant to the Bell System Trust Agreement dated October 1, 1980, and amended and restated as the Telephone Real Estate Equity Trust Agreement dated January 1, 1984 (the Trust Agreement). TREET was originally established by the American Telephone and Telegraph Company (AT&T) to hold, manage and invest assets held by the trusts created under the Bell System Pension Plan and the Bell System Management Pension Plan (the Bell System Plans), which were noncontributory defined benefit pension plans that provided benefits to eligible employees (and their beneficiaries) of AT&T and certain of its subsidiaries and affiliates.

The court-ordered divestiture of AT&T's regional operating companies on January 1, 1984, necessitated a restructuring of the Bell System Trust. AT&T continued and amended the Bell System Plans for its remaining employees, and established the AT&T Master Pension Trust to fund the plans, and each of the regional companies established its own pension plan or plans and its own trust (such plans and trusts, including the AT&T plans and trust, being hereinafter referred to as the Successor Plans and Successor Trusts). The assets of the Bell System Trust, other than real estate, were transferred to a new group trust, known as the AT&T Divestiture Trust, for liquidation and allocation among the Successor Trusts. However, due to the illiquid nature of real estate investments, the Bell System Trust retained its real estate investments (and certain other assets) for the benefit of the Successor Trusts. The Bell System Trust agreement was amended and restated as of January 1, 1984, to reflect the foregoing, and the name of the Bell System Trust was changed to TREET. Under the Trust Agreement, AT&T has the authority to retain investment managers to manage all or a portion of TREET's assets. At present, twenty-one independent investment managers are so retained, including Equitable and Heitman Advisory Corporation (Heitman).

As of December 31, 1983, the Bell System Plans covered a total of 1,206,269 participants including active employees, and retirees. As of December 31, 1985, the net fair market value of TREET's assets was $4,335,687,273.

2. Equitable is a mutual life insurance company organized under the law of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. Equitable is one of the independent investment managers of TREET. TREET assets are managed by Equitable in various pooled and single customer separate accounts and investment advisory accounts. Equitable has no authority or responsibility, and does not provide investment advice, with respect to the TREET assets involved in the subject transaction. These TREET assets are under the sole investment discretion of Heitman. Equitable has no ownership interest in Heitman and no common directors with Heitman, and is not involved in any joint ventrues or partnerships with Heitman.

3. Heitman is an Illinois corporation with its principal office in Chicago, Illinois. It is an investment advisor registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and with the Securities Division of the Secretary of State of Illinois. Heitman is also a "qualified professional asset manager" as defined in Part V(a) of Prohibited Transaction Class Exemption 84–14, however, PTE 84–14 is inapplicable to this transaction because of the restictions contained in Part I(e) of that exemption.

Pursuant to the terms of an investment management agreement between Heitman and AT&T, Heitman has sole responsibility and discretion for the investment of TREET assets allocated to it for investment in real estate or real estate related investments, including repsonsibility for the acquisition, management and disposition of such investments on behalf of TREET. Generally, all real estate investments initiated by Heitman on behalf of TREET are purchased in the name of a trustee or a nominee designated by State Street Bank and Trust Company, the trustee of TREET. Such trustee or nominee has no investment authority or control with respect to assets managed by Heitman.

All investment decisions made by Heitman for TREET are made by Heitman's investment committee. This

committee consists of officers and directors of Heitman. None of the committee members is an officer, director or employee of Equitable or AT&T, or any of their affiliates. None of the outstanding stock of Heitman or any affiliate is held by Equitable or AT&T, or any affiliate; nor does any officer, director, or employee of Equitable or AT&T (or any affiliate) own any stock of Heitman or any affiliate.

Pursuant to its investment management agreement with AT&T, Heitman receives a fee in connection with the acquisition, disposition and management of all investments that it acquires for TREET. This fee arrangement was arrived at through arm's-length negotiations between Heitman and AT&T. Heitman will receive no additional fee for arranging the transaction described in the application, and the transaction will have no effect upon the computation of Heitman's fees.

4. On December 29, 1982, Heitman caused TREET (under its then name of the Bell System Trust) to invest a portion of the assets under Heitman's authority for the purchase of a 43-story office building located at 44 Montgomery Street, San Francisco, California (the Property) from Equitable. As part of the purchase price, TREET delivered to Equitable a purchase money promissory note in the amount of $30 million, secured by the Property (the Original Loan). The Original Loan was for a term of five years, bearing interest at the rate of 12½% per annum. During the first three years of the loan, interest accrued and was added to principal, increasing the principal amount of the Original Loan from $30 million to $43,565,159 at the end of the third year. During the last two years of the loan, interest was to be paid currently.

Since Equitable was an investment manager and therefore a party in interest with respect to TREET, Heitman and Equitable applied for and received a prohibited transactions exemption (PTE 83-165, 48 FR 46874, October 31, 1983) exempting the Original Loan (as well as the purchase and certain other transactions not involving Equitable).

5. At the end of the third year of the Original Loan, interest ceased to be added to principal and TREET became liable to make payments of interest currently. Heitman concluded that, in light of the fact that interest rates on real estate loans had declined substantially below the 12½% payable on the Original Loan, it was in TREET's best interests to refinance the Property. However, Heitman also anticipated that interest rates would continue to decline, and determined that TREET could obtain a lower interest rate if the rate were not fixed at that time. Accordingly, Heitman obtained a temporary loan on behalf of TREET from Continental Illinois National Bank and Trust Company of Chicago (Continental) at a floating interest rate, which at that time was 8.9%. The proceeds of such loan were used to pre-pay the Original Loan, which could be effected without penalty. The sole purpose of the Continental loan was to keep TREET from paying interest at the rate of 12½% while the terms of the refinancing were arranged. Continental is not a party in interest with respect to TREET.

Heitman negotiated, on behalf of TREET, a new loan (the New Loan) from Equitable on May 20, 1986, in the amount of $58,500,000. The New Loan, which was secured by the Property, was for a term of five years with interest payable at a rate of 8¾% per annum. The proceeds of the New Loan were used to repay the loan from Continental, and the remaining proceeds will be reinvested in the Property to fund additional improvements and establish operating reserves. The New Loan, like the Original Loan, was nonrecourse to TREET and the terms of the New Loan agreement are represented to be customary for financing transactions of this type.

6. In summary, the applicants represent that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (a) The terms of the New Loan were negotiated on an arm's-length basis on behalf of TREET by an independent fiduciary of TREET, Heitman; (b) Heitman represents that Equitable has not in any way influenced its decision with respect to the New Loan; and (c) Heitman represents that the New Loan enabled TREET to take advantage of prevailing low interest rates to refinance its investment and maximize its return from the Property.

For further information contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of July, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-15721 Filed 7-10-86; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-456-OL, 50-457-OL; ASLBP No. 79-410-03-OL]

Atomic Safety and Licensing Board; Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2); Hearing Change

July 7, 1986.

Before Administrative Judges: Herbert Grossman, Chairman, Dr. A. Dixon Callihan, Dr. Richard F. Cole.

Please take notice that the evidentiary hearing in the matter of the Braidwood

Station will continue on week-days from July 8, 1986 at 9:00 a.m. until August 15, 1986, if necessary, at the College of St. Francis, in the President's Room and the Moes Room (connecting rooms), 500 North Wilcox Street, Joliet, Illinois 60435, unless otherwise stated. A prior Notice of Hearing, dated April 23, 1986, was published at 51 FR 15982 (April 29, 1986).

The public is invited to attend all hearing sessions.

For the Atomic Safety and Licensing Board.

Herbert Grossman,

Chairman, Administrative Judge.

[FR Doc. 86-15719 Filed 7-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., Clinton Power Station, Unit No. 1; Environmental Assessment and Final Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is issuing exemptions from certain requirements of 10 CFR Part 50 to the Illinois Power Company (the Applicant) for the Clinton Power Station, Unit No. 1 (the facility) located in DeWitt County, Illinois.

Environmental Assessment

A. Deferral of Preoperational Test Related to the Turbine Electrohydraulic Control System

Identification of Proposed Action: The proposed action would exempt the applicant from having to perform acceptance testing of the turbine electrohydraulic control system prior to fuel load. The request for deferral and supporting justification are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 29 requires the protection and reactivity control systems to be designed to assure extremely high probability of accomplishing their safety functions in the event of anticipated operational occurrences.

The applicant has stated that the electrohydraulic control system includes the turbine stop value position switches that supply a scram signal to the reactor protective system. However, since there will be no steam in the main steam lines prior to reactor heatup, there is no need to initiate a scram from stop valve closure. Therefore, the turbine electrohydraulic control system is not required to be operational prior to reactor heatup.

The applicant's request for exemption and the associated basis is contained in a letter dated May 29, 1986.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the turbine electrohydraulic control system operational. Preoperational testing of this system will be completed prior to reactor heatup, when the system is required to be operational. This exemption will provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer preoperational testing of the turbine electrohydraulic control system until after the fuel is loaded but prior to reactor heatup.

Since no steam exists in the main steam lines prior to reactor heatup, the staff concludes that granting the proposed relief will not increase the probability of an accident and will not result in post-accident radiological releases that are greater than those previously determined for the Clinton Station. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

B. Deferral of Preoperational Test Related to the Traversing Incore Probe System

Identification of Proposed Action: The proposed action would exempt the applicant from having to perform the traversing incore probe preoperational test (i.e., operation of the drive control units, verification of control, interlock, alarm and indication functions, and purge operation) prior to fuel load. The request for deferral and supporting justification are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 13, requires, in part, that instrumentation be provided to monitor variables and systems over their anticipated ranges for normal operation, for anticipated operational occurrences, and for accident conditions to assure adequate safety including those variables and systems that can affect the fission process.

The applicant has stated that the traversing incore probe is used for recalibration of the local power range monitor (LPRM) detectors and monitoring of core thermal units. However, the first LPRM recalibration will occur at about 15% power which is after preoperational testing of the traversing incore probe.

The applicant's request for exemption and associated basis is contained in a letter dated May 29, 1986.

Need for Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the traversing incore probe operational. Preoperational testing of this system will be completed prior to exceeding 5% rated power, which is before the system is required for recalibration of the LPRM's. This exemption will provide the applicant with greater flexibility and, therefore, expedite the start of power operations.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer preoperational testing of the traversing incore probe until after fuel loading but prior to exceeding 5% of rated power.

Since the system is not required for LPRM calibration until operations at higher power levels, the staff concludes that the probability of an accident has not been increased and post-accident radiological releases will not be greater than previously determined, due to the proposed relief. Moreover, the proposed relief does not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the

proposed exemption will have no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

C. Deferral of Preoperational Tests Related to the Off-Gas System

Identification of Proposed Action: The proposed action would exempt the applicant from having to perform a preoperational test prior to fuel load on: (1) The off-gas system (i.e., operation and verification of refrigeration units, dryers, interlocks, controls and alarms, hydrogen analyzers, remotely operated valves, and filter efficiency); (2) the off-gas system's in-place charcoal filter loading/testing; (3) the off-gas vault HVAC system; and (4) the off-gas vault final air balancing. The above four items combined will be referred to hereafter as the off-gas system. The request for deferral and supporting justifications are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 60 requires, in part, that the nuclear power unit design include means to control the release of radioactive materials in gaseous effluents.

The applicant has stated that prior to reactor heatup, the main turbine condenser will not be utilized and deferral of the installation of the charcoal filters is needed to avoid their contamination from painting, welding and construction fumes.

The applicant's request for exemption and associated basis is contained in a letter, dated May 29, 1986.

Need for Proposed Action: The exemption is required in order to provide the applicant the ability to load fuel without having the off-gas system operational. Preoperational testing of the off-gas system will be completed prior to reactor pressure vessel headset which occurs before heatup. This exemption will provide the applicant with greater flexibility and, therefore, expedite the start of power operations.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer preoperational testing of the off-gas system until after fuel loading, but prior to reactor heatup.

Prior to closure of the reactor pressure vessel head, this sytem is not required; and prior to heatup, no significant radioactive fission products are present in the reactor coolant and the main turbine condenser is not utilized.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

D. Deferral of Preoperational Tests Related to Portions of the Containment Monitoring System

Identification of Proposed Action: The proposed action would exempt the applicant from having to complete portions of the containment monitoring preoperational tests related to the humidity monitors, containment and drywell H_2/O_2 concentration monitors, hi-range gamma radiation monitors, containment pressure monitors, and suppression pool and drywell excess flow instrument line check valves until after fuel load. The specific requests for deferral and supporting justifications are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 41 requires that, in part, systems to control fission products, hydrogen, oxygen, and other substances in the reactor containment be provided. GDC 64 requires, in part, that means be provided for monitoring the reactor containment atmosphere for radioactive releases.

The applicant has stated that the monitors identified above, for which the deferrals are being requested, are not needed prior to initial criticality. Since the reactor coolant temperature during open vessel testing is maintained at less than 140°F, no decay heat is present so a loss of coolant accident would not result in the formation of hydrogen, and prior to initial criticality no appreciable quantities of fission products are present in the fuel. Therefore no significant release of radioactivity is possible.

The applicant's request for exemptions and the associated basis are contained in letters, dated March 27, 1986 and May 29,1986.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having fully operational portions of the containment monitoring system as identified in the applicant's March 12, 1986 submittal. The operational testing of the portions of the containment monitoring system identified will be complete prior to initial criticality. This exemption will provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: Requiring that the portions of the containment monitoring system identified in the applicant's March 12, 1986, submittal to be fully operational at fuel load would result in a hardship for the applicant without a compensating increase in safety. The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

E. Deferral of Preoperational Tests Related to the Leak Detection System

Identification of Proposed Action: The proposed action would exempt the applicant from having to complete preoperational testing of the leak detection system prior to fuel load. The specific request for deferral and supporting justification are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 30 requires, in part, that means be provided for detecting and identifying the location of the source of reactor coolant leakage. GDC 64 requires, in part, that means be provided for monitoring the containment atmosphere, spaces containing components for recirculation of loss-of-coolant accident fluids, effluent discharge paths and plant environs for radioactivity. Operability of the leak detection system is normally demonstrated during the preoperational testing based on the acceptance criteria specified in these operational test specifications.

The applicant has stated that the leak detection system, for which the deferral is being requested, is not required prior to final criticality, since no appreciable quantities of fission products exist in the reactor coolant prior to that time.

The applicant's request for exemption and the associated basis is contained in a letter, dated March 27, 1986.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the leak detection system operational. Preoperational testing of the leak detection system will be completed prior to final criticality. This exemption will provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: The proposed exemption would allow the applicant to defer preoperational testing of the leak detection system until after fuel loading but before initial criticality. During initial fuel loading and precritical testing, the reactor will remain at essentially ambient temperatures and atmosphere conditions. Under these conditions, no radioactive species will be produced; therefore, there are no environmental impacts associated with the proposed action.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

F. Deferral of Preoperational Test Related to a Portion of the Fuel Pool Cooling and Cleanup System

Identification of Proposed Action: The proposed action would exempt the applicant from having to complete that portion of the fuel pool cooling and cleanup system's preoperational test related to the demonstration of design ability to maintain and alter pool water levels (water level control function) prior to fuel load. The specific request for deferral and supporting justification are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 61 requires, in part, that the fuel storage and handling systems be designed to prevent a significant reduction in fuel storage coolant inventory under accident conditions. Operability of the fuel pool cooling and cleanup system is normally demonstrated during the preoperational testing based on acceptance criteria specified in the preoperational test specification.

The applicant has stated that testing of the level control function of the fuel pool cooling and cleanup system, for which the deferral is being requested, cannot be completed prior to fuel load since the initial core fuel load is currently being dry stored in these pools. Testing the level control function will be performed after the fuel is transferred from the pool area into the reactor vessel and prior to exceeding 5% of rated reactor power.

The applicant's request for exemption and associated basis are contained in a letter, dated March 27, 1986.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the demonstrated ability to maintain and alter fuel pool water levels. Demonstration of operability of the water level control function of this system prior to fuel load would require filling the pools with water (where the initial fuel load is currently dry stored) or relocating the fuel until testing is complete. Either of these approaches would impose an undue burden on the applicant. Preoperational testing of this function of the fuel pool cooling and cleanup system will be completed prior to exceeding 5% of rated reactor power.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer preoperational testing of the portion of the fuel pool cooling and cleanup system related to the demonstration of design ability to maintain the water level control function until after fuel loading but prior to exceeding 5% of rated reactor power. Since the initial fuel load at Clinton Power Station, Unit No. 1 will be performed under dry conditions and no water is presently in the pools, testing of the water level control function of this system cannot be completed until after the initial fuel load is transferred to the reactor vessel. Requiring this portion of the system to be fully operational at fuel load would result in a hardship for the applicant without a compensating increase in safety.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no signficant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the proposed exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and

exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

G. Deferral of Preoperational Test Related to a Portion of the Fuel Handling System

Identification of Proposed Action: The proposed action would exempt the applicant from having to complete that portion of the fuel handling system preoperational test related to the transfer of fuel bundles under wet loading conditions. The request for deferral and supporting justification are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 61 requires, in part, that the fuel handling system be designed to prevent significant reduction in fuel storage coolant inventory under accident conditions.

The applicant has stated the initial fuel load at Clinton Power Station, Unit No. 1 will be performed under dry conditions (i.e., with reactor vessel water level near the main steam lines and cavities and pools dry). Therefore, operation of the fuel handling system under wet conditions (i.e., water in the fuel transfer tubes) is not required. The portion of the fuel handling system's preoperational phase testing, required to support operability needs for transferring fuel to the reactor, will be completed prior to fuel load.

The applicant's request for exemption and the associated basis is contained in a letter dated March 27, 1986.

Need for Proposed Action: The exemption is required in order to provide the applicant the ability to load fuel having only that portion of the fuel handling system needed to handle the initial fuel bundles under dry conditions operational. Preoperational testing of that portion of the fuel handling system required to transfer fuel bundles under wet loading conditions will be completed prior to exceeding 5% of rated reactor power. This exemption will expedite the start of power operations.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer preoperational testing of the portion of the fuel handling system related to the transfer of fuel bundles under wet loading conditions. Since the initial fuel loading at Clinton Power Station, Unit No. 1 will be performed under dry conditions, operability of that portion of the fuel handling system associated with the handling of fuel under wet conditions is not necessary. Requiring this portion of the system to be fully operational at fuel load would result in a hardship for the applicant without a compensating increase in safety.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise effect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the proposed relief does not affect non-radiological plant effluents and has no environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

H. Deferral of Preoperational Testing of the In-Place Filters on the Control Room Heating, Ventilating and Air Conditioning (HVAC) System

Identification of Proposed Action: The proposed action would exempt the applicant from having to complete preoperational testing of the in-place filters for the control room HVAC system prior to fuel load. The specific request for deferral and supporting justifications are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 19 requires, in part, that control room shall be provided from which actions can be taken to operate the nuclear power unit safely under normal conditions and to maintain it in a safe condition under accident conditions. The applicant proposes to defer installation of the activated charcoal into the HVAC filters and installation of HEPA filters into the control room HVAC until after fuel loading but prior to initial criticality. This would also require a deferral of the final in-place filter testing of this system until prior to initial criticality.

The applicant's request for exemption and associated basis are contained in a letter, dated March 27, 1986.

Need for Proposed Action: The exemption is required in order for the applicant to defer installation of activated charcoal and HEPA filters and final in-place filter testing (preoperational testing) of the control room HVAC system until prior to initial criticality to avoid contamination of filters from fumes (e.g., welding, cleaning fluids) generated during construction.

Environmental Impact of the Proposed Action: Requiring that preoperational testing of the in-place filters for the control room HVAC system to be performed prior to fuel load would result in a hardship for the applicant in the form of time delays and filter replacement costs without a compensatory increase in safety.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological enivronmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

I. Deferral of Three Sets of Tests of the Heating, Ventilation and Air Conditioning (HVAC) System

1. Deferral of Preoperational Tests Related to the Drywell Purge System and the Auxiliary Building System

Identification of Proposed Action: The proposed action would exempt the applicant from having to perform

acceptance testing of the drywell purge system and the auxiliary building HVAC system prior to fuel load. The request for deferral and supporting justification are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 41 requires, in part, that systems to control fission products, hydrogen, oxyen and other substances which may be released into the reactor containment be provided to reduce the concentration of fission products released to the environment and to control the concentration of hydrogen or oxygen and other substances in the containment atmosphere following postulated accidents.

The Code of Federal Regulations Title 10 Part 50, Appendix A, GDC 60 requires, in part, that the nuclear power unit design shall include means to control the release of radioactive materials in gaseous effluents.

The applicant has stated that the drywell purge system is not required to support personnel access to the drywell during initial criticality testing for the following reasons: prior to operation, no appreciable amounts of airborne radioactivity in the drywell will be present; prior to heatup, no significant heat loads will develop inside the drywell; and prior to power operation, a design basis LOCA would not result in any appreciable quantities of hydrogen (hydrogen control is only a secondary or backup function of this system). The applicant has further stated that although the testing of the auxiliary building HVAC system will not be completed prior to reactor heatup, vital areas throughout the building will be maintained by the switchgear heat removal system and the ECCS equipment cooling system. Additional area heat loads beyond that controlled by these two systems are not expected prior to power ascension.

The applicant's request for exemption and associated basis are contained in a letter dated May 29, 1986.

Need for Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the drywell purge system or the auxiliary building HVAC system operational. Preoperational testing will be completed prior to reactor heatup when the system is required to be operational to perform its intended function. This exemption will provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operations.

Environmental Impact of Proposed Action: The exemption would allow the applicant to defer preoperational testing of the drywell purge system and the auxiliary building HVAC system until after fuel loading but prior to reactor heatup. Since the systems will not be required until reactor heatup, the staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative of the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

2. Deferral of In-Place Filter Tests Related to the Drywell Purge System and the Radwaste Building HVAC System

Identification of Proposed Action: The proposed action would exempt the applicant from having to complete preoperational testing of the in-place filters for the drywell purge system and radwaste HVAC system prior to fuel load. The specific request for deferral and supporting justifications are contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 60 requires, in part, that the nuclear power unit design include means to control suitably the release of radioactive materials. The applicant proposes to defer installation of the activated charcoal into the HVAC filters and installation of HEPA filters for the drywell purge system; and installation of the HEPA filters for the radwaste building HVAC system, until after fuel loading but prior to rector heatup. This would also require a deferral of the final in-place filter testing of these systems prior to reactor heatup.

The applicant's request for exemption and associated basis are contained in letters, dated March 27, 1986 and May 29, 1986.

Need for Proposed Action: The exemption is required in order for the applicant to defer installation of activated charcoal and HEPA filters and final inplace filter testing (preoperational testing) of the drywell purge system and the radwaste building HVAC system until prior to reactor heatup to avoid contamination of filters from fumes (e.g., welding, cleaning fluids) generated during construction.

Enviornmental Impact of the Proposed Action: Requiring that preoperational testing of the in-place filters for the drywell purge system and the radwaste building HVAC system be performed prior to fuel load would result in a hardship for the applicant in the form of time delays and filter replacement costs without a compensatory increase in safety.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated wtih the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

3. Deferral of Pressure Boundary Testing

Identification of Proposed Action: The proposed action would exempt the applicant from having to perform acceptance testing for the pressure boundary of the radwaste, auxiliary, fuel and containment buildings prior to fuel load. The specific request for deferral and supporting justification are

contained in a submittal from the applicant, dated March 12, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 57 lists requirements for containment isolation valves.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 60 requires, in part, that the nuclear power unit design include means to control suitably the release of radioactive materials.

The Code of Federal Regualtions Title 10 Part 50, Appendix A, General Design Criterion (GDC) 61 requires, in part, that fuel storage and handling, and radioactivity waste systems be designed to assure adequate safety under normal and postulated accident conditions.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 63 requires, in part, that appropriate systems be provided to monitor fuel storage and radioactive waste systems and associated handling areas.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 64 requires, in part, that means be provided for monitoring radioactivitiy releases.

The applicant has stated that all vital areas (i.e., main control room and secondary containment) will be pressure bondary tested prior to fuel load. However, prior to reactor heatup, there will not be any appreciable quantities of airborne radioactivity in the areas for which the test deferral is being requested.

The applicant's request for exemption and associated basis are contained in a letter dated May 29, 1986.

Need for Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the pressure boundary testing of the radwaste, auxiliary, fuel and containment buildings completed. The testing will be completed after fuel loading but prior to reactor heatup, when the pressure boundaries are required to perform their intended functions, controlling the release of radioactive material. This exemption will provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operations.

Environmental Impact of Proposed Action: The proposed exemption would allow the applicant to defer pressure boundary testing of the radwaste, auxiliary, fuel and containment buildings until after fuel loading but prior to reactor heatup. Since prior to reactor heatup, there will not be any appreciable quantities of airborne radioactivity in these areas, the staff concludes that the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: These actions associated with the granting of the proposed exemptions as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the Clinton Power Station, Unit No. 1" dated May 1982.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's submittals that support the requested exemptions A through I above. The NRC staff 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 exemptions.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemptions as listed herein, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Bethesda, Maryland, this 7th day of July 1986.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Division of BWR Licensing.

[FR Doc. 86-15709 Filed 7-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443]

Public Service Company of New Hampshire, et al., Seabrook Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to Public Service Company of New Hampshire, et al.[1] (the applicant) for the Seabrook Station, Unit 1, located in Seabrook Township, Rockingham County, New Hampshire.

Environmental Assessment

Identification of Proposed Action: The exemption would eliminate the full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J following normal air locking opening and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the applicants' request dated May 21, 1986.

Need for Proposed Action: The proposed exemption is required to provide the applicants with greater plant availability over the lifetime of the plant.

Environmental Impact of the Proposed Action: The proposed exemption grants the substitute of an air lock seal test for an air lock pressure test while the reactor is in a shutdown or refueling mode. When no maintenance has been performed on the air lock that could affect its sealing capability, the air lock doors have been properly closed, and the periodic 6-month test at Pa required by Paragraph III.D.2(b)(i) of Appendix J has been performed on schedule, there is no reason to expect the air lock to leak excessively just because it has

[1] The current construction permit holders for Seabrook Station are: Bangor Hydro-Electric Company, Canal Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Connecticut Light & Power Company, Fitchburg Gas & Electric Light Company, Hudson Light and Power Department, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, New England Power Company, New Hampshire Electric Cooperative, Inc., Public Service Company of New Hampshire, Taunton Municipal Lighting Plant, the United Illuminating Company, Vermont Electric Generation and Transmission Cooperative, Inc., and Washington Electric Cooperative, Inc.

been opened while the reactor is in a shutdown or refueling mode. Performing the door seal leak test of Paragraph III.D.2(b)(iii) of Appendix J is sufficient, in this case, to demonstrate the continuing integrity of the air lock.

With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small, due to the added seal leakage tests and the protection against excessive leakage afforded by the other tests required by Appendix J.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of Seabrook Station, Units 1 and 2, issued December 1982.

Agencies and Persons Contacted: The NRC staff reviewed the applicants' request that supports the proposed exemption. The NRC staff 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 exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption dated May 21, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Exeter Public Library, Front Street, Exeter, New Hampshire 03833.

Dated at Bethesda, Maryland, this 7th day of July 1986.

For the Nuclear Regulatory Commission.

Vincent S. Noonan,

Director, PWR Project Directorate No. 5, Division of PWR Licensing—A.

[FR Doc. 86-15710 Filed 7-10-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-23401; File No. SR-NSCC-86-07]

Self-Regulatory Organiztions; National Securities Clearing Corporation; Notice of Proposed Rule Change

On June 4, 1986, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") modifying NSCC Rule 50, which governs the Automated Customer Account Transfer Service ("ACATS").[1] NSCC requested that the Commission approve the proposal on an accelerated basis undr section 19(b)(2) of the Act. The Commission is publishing this Notice to solicit comment.

I. Description of the Proposal

The proposed rule change modifies NSCC Rule 50, § 10, which, among other things, provides that when a Receiving Member accepts a customer account transfer, NSCC enters all continuous net settlement ("CNS")-eligible items [2] in that account in its CNS accounting operation as of the third business day after trade date ("T+3"), unless the Receiving Member notifies NSCC otherwise. NSCC's proposal would adjust NSCC's CNS settlement guarantee for ACATS transfers to eliminate NSCC's guarantee to ACATS Receving Members if the Delivering Member fails-to-deliver and fails to pay any portion of the entire money settlement obligation on settlement day (T+5). Thus, the proposal would authorize NSCC, if it so determines, to eliminate the member's open CNS ACAT deliver obligations from the CNS accounting operation and reverse related credits of the Receiving Member.[3] If NSCC so determines, the

[1] The Commission approved NSCC Rule 50 in Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274 (October 9, 1985) (File No. SR-NSCC-85-07). NSCC Rule 50 imposes on NSCC members specific, uniform transfer procedures that for the first time automate the customer account transfer process. Generally, the Rule provides that an NSCC member to whom a customer's securities account is to be transferred ("Receving Member") may initiate the transfer by filing with NSCC a Transfer Initiation Request ("TIR"). NSCC makes the TIR available to the NSCC member who carries the customer account ("Carrying Member"). Within time frames established by the appropriate Designated Examining Authority ("DEA") (*e.g.* the New York Stock Exchange, Inc. ("NYSE")), the Delivering Member must accept or reject the request by forwarding the appropriate form to NSCC. NSCC then forwards this information to the Receiving Member who must accept, request an adjustment to, or reject the account transfer, again within the time frame established by the DEA. If the Receiving Member accepts (*i.e.*, validates) the transfer instructions, or does nothing, NSCC will enter all items in that account into its automated accounting systems. Settlement of ACATS items generally occurs two business days later. *See also* NYSE Rule 412, approved by the Commission in Securities Exchange Act Release No. 22663 (November 26, 1985), 50 FR 49638 (December 3, 1985); and Securities Exchange Act Release No. 22941 (February 24, 1986), 51 FR 7170 (February 28, 1986) and Securities Exchange Act Release No. 22948 (January 25, 1986), 51 FR 7870 (March 6, 1986), approving similar rules of the National Association of Securities Dealers, Inc. ("NASD") and the Muncipal Securities Rulemaking Board ("MSRB"). Exchange, Inc. ("NYSE")), the Delivering Member must accept or reject the request by forwarding the appropriate form to NSCC. NSCC then forwards this information to the Receiving Member who must accept, request an adjustment to, or reject the account transfer, again within the time frame established by the DEA. If the Receiving Member accepts (*i.e.*, validates) the transfer instructions, or does nothing, NSCC will enter all items in that account into its automated accounting systems. Settlement of ACATS items generally occurs two business days later. *See also* NYSE Rule 412, approved by the Commission in Securities Exchange Act Release No. 22663 (November 26, 1985), 50 FR 49638 (December 3, 1985); and Securities Exchange Act Release No. 22941 (February 24, 1986), 51 FR 7170 (February 28, 1986) and Securities Exchange Act Release No. 22948 (January 25, 1986), 51 FR 7870 (March 6, 1986), approving similar rules of the National Association of Securities Dealers, Inc. ("NASD") and the Municipal Securities Rulemaking Board ("MSRB").

[2] NSCC's CNS system summarizes and nets together each member's daily tranactions in each issue with any previous open positions to create a single net long or short position.

[3] To eliminate the ACATS delivery obligation from CNS and to reverse related debits and credits, NSCC must unwind the netting process. NSCC's CNS system now tracks separately every ACATS item and the identities of the original Receiving and Delivering Members throughout the settlement process, even if the netting process causes one or both to "net out." ACATS CNS reversals will work like this: Broker A, the Receiving Member, has requested Broker B, the Delivering Member, via ACATS, to deliver 100 shares of IBM. Assuming no problems, that transfer flows into CNS as of T+3. The obligations are netted. On the morning of T+5, settlement day, Broker A has a total CNS IBM delivery obligation to NSCC for 200 shares, 100 relating to the ACATS item and 100 relating to other CNS activity. Broker A, however, fails-to-deliver 100 shares; the other 100 shares are allocated by NSCC for delivery to Broker C. Broker A also fails to pay to NSCC its mark-to-the-market on that failed delivery (or any portion of its net money settlement payment obligation for that day).

In the meantime, the CNS system allocates 100 shares of IBM for delivery to Broker B, the Receiving Member. NSCC, in this situation, can take the following action. First, the 100 share delivery from Broker A to Broker C, a "regular-way" CNS delivery, will be guaranteed by NSCC. Second, NSCC will identify all ACATS Receiving members

Continued

ACATS item is exited from NSCC and the parties to the transaction must settle the transaction, if at all, outside NSCC.[4]

NSCC will continue to guarantee settlement of ACATS CNS-processed transfers, but only if the Delivering Member: (1) Satisfies its ACATS-related CNS securities delivery obligations on settlement day; or (2) fails-to-deliver the securities but fully pays the entire money settlement obligation due NSCC on settlement day, including marks-to-the-market due NSCC on the CNS ACATS fails.

II. NSCC's Rational for the Proposal

NSCC states in its filing that, in its current form, Rule 50, Section 10, exposes NSCC to considerable financial risk. A critical difference between regular-way and ACATS CNS processing relates to the way items are valued in the system. Unlike ordinary CNS items which enter CNS at contract value, ACATS CNS items enter CNS unvalued, reflecting their true nature as "free" transfers. To enable CNS use for ACATS, however, ACATS items need to be valued. Therefore, ACATS items, like all CNS items are marked-to-the-market on the morning of settlement day, *i.e.*, T+5. The ACATS items thus are marked to their full value as of the prior day's closing price. On the morning of settlement day, the Delivering Member's CNS projection report shows a short securities position and its CNS accounting summary shows a cash debit for the "full value" mark. Conversely, the Receiving Member's projection report shows a long securities position and the summary shows a cash credit for the mark. When delivery occurs, the Delivering Member's short position is cancelled and the money debit for the mark is offset by a credit. At the same time, the Receiving Member's long position is offset and the money credit is debited, wiping out the mark. The result is a transfer of securities, but for no value; no money is paid by the Receiving Member.

NSCC's exposure arises in limited circumstances. Even if the Delivering Member fails-to-deliver but pays the "full value" mark, NSCC still will be able to perform its obligations to the *contra* party by buying-in or borrowing the securities. On the other hand, if the Delivering Member fails to deliver and fails to pay the "full value" mark, NSCC, as guarantor and the *contra* party, still must deliver the securities to the Receiving Member. Yet, because the Delivering Member has failed to pay the mark, NSCC has received no funds to cover NSCC's payment obligation on T+5 and the delivery obligation associated with the ACATS CNS item. Moreover, even if NSCC bought-in or borrowed securities for delivery to the Receiving Member, NSCC could not expect to be paid by the Receiving Member; the accounting entries just would "wash". Thus, NSCC is at risk for the full market value of the ACATS position.[5]

The NYSE and the National Association of Securities Dealers ("NASD") recently have mandated use of ACATS.[6] NSCC states that its risk has increased along with increased use of the service. Consequently, NSCC has determined that it can no longer accept this risk.

III. Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submission should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of NSCC. All submission should refer to the file number in the caption above and should be submitted by August 1, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 7, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-15712 Filed 7-10-86; 8:45 am]

BILLING CODE 8010-01-M

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that were due to receive IBM from Broker A, the Delivering Member, before the netting occurred. NSCC will discover Broker B. NSCC also will see that Broker B was allocated 100 shares of IBM. Third, NSCC will reverse that CNS delivery to Broker B and reallocate it to another NSCC Member with a net long CNS IBM position. Broker A and Broker B can settle this customer transfer item outside NSCC. Moreover, all preliminary CNS money and debits and credits relating to the ACATS item are reversed by NSCC.

[4] NSCC does not guarantee account transfers relating to non-CNS eligible items and CNS items that are specified to be delivered ex-CNS. For those items, NSCC produces automated customer account receive and deliver orders. These receive and deliver orders contain customer account information and direct the appropriate NSCC members to settle the transction. On settlement day, NSCC credits and debits the appropriate members' settlement accounts for the value of the items indicated on the recieve and deliver orders, but actual delivery and money settlement are the responsibility of the Receiving and Delivering Members.

[5] NSCC carries much less risk relating to "regular-way" CNS transactions because CNS-eligible transactions are entered into the system at their contract value and NSCC collects marks-to-the-market on fails-to-deliver equal to the difference between the fail's contract value and market price as of the market close on the previous business day. Thus, regular-way CNS marks necessarily are for much smaller amounts than CNS-ACATS-related "full value" marks. Moreover, because ordinary CNS deliveries are for value, NSCC can expect a CNS receiver to pay NSCC for delivered securities. This payment from the receiver, together with the mark-to-the-market payment from the deliverer respecting the fail, in all likelihood should offset almost all of NSCC's market risks.

[6] *See* Securities Exchange Act Release Nos. 22863 (November 26, 1985), 50 FR 49638 (December 3, 1985) and 22941 (February 24, 1986), 51 FR 7179 (February 28, 1986).

[Ret. No. 34-23400; File No. SR-SCCP-86-03]

Self-Regulatory Organization; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

On June 2, 1986, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") concerning when-issued municipal securities transactions. The Commission is publishing this notice to solicit public comment on the proposal.

The proposal modified SCCP's Municipal Bond Comparison System [1]

[1] SCCP's MBCS is similar to the National Securities Clearing Corporation ("NSCC") Municipal Bond Comparison System and the changes announced here are similar to those made by NSCC previously. *See* Securities Exchange Act Release No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1986) and Securities Exchange Act Release No. 22004 (May 1, 1985) 50 FR 24370 (June 12, 1985).

("MBCS") in several ways. First, the proposal will permit the submission of municipal bond when-issed trade data for comparison. The proposal requires when-issued trades to be executed no later than six business days prior to the new issue's announced settlement date for the normal processing and output schedules to be followed. When settlement date notification is received less than six days prior to settlement, some changes to the normal processing and output schedule will be necessary. A when-issued bond should be submitted to MBCS for comparison even if no settlement date has been announced as long as it has been assigned a cusip number. Price figuration for when-issued trades will be calculated according to MSRB Rule 33.

Second, the proposal will aslo provide MBCS participants with a one-side delete capability. This will enable participants to delete a municipal bond transaction if they believe it is materially different from that they bought or sold. The purchaser or seller of a secondary market or when-issued trade may submit a delete transaction on the day the compared or uncompared T+1 trade appears on a participant's contract sheet. Using the delete does not release the participants from their trade obligation but will allow them to resolve differences regarding execution of the trade. Then, new trade data can be submitted to MBCS.

Third, the proposal modified procedures for the comparison of syndicate takedown trades. The proposal provides for one-sided trade data input by the syndicate manager resulting in compared trades reported to the syndicate manager and syndicate members. The syndicate manager or syndicate member may delete a compared takedown trade by using one-sided delete on the day the compared trade appears on the contarct sheet or on the next business day. For syndicate buy-backs, the syndicate manager can submit a sell-side withhold of the takedown trade, which results in a compared withhold trade reported on takedown contract sheets. Syndicate members' contracts will automatically show a purchase-withhold matching the sell-side withhold. Syndicate members will not be able to submit a purchase-withhold for takedown trades.

Finally, the proposal will proide an extended settlement feature for when-issued and secondary market trades that require settlement time beyond the standard industry practice of five business days. The MBCS will allow up to fifteen additional business days for extended settlement date processing. The extended settlement trade will be printed on a separate contract sheet and will match on the number of extended settlement days and on the contrct amount as submitted by the participants. The proposal does not make available extended settlement capabilities for syndicate takedown trades.

The proposal represents SCCP's second step towards providing automated municipal securities processing. SCCP first implemented an automated comparision system in 1984 in order to provide automated comparison services to SCCP municipal securities brokers and dealers as contemplated in Section 17A of the Act (Securities Exchange Act Release No. 21315 (September 12, 1984)). SCCP states that the proposal establishes new system enhancements and procedures to service a wider spectrum of municpal securities processing activities.

The rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4. The Commisison may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is pubished in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552 are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–86–03 and should be submitted by August 1, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 7, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–15713 Filed 7–10–86; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2243]

Louisiana; Declaration of Disaster Loan Area

Caddo Parish and the adjacent Parishes of Bossier and DeSoto in the State of Louisiana constitute a disaster area because of damage from Hurricane Bonnie which occurred on June 26 and 27, 1986. Applications for loans for physical damage may be filed until the close of business on September 1, 1986, and for economic injury until the close of business on April 2, 1987, at the Address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, or other locally announced locations.

The filing periods specified above are subject to the availability of appropriated funds on and after October 1, 1986.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 224308 for physical damage and for economic injury the number is 641600.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: July 2, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86–15640 Filed 7–10–86; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0191]

Servico Business Investment Corporation; License Surrender

Notice is hereby given that Servico Business Investment Corporation, 1601 Belvedere Rd., West Palm Beach, Florida 33406 has surrender its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Servico Business Investment Corporation was licensed by the Small Business Administration on December 5, 1980.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender

of the license was accepted on June 27, 1986, and accordingly, all rights privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 3, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-15641 Filed 7-10-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-7-15]

Proposed Revocation of the Section 401 Certificates of Northeastern International Airways

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 86-7-15) Dockets 38263, 40379, and 40910.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order revoking the certificates of Northeastern International Airways, Inc., issued under section 401 of the Federal Aviation Act.

DATES: Persons wishing to file objections shall do so no later than July 24, 1986.

ADDRESSES: Responses should be filed in Dockets 38263, 40379 and 40910 and addressed to the Office of Documentary Services, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P-47, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 755-3812.

Dated: July 3, 1986

Matthew V. Schcozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-15619 Filed 7-10-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Connecticut Department of Transportation (DOT) for Groton-New London Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Groton-New London Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before December 28, 1986.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 1, 1986. The public comment period ends August 30, 1986.

FOR FURTHER INFORMATION CONTACT: M. Ashraf Jan, Federal Aviation Administration, New England Region, Airports Division, ANE-610, 12 New England Executive Park, Burlington, MA 01803

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Groton-New London Airport are in compliance with applicable requirements of Part 150, effective July 1, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 28, 1986. This notice also announces the availability of this program for public review and comment.

Under section 103 on Title I of the Aviation Safety and Noise Abatement Act of 1979 (Hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An aiport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or purposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Connecticut DOT submitted to the FAA on February 11, 1986, noise exposure maps, descriptions and other documentation which were produced during Airport Noise Compatibility Planning (Part 150) Study at Groton-New London Airport from August 1984 to February 1986. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Connecticut DOT. The specific maps under consideration are Figure 14.2, Figure 14.3, Figure 14.5 and Figure 14.6 along with the supporting documentation in the final report of the Part 150 Study. The FAA has determined that these maps for Groton-New London Airport are in compliance with applicable requirements. This determination is effective on July 1, 1986.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local

government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Groton-New London Airport, also effective on July 1, 1986. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 28, 1986.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, New England Region, Airports Division, ANE-610, 12 New England Executive Park, Burlington, MA 01803

Mr. Sebastian Puglisi, Connecticut Department of Transportation, Bureau of Planning, Room 214, 24 Wolcott Hill Rd., P.O. Drawer A, Wethersfield, CT 06109-0801

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on July 1, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-15625 Filed 7-10-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

[Number 150-01]

Designation of Internal Revenue Districts

Dated: June 6, 1986.

Under the authority given to the President to establish and alter Internal Revenue Districts by section 7621 of the Internal Revenue Code of 1954, as amended, and vested in me as Secretary of the Treasury by Executive Order 10289, approved September 17, 1951, as made applicable to the Internal Revenue Code of 1954 by Executive Order 10574, approved November 5, 1954, and pursuant to the authority vested in me by section 321(b) of 31 U.S.C., and Reorganization Plan No. 1 of 1952 as made applicable to the Internal Revenue Code of 1954 by section 7804(a) of such Code and by Executive Order 10574, the Internal Revenue Districts continue as they existed prior to this order, with this change: The State of Florida shall be represented by two Internal Revenue districts, as described below.

1. *Internal Revenue Districts.* Each district established pursuant to section 7621 of the Internal Revenue Code of 1954, as amended, shall be known as an Internal Revenue district and shall be identified by the name of the city or subdivision thereof in which the headquarters office of the District Director of Internal Revenue is located.

2. *District Director of Internal Revenue.* The head of each District office shall bear the title "District Director of Internal Revenue" identified by the name of the city or subdivision thereof, in which the headquarters office is located.

3. *Designation of Internal Revenue Districts That Comprise An Entire State.*

Alabama, headquarters located in Birmingham, Alabama

Alaska, headquarters located in Anchorage, Alaska

Arizona, headquarters located in Phoenix, Arizona

Arkansas, headquarters located in Little Rock, Arkansas

Colorado, headquarters located in Denver, Colorado

Connecticut, headquarters located in Hartford, Connecticut

Delaware, headquarters located in Wilmington, Delaware

Georgia, headquarters located in Atlanta, Georgia

Hawaii, headquarters located in Honolulu, Hawaii

Idaho, headquarters located in Boise, Idaho

Indiana, headquarters located in Indianapolis, Indiana

Iowa, headquarters located in Des Moines, Iowa

Kansas, headquarters located in Wichita, Kansas

Kentucky, headquarters located in Louisville, Kentucky

Louisians, headquarters located in New Orleans, Louisiana

Maine, headquarters located in Augusta, Maine

Maryland (including the District of Columbia), with headquarters located in Baltimore, Maryland

Massachusetts, headquarters located in Boston, Massachusetts

Michigan, headquarters located in Detroit, Michigan

Minnesota, headquarters located in St. Paul, Minnesota

Mississippi, headquarters located in Jackson, Mississippi

Missouri, headquarters located in St. Louis, Missouri

Montana, headquarters located in Helena, Montana

Nebraska, headquarters located in Omaha, Nebraska

Nevada, headquarters located in Las Vegas, Nevada

New Hampshire, headquarters located in Portsmouth, New Hampshire

New Jersey, headquarters located in Newark, New Jersey

New Mexico, headquarters located in Albuquerque, New Mexico

North Dakota, headquarters located in Fargo, North Dakota

North Carolina, headquarters located in Greensboro, North Carolina

Oklahoma, headquarters located in Oklahoma City, Oklahoma

Oregon, headquarters located in Portland, Oregon

Rhode Island, headquarters located in Providence, Rhode Island

South Dakota, headquarters located in Aberdeen, South Dakota

South Carolina, headquarters located in Columbia, South Carolina

Tennessee, headquarters located in Nashville, Tennessee

Utah, headquarters located in Salt Lake City, Utah

Vermont, headquarters located in Burlington, Vermont

Virginia, headquarters located in Richmond, Virginia

Washington, headquarters located in Seattle, Washington

West Virginia, headquarters located in Parkersburg, West Virginia
Wisconsin, headquarters located in Milkwaukee, Wisconsin
Wyoming, headquarters located in Cheyenne, Wyoming

4. *Designation of Internal Revenue Districts Within Certain States.*

a. *California*—(1) *Laguna Niguel District* shall include the Counties of Imperial, Orange, Riverside, San Bernardino, San Diego, and that portion of Los Angeles County served by the Carson post of duty, in the State of California, with headquarters located in Laguna Niguel, California. The Carson post of duty services the area of Los Angeles County which is generally bordered by the Artesia Freeway on the north, the Pacific Ocean on the west and south, and the Orange County line on the east, and includes in total the following 1982 zip code areas: 90254, 90274, 90277, 90278, 90501, 90502, 90503, 90504, 90505, 90507, 90508, 90509, 90510, 90701, 90706, 90710, 90712, 90713, 90714, 90715, 90716, 90717, 90731, 90732, 90733, 90744, 90745, 90746, 90747, 90749, 90802, 90803, 90804, 90805, 90806, 90807, 90808, 90809, 90810, 90813, 90814, 90815, 90822, and 90840.

(2) *Los Angeles District* shall include the County of Los Angeles, except for that portion serviced by the Carson post of duty, in the State of California, with headquarters located in Los Angeles, California.

(3) *San Jose District* shall include the Countries of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, in the State of California, with headquarters located in San Jose, California.

(4) *Sacramento Distict* shall include the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba in the State of California, with the headquarters office located in Sacramento, California.

(5) *San Francisco District* shall include the Counties of Alameda, San Francisco and San Mateo, in the State of California, with headquarters located in the San Francisco, California.,

b. *Florida—(1) Jacksonville District* shall include the Counties of Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Santa Rosa, Seminole, St. Johns, Sumter, Suwanee, Taylor, Union, Volusia, Wakulla, Walton, and Washington, in the State of Florida, with headquarters located in Jacksonville, Florida.

(2) *Fort Lauderdale District* shall include the Countries of Broward, Charlotte, Collier, Dade, DeSota, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Monroe, Okeechobee, Palm Beach, Sarasota, and St. Lucie, in the State of Florida, with headquarters located in Fort Lauderdale, Florida.

c. Illinois.—(1) *Chicago District* shall include the Counties of Boone, Bureau, Carroll, Cook, De Kalb, Du Page, Grundy, Henry, Jo Daviess, Kane, Kankakee, Kandall, Lake, La Salle, Lee, McHenry, Marshall, Mercer, Ogle Putnam, Rock Island, Stark, Stephenson, Whiteside, Will, and Winnebago in the State of Illinois, with headquarters located in Chicago, Illinois.

(2) *Springfield District* shall include the Counties of Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Knox, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Williamson, and Woodford within the State of Illinois, with headquarters located in Springfield, Illinois.

d. *New York*—(1) *Brooklyn District* shall include the Counties of Kings, Nassau, Queens, and Suffolk in the State of New York, with headquarters located in Brooklyn, New York.

(2) *Manhattan District* shall include Blackwells Island, Manhattan Island, Staten Island, Randalls Island, and Wards Island; and the Counties of Bronx, Richmond, Rockland, and Westchester in the State of New York, with the headquarters office located in New York, New York.

(3) *Albany District* shall include the Counties of Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Sullivan, Ulster, Warren, and Washington in the State of New York, with the headquarters office located in Albany, New York.

(4) *Buffalo District* shall include the Counties of Allegany, Broome, Cattaraugus, Cayuga, Chautaugua, Chemung, Chenango, Cortland, Delaware, Erie, Gensee, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates, in the State of New York with headquarters located in Buffalo, New York.

e. *Ohio*—(1) *Cleveland District* shall include the Counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Crawford, Cuyahoga, Darke, Defiance, Erie, Fulton, Geauga, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Lake, Logan, Lorain, Lucas, Mahoning, Medina, Mercer, Monroe, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Van Wert, Wayne, Williams, Wood, and Wyandot in the State of Ohio, with the headquarters office located in Cleveland, Ohio.

(2) *Cincinnati District* shall include the Counties of Adams, Athens, Brown, Butler, Clark, Cleremont, Clinton, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Miami, Montgomery, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Union, Vinton, Warren, and Washington within the State of Ohio, with headquarters located in Cincinnati, Ohio.

f. *Pennsylvania*—(1) *Philadelphia District* shall include the Counties of Adams, Berks, Bradford, Bucks, Carbon, Chester, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Susqeuhanna, Tioga, Union, Wayne, Wyoming, and York in the State of Pennsylvania, with the headquarters office located in Philadelphia, Pennsylvania.

(2) *Pittsburgh District* shall include the Counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield,

Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, and Westmoreland within the State of Pennsylvania, with headquarters located in Pittsburgh, Pennsylvania.

g. *Texas*—(1) *Austin District* shall include the Counties of Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Bosque, Brazos, Brewster, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Colorado, Comal, Coryell, Culberson, DeWitt, Dimmitt, Duval, Edwards, El Paso, Falls, Fayette, Freestone, Frio, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hamilton, Hays, Hidalgo, Hill, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, Lampasas, LaSalle, Lavaca, Lee, Leon, Limestone, Live Oak, Llano, McCulloch, McLennan, McMullen, Madison, Mason, Matagorda, Maverick, Medina, Milam, Nueces, Pecos, Presidio, Real, Reeves, Refugio, Robertson, San Patricio, San Saba, Somervell, Starr, Terrell, Travis, Uvalde, Val Verde, Victoria, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala in the State of Texas, with the headquarters office located in Austin, Texas.

(2) *Dallas District* shall include the Counties of Anderson, Anderews, Angelina, Archer, Armstrong, Bailey, Baylor, Borden, Bowie, Briscoe, Brown, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lipscomb, Loving, Lubbock, Lynn, Marion, Martin, Menard, Midland, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randall, Reagan, Red River, Roberts, Rockwall, Runnels, Rusk, Sabine, San Augustine, Schleicher, Scurry, Shackleford, Shelby, Sherman, Smith, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Upshur, Upton, Vann Zandt, Ward, Wheeler, Wichita, Wilbarger, Winkler, Wise, Wood, Yoakum, and Young in the State of Texas, with headquarters located in Dallas, Texas.

(3) *Houston District* shall include the Counties of Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker in the State of Texas, with headquarters located in Houston, Texas.

5. *U.S. Territories and Insular Possessions.* The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. territories and insular possessions and other authorized areas of the world.

6. The above change shall be implemented on a date determined by the Commissioner of Internal Revenue. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this order.

7. All offices in existence within the Internal Revenue Service but not mentioned in this order are continued without interruption.

8. *Effect on Prior Treasury Department Orders.* This order supersedes Treasury Department Order 150-01, February 27, 1986.

James A. Baker III,

Secretary of the Treasury.

Note.—The Acting Commissioner of the Internal Revenue Service has determined that the effective date will be October 1, 1986.

[FR Doc. 86-14648 Filed 7-10-86; 8:45 am]

BILLING CODE 4810-25-M

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

J. Roger Mentz,

Assistant Secretary for Tax Policy.

[FR Doc. 86-15670 Filed 7-10-86; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 37]

Surety Companies Acceptable on Federal Bonds; Termination of Authority of American Centennial Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American Centennial Insurance Company, Wilmington, Delaware under the United States Code, Title 31, sections 9304—9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27106, July 1, 1985.

With respect to any bonds currently in force with American Centennial Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634-2381.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86-15645 Filed 7-10-86; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1985 Rev., Supp. No. 36]

Surety Companies Acceptable on Federal Bonds; Termination of Authority of American Independent Reinsurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American Independent Reinsurance Company, Stamford, Connecticut, under the United States Code, Title 31, sections 9304—9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27107, July 1, 1985.

With respect to any bonds currently in force with American Independent Reinsurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634–2381.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15646 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 27]

Surety Companies Acceptable on Federal Bonds; Termination of Authority of the Connecticut Indemnity Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to The Connecticut Indemnity Company of Hartford, Connecticut, under the United States Code, Title 31, sections 9304—9308, to qualify as an acceptable surety on Federal Bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27111, July 1, 1985.

With respect to any bonds currently in force with The Connecticut Indemnity Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634–2298.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15647 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1986 Rev., Supp. No. 31]

Surety Companies Acceptable on Federal Bonds; Termination of Authority of Dependable Insurance Co., Inc.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Dependable Insurance Company of Jacksonville, Florida, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27112, July 1, 1985.

With respect to any bonds currently in force with Dependable Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634–2381.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15648 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 35]

Surety Companies Acceptable on Federal Bonds Termination of Authority of First California Property and Casualty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to First California Property and Casualty Insurance Company, Calabasas, California under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27114, July 1, 1985.

With respect to any bonds currently in force with First California Property and Casualty Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634–2381.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15649 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 34]

Surety Companies Acceptable on Federal Bonds; Termination of Authority of Hawkeye-Security Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Hawkeye-Security Insurance Company, Des Moines, Iowa, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27118, July 1, 1985.

With respect to any bonds currently in force with Hawkeye-Security Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634–2381.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15650 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 29]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Integrity Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Integrity Mutual Insurance Company, Appleton, Wisconsin, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27120, July 1, 1985.

With respect to any bonds currently in force with Integrity Mutual Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2381.

Dated July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15651 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 25]

Surety Companies Acceptable on Federal Bonds Termination of Authority, Morrison Assurance Co., Inc.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Morrison Assurance Company, Inc. of Tampa, Florida, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27123, July 1, 1985.

With respect to any bonds currently in force with Morrison Assurance Company, Inc., bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2298.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15652 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 30]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; National Excess Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to National Excess Insurance Company, Laguna Hills, California, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27124, July 1, 1985.

With respect to any bonds currently in force with National Excess Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2381.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15653 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 28]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; The National Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to the National Mutual Insurance Company of Celina, Ohio, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27124, July 1, 1985.

With respect to any bonds currently in force with The National Mutual Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financing Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2298.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15654 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 33]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Northwestern National Casualty Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Northwestern National Casualty Company, Milwaukee, Wisconsin, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27126, July 1, 1985.

With respect to any bonds currently in force with Northwestern National Casualty Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2381.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15655 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 32]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, Northwestern National Insurance Company of Milwaukee, WI

Notice is hereby given that the Certificate of Authority issued by the Treasury to Northwestern National Insurance Company of Milwaukee, Wisconsin, Milwaukee, Wisconsin under the United States Code, Title 31, sections 9304–9308, to quality as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27126, July 1, 1985.

With respect to any bonds currently in force with Northwestern National Insurance Company of Milwaukee, Wisconsin, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2381.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management, Service.

[FR Doc. 86–15656 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 26]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Security Insurance Company of Hartford

Notice is hereby given that the Certificate of Authority issued by the Treasury to Security Insurance Company of Hartford, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27130, July 1, 1985.

With respect to any bonds currently in force with Security Insurance Company of Hartford, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2298.

Dated: July 2, 1986.

Marcus W. Page,

Acting Commissioner, Financial Management Service.

[FR Doc. 86–15657 Filed 7–10–86; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private Organizations," expiration date January 31, 1987.

Private sector organizations interested in working cooperatively on the following concept are encouraged to so indicate:

Program for Business and Economic Journalists from the Middle East: The Office of Private Sector Programs, Initiative Grants/Bilateral Accords Division will develop a program for business and economic journalists from the Middle East. It will focus on enhancing the participants' overall skills in business and economic report writing through a series of workshops in several areas, including microeconomics and international trade, and provide an introduction to professionals in the journalism field and press centers in Washington, DC and New York City. This program is tentatively scheduled for the fall 1986 or spring 1987.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project. While not restricted to faculties of journalism, USIA would prefer proposals from U.S. non-profit institutions which demonstrate their ability to conduct a series of functional sessions for journalists.

Emphasis during the preliminary consultative process will be on identifying organizations able to meet the above criteria. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining third-party private-sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations must postmark their general letter of interest within 20 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (Attn: Initiative Grants/Bilateral Accords Division), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: July 8, 1986.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 86–15555 Filed 7–10–86; 8:45 am]

BILLING CODE 8230–01–M

Meeting of the Advisory Board for Radio Broadcasting to Cuba

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on July 21, 1986, in Room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

Monday, July 21, 1986

Part One—Open to the Public

9:00 a.m. 1. Discussion and Approval of By-Laws Revisions, and confirmation of the minutes

10:00 a.m. 2. Discussion about upcoming Confirmation Hearing

Part Two—Open to the Public—10:30 a.m. to 12:45 p.m.

3. Public testimony period
4. Budget Report and Overall Assessment by Radio Marti Program Director Dr. Betancourt
5. Discussion of Program Operations

Reports
6. Adjournment for lunch
Part Three—Closed to the Public
2:00 p.m. 7. Future Plans of the News Department
3:00 p.m. 8. Future Plans of the Research Department
4:00 p.m. 9. Future Plans of the Program Department
5:00 p.m. 10. Adjournment.

Items 7, 8, and 9 will be closed to the public. Items 7, 8, and 9 cover future goals and objectives of the (7) news department, (8) research department, and (9) program department. All will involve discussion of classified information. Closing such deliberations to the public is justified by the Sunshine Act under 5 U.S.C. 552b (c)(1). Premature disclosure of some of this information also would be likely to significantly frustrate implementation of proposed Agency action. (5 U.S.C. 552b (c)(9)(B)).

Members of the public interested in attending the meeting should contact Mr. Stuart Sweet on (202) 485–6312 to make prior arrangements, as access to the building is controlled.

Dated: July 8, 1986.

Charles Z. Wick,

Director.

[FR Doc. 86–15770 Filed 7–10–86; 10:54 am]
BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 133
Friday, July 11, 1986

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).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:25 a.m. on Tuesday, July 8, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter 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 matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), and (c)(9)(A)(ii)).

Dated: July 8, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-15751 Filed 7-9-86; 12:34 pm]

BILLING CODE 6714-01-M

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FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Wednesday, July 16, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System Employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-15716 Filed 7-8-86; 4:05 pm]

BILLING CODE 6210-01-M

3

OVERSEAS PRIVATE INVESTMENT CORPORATION

TIME AND DATE: 9:00 a.m. (closed portion). 10:00 a.m. (open portion), Tuesday, July 22, 1986.

PLACE: Offices of the Corporation, seventh floor Board Room 1615 M Street, NW., Washington, DC.

STATUS: The first part of the meeting from 9:00 a.m. to 10:00 a.m. will be closed to the public. The open portion of the meeting will start at 10:00 a.m.

MATTERS TO BE CONSIDERED (Closed to the public 9:00 a.m. to 10:00 a.m.):

1. Finance Project in Western Hemisphere Country.
2. Finance Project in Western Hemisphere Country.
3. Finance Project in East Asia Country.
4. OPIC Privatization.
5. Performance Requirements.
6. Public Hearing.
7. Claims Report.
8. Information Report: Finance.
9. Information Report: General.
10. China Projects: Status Report.

FURTHER MATTERS TO BE CONSIDERED (Open to the public 10:00 a.m.):

1. Approval of the Minutes of the Previous Meeting.
2. Approval of Scheduled Board Meetings.
3. Personnel Actions.
4. OPIC Bank Accounts in the Dominican Republic.
5. Policy: Country Limitations.
6. OPIC Budget for FY 1988.
7. Allocation of Retained Earnings.
8. Financial Statements.
9. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 457-7015

Elizabeth A. Burton,

Corporate Secretary.

July 10, 1986.

[FR Doc. 86-15787 Filed 7-9-86; 3:44 pm]

BILLING CODE 3210-01-M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: Tuesday, July 1, 1986.

CHANGE IN THE MEETING: Additional item/meeting.

The following closed item scheduled for Tuesday, July 8, 1986, following the 1:30 p.m. open meeting, has been rescheduled for Thursday, July 10, 1986, at 11:00 a.m.

Access to investigative files by Federal, State, or Self-Regulatory Authorities.

The following item was considered at a closed meeting scheduled on Tuesday, July 8, 1986, following 1:30 p.m. open meeting.

Regulatory matter hearing enforcement implications.

The following additional items will be considered at a closed meeting scheduled for Thursday, July 10, 1986, at 11:00 a.m.

Formal order of investigation.
Institution of administrative proceeding of enforcement nature.

The following item will be considered at an open meeting scheduled for Thursday, July 10, 1986, at 2:30 p.m.

Consideration of whether to send a letter to the joint House/Senate Conference Committee considering proposed tax reform legislation, concerning the effect on financial reporting of a provision in the current Senate Bill which would impose an alternative minimum tax based on the difference

between income reported in financial statements for financial reporting purposes and tax preference income. For further information, please contact John Heyman at (202) 272–2130.

Commissioner Peters, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

Jonathan G. Katz,

Secretary.

July 9, 1986.

[FR Doc. 86–15795 Filed 7–9–86; 3:59 pm]

BILLING CODE 8010–01–M

Federal Register

Friday
July 11, 1986

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Electrical Standards for Construction; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket S-106]

Electrical Standards for Construction

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

ACTION: Final rule.

SUMMMARY: OSHA is revising the electrical safety standards for construction in Subpart K of 29 CFR Part 1926. The revision is intended to clarify and update those standards. The final rule will accomplish the following three major objectives:

(1) National Electrical Code (NEC) requirements which directly affect employee safety in construction workplaces have been placed in the text of the OSHA standard, eliminating the need for the NEC to be incorporated by reference.

(2) Relevant requirements in the existing text of Subpart K, which supplemented the NEC, have been integrated into the new format.

(3) The requirements have been written in performance language so that superfluous detailed specifications could be omitted and changes in technology could be accommodated, without compromising safety.

The final standard also provides the clarification that installations made in accordance with the 1984 NEC will be accepted as being in compliance with the installation requirements of Subpart K, except for several provisions.

EFFECTIVE DATE: These revisions become effective on October 9, 1986.

The information collection regulations contained in this regulation, 29 CFR Part 1926, have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 1218-0130.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210. (202-523-8151).

SUPPLEMENTARY INFORMATION:

I. Background

(A) Safety Problems of Electric Shock

It is well known that the human body will conduct electricity. If direct body contact is made with an electrically energized part while a similar contact is made simultaneously with another conductive surface which is maintained at a different electrical potential, a current will flow. This current will enter the body at one contact point, traversing the body and then exiting at the other contact point, usually the ground.

Each year many workers suffer pain, injuries and death from such electric shocks. The Bureau of Labor Statistics (BLS) reports 830 work-related deaths by all causes for 1980 (960 fatalities in 1979) in construction workplaces with 11 employees or more. In researching causes of these fatalities, BLS has found that about 12 percent were electrocutions. Therefore, for this period, the number of accidental electrocutions for construction firms with more than 10 employees has likely exceeded 100 each year. The overall number of electrocutions in construction is probably higher, since the BLS fatality data presented here do not include deaths in workplaces with 10 or fewer employees.

The effects that electric shock will have on an individual will depend upon the type of circuit; its voltage, resistance, and current; the pathway through the body; and the duration of the contact. For example, electric shocks produced by alternating currents of powerline frequency (normally 60 Hertz) passing through the body from hand to foot for an average adult worker for one second can cause various effects, starting from a condition of being barely perceptible at 1 milliampere to involuntary muscular control from 9 to 25 milliamperes. The passage of still higher currents can produce ventricular fibrillation of the heart (cessation of rhythmic pumping action) from 75 milliamperes to 4 amperes and finally immediate cardiac arrest at over 4 amperes. Nearly instantaneous fatalities from electric shock can result from direct paralysis of the respiratory system (at 20 milliamperes or more), failure of the heart to pump due to ventricular fibrillation (at 75 milliamperes or more), or immediate and complete heart stoppage (at 4 amperes or more). Even if the shocking current does not pass through vital organs or nerve centers, severe injuries such as deep internal burns can still occur. In some cases, injuries caused by electric shock can be a contributory cause of delayed fatalities.

Burns suffered in electrical accidents are of great concern. These burns may be of three basic types: Electrical burns, arc burns, and thermal contact burns. Electrical burns are the result of the electric current flowing in the tissues and may be skin deep or may affect deeper layers (muscles, bones, etc.) or both. Tissue damage is caused by the heat generated from the current flow; if the energy delivered by the electrical shock is high, the body cannot dissipate the heat and the tissue is burned. Typically, such electrical burns are slow to heal. Arc burns, on the other hand, are the result of high temperatures produced by electric arcs or by explosions in close proximity to the body. These burns are similar to burns and blisters produced by any high temperature source. Finally, thermal contact burns are those normally experienced from the skin's contacting hot surfaces of overheated electrical conductors, conduits, or other energized equipment. All types of burns may be produced simultaneously.

Electrical shock currents, even at levels as low as 3 milliamperes, can also cause injuries of an indirect or secondary nature. In this case, the involuntary muscular reaction from the electrical shock can cause bruises, bone fractures, and even death resulting from collisions or falls.

(B) Hazards Associated With Electricity

Most electrical systems use the earth to establish an electrical voltage reference system with respect to ground. This is done by connecting a portion of the circuit to ground. Since these systems use conductors which have voltages to ground, a shock hazard exists for persons who are in electrical contact with the earth and are exposed to the conductors. If a person comes in contact with an ungrounded conductor while he or she is also in contact with the ground, his or her body becomes part of the circuit and current passes through it. Employees on construction sites, because of the environment involved, are likely to be in contact with ground or a grounded conductive surface most of the time. Therefore, the possibility of receiving an electrical shock on a construction site is much greater than for most other workplaces.

In addition to the shock hazard, electricity poses other hazards to employees. For example, when a short circuit occurs or current flow is interrupted, hazards are created from the resultant arcs. If high current is involved, these arcs can cause injury or can start a fire. Fires can also be created by overheating equipment or by conductors carrying too much current. High-energy arcs can damage equipment, causing fragmented metal to fly in many directions. In atmospheres which contain flammable gases or vapors or combustible dusts, even low-energy arcs can cause violent explosions.

(C) Nature of Electrical Accidents

Electrical accidents, when initially studied, often appear to be caused by circumstances which are varied and peculiar to the particular incidents involved. However, further consideration usually reveals the underlying cause to be a combination of three possible factors, i.e., work involving unsafe equipment and installations, workplaces made unsafe by the environment, and unsafe work performance (unsafe acts). For simplicity, the first and second accident-causing situations are sometimes combined and referred to as "unsafe conditions." Thus, electrical accidents can be generally considered as being caused by unsafe conditions, unsafe acts, or, in the usual case, combinations of the two.

A few illustrations may help to clarify these contributory factors. For example, some unsafe conditions involving electrical equipment and installations can often be identified by the presence of faulty insulation, improper grounding, loose connections, defective parts, ground faults in equipment, or unguarded live parts. The environment, particularly the wet and damp conditions at a construction site, can also be a contributory factor to electrical accidents in a number of ways. Other unsafe environments affecting electrical safety would be, for example, atmospheres containing flammable gases or vapors, and areas containing corrosive atmospheres.

Some unsafe acts can be recognized as, typically, the failure to deenergize electrical equipment when it is being repaired or inspected, the intentional use of obviously defective and unsafe tools, or the use of tools or equipment too close to energized parts. It should also be noted that inadequate maintenance can cause equipment or installations, which were originally considered safe, to deteriorate, resulting in an unsafe condition.

Compounding these hazards, the temporary nature of construction increases the probability that a combination of unsafe conditions, unsafe acts, and unsafe environments will result in electrical accidents. For example, the use of tools and cords in poor condition and the use of ungrounded equipment have contributed to construction accidents. Furthermore, the wet and conductive environments common on construction projects increase the likelihood of electric shock when such unsafe conditions are present.

(D) Protective Measures

There are various general ways of protecting employees from the hazards of electric shock, including insulation and guarding of live parts. For example, insulation provides an electrical barrier to the flow of current. To be effective, the insulation must be appropriate for the voltage, and the insulating material must be clean and dry. Another type of protection, guarding, prevents the employee from coming too close to energized parts. Guarding can be in the form of a physical barrier, or it can be provided by installing the live parts out of reach from the working surface. (This technique is known as "guarding by location.")

Grounding is yet another method of protecting employees from electric shock; however, it is normally a secondary protective measure. To keep guards or enclosures (the primary protection) at a common potential with earth, they are connected, by means of a grounding conductor, to ground. If a live part accidentally comes in contact with a grounded enclosure, current flow is directed back to earth, so that circuit protective devices (e.g., fuses and circuit breakers) can interrupt the circuit.

In addition to these protective measures, the use of proper work procedures is necessary for employee protection. When employees are working near or with electrical equipment, they must use safe work practices. Such safety-related employee work practices include keeping a prescribed distance from exposed energized lines, avoiding the use of electrical equipment while one is wet, and locking-out and tagging equipment which is deenergized for maintenance.

Another important safety practice involves electrical protective devices, such as rubber gloves and rubber mats (which are used for insulation against live parts) or liveline tools (which are used for insulation from and actuation of energized parts from a distance). However, to assure the protection of the employee, this equipment must be properly manufactured and maintained. With this equipment, regular maintenance becomes an important consideration in order to keep the equipment from deteriorating and causing an unsafe condition.

(E) Existing Regulations and Reasons for Revision

As noted earlier, electricity has long been recognized as a serious workplace hazard, exposing employees to such dangers as electric shock, electrocution, fires, and explosions. Indeed, the long history of the National Electrical Code attests to this fact. Since the turn of the century, the NEC has represented the continuing efforts of experts in electrical safety to deal with these recognized hazards and to provide for safety in all electrical installations, including construction workplaces.

The regulations presently contained in Subpart K of 29 CFR Part 1926 incorporated the entire 1971 NEC by reference. They also included some additional requirements (for example, those on battery rooms and battery charging, § 1926.403) that are not contained in the NEC. The NEC is the most widely used code for safeguarding people and property from the potential hazards associated with electricity. Today, in addition to its role in the existing OSHA standards, the NEC provides the basis for electrical safety regulations in over 2000 municipalities throughout all 50 States, and it is enforced by over 12,000 governmental electrical inspectors.

OSHA recognizes the important role that the NEC has played over the years in defining basic requirements for safety in electrical installations. The revision of Subpart K will maintain the protection presently afforded to employees by the 1971 NEC, as incorporated by reference in the former standards. While carrying forward NEC provisions which are considered necessary for employee safety, OSHA is providing greater flexibility for compliance with these provisions to the extent that employee safety warrants. OSHA has determined, therefore, that the requirements contained in this revision of Subpart K are reasonably necessary to protect employees from electrical hazards posing significant risks in the workplace.

Since the 1971 NEC was adopted as a national consensus standard, the National Fire Protection Association (NFPA) has revised the NEC four times, the most recent being the 1984 edition. Because of the continual process by the NFPA of updating the Code, any specific edition which OSHA might adopt would likely be outdated within a few years. In addition, since the rulemaking process can become somewhat lengthy, a complete revision of the OSHA electrical safety standards every three years to keep pace with the NEC changes is not practical. To remedy this problem, OSHA has revised Subpart K to make the standards flexible enough to accommodate changes in technology, obviating the need for constant revision. Additionally, where possible, the regulations are written in performance terms in order to allow alternative

installation methods if they provide comparable safety to the employee.

Another difficulty with incorporation of the entire NEC by reference is that the NEC contains many details which are not directly related to employee safety. In this revision of Subpart K, OSHA has tried to carry forward only NEC provisions which are relevant to employee safety in construction workplaces. In addition, OSHA has attempted to simplify those provisions to make the standards easier for employers and employees to use and understand. Furthermore, since the revised standard places all relevant requirements in the text of the regulations, employers will no longer have to refer to the NEC to determine their obligations under OSHA.

In striving for this degree of simplification, the Agency has tried to use an approach which will both allow for and accept new methods of electrical installation which may appear in future NEC revisions. Nonetheless, OSHA also recognizes that while such future editions of the NEC might contain technological advances providing significant improvement in employee safety, the new installations might not be permitted under Subpart K. Should this occur, the new, more protective NEC revisions would merit employer attention at an early date rather than awaiting a further update of Subpart K. OSHA policy under the existing coverage of Subpart K, which will continue under the revised standard, is that employers who elect to follow the latest NEC changes in the interim will incur a de minimis violation of the relevant Subpart K provision. However, due to the performance-oriented nature of the OSHA standard as compared to the NEC, conflicts between the NEC and the OSHA standards in areas affecting employee safety are expected to be infrequent.

The Agency's de minimis policy is set forth in OSHA Instruction CPL 2.45A (Field Operations Manual). As this instruction explains, a de minimis condition exists where an employer's workplace has been updated in accordance with new technology or equipment as a result of revisions to the latest consensus publications from which OSHA standards were derived (such as the NEC), where the updated versions result in a "state of the art" workplace, technically advanced beyond the requirements of the applicable OSHA standard, and where equal or greater safety and health protection is provided.

II. Development of Standard

(A) General Approach

In view of the limitations imposed by the continued incorporation by reference of the 1971 NEC, as previously discussed, OSHA determined that relevant requirements for electrical safety for construction should be placed within the body of Subpart K and that these provisions should be updated and clarified to facilitate their application to construction workplaces. OSHA used selected provisions of Part I of NFPA 70E, "Electrical Safety Requirements for Employee Workplaces," as a base document for developing its proposed revision for construction.

(B) Background

In 1976, NFPA created the "70E Committee" to prepare a consensus standard for possible use by OSHA in developing revisions of the Agency's electrical safety standards. The 70E Committee visualized a standard consisting of four major parts:

Part I—Installation Safety Requirements,
Part II—Safety-Related Work Practices,
Part III—Safety-Related Maintenance Requirements,
Part IV—Safety Requirements for Special Equipment.

The NFPA 70E Committee completed its work on Part I, and NFPA approved it as a national consensus standard in 1979. Part I was derived from the 1978 NEC; however, unlike the NEC, NFPA 70E Part I was not intended to be applied as a comprehensive standard for the design, installation, modification, or construction of an electrical installation or system. Rather, the purpose of NFPA 70E Part I was to provide a compilation of provisions from the NEC which were considered relevant to employee safety from electrical hazards of electric utilization systems in the workplace. Efforts were made to revise and clarify language from the NEC in order to make the requirements more readily understood and implemented by employers.

As a result, OSHA carefully reviewed the work product of the NFPA 70E Committee and determined that its use as a source document for OSHA's design safety standard for electrical utilization systems and equipment was appropriate and offered certain advantages in achieving a more simplified standard. OSHA consequently prepared a notice of proposed rulemaking containing proposed amendments to the electrical safety standards in Subpart S of 29 CFR Part 1910. The proposal was published in the **Federal Register** on September 25, 1979 (44 FR 55274). This was followed by a public hearing (which was held on November 8, 1979), and the final standard was subsequently published on January 16, 1981 (46 FR 4034).

In the process of developing the revision of Subpart K, OSHA reviewed NFPA 70E to examine its suitability as a standard for electrical safety for construction workplaces. Various provisions in NFPA 70E (i.e., sections 2.B(1), 3.A(2)(a), and 3.A(2)(c)(vii)) specifically mention construction. Other sections, while not using the term "construction", clearly cover the types of equipment and operations found in construction work. For example, section 6.A(4) *Tunnel Installations*, refers to the use of mobile shovels, draglines, underground excavators, and the like. This further demonstrates that electrical safety in construction was a consideration in the development of the consensus standard. In reviewing reports of electrical accidents in construction, OSHA also determined that many of the requirements in NFPA 70E were directed at the causes of these accidents, as well as to typical hazards present in the construction industry. For example, NFPA 70E provisions on temporary wiring and on grounding address hazards which contribute to many of the electrocutions and electric shock injuries in construction.

However, OSHA also recognized that NFPA 70E addresses the broad spectrum of occupational electrical hazards and covers many types of installations not generally found in construction. The Agency reviewed NFPA 70E at length to determine which provisions were relevant to construction and to incorporate only those relevant parts into revised Subpart K. For example, parts of NFPA 70E contain requirements pertaining to installations and equipment not generally found in construction, such as data processing systems, electric signs and outline lighting, electrolytic cells, swimming pools, and electrically driven or controlled irrigation machines. Therefore, in order to better effectuate the protection of employees from the hazards of electric shock than that provided by a national consensus standard, the proposed version of Subpart K did not include provisions from NFPA 70E which specifically address these and other types of installations not generally found in construction.

(C) New Format for Subpart K

The major change in the new format of Subpart K is the inclusion of the

relevant NEC provisions within the body of the standard itself, making it unnecessary to continue to incorporate the entire NEC by reference.

An advantage of using this format is indicated by the reduction from the approximately 250,000 words in the National Electrical Code to the approximately 15,000 words in the revised standard.

The new format divides Subpart K into four groups of standards. In addition, a general definitions section covering the entire Subpart is also provided. OSHA believes that the use of this format can provide for the continued effective coverage of hazards and equipment currently addressed, with enough flexibility to accommodate other equipment and protective methods in the future. The revised Subpart K is divided into four major groups as follows:

Installation Safety Requirements: §§ 1926.402—1926.415
Safety-Related Work Practices: §§ 1926.416—1926.430
Safety-Related Maintenance and Environmental Considerations: §§ 1926.431—1926.440
Safety Requirements for Special Equipment: §§ 1926.441—1926.448.

Since each division represents a wide range of diverse equipment, installations and practices, divisions will be further subdivided as appropriate.

In addition, a general definitions section for all of Subpart K is included as § 1926.449.

Various provisions located elsewhere in Part 1926 formerly referenced either the 1971 NEC or specific paragraphs in Subpart K. The final rule changes these references to reflect the appropriate revised provisions of Subpart K.

III. History of the Regulation

As required by section 107 of the Construction Safety Act (83 Stat. 96, 40 U.S.C. 333), a draft of the proposed revision of Subpart K was submitted to the Advisory Committee on Construction Safety and Health (ACCSH) on January 26, 1982, and was discussed at their meeting on March 3, 1982. The committee's recommendation is contained in the transcript of this meeting.

During the meeting, committee members and public participants made suggestions concerning the draft proposal. OSHA thoroughly reviewed and analyzed the ACCSH recommendations, many of which were incorporated into the proposal and this final rule. Careful consideration was given to all of the suggestions. The major issues raised by the Committee were discussed in the preamble to the proposal (48 FR 45877–45878).

On October 7, 1983, OSHA published (48 FR 45872) a proposed revision of its electrical standards for construction. The notice of proposed rulemaking invited interested persons to submit written comments on the proposed standard and to file objections and requests for a public hearing. The original date for the close of the comment period was set for November 21, 1983, but was subsequently extended, at the request of commenters, to December 31, 1983 (48 FR 54652). Thirty-six written comments were received, including two requests for a hearing. These hearing requests identified ten major issues:

1. Whether OSHA should modify the application of Subpart K to cover existing facilities where construction activities are being performed.

2. Whether some industrial transmission and distribution installations should be covered by Subpart K.

3. Whether the NEC should continue to be incorporated by reference and, if not, whether the standard should be based on applicable provisions of NFPA 70E relevant to construction.

4. Whether OSHA should retain the more detailed language of the former standard in paragraphs (d), (e), and (g) of § 1926.401, which deal with specific ground resistance values and bonding techniques, rather than the more performance-oriented language of proposed § 1926.404(f).

5. Whether receptacles in existing installations should be permitted to be grounded by means of grounded metal cold water pipes, as was the case in the former standards, or whether such receptacles should be required to be grounded by a separate equipment grounding conductor connected back to the service.

6. Whether temporary lighting should be required to be installed with "heavy duty" cords rather than with other means, such as multi-conductor cable assemblies or open conductors.

7. Whether the specific language in paragraphs (a)(1), (a)(3), (a)(6), and (a)(8) of former § 1926.402, dealing with design details of attachment plugs and receptacles and with protection of cables from damage, should be retained or whether the objectives of these requirements have been adequately addressed in the proposal.

8. Whether revised § 1926.403(j) should apply to equipment on the supply side of the service conductors.

9. Whether the requirement, in proposed § 1926.404(f)(7)(i), to ground enclosures for conductors should allow exemptions for enclosures used to protect cables from damage and for enclosures added to existing installations of open wiring, knob-and-tube wiring, and nonmetallic-sheathed cable, under certain restrictions.

10. Whether the definitions for Subpart K should be as proposed, or whether they should conform to those either in the 1984 NEC or in the former standard.

In response to these hearing requests, OSHA published a notice of public hearing, listing these issues, on February 9, 1984 (49 FR 4949). In addition to listing the issues, the hearing notice pointed out that, as noted in the proposal, existing § 1926.400(h) on ground-fault protection was being redesignated as § 1926.404(b)(1) and was not being proposed for removal or revision. The notice also made note of an error in the printing of proposed § 1926.404(a)(1) and listed the correct wording as: "A conductor used as an equipment grounding conductor shall be identifiable and distinguishable from all other conductors." One commenter who objected to the proposal mentioned these two concerns in his hearing request (Ex. 2-28). The informal rulemaking hearing was convened by Judge Julius A. Johnson on April 10, 1984, pursuant to section 6(b)(3) of the Act (29 U.S.C. 655(b)(3)) and 29 CFR Part 1911. The hearing included testimony from 14 witnesses. Judge Johnson established a post-hearing period for the submission of additional comments and briefs extending through May 30, 1984.

The entire record, including 27 exhibits and 101 transcript pages, was certified by Judge Johnson on October 25, 1984, in accordance with 29 CFR 1911.17. Copies of materials in the record, as well as an index of the record, may be obtained from the OSHA Docket Office, Room N3670, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210.

This final standard is based on a full consideration of the entire record of this proceeding including materials discussed or relied on in the proposal, the record of the informal hearing, and all written comments and exhibits received.

IV. Issues

The evidence submitted into the record is summarized and evaluated in the following discussions of the issues. The numbers in brackets refer to specific references in the April 10, 1984, hearing exhibits (Ex.) and hearing transcript page numbers (Tr.).

1. *Whether OSHA should modify the application of Subpart K to cover*

existing facilities where construction activities are being performed.

Proposed § 1926.402(b) stated that the installation safety requirements of Subpart K would apply to "electrical installations on the jobsite, both temporary and permanent." This language, which is the same as that contained in the existing standard, suggested that the permanent wiring of an existing building would be covered by Subpart K any time construction work was being performed.

One hearing participant, the American Iron and Steel Institute (AISI) (Ex. 2–15), was concerned about the possible duplication or overlapping of standards between the electrical standards for general industry, Part 1910, Subpart S, and those for construction, Part 1926, Subpart K. It was argued that an employer could be subject to different standards at the same workplace, depending upon whether construction activities or routine maintenance activities were being performed.

AISI reiterated its concern in its post-hearing brief (Ex. 23), claiming that, without a clarification, the Subpart K requirements could be construed as applying to an existing installation of electric equipment any time construction activities are being performed in a given workplace. They proposed that the electrical standards for general industry, Part 1910, Subpart S, be used as the standard for permanent installations.

One of OSHA's expert witnesses, Mr. Ralph H. Lee, stated his view that when maintenance, modification, or re-construction is being performed in an existing installation, the rules of Subpart S of Part 1910 apply to equipment and wiring forming part of the permanent facilities (Ex. 11). He explained that the wiring and equipment temporarily brought in to perform the construction activities must comply with Subpart K of Part 1926.

OSHA's application of the existing electrical standards for construction has followed the pattern outlined by Mr. Lee. The proposed revision of Subpart K was not intended to change this application.

However, OSHA does recognize that the application of Subpart K to existing facilities where construction activities are taking place should be clarified. Therefore, in order to clarify the scope of new §§ 1926.402 through 1926.408, OSHA has modified the second sentence of § 1926.402(a) in the final rule to read:

> These regulations apply to installations, both temporary and permanent, used on the jobsite; but the regulations do not apply to existing permanent installations that were in place before the construction activity commenced.

This language should make it clear that the permanent wiring of an existing building is not covered by the installation safety requirements in §§ 1926.402 through 1926.408 of Subpart K. Such wiring must comply with Subpart S of Part 1910 if the building is a workplace. If the building is a private residence, the existing permanent wiring of the building would not be covered by any OSHA standards. In this situation, in which the construction employer would have no control over the original installation, that employer would still have the general duty to protect employees from recognized hazards presented by the electrical installation which are likely to cause death or serious physical harm. Additionally, the safety-related work practices contained in §§ 1926.416 and 1926.417 will apply to all construction work, regardless of whether a new or existing electrical installation is involved. Thus, the work-practice requirements will provide protection for construction employees from hazards presented by existing installations, even if an installation itself is not subject to §§ 1926.402 through 1926.408. These sections require the employer to protect employees from contact with energized parts, which is the major and most serious hazard posed to construction workers by an existing permanent installation.

Under the final standard (as under the existing standard), the permanent wiring used to provide power at the jobsite and installed during the construction process would be covered by Subpart K. Any equipment or wiring, such as portable tools or extension cord sets, connected to the permanent wiring would also be covered, whether or not the permanent wiring itself is covered. This protects employees using portable equipment against faults in the permanent wiring.

The language contained in final § 1926.402(a) will maintain OSHA's current policy regarding the application of the electrical standards for construction to permanent wiring. OSHA also believes that the final rule clarifies the scope of Subpart K so that employers and employees can more readily determine which standards are applicable to their workplaces.

2. *Whether some industrial transmission and distribution installations should be covered by Subpart K.*

In their hearing request (Ex. 2–15), AISI recommended that OSHA clearly define and differentiate between electrical utilization equipment and power distribution and transmission equipment. Their suggestion was that OSHA use 15 kV as the demarcation line between the utilization system and the transmission and distribution system. Above 15 kV, equipment would be considered transmission or distribution equipment; below, equipment would be considered as part of the utilization system.

In his hearing statement (Ex. 18), the steel industry witness who raised this issue reiterated his concern with the proposal's "lack of specific discrimination between conventional electrical utilization systems and those of utility-type generation, transmission, and distribution systems." However, he did not reaffirm his support for a 15 kV dividing line. Instead, he suggested that OSHA await the outcome of a study of an NEC subcommittee planned for assignment to review public comments relating to NEC scope applicability (Ex. 18, 21). This procedure is part of NFPA's periodic review process for revising and updating the NEC.

Since the NEC updating cycle includes a multiplicity of steps including formal submittals of both proposals and comments, reviews for consensus, and finally submittal to NFPA membership for approval, no changes in the NEC will be finalized until NFPA formally adopts the 1987 edition of the NEC as a national consensus standard.

The suggestion made to OSHA that some particular voltage, such as 15 kV, be established as a demarcation line between the utilization system and the transmission and distribution system, was questioned by several witnesses at the hearing. One witness representing the Edison Electric Institute (EEI) stated that many power plants and substations which are part of a utility company's generating and distribution facilities, operate at less than 15 kV (Tr. 42). Additionally, one of OSHA's expert witnesses questioned the rationale of such a demarcation line between utilization and distribution systems inasmuch as Subpart K and Subpart V now provide for such separation, and he further testified that Subpart K addresses "600 volt and below circuitry, with most power utilized at 120 volts serving power tools and lighting" (Tr. 28). The other OSHA expert witness made the same point and also noted that Subpart K also covers "utilization uses" over 600 volts (Ex. 11).

In light of this evidence, OSHA does not consider it appropriate to define transmission and distribution systems vis-a-vis utilization in terms of voltage. The voltage of a system is not always an indication of the system's purpose. OSHA believes that a determination of

whether certain equipment is part of the utilization system or part of a transmission or distribution system can only be made on a case-by-case basis.

The representatives of the electric utility industry brought out a related issue, namely, whether the proposed Subpart K would continue the "utility exclusion" contained in the 1971 NEC adopted by reference in the existing standard (Tr. 39–40). As pointed out by the EEI witness, section 90–2(b)(5) of the 1971 NEC states:

90–2. Scope.

* * * * *

(b) *Not covered.* It [the NEC] does not cover:* * *

(5) Installations under the exclusive control of electric utilities for the purpose of communication, metering or for the generation, control, transformation, transmission and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, etc., or outdoors by established rights on private property.

The electric utility industry representatives acknowledged that transmission and distribution lines (covered by Subpart V of the Construction Standards) were clearly not covered by the proposed requirements. However, they were concerned that the revised Subpart K would apply to the temporary and permanent wiring when construction work is performed in "an electric utility workplace, other than transmission and distribution lines" (Tr. 41). They contended that Subpart K should retain the incorporation by reference of the National Electrical Code, along with its "exemption" of certain electric utility facilities (Ex. 22).

Proposed § 1926.402(a), which was consistent with existing § 1926.400(b), provided that the electrical installation requirements only apply to "electrical equipment and installations used to provide electric power and light." It was never intended that the standard cover electrical installations used primarily for the generation, transmission, or distribution of electric power. To make this point absolutely clear in the final rule, OSHA has changed § 1926.402(b) to read as follows:

(b) *Not covered.* Sections 1926.402 through 1926.408 do not cover installations used for the generation, transmission, and distribution of electric energy, including related communication, metering, control, and transformation installations. (However, these regulations do cover portable and vehicle-mounted generators used to provide power for equipment used at the jobsite.) See Subpart V of this Part for the construction of power distribution and transmission lines.

While the exact language of section 90–2(b)(5) of the 1971 NEC has not been used, the installations listed in the OSHA paragraph as not being covered are of the same types as noted in the 1971 NEC. The only difference is that the NEC refers only to such installations under the exclusive control of electric utilities, while OSHA's electrical installation standards for construction have never covered such installations regardless of who controlled them. Although the specific suggestions of the steel and electric utility have not been incorporated into the final rule, it is OSHA's belief that the language added in § 1926.402(b) of the final rule clarifies the application of the standard and responds adequately to their stated concerns.

3. *Whether the NEC should continue to be incorporated by reference and, if not, whether the standard should be based on applicable provisions of NFPA 70E relevant to construction.*

One of the hearing requests (Ex. 2–28) objected to the proposal's elimination of the incorporation by reference of the National Electrical Code. This commenter, representing the International Brotherhood of Electrical Workers (IBEW), suggested that OSHA simply replace the reference to the 1971 NEC with one to the 1984 NEC. To support their view, the IBEW cited evidence from the preamble to the proposal that the NEC is adopted and enforced by many local and State jurisdictions and that it is widely understood and recognized in the construction industry. The IBEW also argued that, since OSHA's standard was based on NEC provisions, each revision of the NEC would necessitate a revision of the OSHA standard.

In support of their position that OSHA should adopt the 1984 NEC, the IBEW presented evidence of the legality of incorporating a national consensus standard by reference (Ex. 16). According to section 552(a)(1) of the Administrative Procedure Act, an incorporation by reference is valid if it is reasonably available to affected persons and if its incorporation is approved by the Director of the **Federal Register**. As noted by one IBEW witness, the NEC is certainly available to all employers and employees (Tr. 75–76). However, this witness also acknowledged that OSHA would have to propose a specific edition of the NEC, describe any substantive revisions to the current standard which would be incorporated therein, and hold a hearing if someone objects to the proposal (Tr. 77).

At the hearing, one IBEW witness restated these objections (Tr. 61–63, 68–69). Additionally, he countered OSHA's claim that the proposal would simplify the standards by noting that those in the construction industry are already familiar with and understand the NEC (Tr. 62). He therefore claimed that OSHA's adoption of requirements which differ from the NEC would lead to confusion rather than simplification (Tr. 68).

IBEW's claims were supported at the hearing by EEI (Tr. 46–49; Ex. 13). One EEI representative noted that there is a "network of training and education concerning the NEC" (Tr. 47). He stated that community colleges, professional associations, and the NFPA itself are involved in this educational effort. As did the IBEW witness, the utility witness argued that confusion would result from OSHA's issuance of a standard which "attempts with different language to imitate a portion of the NEC."

Other evidence and several other commenters generally supported the view that the NEC is widely recognized and understood and that it should be incorporated in some manner into the OSHA standards (Ex. 2–6, 2–13, 2–23, 2–29).

Both of OSHA's expert witnesses supported the proposed removal of the incorporation of the NEC by reference (Ex. 10, 11). Mr. Bernard W. Whittington noted the specification orientation of the NEC and the need for OSHA to enforce a standard which would accept alternative methods of compliance while still protecting employees (Tr. 25–26). Mr. Ralph H. Lee also supported OSHA's proposal, contending that it would simplify the standards and eliminate requirements not directly related to employee safety. The overwhelming majority of the comments also supported OSHA's intention to eliminate the incorporation of the NEC by reference and replace it with a performance-oriented standard (Ex. 2–5, 2–10, 2–18, 2–20, 2–21, 2–30, 2–36, 18, 21, 24, 25, 27).

In developing its proposed Subpart K revision, OSHA drew heavily on its experience with the incorporated 1971 NEC and the problems that had been encountered in recent years. These problems, which were noted in the proposal and are discussed at length later under this issue, would exist with the adoption by reference of any specific edition of the National Electrical Code, and they have been well documented in the rulemaking record (Ex. 19, 20, 21, 24). In summary, there are essentially five major areas of concern:

1. The NEC is revised by NFPA every 3 years. The OSHA public rulemaking effort typically takes more than 3 years from the early draft stage to the

publication of a final rule. (Indeed, this effort to revise Subpart K took 4 years to complete.) Therefore, any specific edition of the NEC which OSHA proposes to adopt will already have been replaced by a more recent edition by the time the final rule will have been published. (For example, had OSHA in late 1981 or early 1982 decided to propose the adoption of the then current 1981 NEC instead of drafting the standard as proposed, the 1984 NEC would have been published by NFPA about the same time as OSHA's proposal on adoption of the 1981 NEC. In light of the number of changes to the NEC from 1981 to 1984, the OSHA standard would likely have needed to be reproposed in order to provide for public notice and comment on those proposed changes.) Without a continual process of revising Subpart K to reflect changes in the NEC, OSHA's electrical standards for construction would quickly become hopelessly out of date.

2. Even if OSHA were to propose adoption of each new edition of the NEC as it became available, public comments received during the rulemaking process could result in the Agency's adoption of many requirements which differ from those in the code.

3. In addition to the official 3-year period for NEC revision, the NEC can be changed anytime within that period by the processing of Tentative Interim Amendments by the National Fire Protection Association. If the amendments were to make substantive changes in the NEC, OSHA would have to go through further rulemaking in order to bring Subpart K into conformity with the code.

4. The NEC contains many installation details which are not directly related to employee safety and which, therefore, are not necessary for inclusion in an OSHA standard. (See Section II of this preamble for discussion of the development of the proposal.)

5. Although the NEC is not intended as a design specification nor an instruction manual for untrained persons, it does contain many detailed equipment or installation requirements which are not amenable to routine inspections for workplace safety.

OSHA does not dispute the legality of adopting a specific edition of the NEC into its regulations. In fact, OSHA has found the current incorporation by reference of the 1971 NEC in the general industry and construction electrical standards to be legal and enforceable. Yet, portions of these standards became outdated upon publication of the 1975 NEC. OSHA has continued to enforce the 1971 NEC even as later editions of the Code have become available. This process has caused the existing standards, though enforceable, to become out of date.

However, OSHA believes that adoption of new editions of the NEC by reference as they become available is not practical. IBEW suggested that OSHA could propose to adopt a future edition of the NEC at the time that a new edition is being proposed by NFPA (Tr. 77). Nevertheless, there are additional burdens placed on OSHA which would preclude such a possibility. Initially, OSHA would have to know exactly what was being proposed in the new NEC. An evaluation would have to be made to determine what substantive differences existed between the 1971 NEC and the NFPA's proposal. OSHA would then justify each difference in terms of employee safety and evaluate the regulatory impacts of these changes. By the time OSHA could publish a proposal, NFPA would likely have already approved the final NEC. If the new NEC were approved by NFPA with additional changes beyond what had been proposed, OSHA's proposal, preamble, and regulatory analysis would all have to be changed to reflect these changes. After publication of OSHA's proposal, the public would have the opportunity to comment and request a hearing. Lastly, OSHA would have to evaluate the rulemaking record and adopt a final rule based on that record. Due to this lengthy process, OSHA does not believe that its regulations could keep pace with the NEC.

Because the NEC is such a widely-used and recognized electrical installation code, the idea of merely incorporating the latest edition of the NEC into the OSHA standards by reference, to replace the 1971 edition, seems attractive at first glance. However, based upon OSHA's experience with its present electrical standards for construction, and its evaluation of the logistics of standards revision and the rulemaking process, the Agency has determined that incorporation of the latest edition of the NEC whenever it becomes available is not a practicable option. As noted previously, this determination centers primarily on the vagaries of the NEC revision process, on the contents of the NEC itself, and on the problems associated with standard-setting under section 6(b) of the OSHAct. The following discussion focuses on each of these limitations at length.

In developing its periodic revisions of the NEC, the National Fire Protection Association (NFPA) relies on twenty code making panels, a correlating committee and various advisory committees and subcommittees. After the code making panels take action to accept, accept-in-principle or reject the proposals, a consensus review of all panel action is conducted by the correlating committee. During the current processing schedule for the coming 1987 NEC, over 3500 proposals have been submitted for action. Following the completion of the code making panel action on these proposal submittals, related public comments are then received by NFPA, and the same cycle of panel action and correlating committee review repeats. When work on the received comments is concluded, final NFPA acceptance or rejection balloting is required before the completed NEC can be released.

The final NEC document which emerges from these deliberations is the result of many judgments and decisions which are not subject to final detailed general public or judicial scrutiny. However, when OSHA receives the new NEC, the Agency is not free simply to adopt it as an OSHA standard *in toto*, without opening it to public notice, comment, and an opportunity for a hearing. This means that all changes from the existing OSHA standard would be the subject of the rulemaking effort and would need to be supportable by substantial evidence on the record as a whole. It would be necessary for the Agency to be totally versed on every aspect of the new NEC in order to provide support for incorporating those provisions in the OSHA standards. It is clear, therefore, that the incorporation of the latest NEC would not necessarily be a straight-forward, *pro forma* exercise. Further, an OSHA rulemaking on the entire NEC would provide parties who had not prevailed with argument at the NFPA level, to raise those arguments anew at the OSHA level. It would be unreasonable to expect OSHA to have the degree of institutional knowledge of the NEC revisions which would be necessary to deal with these arguments. Even more compelling, however, is the problem of consistency: The benefits of incorporating the latest NEC through rulemaking would be achieved only if the entire NEC were to pass through the proceeding unscathed, without OSHA being compelled to make changes in the final rule. Only then would the language in the final standard remain totally consistent with the latest NEC and thus be identical to that being enforced by building and other authorities in this country. Given OSHA's need to develop its standards based upon the public record, one cannot assume that OSHA's proposal would go through rulemaking unchanged or that public input would have no effect upon either the form or

the substance of its final electrical standards. Indeed, even in the performance-oriented final rule being promulgated today, public comment has led the Agency to make various modifications; the many specifications in the NEC would certainly be subject to comparable revision during the rulemaking process.

Yet another complication involves the interrelationship between NFPA's schedule for revising the NEC, and OSHA's timetables for revising its standards under section 6(b) of the OSHAct. Because the development of an OSHA standard can be a lengthy process, it is conceivable that the rulemaking on a new edition of the NEC might well extend past the time when an even newer edition becomes available. This would lead to the incongruous situation of OSHA finalizing a standard which would have to be reopened for further rulemaking almost immediately. The likelihood of such a scenario would be enhanced by the need to evaluate new changes in the NEC in detail in each rulemaking. The Agency does not believe that such efforts would constitute a productive use of Agency resources or the resources of the interested parties that would be participating in the proceedings. OSHA has made a determined effort to develop an electrical standard for construction which is flexible enough to allow for changes in technology and practices over time and which can accommodate revisions in the NEC without itself having to be revised. If this effort is effective, the Agency will be able to concentrate its rulemaking resources in more productive areas.

Even if OSHA were to be able to adopt new editions of the NEC as they were issued, this would not assure uniformity in and of itself, because of another element of the NEC development process. Between editions of the NEC, the NFPA is frequently called upon to issue modifications and interpretations to the most recent code. These issuances are referred to as "Tentative Interim Amendments" and "Formal Interpretations" respectively and are, at least in the former case, precursors of changes to be made in the next edition of the NEC. It is evident that there is no way for OSHA to incorporate these documents into its rulemakings on any comprehensive basis. Further, to the extent that these "Tentative Interim Amendments" and "Formal Interpretations" do not represent OSHA's views, there is the potential for further disagreement between the NEC and the OSHA standards.

In addition, as has been pointed out frequently during this rulemaking, the NEC contains many specifications which are not directly related to employee safety in the workplace. If the entire NEC is to be incorporated by reference in the OSHA standards, the Agency is faced with enforcing standards whose scope is broader than employee protection would necessarily warrant. It was this very problem that led NFPA to convene the 70E committee, with the charge of using the NEC as a source document to develop an electrical safety standard specifically for the workplace. It was the product of that committee's efforts which served as the basis for OSHA's proposed revision of Subpart K. Further, even for details of the NEC which do directly relate to safeguarding employees, the NEC provides many specifications which provide inadequate flexibility for the employer in providing a safe electrical installation. The revised standards are intended to allow for alternative safe methods of installation which are or may be available, and which might not be permissible under a specific edition of the NEC.

In adopting NFPA 70E as a national consensus standard for workplace safety, NFPA recognized that its continuous process of revising the NEC is not compatible with OSHA's need to keep its standards up to date. As noted in section 11(B) of this preamble, NFPA 70E was developed to provide the essential elements of workplace safety covered by the NEC, while obviating the need for frequent revision as new editions of the NEC became available. OSHA has afforded considerable weight to the determinations made by NFPA in this area, particularly in light of their responsibilities in developing the NEC itself and NFPA 70E. Support for OSHA's use of NFPA 70E as a base document in revising its electrical standard for construction was voiced by many commenters and witnesses (Ex. 2–10, 2–30, 2–42, 19, 20, 25, 26, 27). It was generally agreed that NFPA 70E contains basic NEC requirements dealing directly with employee safety, is written in performance terms allowing alternative methods of providing safety, and is written so that it will not need frequent revision (Ex. 2–10, 2–15, 2–34, 2–42, 2–43, 10, 11, 19, 20, 24, 26, 27). For these reasons OSHA has decided to retain the proposal's reliance on NFPA 70E requirements and removal of the incorporation of the NEC by reference. By revising Subpart K in this manner, OSHA expects to be able to protect employees from electrical hazards present in construction workplaces, while reducing the possibility that the standard will become out of date within a short period of time.

At the same time, the record reflects that many electrical contractors and others are familiar with the requirements of the 1984 NEC (Tr. 46–47, 55–57, 62–63) and that there is widespread compliance with those requirements in the construction industry (Ex. 2–13, 2–23; Tr. 55–57). Because of this, OSHA has thoroughly reviewed the 1984 NEC and has determined that the requirements of that Code are at least as effective in protecting employees as revised Subpart K §§ 1926.402–1926.408, except for §§ 1926.404(b)(1) and 1926.405(a)(2)(ii)(E), (F), (G), and (J). These excepted provisions are from the text of the existing Subpart K, and they contain requirements which are not contained in the Code or which differ from requirements in the Code. (For a more complete discussion, see section V of this preamble.) Therefore, OSHA has determined that an installation which complies with the 1984 NEC (excluding all NFPA generated Tentative Interim Amendments) will be accepted as being in compliance with the installation practices contained in the revised Subpart K, except for the specific provisions previously noted.

Although OSHA considers the performance-oriented installation practices contained in the revised Subpart K as the minimum required standard, the Agency will accept, exclusive of any subsequent Tentative Interim Amendments and future NEC revisions, compliance with the specification-type requirements of the 1984 NEC. OSHA cannot accept, in advance, compliance with future editions of the NEC, but will review all future editions to determine their consistency with the performance requirements contained in the revised Subpart K. It is hoped that during this time employers and employees, by employing the less detailed OSHA standard and by understanding how it relates to the NEC, will experience a minimum of confusion from the revised standard.

4. *Whether OSHA should retain the more detailed language of the existing standard in paragraphs (d), (e), and (g) of § 1926.401, which deal with specific ground resistance values and bonding techniques, rather than the more performance-oriented language of proposed § 1926.404(f).*

In their hearing request, IBEW objected to the proposal's revision of former § 1926.401(d) (Ex. 228). Disagreeing with the Distribution Table

in the preamble to the proposal, the IBEW argued that proposed § 1926.404(f)(10) was not equivalent to existing § 1926.401(d).

The existing requirement reads as follows:

(d) *Ground resistance.* Driven rod electrodes shall, where practicable, have a resistance to ground not to exceed 25 ohms. Where the resistance is not as low as 25 ohms, two or more electrodes connected in parallel shall be used.

The proposed revision read as follows:

(10) *Made electrodes.* Where made electrodes are used, they shall be free from nonconductive coatings, such as paint or enamel; and where practicable, they shall be embedded below permanent moisture level. A single electrode consisting of a rod, pipe or plate which has a resistance to ground greater than 25 ohms shall be augmented by one additional electrode installed no closer than 6 feet (1.83 m) to the first electrode.

The language of both of these requirements came from the NEC. Existing § 1926.401(d) is identical to 1971 NEC section 250–84; proposed § 1926.404(f)(10) was derived from 1984 NEC sections 250–83 and 250–84.

At the hearing, the IBEW restated their position with respect to existing § 1926.401(d) that the proposal provided inadequate protection. Their entire argument consisted of the following statement: .

The present section [§ 1926.401(d)] should be retained. It requires, where practical, driven rod electrodes to have a resistance to ground not to exceed 25 ohms. Where this is not practical and the resistance is greater than 25 ohms, it provides for two or more electrodes to be used.

The proposed amendment .405(f)(10) states that a single electrode having a resistance greater than 25 ohms shall be augmented by one additional electrode. This is inadequate protection. (Tr. 65)

The IBEW presented no further evidence on this issue.

This testimony was rebutted by OSHA's expert witness, Mr. Ralph H. Lee, who explained the difficulty of achieving a 25-ohm resistance with made electrodes in some parts of the country (Ex. 11; Tr. 34–35). Mr. Lee also explained that the purpose of this provision is the protection of the employee from hazards resulting from the impression of a higher than normal voltage on the utilization system (Ex. 11). This could happen, for example, through the failure of insulation in a distribution transformer. The connection of the utilization system to ground facilitates the operation of protective devices by providing a path for current resulting from the higher voltage; and this prevents subsequent insulation failure, due to the impression of high voltage on the lower voltage circuit, and possible injury to employees. Because of these facts, Mr. Lee explained, a resistance less than 25 ohms is not of primary importance. No evidence was presented to refute this testimony.

OSHA agrees with the rationale set forth by Mr. Lee and is retaining § 1926.404(f)(10) as proposed. This is consistent with what is required by the 1984 NEC.

With respect to existing § 1926.401(e), the IBEW argued that this provision was essential, and they objected to its removal (Ex. 2–28; Tr. 65). This requirement read as follows:

(e) *Testing of grounds.* Grounding circuits shall be checked to ensure that the circuit between the ground and the grounded power conductor has a resistance which is low enough to permit sufficient current to flow to cause the fuse or circuit breaker to interrupt the current.

Taken literally, this paragraph required employers to check the resistance to ground of the grounding electrode. Both the proposal and the existing standard required this resistance, where practical, to be less than 25 ohms. However, a grounding electrode resistance near this limit is not low enough to cause an overcurrent device to open a circuit due to the existence of a fault to a remote ground. Mr. Ralph H. Lee noted that, on a 277/480-volt system, a 25-ohm ground alone would allow only 11.1 amperes to flow, not enough to operate a 15-ampere protective device (Ex. 2–38, 11). Thus, such an installation would meet existing § 1926.401(b), but the resistance check required by existing § 1926.401(e) would show that the resistance was too high to permit sufficient current to flow to cause the overcurrent device to interrupt the circuit. As noted by Mr. Lee, the grounding of the system protects against the possibility of the impression of high voltage on the system; it is the equipment grounding conductor which protects employees from ground faults in the utilization system itself (Ex. 2–38, 11). Therefore, a grounding electrode with a 25-ohm resistance to ground would not pose a hazard to employees.

At best, it is incongruous for the requirement directly addressing the resistance to ground of the grounding electrode to allow a higher resistance than the requirement to check the resistance allows. Additionally, as noted in the discussion of the previous issue, the resistance of the grounding electrode is not of primary importance to employee safety. The most common and most hazardous ground fault is a fault from a "hot" conductor to the metal frame of an electric tool, which is required to be grounded. The equipment grounding conductor returns current to the source of voltage, and this "short circuit" causes the overcurrent device to open the circuit. Since the impedance of the grounding electrode is not a part of the circuit conducting the fault current, the value of this impedance has no effect on the amount of fault current flowing or on whether or not the overcurrent device opens the circuit upon occurrence of this type of ground fault. Therefore, OSHA has determined that a requirement to check the resistance of the grounding electrode is not necessary for employee safety.

The IBEW also claimed that the proposed removal of existing § 1926.401(g) would seriously weaken the provisions concerning bonding by limiting their application (Ex. 2–28; Tr. 65). In the Distribution Table in the preamble to the proposal, OSHA stated that the requirements of existing § 1926.401(g) dealing with bonding for static electricity control were already covered in §§ 1926.151(a)(5) and 1926.152(e)(2). The IBEW noted that the referenced provisions relate only to bonding in connection with hazardous concentrations of flammable gases, vapors, or liquids (Ex. 2–28). Their objections claimed that these rules do not address the subject of attaching and detaching bonding clamps or clips (Ex. 2–28; Tr. 66).

Paragraph (g) of former § 1926.401 reads as follows:

(g) *Bonding.* (1) Conductors used for bonding and grounding stationary and movable equipment shall be of ample size to carry the anticipated current.

(2) When attaching bonding and grounding clamps or clips, a secure and positive metal-to-metal contact shall be made. Such attachments shall be made before closures are opened and material movements are started and shall not be broken until after material movements are stopped and closures are made.

There was no requirement in this paragraph to provide bonding conductors; this paragraph applied if bonding conductors were provided. In paragraphs (f)(8)(ii) and (f)(9) of § 1926.404, the proposal carried forward the requirements of existing § 1926.401(g)(1). The proposed provisions read as follows:

(f) * * *

(8) * * *

(ii) A conductor used for grounding fixed or movable equipment shall have capacity to conduct safely any fault current which may be imposed on it.

* * * * *

(9) *Bonding.* Where bonding conductors are used to assure electrical continuity they shall

have the capacity to conduct any fault current which may be imposed.

The language used in these paragraphs is nearly identical to that used in paragraph (g)(1) of the existing standard. In this case, the requirements in the proposal and in the existing regulation are the same. Therefore, the final rule incorporates the provisions of existing § 1926.401(g)(1) in paragraphs (f)(8)(ii) and (f)(9) of revised § 1926.404, as proposed.

Paragraph (g)(2) of existing § 1926.401 did not relate to equipment or installations covered by Subpart K. Rather, this provision addressed bonding jumpers used to control static electricity during the transfer of materials from one enclosure to another. These bonding jumpers are not a part of the electrical installation used to provide power and light; therefore, coverage of these jumpers does not belong within Subpart K, which only covers that installation.

However, the use of such bonding conductors is covered in Subpart F of Part 1926. Paragraph (a)(5) of § 1926.151 addresses bonding for tanks and vessels containing hazardous concentrations of flammable gases or vapors and reads as follows:

(5) The nozzle of air, inert gas, and steam lines or hoses, when used in the cleaning or ventilation of tanks and vessels that contain hazardous concentrations of flammable gases or vapors, shall be bonded to the tank or vessel shell. Bonding devices shall not be attached or detached in hazardous concentrations of flammable gases or vapors.

Paragraph (e)(2) of § 1926.152 addresses bonding for containers of flammable liquids and reads as follows:

(2) Transfer of flammable liquids from one container to another shall be done only when containers are electrically interconnected (bonded).

Both of these provisions set forth the conditions under which bonding is required, including when the bonding must be in place. Existing § 1926.401(g)(2) does not go beyond what is already required by the Subpart F regulations. Since existing § 1926.401(g)(2) would be out of place in Subpart K and since the hazards it addressed are still covered elsewhere in the construction standards, OSHA has decided to remove this provision from the electrical standards for construction.

5. *Whether receptacles in existing installations should be permitted to be grounded by means of grounded metal cold water pipes, as is the case in the existing standards, or whether such receptacles should be required to be grounded by a separate equipment grounding conductor connected back to the service.*

For branch circuit extensions, the existing standard, as stated in 1971 NEC section 250–50, Exception, allows the grounding conductor of a grounding type receptacle to be grounded to a nearby cold water pipe if the original branch circuit does not have an equipment grounding conductor. The draft proposal reviewed by ACCSH continued to allow this practice and was intended to be consistent with the NEC.

Some of the ACCSH members raised concerns regarding the use of a water pipe as a ground, pointing out the hazards involved. In particular, the committee cited the widespread use of plastic pipe as evidence that many piping systems would not provide a continuous electrical conductor. Additionally, it was noted that the use of a water pipe as a grounding conductor can introduce hazards to plumbers working on the piping. If the pipe is carrying leakage current, it poses a shock hazard to anyone interrupting its continuity.

OSHA agrees that the expanded use of plastic water pipe can cause problems with the reliability of a water pipe as a ground and recognizes the increased shock hazard to those working on the pipes. Also, the types of old, ungrounded branch circuits addressed by this provision of the NEC are not generally encountered in construction. For these reasons, OSHA's proposal would not have allowed the grounding of receptacles by means of grounded water pipes. The proposal would have required them to be grounded by means of an equipment grounding conductor which runs with or encloses the circuit conductors (proposed § 1926.404(f)(9)). Since the proposal differed from the NEC on this point, OSHA solicited comments regarding any problems which could result from this conflict of standards.

In their objections, the IBEW argued that OSHA's standard should follow the NEC (Ex. 2–28). After noting that OSHA's standard prohibited the grounding of receptacles by means of grounded metal cold water pipes, the IBEW claimed that NEC provisions on grounding are adequate and more clearly address the relevant hazard than OSHA's proposal (Ex. 2–28; Tr. 64). In support of their position, they quoted NEC requirements for including an underground metal water pipe as part of the grounding electrode system and for supplementing the water pipe with an additional electrode (Ex. 2–28).

OSHA's expert witness, Mr. Ralph Lee, noted the hazards arising from the practice of grounding a receptacle by means of a metal water pipe near the receptacle (Ex. 11; Tr. 35). He suggested the elimination of this practice.

One commenter argued that provisions relating to existing installations were not relevant to an electrical construction standard (Ex. 2–40).

After considering this issue, OSHA agrees with this last comment. As explained in § 1926.402(a), the electrical installation standards do not apply to existing installations in place before the construction activity began. Thus, any requirements dealing with the existing wiring of a building would be beyond the scope of the standard; and the issue of grounding to cold water pipes deals exclusively with existing installations. OSHA has decided, therefore, that the standard should be silent on this issue. The revised standard specifies which equipment is to be grounded, but does not cover methods used in existing installations to ground this equipment. Thus, the employee using the equipment is protected, but the method used to provide the protection is determined by the employer.

OSHA realizes that employees working on plumbing systems may face hazards resulting from the practice of using metal pipes to ground equipment. These hazards will be addressed in future rulemaking activities.

6. *Whether temporary lighting should be required to be installed with "heavy duty" cords rather than with other means, such as multiconductor cable assemblies or open conductors.*

In the existing standard, § 1926.401(j)(2) contained the requirement:

Temporary lights shall be equipped with heavy duty electric cords with connections and insulation maintained in safe condition.

In § 1926.405(a)(2)(ii)(B), the proposed standard would have allowed methods of wiring temporary lights in addition to cords, including open conductors, cables suitable for the environment, and conduit. In this area, the proposal was consistent with the 1971 and 1981 NEC, which allow but do not require temporary lights to be wired with cord. The NEC recognizes that, when properly installed, any of these wiring methods can provide safety as effectively as heavy duty electric cord can. Since it was thought that proposed § 1926.405(a)(2)(ii)(B) would adequately protect employees from the hazards of temporary lighting wiring methods, the language of existing § 1926.401(j)(2) was not included in the proposal. This approach was consistent with OSHA Instruction STD 3–9.1, which interpreted

the former standard as allowing methods of wiring portable lights other than by means of heavy duty cords, provided the installation complied with the 1971 NEC.

Several ACCSH members objected to the proposed removal of this requirement. The representative of the International Brotherhood of Electrical Workers felt that OSHA's proposal did not provide the minimum protection of the existing standard. However, no one presented data or information demonstrating that other temporary lighting wiring methods allowed by the existing standard (as interpreted under OSHA Instruction STD 3-9.1) have caused injury or exposed employees to unnecessary hazards. Subsequently, OSHA formally proposed the elimination of existing § 1926.401(j)(2), while inviting comments on this issue.

After publication of the proposal, the IBEW again objected to the proposed elimination of existing § 1926.401(j)(2). They also took this opportunity to urge OSHA to rescind OSHA Instruction STD 3-9.1. They based their objections on the claim that former § 1926.401(j)(2) was "clearly worded, self-contained, and substantively essential" (Ex. 2-28). At the hearing, the IBEW witness noted that cords used for temporary lighting on construction sites are subject to various kinds of damage from workers, equipment, and the weather (Tr. 66).

Support for OSHA's proposed removal of this requirement was expressed in the comments and at the hearing (Ex. 2-15, 2-34, 2-42, 2-43; Tr. 30). These comments noted the lack of evidence that wiring temporary lights by means other than "heavy duty" flexible cord is hazardous. A hearing exhibit submitted by Mr. Ralph H. Lee stated that "heavy duty" cords owe their "heavy duty" capability to the heavy jacket surrounding the cord's conductors (Ex. 11). This exhibit went on to claim that the conductors within the jacket are rather fragile (due to their being stranded) and that these conductors form the strength element for the festooned lighting common in construction. (In festoon lighting, the lights are suspended as pendants from the supply conductors.) This exhibit also claimed that open conductors, because they are generally solid conductors, are stronger and more suitable for this type of wiring.

After considering all the evidence on this issue, OSHA has determined that many methods of wiring temporary lights can be installed so as to provide safety to employees. The final rule requires open conductors to be located so that they will not be exposed to damage (§ 1926.405(a)(2)(ii)(B)). Other types of wiring methods protect the conductors between lights by means of jackets or metal or nonmetallic raceways. As required by the standard, these wiring methods are fixed in place for weeks or months at a time, and they are not as exposed to likely damage as is portable equipment.

The only time a "heavy duty" cord would be necessary is when the temporary lighting is portable rather than fastened in place. In such cases, the flexibility provided by the cord would be needed to prevent the conductors from being damaged by the constant flexion, and a heavy jacket would protect the conductors from the abrasion and abuse they receive when being moved around a jobsite. Additionally, if flexible cord is used for the installation of fixed temporary lighting, the cord used must be of a type that is suitable for hard use so that it can withstand the abuse it faces on a construction site.

Therefore, the final rule allows various means of installing temporary lights, but is more specific than the proposal in its requirements for portable equipment. Final § 1926.405(a)(2)(ii)(B) requires temporary branch circuits, including those for lighting, to be run as multiconductor cord or cable assemblies, within raceways, or as open conductors. Open conductors may be installed only where not subject to damage. To deal with the problem of portable lighting and to continue the requirement for "heavy duty" cord for this equipment, OSHA has amended § 1926.405(a)(2)(ii)(J) in the final rule to require cords used for portable and temporary lights to be designed for hard or extra-hard usage. The proposal had required this only of extension cords. (See also further discussion of this requirement in Section V of this preamble.)

7. Whether the specific language in paragraphs (a)(1), (a)(3), (a)(6), and (a)(8) of existing § 1926.402, dealing with design details of attachment plugs and receptacles and with protection of cables from damage, should be retained or whether the objectives of these requirements have been adequately addressed in the proposal.

Paragraphs (a)(1) and (a)(3) of existing § 1926.402 contains specific design requirements for receptacles, plugs, and connectors. Paragraphs (a)(6) and (a)(8) of existing § 1926.402 contains requirements for protecting cables from physical damage. These four paragraphs read as follows:

(a) *Flexible cable and cords.* (1) Receptacles for attachment plugs shall be of approved, concealed contact type with a contact for extending ground continuity and shall be so designed and constructed that the plug may be pulled out without leaving any live parts exposed to accidental contact.

* * * * *

(3) Attachment plugs or other connectors supplying equipment at more than 300 volts shall be of the skirted type or otherwise so designed that arcs will be confined.

* * * * *

(6) Trailing cables shall be protected from damage.

* * * * *

(8) Cable passing through work areas shall be covered or elevated to protect it from damage which would create a hazard to employees.

OSHA proposed to remove these paragraphs from Subpart K. As noted in the Distribution Table contained in the preamble to the proposal, various provisions which were included in the proposed standard addressed the hazard dealt with by these existing regulations. In particular, the following table describes how these existing paragraphs were covered in the proposal:

DISTRIBUTION TABLE FOR PARAGRAPHS (a)(1), (a)(3), (a)(6), AND (a)(8) OF EXISTING § 1926.402

Old paragraph	Area addressed	Proposed new section
(a)(1)	Approval of receptacles.	§ 1926.403(a)—Requires all equipment to be approved.
(a)(1)	Receptacles—Concealed contact and guarding of live parts.	§ 1926.403(i)(2)—Requires all live parts to be guarded from employee contact.
(a)(1)	Receptacles to be grounding type.	§ 1926.404(f)—Contains general requirements on grounding. § 1926.405(a)(2)(ii)(C)—Requires receptacles on temporary wiring to be grounding type.
(a)(3)	Attachment plugs and connectors over 300 volts to be skirted type.	§ 1926.403(a)—Requires approval of § 1926.403(c)—Requires equipment to be capable of safely interrupting current.
(a)(6)	Trailing cables to be protected from damage.	§ 1926.405(a)(2)(ii)(I)—Requires flexible cords and cables to be protected from damage.
(a)(8)	Cable passing through areas to be covered or elevated.	§ 1926.405(a)(2)(ii)(B)—Requires branch-circuit conductors to be elevated. (Usual application is to cables run as temporary wiring.) § 1926.405(a)(2)(ii)(I)—Requires flexible cords and cables to be protected from damage.

As can be seen from this table, the proposal contained requirements written in performance language addressing the same hazards as the existing standard. However, in raising this issue, the IBEW objected to the elimination of the specific language contained in the existing standard (Ex. 2-28). They

claimed that the simple language of the existing standard was being replaced by a maze of regulations in the proposal (Ex. 2–28). They also argued that the general provisions of the proposal do not adequately address the hazards covered by the existing standard (Ex. 2–28). For example, the IBEW stated that paragraphs (a), (b), and (c) of proposed § 1926.403 do not deal with the hazard of attachment plugs or other connectors supplying equipment at more than 300 volts.

On the other hand, Mr. Bernard W. Whittington, an OSHA expert witness, contended that the proposed regulations noted in the Distribution Table did, in fact, cover the same hazards as those in the existing standard (Ex. 10; TR. 30–31). In support of OSHA's proposal, Mr. Whittington, who (through his membership on the NFPA 70E Committee) helped draft NFPA 70E, argued that the performance-oriented approach proposed for Subpart K is appropriate and provides equivalent or better safety compared to the existing Subpart K (Tr. 27, 31).

OSHA has determined that properly written performance-oriented standards can protect employees as well as specification standards, while providing employers with the opportunity to protect their employees in the most efficient manner. The concerns raised with respect to this issue are demonstrative of this point. For example, existing § 1926.402(a)(3) required plugs and connectors used at 300 volts or more to be the skirted type. This skirting is one means of protecting employees separating the connectors under load conditions from the arcing caused by this separation. In the final standard, § 1926.403(a) does not specify skirting but does require these plugs and connectors to be approved; the qualified testing laboratory "approving" these devices would determine their safety, including provisions for protection from arcing. Additionally, final § 1926.403(b) requires them to be free of serious hazards and states that arcing effects are one consideration involved. Also, final § 1926.403(c) requires equipment to be rated to interrupt the current which is to be broken. Equipment which could not safely interrupt high current would not be rated for this service and may not be used in this manner. Thus, the final standard requires employee protection equivalent to that provided by the existing standard while allowing greater flexibility in compliance.

8. *Whether revised § 1926.403(j) should apply to equipment on the supply side of the service conductors.*

Paragraph (j)(1) of proposed § 1926.403 read as follows:

(j) *Over 600 volts, nominal*—(1) *General.* Conductors and equipment used on circuits exceeding 600 volts, nominal, shall comply with all applicable provisions of paragraphs (a) through (g) of this section and with the following provisions which supplement or modify those requirements. The provisions of paragraphs (j) (2), (3), and (4) of this section do not apply to equipment on the supply side of the service conductors.

Proposed paragraphs (j)(2), (j)(3), and (j)(4) dealt with guarding of live parts, working space about equipment, and access to workspace for installations over 600 volts. The last sentence of proposed paragraph (j)(1) stated the simple fact that equipment on the *supply side* of the service conductors was not addressed. Such equipment would be part of a distribution network and, thus, not covered by the proposed installation provisions anyway. (See discussion of Issue 2. Neither the proposal nor the final installation rules apply to distribution lines or equipment.) The equipment addressed by final § 1926.403(j), and covered by the standard, would be the service conductors and equipment on the load side of these conductors.

In their objections to the proposal, the IBEW claimed that there was no good reason for excluding those provisions from applying to equipment on the supply side of the service conductors (Ex. 2–28). To support their objection, they noted that the voltages mentioned in § 1926.403(j) are those normally associated with supply-side equipment (Ex. 2–28).

Installations on the supply side of the service conductors are outside the scope of Subpart K, which only covers utilization systems (Ex. 11, 13). Therefore, OSHA has decided to retain § 1926.403(j)(1) as proposed, to cover only service conductors over 600 volts and equipment over 600 volts on the load side of the service conductors.

9. *Whether the requirement, in proposed § 1926.404(f)(7)(i), to ground metal enclosures for conductors should allow exemptions for enclosures used to protect cables from damage and for enclosures added to existing installations of open wiring, knob-and-tube wiring, and nonmetallic sheathed cable, under certain restrictions.*

Paragraph (f)(7)(i) of proposed § 1926.404 contained a requirement similar to one in the 1971 NEC that enclosures for conductors be grounded. OSHA proposed two exceptions to this rule: one for enclosures used to protect cable assemblies from damage, the other for enclosures used for conductors run as extensions of existing circuits. These exceptions were also contained in the 1971 NEC. Proposed § 1926.404(f)(7)(i) read as follows:

(7) *Supports, enclosures, and equipment to be grounded*—(1) *Supports and enclosures for conductors.* Metal cable trays, metal raceways, and metal enclosures for conductors shall be grounded, except that:

(A) Metal enclosures such as sleeves that are used to protect cable assemblies from physical damage need not be grounded; and

(B) Metal enclosures for conductors added to existing installations of open wire, knob-and-tube wiring, and nonmetallic-sheathed cable need not be grounded if all of the following conditions are met: (1) Runs are less than 25 feet (7.62 m); (2) enclosures are free from probable contact with ground, grounded metal, metal laths, or other conductive materials; and (3) enclosures are guarded against employee contact.

The IBEW objected to the exceptions to the proposed requirement to ground metal enclosures for conductors (Ex. 2–28). Claiming that both exceptions were inappropriate and would promote electrical hazards, they stated that any metal should be grounded "if there is a possibility of [its] becoming energized and being touched by a person in contact with the ground" (Tr. 65).

This proposed requirement was equivalent to 1971 NEC Section 25033, which was adopted by reference in existing § 1926.400(a). The first proposed exception (taken from the NEC) recognized the fact that the conductors within a cable assembly are protected against insulation failure by an outer jacket over the conductor insulation. The metal enclosure is normally provided in areas where the cable's jacket must be protected. Being isolated sections, these enclosures have no ready access to a grounding means. Since an insulation failure leading to contact of the conductor with the metal enclosure is very unlikely and since a means of grounding these enclosures is not readily available, the enclosures were not required to be grounded. OSHA proposed to continue this exception.

The second exception, also taken from the 1971 NEC, applied to metal enclosures for conductors added to existing installations of open wiring, knob-and-tube wiring, and nonmetallic-sheathed cable. In this case, the exception was limited to situations in which the possibility of insulation failure is low, due to the limitation on the length of the run of the conductors. Also, the exception limited the likelihood of employee contact with the ungrounded metal enclosure.

Support was expressed for OSHA's proposal, with commenters stating that paragraphs (f)(7)(i) (A) and (B) of proposed § 1926.404 posed no electrical hazard to employees (Ex. 2–38, 2–47, 2–

43). One of OSHA's expert witnesses noted that metal enclosures which were not required to be grounded would normally be inaccessible to employees (Ex. 11).

OSHA has determined that installations which meet the conditions set forth in the exceptions to proposed § 1926.404(f)(7) do not compromise employee safety. Therefore, these exceptions have been retained in the final rule.

10. *Whether the definitions for Subpart K should be as proposed, or whether they should conform to those either in the 1984 NEC or in the existing standard.*

The definitions contained in § 1926.449 of proposed Subpart K were derived from and were consistent with those in the National Electrical Code. In some cases, certain minor differences resulted from NEC changes over the years. Also, as explained in the preamble to the proposal (48 FR 45877), definitions related to "approval" were proposed to be modified to remove references to specific testing laboratories. The specific definitions at issue were proposed to read as follows:

Acceptable. An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart K:

(i) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a qualified testing laboratory capable of determining the suitability of materials and equipment for installation and use in accordance with this standard; or

(ii) With respect to an installation or equipment of a kind which no qualified testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of, and found in compliance with, the National Electrical Code; or

(iii) With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives.

Accessible. (As applied to wiring methods.) Capable of being removed or exposed without damaging the building structure or finish, or not permanently closed in by the structure or finish of the building. (See "concealed" and "exposed.")

Accessible. (As applied to equipment.) Permitting close approach; not guarded by locked doors, elevation, or other effective means. (See "Readily accessible.")

Ampacity. Current-carrying capacity of electric conductors expressed in amperes.

Approved. Acceptable to the authority enforcing this subpart. The authority enforcing this subpart is the Assistant Secretary of Labor for Occupational Safety and Health. The definition of "acceptable" indicates what is acceptable to the Assistant Secretary of Labor, and therefore approved within the meaning of this subpart.

Automatic. Self-acting, operating by its own mechanism when actuated by some influence, such as a change in current strength, pressure, temperature, or mechanical configuration.

Guarded. Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of approach to a point of danger or contact by persons or objects.

Identified (As applied to equipment). Recognized as suitable for the specific purpose, function, use, environment, application, etc. where described as a requirement in this standard. Suitability of equipment for a specific purpose, environment, or application is determined by a qualified testing laboratory where such identification includes labeling or listing.

Labeled. Equipment or materials to which has been attached a label, symbol or other identifying mark of a qualified testing laboratory which indicates compliance with appropriate standards or performance in a specified manner.

Listed. Equipment or materials included in a list published by a qualified testing laboratory whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

Qualified person. One familiar with the construction and operation of the equipment and the hazards involved.

Qualified testing laboratory. A properly equipped and staffed testing laboratory recognized by the Assistant Secretary of Labor which has capabilities for and provides the following services: (a) experimental testing for safety of specified items of equipment and materials referred to in this standard to determine compliance with appropriate test standards or performance in a specified manner; (b) inspecting the run of such items of equipment and materials at factories for product evaluation to assure compliance with the test standards; (c) service-value determinations through field inspections to monitor the proper use of labels on products and with authority for recall in the event a hazardous product is installed; (d) employing a controlled procedure for identifying the listed and/or labeled equipment or materials tested; and (e) rendering creditable reports or findings that are objective and without bias of the tests and test methods employed.

The IBEW objected to these proposed definitions—to some because they are not consistent with the 1984 NEC, to those related to "approval" because they are "inappropriate and unenforceable." They claimed that the NEC definitions are recognized throughout the industry and are adequate for the purpose of Subpart K (Tr. 67). They argued that "editorial changes to language in the National Electrical Code will serve only to confuse employers and employees and render enforcement more difficult" (Tr. 67). Additionally, the IBEW objected to OSHA's proposed definition of "qualified person," since it differed from the generic Construction Standards definition of "qualified" in § 1926.32(l) (Ex. 2–28). Lastly, arguing that the proposal's definition of "approved" was inappropriate and unenforceable, they suggested that the definition in existing § 1926.405(a) be retained.

With respect to the definition of "accessible (as applied to wiring methods)", OSHA has determined that the proposed definition is the same as that given in the 1984 NEC. Therefore, IBEW's concern regarding this definition has been met, and there is no change in the final rule.

Although identical in intent to the NEC definitions, the meanings of "accessible (as applied to equipment)," "ampacity," and "automatic" given in the proposal differed slightly in language or punctuation. To promote consistency with the NEC, OSHA has decided to use the 1984 NEC definitions of these terms.

Despite the fact that the proposed definition of "guarded" is not identical to that given in the 1984 NEC, OSHA's definition agrees with the NEC and is a grammatical improvement. Therefore, OSHA has retained the proposal's definition of "guarded."

In the case of "qualified person," the proposed definition was the same as the 1984 NEC, because the requirements contained in the proposal were largely based on the Code. This definition differs from that in § 1926.32(l), which applies generally throughout the construction standards and which reads as follows:

"Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

The proposal incorporated a definition of "qualified person" directly from the 1984 NEC. The use of the term "qualified person" in the NEC and in OSHA's proposal is heavily dependent upon the restrictions imposed by that definition. In comparing the proposed definition with the general definition of "qualified" in § 1926.32(l) of the construction standards, the Agency has determined that the general definition does not provide sufficient specificity as to the qualifications of a "qualified person." Although the use of the general definition would provide some added degree of consistency throughout the

construction standards, it does not adequately reflect the uniqueness of the electrical hazards covered by Subpart K. For example, revised § 1926.405(a)(2)(iii) prohibits access of other than qualified persons to temporary installations of equipment over 600 volts. It is clear from the proposed definition of "qualified person" that an individual would need to be familiar with the construction and operation of those installations, and with the associated hazards, in order to be allowed access to them. This would not necessarily require a person with an advanced degree or certificate; indeed, the mere fact that a person possessed such a degree or certificate would not automatically make him or her "qualified" in a particular situation under Subpart K. Based on the proposed definition, an electrical engineer who was not familiar with the installation would not be considered qualified for the purposes of § 1926.405(a)(2)(iii), despite having an engineering degree. However, under the general definition of "qualified" in § 1926.32(l), such an individual might be considered to meet the definition by virtue of the phrase "has successfully demonstrated his ability to solve or resolve problems relating to the *subject matter, the work, or the project*" (emphasis added). For the purposes of Subpart K, knowledge of the installation in question is necessary before a person can be considered "qualified;" such specific knowledge is not an absolute requirement under the general construction definition. For these reasons, OSHA believes that, to retain the original intent of the "qualified person" requirements within Subpart K, the proposed definition of "qualified person" is more appropriate than the general definition of "qualified" in § 1926.32(l). Therefore, the final standard carries forward the definition as originally proposed.

The remaining definitions of concern to the IBEW relate to the suitability of equipment or materials as determined by a qualified testing laboratory. The existing standard, in § 1926.405(a), simply referenced the general industry electrical standard, while the proposal placed the relevant portions of the general industry definitions, amended to conform to the 1981 NEC, in the text of Subpart K. The existing definitions relating to approval referred to a nationally recognized testing laboratory, such as, but not limited to, Underwriters Laboratories, Inc. (UL) and Factory Mutual Engineering Corp. (FM). However, in accordance with the 1981 NEC, all references to "a nationally recognized testing laboratory" were changed to "qualified testing laboratory." Additionally, the proposal defined "qualified testing laboratory" in terms which parallel the description of such laboratories in Section 90–6 of the 1981 NEC. The proposed definition did not include references to the two specific laboratories mentioned in the existing definitions but set forth criteria for laboratories to meet and would have required "recognition" by the Assistant Secretary. These provisions are discussed more fully below. In the proposed Subpart K, terms related to approval were applied in the same manner as in the existing regulations.

In contrast to IBEW's position, several comments expressed support for OSHA's proposed definitions (Ex. 2–4, 2–20, 2–40, 2–41). The proposed definitions are nearly the same as the definitions of similar terms in the 1984 NEC. The only significant difference is that, whenever the NEC mentions "acceptable to the authority having jurisdiction," OSHA (being that authority) has specified what is acceptable. For example, the 1984 NEC, as did previous NEC editions, defines "approved" as being acceptable to the authority having jurisdiction. In the proposal as in the existing standards, OSHA retained the NEC language and added a sentence explaining that the Assistant Secretary is the authority having jurisdiction for Subpart K. OSHA further proposed, consistent with the former standard, a definition of "acceptable", which is not defined in the NEC. In a format similar to that used in Subpart S of the General Industry Standards, OSHA proposed various criteria to indicate what the Agency would consider to be "acceptable" for the purposes of Subpart K.

The definition of "approved" contained in the proposal was also generally consistent with the existing standard, except for the removal of references to specific testing organizations. Because the proposal removed mention of UL and FM from the existing standard and was more specific than the NEC in illustrating what is acceptable, OSHA has determined that the proposed definitions of terms related to approval are consistent with the NEC and are more appropriate for the Agency's purposes than the existing definitions.

In the final rule, OSHA has revised its proposed definition of "qualified testing laboratory" by deleting the words "recognized by the Assistant Secretary of Labor." However, all of the criteria contained in the definition have been retained as originally proposed. The definition thus sets forth the elements which a laboratory must meet in order to be considered a "qualified testing laboratory" for the purposes of Subpart K but does not incorporate a requirement for such a laboratory to receive "recognition" from OSHA. There is currently no operative mechanism for OSHA to provide the "recognition" envisioned by the proposed definition. OSHA is presently evaluating the many issues related to the use of testing laboratories (including OSHA's role in recognizing such laboratories) in the context of its general industry standards. As was noted in the Subpart K proposal, OSHA published a notice of proposed rulemaking (49 FR 8326) on March 6, 1984, on the safety testing or certification of certain workplace equipment and materials involving the use of accredited testing laboratories. Although the testing and certification proposal is not applicable to the construction industry and would not directly affect Subpart K of Part 1926, it does incorporate many of the definitions that are found in Subpart K, including a term that is analogous to the Subpart K term "qualified testing laboratory" (called "qualified electrical testing laboratory" in the general industry proposal). OSHA therefore recognizes that, in the interest of consistency, the outcome of the general industry rulemaking on safety testing and certification may possibly lead the Agency to reevaluate the use of the terms and definitions that are found in Subpart K of Part 1926. When that rulemaking has been completed, appropriate changes will be proposed for the regulations in Subpart K, if necessary, as well as for other OSHA regulations which deal with product approval and testing laboratories.

11. Other objections.

In their hearing request, the IBEW raised two other issues—one resulted from a misunderstanding of the proposal, the other from a mistake in the printing of the proposal (Ex. 2–28). The IBEW objected to the removal of former § 1926.400(h), dealing with ground-fault protection. However, as noted in the proposal (48 FR 45876, 45881), OSHA did not propose this paragraph for removal, but indicated that the ground-fault protection provisions would be redesignated in the revised Subpart K as paragraph (b)(1) of § 1926.404, without change. Accordingly, the entire text of redesignated § 1926.404(b)(1) [existing § 1926.400(h)] has been included for publication in the final rule. This should eliminate any misunderstandings.

The other issue raised was of the omission of the word "grounding" from proposed § 1926.404(a)(1). As noted in

the hearing notice, the correct wording of the second sentence of this paragraph is: "A conductor used as an equipment grounding conductor shall be identifiable and distinguishable from all other conductors." This correction has been made in the final rule.

V. Summary and Explanation of the Final Standard

The final standard revising 29 CFR Part 1926, Subpart K, follows the language and format of the proposal with some changes. Most of the changes are editorial in nature. However, those that are substantive are discussed in detail in the following discussion. Where changes have been made concerning areas of the proposal which were major issues at the hearing, reference is made to the discussion of such issues in section IV of this preamble.

The resulting final standard, which is based on the record considered as a whole, simplifies and clarifies the existing Subpart K. The significance of this simplification is indicated by the reduction from the approximately 250,000 words in the National Electrical Code to the approximately 15,000 words in this final standard. As a consequence, the 1971 NEC (NFPA–70) will no longer be incorporated by reference in the OSHA Construction Standards.

Subpart K of Part 1926, as revised, provides a systematic format to satisfy present requirements and to accommodate future growth. Subpart K contains four major parts covering not only the design safety standards for electrical systems (Part I), but also safety-related work practices (Part II), safety-related maintenance and environmental conditions (Part III), and safety requirements for special equipment (Part IV).

As previously mentioned, the existing Subpart K incorporated by reference the entire 1971 National Electrical Code. Additionally, the existing standard set forth other requirements addressing unique hazards present in the construction industry. Some of these additional requirements were equivalent to or duplicated requirements in the 1971 NEC. For example, existing § 1926.402(a)(2) prohibited the interchangeability of receptacles used on circuits of different voltages, frequencies, or types of current. A paragraph in section 210–21 of the 1971 NEC contained the same prohibition.

Other regulations in existing Subpart K were derived from different sources and supplemented the requirements of the NEC. An example of this type is existing § 1926.402(a)(10), which prohibits the use of worn or frayed cables. While no such requirement is explicitly stated in the 1971 NEC, this prohibition is implied throughout various sections of the code, such as sections 100–17, 230–46, 305–2, and 410–23.

The revision of Subpart K will accomplish the following three major objectives:

(1) NEC requirements which directly affect employee safety in construction workplaces have been placed in the text of the OSHA standard, eliminating the need for the NEC to be incorporated by reference.

(2) Relevant requirements from the existing text of Subpart K which supplemented the NEC have been integrated into the new format.

(3) The requirements have been written in performance language so that unnecessary detailed specifications can be omitted and changes in technology can be accommodated, without compromising safety.

As a result, the final standard should be easier to use and understand and should not become technologically obsolete in the near future. Since it has been written in performance-oriented terms, Subpart K should remain a viable electrical safety standard, even though the detailed specifications of the NEC change as the Code is revised every three years. Therefore, when the NEC is periodically revised by NFPA, Subpart K should not be out-of-date to the extent that revision of the OSHA standard would be necessary.

The final rule contains several new provisions, which are not found either in the 1971 NEC or elsewhere in the existing Subpart K. These few additional requirements reflect safety requirements appearing in the 1981 NEC (on which the proposal was based) and carried forward in the most recent revision (1984) of the NEC. At the time the proposal was published, OSHA determined that most construction employers were generally complying with the 1981 NEC and that the few new rules contained in that edition of the code were already being met. Since the 1984 NEC versions of these rules contained no substantive changes, employers should still be in compliance with these new rules, if they are now complying with the 1984 NEC. Therefore, as set forth in OSHA's regulatory analysis, the final standard should create no new burdens on employers, nor should it reduce employee safety.

Some parts of the existing §§ 1926.400 through 1926.405 have been deleted or modified and incorporated into new sections. Other parts of these sections have been incorporated into new sections without substantive change. As an aid for following these changes, OSHA has developed the following distribution table:

DISTRIBUTION TABLE

Old section	New section
1926.400(a)	Removed. The old paragraph adopted the 1971 NEC by reference. The final rule places the relevant NEC requirements into the text of the regulation.
1926.400(b)	1926.402.
1926.400(c)	1926.416(a).
1926.400(d)	1926.416(b)(1).
1926.400(e)	1926.403(i)(1) [low voltage]; and 1926.403(j)(3) [high voltage]—requirements are consistent with the 1984 NEC.* Minimum clear working space has been increased from 2½ feet to 3 feet.
1926.400(f)	1926.416(c); reference to NEC has been removed.
1926.400(g)	1926.417.
1926.400(h)	1926.404(b)(1).
1926.401(a)	1926.404(f)(7)(iv); requirement has been reworded to be consistent with the 1984 NEC.* Requirement now lists specific conditions requiring the grounding of portable equipment.
1926.401(b)	1926.404(f)(7) (iii) and (v); requirement has been reworded to be consistent with the 1984 NEC.* Requirements now list specific conditions requiring the grounding of fixed equipment.
1926.401(c)	1926.404(f)(6); requirements relating to impedance and ampacity of grounding conductor have been removed to be consistent with 29 CFR Part 1910, Subpart S. Briefly, these requirements have been removed because the parameters cannot be accurately measured in operational workplaces. Further discussion of OSHA's rationale for removing these requirements can be found in the preamble to the Subpart S final rule document (January 16, 1981, 46 FR 4044, Column 3, Discussion of Issue No. 5).
1926.401(d)	Ground resistance of driven rod electrodes is covered by 1926.404(f)(10).
1926.401(e)	Removed. Requirement is ambiguous in that it implies that the resistance between the ground and the grounded power conductor is a controlling factor in circuit overcurrent protection. Clarifying the ambiguity would result in a requirement for measuring the actual equipment grounding conductor impedance under fault conditions. The practicality of such measurements have been questioned and currently no such requirement exists in the National Electrical Code. See discussion of issue No. 4.
1926.401(f)	1926.405(a)(2)(ii)(J).
1926.401(g)(1)	Conductor ampacity is covered by 1926.404(f)(8)(ii) for grounding and by 1926.404(f)(9) for bonding.
1026.401(g)(2)	Bonding as it relates to static electricity control for material handling is covered in Subpart F (Fire Protection and Prevention) of Part 1926 instead of Subpart K. Bonding for this purpose is addressed in 1926.151(a)(5) and 1926.152(e)(2).
1926.401(h)	Temporary wiring is covered in 1926.405 (a)(2). Reference to the NEC has been removed.
1926.401(i)	Covered by 1926.403(i)(2) and 1926.405(a)(2)(ii)(B).
1926.401(j)(1)	1926.405(a)(2)(ii)(E).
1926.401(j)(2)	First sentence removed. Hard usage cords are required by 1926.405(a)(2)(ii)(J). Second sentence is 1926.405(a)(2)(ii)(F). Third sentence is covered by 1926.403(e) for conductors and 1926.405(g)(2)(iii) for hard service flexible cords.
1926.401(j)(3)	1926.416(b)(2).
1926.401(j)(4)	1926.405(a)(2)(ii)(G); amended to allow greater flexibility.
1926.402(a)(1)	Covered by 1926.403(a), 1926.403(i)(2), 1926.404(f) and 1926.405(a)(2)(ii)(C).
1926.402(a)(2)	1926.405(j)(2)(i).

DISTRIBUTION TABLE—Continued

Old section	New section
1926.402(a)(3)	Covered by 1926.403 (a), (b) and (c).
1926.402(a)(4)	Covered by 1926.403(b) and 1926.405(g)(2)(iv).
1926.402(a)(5)	1926.405(g)(2)(iii); amended to be consistent with the 1984 NEC.* Splices are now permitted for hard service cords No. 12 and larger only.
1926.402(a)(6)	1926.405(a)(2)(ii)(1) and 1926.408(a)(4)(ii).
1926.402(a)(7)	Covered by 1926.403(e) and 1926.405(g)(2)(iii).
1926.402(a)(8)	Covered by 1926.405(a)(2)(ii) (B) and (I).
1926.402(a)(9)	1926.405(j)(1)(iii); amended to conform to 1984 NEC.* Editorial changes only.
1926.402(a)(10)	1926.416(e)(1).
1926.402(a)(11)	1926.405(a)(2)(ii)(I); amended to conform to the 1984 NEC.* Editorial changes only.
1926.402(a)(12)	1926.416(e)(2).
1926.402(b)(1)	1926.404(e)(1)(i); amended to simplify requirement.
1926.402(b)(2)	1926.404(e)(1)(ii); amended to conform to 1984 NEC.* Editorial changes only.
1926.402(b)(3)	1926.416(d).
1926.402(c)(1)	1926.403(h); reworded for clarification.
1926.402(c)(2)	Covered by 1926.403(f) and 1926.404(e)(1)(v).
1926.402(c)(3)	Covered by 1926.403(d)(1) and 1926.405(b)(2).
1926.402(c)(4)	1926.405(e); amended to be consistent with the 1984 NEC.* Editorial changes only.
1926.402(d)	Covered by 1926.403 (i)(2) and (j)(2) and by 1926.405(j)(5).
1926.402(e)	Covered by Subparts F and J of Part 1926.
1926.403	1926.441, with minor editorial changes.
1926.404(a)	Placed in 1926.449 and amended to conform to 29 CFR Part 1910, Subpart S.
1926.404(b)	1926.407(b); amended to conform to 29 CFR Part 1910, Subpart S.
1926.404(c)	Covered by 1926.407 (b)(2) and (d).
1926.404(d)	1926.432.
1926.405	1926.449; amended to include more definitions and to be consistent with the 1984 NEC.* Editorial changes only.

*Note: OSHA is using language comparable to the 1984 NEC version of these rules. See text for additional explanation.

As can be seen from the Distribution Table, some of the final revisions are 1984 NEC versions of former requirements set forth in Subpart K. For example, final § 1926.404(f)(7)(iv), which addresses grounding of cord- and plug-connected equipment, is derived from 1984 NEC section 250–45. This regulation replaces existing § 1926.401(a), which required portable and plug-connected equipment other than double-insulated equipment to be grounded.

In contrast, the final rule lists specific conditions which warrant the grounding of equipment connected by cord and plug. If the listed conditions are not present, grounding is not necessary for employee safety. In developing revisions to the existing requirements of Subpart K, OSHA relied on corresponding requirements contained in the NEC. The reasons for this are threefold. First, the NEC is widely recognized and understood in the construction industry. The use of language consistent with (and in many cases identical to) that used in the 1984 NEC will promote greater understanding of OSHA's standard within the industry. Second, as clearly demonstrated in the Regulatory Analysis, a majority of contractors have become familiar with and are already complying with the provisions of the latest NEC in effect (four NEC revisions by NFPA since 1971). This ensures wide acceptance of and compliance with OSHA's revised standard. Third, OSHA's final rule is consistent with the regulations of many state and local authorities, which base their rules on the latest edition of the NEC. This reduces the possibility that employers will be required to follow conflicting or inconsistent standards.

Parts of the standard not listed in the distribution table have been derived from requirements in the 1984 National Electrical Code and NFPA 70E. The following section discusses the final rule's principal substantive deletions from the existing standard. Principal additions are discussed in the sections explaining and describing the final rule.

Principal deletions. In the 1971 NEC, incorporated by the existing Subpart K, Chapters 3 and 4 deal with wiring methods and materials (Chapter 3) and equipment for general use (Chapter 4) and include extensive design-type data. In the final rule, however, the tables containing various specialized technical information, such as are contained in those chapters, have not been included. Typical topics of these deleted parts include insulation characteristics, allowable ampacities, electrical box sizes, and flexible cord and motor full load currents. This type of information has not been included in the final standard because it deals with items not directly related to electrical hazards. For example, requirements on the composition of insulation on a conductor have been deleted; however, the actual requirement that the conductor be insulated and that the insulation be approved for its intended purpose has been retained. These changes result in a standard which is more performance oriented, but which does not reduce the level of safety provided by Subpart K.

Chapter 6 of the 1971 NEC describes special equipment requirements. Requirements from this chapter dealing with electrically operated organs and the installation of equipment and wiring used for sound recording and reproduction have not been included in the final rule because electrical safety for employees in construction is not directly affected by these items. This type of equipment is not normally found in construction.

Chapter 7 of the 1971 NEC deals with special conditions. Requirements from this chapter involving stand-by power generation systems and emergency systems have not been included. In these situations, primary electrical hazards to the worker are minimal since the effects of power outage are generally limited to work stoppage. Additionally, such systems are not commonly used for construction purposes, and the general installation requirements of Subpart K would provide protection in the few cases in which these systems would be present.

Chapter 9 of the 1971 NEC provides a collection of tables containing technical data, together with a number of sample computations. This entire chapter is not included in the revised standard because it is solely an instructive guide for the design of certain electrical systems and is not a necessary component of OSHA electrical safety regulations.

Section 1926.402 Applicability.

Paragraph (a) of this section states that revised §§ 1926.402 through 1926.408 apply to electrical installations used to provide power and light at the construction jobsite. However, these regulations do not apply to existing electrical installations which were wired before the construction work started. Equipment (for example, extension cord sets and electric tools) connected to an existing installation during the construction process would be covered by §§ 1926.402 through 1926.408. For a more detailed discussion, see Issue I of Section IV of this preamble.

The note to paragraph (a) states that OSHA will consider an employer's compliance with the 1984 NEC to be the same as compliance with most of the requirements of revised § § 1926.403 through 1926.408. For employers who comply with the 1984 NEC, this paragraph then lists the additional provisions contained within § § 1926.402 through 1926.408 with which those employers must also comply. After thoroughly reviewing the final standard, OSHA determined that these provisions were not derived directly from the NEC and that they contained substantively different requirements supplementing the provisions of the 1984 Code. These different requirements were then listed in the note to paragraph (a). For a further discussion of this paragraph, see Issue 3 in section IV of the preamble. An explanation of why the particular provisions listed in this paragraph were chosen is provided in the discussion of each paragraph in this section of the preamble.

Paragraph (b) states that revised § § 1926.402 through 1926.408 do not apply to electrical installations for the generation, transmission, and distribution of electric energy. Such installations are not covered by the

NEC. However, this non-coverage or so called "exemption" does not extend to portable or vehicle-mounted generators providing power for utilization equipment at the construction site. This equipment is not considered electric-utility-type generating equipment and is covered by the NEC. For example, in the case of grounding requirements, portable or vehicle-mounted generators are covered by section 250–6 in the 1984 NEC. OSHA considers these types of generators to be part of the utilization system, since they are general of low capacity and are connected directly to the utilization equipment. This contrasts with the much larger generators supplying transmission and distribution networks. Also, the final standard contains provisions dealing directly with these types of small generators (§ 1926.404(f)(3)). For a more detailed discussion of this paragraph, see Issue I of Section IV of this preamble.

Section 1926.403 General requirements.

This section contains general requirements for electrical installations. These requirements address approval and use of equipment, splices, marking and identification, working clearances, and guarding of live parts.

Paragraph (a) requires all electric equipment and conductors to be approved. One commenter suggested removing the word "approved" from other places throughout Subpart K (Ex. 2–20). It was argued that the presence of other requirements for "approved" equipment weakened the general requirement for approval of all equipment. This recommendation has been accepted, and the unnecessary use of the word "approved" has been discontinued elsewhere in Subpart K.

Paragraph (b)(1) restates the general duty clause of the OSHAct, with respect to electrical equipment. Employers are required to provide a workplace free from recognized hazards. This paragraph supplements the general duty by including criteria for judging the safety and acceptability of electrical equipment and installations.

Paragraph (b)(2) requires equipment to be used and installed in accordance with necessary safety instructions. The proposed requirement read as follows:

(2) Listed or labeled equipment shall be used and installed in accordance with any instructions included in the listing or labeling.

One commenter suggested that this paragraph also refer to certified equipment, to be consistent with OSHA's definition of "acceptable" (Ex. 2–20). (The definition refers to equipment that is "certified, or listed, or labeled" by a qualified testing laboratory.) This comment has been accepted, and the final rule reads as follows:

(2) Listed, labeled, or certified equipment shall be installed and used in accordance with instructions included in the listing, labeling, or certification.

Paragraph (c) requires equipment that must interrupt current to be capable of doing so safely. Paragraph (d) addresses the mounting of equipment and contains provisions allowing for the safe dissipation of heat.

Paragraph (e) requires splices to be suitably made and insulated. Parts of electric equipment that produce arcs, sparks, or molten metal are required to be appropriately guarded by § 1926.403(f).

Marking and identification are covered in § 1926.403 (g) and (h). In paragraph (g), electric equipment is required to be marked to identify the manufacturer and to identify the relevant electrical ratings. Paragraph (h) requires branch circuits, feeders, services, and disconnecting means for equipment to be identified.

Paragraphs (i) and (j) set forth requirements pertaining to the guarding of and working clearances around live parts of electric equipment. Regulations applying to equipment 600 volts or less can be found in § 1926.403(i), while paragraph (j) applies over 600 volts.

Section 1926.404 Wiring design and protection.

This section covers the design requirements for wiring systems from the service conductors to the branch circuit conductors. It also covers requirements for the protection of electric conductors from overcurrent and physical hazards.

Paragraph (a) requires that the grounded circuit conductor and the equipment grounding conductor be identifiable and distinguishable from other conductors. These regulations have been written in more performance-oriented terms than the existing requirements (contained in Article 200 of the 1971 NEC, originally incorporated by reference in Subpart K) which required that those conductors be identified in a specific manner.

Paragraph (b)(1), redesignated from § 1926.400(h) of the existing standard, addresses ground-fault protection for employees. The public rulemaking on revised Subpart K did not invite comment on this provision, as it has already been the subject of a comprehensive public rulemaking effort (41 FR 55696; December 21, 1976). Therefore, the requirements read the same as the old regulations, except for editorial changes necessitated both by its new location and by the new format for Subpart K.

Briefly, paragraph (b)(1) requires employers to provide one of two methods of ground-fault protection—either ground-fault circuit interrupters (GFCI) or an assured equipment grounding conductor program—to protect employees on construction sites. If the employer chooses the GFCI option, then 120-volt, 15- and 20-ampere receptacles which are not part of the permanent wiring must have ground-fault circuit interrupter protection. (The GFCI is a device which continuously monitors current and detects current leaking to ground outside the path of the circuit conductors. When the leakage to ground exceeds the trip level, the circuit is interrupted quickly enough to prevent electrocution.) If the assured equipment grounding conductor program is chosen, then the employer must maintain equipment grounding conductors through daily inspections and periodic tests. (Thus, the ground-fault protection provided by the equipment grounding conductor is maintained.)

Paragraph (b)(1) of final § 1926.404 is included in the aforementioned list of provisions in the note to final § 1926.402(a). Thus, OSHA is requiring employers to comply with final § 1926.404(b)(1) regardless of whether they comply with the 1984 NEC, which contains a somewhat similar provision in section 305–4. The OSHA regulation is different from the NEC in several respects. The primary difference is that OSHA's GFCI option applies to receptacle outlets which are not part of the permanent wiring, while the NEC requirement only applies to temporary wiring. For example, under the OSHA regulation for GFCIs, protection must be provided for the receptacle outlets on the end of extension cord sets even if the extension cords are supplied by permanent wiring. Under the NEC, GFCI protection is only required when temporary wiring is used and all the requirements for running temporary wiring (Article 305 of the 1984 NEC) are met. Other significant differences exist between the OSHA and NEC requirements for the assured equipment grounding conductor program. Since the OSHA regulation provides greater employee protection, compliance with analogous 1984 NEC provisions alone will not be acceptable under Subpart K.

Paragraph (b)(2) contains requirements for outlet devices. For this particular requirement, the proposal contained several specifications, in addition to the general performance

requirement that outlet devices have a rating not less than the load to be served. Two comments suggested that these specifications were overly detailed and unnecessary (Ex. 2–34, 2–37). Proposed § 1926.404(b)(2) read as follows:

(2) *Outlet devices.* Outlet devices shall have an ampere rating not less than the load to be served and shall comply with the following:

(i) *Lampholders.* Where connected to a branch circuit having a rating in excess of 20 amperes, lampholders shall be of the heavy-duty type. A heavy-duty lampholder shall have a rating of not less than 660 watts if of the admedium type and not less than 750 watts if of any other type.

(ii) *Receptacles.*

(A) A single receptacle installed on an individual branch circuit shall have an ampere rating of not less than that of the branch circuit.

(B) Where connected to a branch circuit supplying two or more receptacles or outlets, receptacle ratings shall conform to the values listed in Table K–4.

(C) The rating of an attachment plug or receptacle used for cord- and plug-connection of a motor to a branch circuit shall not exceed 15 amperes at 125 volts or 10 amperes at 250 volts if individual overload protection is omitted.

TABLE K–4. RECEPTACLE RATINGS FOR VARIOUS SIZE CIRCUITS

Circuit rating, ampere	Receptacle rating amperes
15	Not over 15.
20	15 or 20.
30	30.
40	40 or 50.
50	50.

The introduction to proposed paragraph (b)(2) required outlet devices to be able to carry the current demanded by the load. Proposed paragraph (e)(1)(i) of the same section required equipment (including outlet devices) to be protected against overcurrent. These two requirements determined, in terms of performance, the maximum and minimum ratings of outlet devices on any particular branch circuit. Therefore, proposed paragraphs (b)(2)(i) and (b)(2)(ii) were redundant in setting forth these ratings by specification.

OSHA agrees that proposed § 1926.404(b)(2)(i), regarding lampholders, is unnecessary for the protection of employees, as the hazard it addressed is already covered under the general requirement of paragraph (b)(2) and under the performance language of paragraph (e)(1)(i). Therefore, proposed paragraph (b)(2)(i) does not appear in the final rule.

However, in contrast to proposed paragraph (b)(2)(i), the specifications for receptacles contained in proposed § 1926.404(b)(2)(ii) are necessary for employee protection, because the relevant hazards are not addressed by the general requirement. A degree of specificity is needed in these requirements to prevent employers from avoiding the ground-fault protection regulations simply by installing plugs and receptacles of ratings above 20 amperes on 15- and 20-ampere equipment and circuits. (See discussion of final § 1926.404(b)(1) in this section of the preamble.) Although this practice is technically prohibited by the performance language of paragraphs (b)(2) and (e)(1)(i), OSHA believes that specifications are needed to provide adequate criteria for interpretation and enforcement of these two paragraphs and paragraph (b)(1). Therefore, proposed § 1926.404(b)(2)(ii) has been retained and renumbered as paragraphs (b)(2) (i), (ii), and (iii) in the final rule.

Paragraph (c) contains requirements on the location and clearance of low voltage (600 volts or less) conductors and of outside lamps. Again, two commenters argued that this paragraph contained provisions (viz., paragraphs (c)(1)(i) and (c)(2)) that are overly detailed and not directed towards employee safety (Ex. 2–34, 2–37). The requirements of concern to these commenters related to the minimum size of overhead conductors.

Many requirements in the NEC (for example, 1984 NEC sections 230–23, 230–31, 250–94, and 400–12) specify the minimum size of conductors. Generally, throughout the revised standard, OSHA has not retained such requirements because the use of performance language has been determined to provide comparable safety. In reviewing proposed paragraphs (c)(1)(i) and (c)(2), OSHA has determined that the hazards addressed by these paragraphs are adequately covered by two other provisions of the final standard: § 1926.403(b)(1)(iii), governing mechanical strength and durability, and § 1926.404(e)(1)(i), requiring suitable overcurrent protection. Therefore, OSHA has accepted the recommendation of the two comments on these proposed requirements, and paragraphs (c)(1)(i) and (c)(2) of proposed § 1926.404 do not appear in the final rule.

Reflecting existing requirements for the installation of outside service, feeder, and branch-circuit conductors of 600 volts or less, 1971 NEC sections 230–24(b) and 730–18 read as follows:

230–24 (b). *Clearance from Ground.* Service-drop conductors when not in excess of 600 volts, shall have the following minimum clearance from ground:

10 feet—above finished grade, sidewalks or from any platform or projection from which they might be reached;

12 feet—over residential driveways and commercial areas such as parking lots and drive-in establishments not subject to truck traffic;

15 feet—over commercial areas, parking lots, agricultural or other areas subject to truck traffic;

18 feet—over public streets, alleys, roads and driveways on other than residential property.

730–18. *Clearance from Ground.* [Outside *feeders and branch circuits.*] Open conductors of not over 600 volts shall conform to the following:

10 feet—above finished grade, sidewalks or from any platform or projection from which they might be reached;

12 feet—over residential driveways and commercial areas such as parking lots and drive-in establishments not subject to truck traffic;

15 feet—over commercial areas, parking lots, agricultural or other areas subject to truck traffic;

18 feet—over public streets, alleys, roads, and driveways on other than residential property.

Instead of relying on the NFPA 70E requirement which is comparable to these NEC provisions and which presents the identical distances for each category, OSHA proposed to update the requirement so that it would be comparable to the equivalent 1981 NEC provisions which revised thc categories for the four different clearance distances. This proposed update was contained in § 1926.404(c)(1)(iii), which read as follows:

(c) *Outside conductors and lamps—(1) 600 volts, nominal, or less.* Paragraphs (c)(1) (i) through (v) of this section apply to branch circuit, feeder, and service conductors rated 600 volts, nominal, or less and run outdoors as open conductors.

* * * * *

(iii) *Clearance from ground.* Open conductors shall conform to the following minimum clearances:

(A) 10 feet (3.05 m)—above finished grade, sidewalks, or from any platform or projection from which they might be reached where the supply conductors are limited to 150 volts to ground and accessible only to employees on foot.

(B) 12 feet— (3.66 m)—Over driveways and other similar areas, such as parking lots, not subject to truck traffic where the supply conductors are limited to 300 volts to ground.

(C) 15 feet (4.57 m)—above finished grade where the supply conductors have a nominal voltage greater than 300 volts to ground and accessible only to employees on foot.

(D) 18 feet (5.49 m)—over streets, alleys, roads, driveways and other areas subject to truck traffic.

In effect, OSHA's proposed revision would have increased the clearance distance for non-public areas subject to truck traffic from 15 feet to 18 feet. In this regard, it should be noted that the 1984 NEC does not incorporate this approach, but reverts to the clearances that had been established in pre-1981 editions of the code, with some minor changes in clearance categories. Because of the varying NEC position on this issue, OSHA has reevaluated the clearances contained in the proposal. For reasons to be discussed subsequently, the Agency has determined that § 1926.404(c)(1)(iii) should not be promulgated as proposed, and that the existing clearance provision should be carried forward unchanged in the final rule.

One commenter (Ex. 2–27) claimed that the proposal was too complex in this area and suggested that OSHA base the vertical clearance distances solely on voltage, except where truck traffic is involved. In areas subject to truck traffic, 18 feet was suggested as the required clearance from ground. This approach is similar to that presented in the 1984 NEC.

In analyzing this comment, OSHA has discovered that there is an unnecessary inconsistency between Subpart S of the General Industry Standards and the proposed revision of Subpart K of the Construction Standards. Section 1910.304(c)(2) of Subpart S reads as follows:

(c) *Outside conductors, 600 volts, nominal, or less.* Paragraph (c)(1), (c)(2), (c)(3), and (c)(4) of this section apply to branch circuit, feeder, and service conductors rated 600 volts, nominal, or less and run outdoors as open conductors. Paragraph (c)(5) applies to lamps installed under such conductors.

* * * * *

(2) *Clearance from ground.* Open conductors shall conform to the following minimum clearances:

(i) 10 feet—above finished grade, sidewalks, or from any platform or projection from which they might be reached.

(ii) 12—feet over areas subject to vehicular traffic other than truck traffic.

(iii) 15 feet—over areas other than those specified in paragraph (c)(2)(iv) of this section that are subject to truck traffic.

(iv) 18 feet—over public streets, alleys, roads, and driveways.

This general industry requirement is equivalent to the comparable provisions (Sections 230–24(b) and 730–18) in the 1971 NEC adopted by the existing Subpart K of Part 1926.

OSHA's Regulatory Analysis of the proposed revision to Subpart K identified proposed § 1926.404(c)(1)(iii) as one revised provision which would impose additional compliance obligations over those imposed by the existing provisions. However, the available data indicated that the reported accidents which were related to inadequate clearances would have been prevented by compliance with either the current rule or the proposed rule. In brief, the Regulatory Analysis concluded that all reported accidents attributable to non-compliance with the proposed rule also involved a failure to comply with the existing standard. The Agency believes that under these circumstances, particularly in light of the changes made from the 1981 to 1984 editions of the NEC, adoption of the proposed revision of the clearances provision is not warranted. Therefore, OSHA has decided to retain the existing requirements for vertical clearance from ground for outside service, feeder, and branch-circuit conductors. The final requirement, which is now contained in § 1926.404(c)(1)(ii), reads as follows:

(ii) *Clearance from ground.* Open conductors shall conform to the following minimum clearances:

(A) 10 feet (3.05 m)— above finished grade, sidewalks, or from any platform or projection from which they might be reached.

(B) 12 feet (3.66 m)— over areas subject to vehicular traffic other than truck traffic.

(C) 15 feet (4.57 m)—over areas other than those specified in paragraph (c)(1)(ii)(D) of this section that are subject to truck traffic.

(D) 18 feet (5.49 m)—over public streets, alleys, roads, and driveways.

By carrying forward the existing requirements in Subpart K, the final OSHA § 1926.404(c)(1)(ii) will be consistent with Subpart S of the General Industry Standards and will minimize unnecessary burdens on the part of employers while maintaining the current level of safety for employees. Of course, as provided in the note to final § 1926.402(a), if an installation is in compliance with the 1984 NEC, OSHA will also consider it to be in compliance with revised § 1926.404(c)(1)(ii).

Paragraph (d) requires that a disconnecting means be provided for the service entrance conductors. It also contains the location, marking, and operational requirements for that disconnect.

Paragraph (e) contains overcurrent protection requirements for low voltage and high voltage conductors. One comment was received concerning proposed paragraph (e)(1)(iii) (Ex. 2–10). In the proposal the first sentence of this paragraph read as follows:

Except for service fuses, all cartridge fuses which are accessible to other than qualified persons and all fuses and thermal cutouts on circuits over 150 volts to ground shall be provided with disconnecting means.

Referring to the exception for service fuses, the comment suggested that OSHA's requirement be modified in accordance with the 1984 NEC provision upon which it was based. Section 240–40, with Exception No. 1, of the 1984 NEC reads as follows:

240–40. *Disconnecting Means for Fuses and Thermal Cutouts.* Disconnecting means shall be provided on the supply side of all fuses or thermal cutouts in circuits of over 150 volts to ground and cartridge fuses in circuits of any voltage, where accessible to other than qualified persons, so that each individual circuit containing fuses or thermal cutouts can be independently disconnected from the source of electric energy.

Exception No. 1: A device provided for current limiting on the supply side of the service disconnecting means as permitted by Section 230–82.

OSHA agrees that inconsistency with the NEC should be avoided if possible. Therefore, in § 1926.404(e)(1)(iii) of the final rule, the words "Except for service fuses" have been replaced with language contained in Exception No. 1 to section 240–40 of the 1984 NEC. The relevant sentence in the final rule reads as follows:

Except for devices provided for current limiting on the supply side of the service disconnecting means, all cartridge fuses which are accessible to other than qualified persons and all fuses and thermal cutouts on circuits over 150 volts to ground shall be provided with disconnecting means.

Grounding and bonding requirements for electric systems are contained in paragraph (f). This paragraph is subdivided into eleven categories as follows:

(1) Systems to be grounded.

(2) Separately derived systems.

(3) Portable and vehicle-mounted generators.

(4) Conductors to be grounded.

(5) Grounding connections.

(6) Grounding path.

(7) Supports, enclosures, and equipment to be grounded.

(8) Methods of grounding equipment.

(9) Bonding.

(10) Made electrodes.

(11) Grounding of systems and circuits of 1,000 volts and over (high voltage).

As was proposed, paragraph (f)(3) of final § 1926.404 contains new regulations pertaining to the grounding of portable and vehicle-mounted generators. To prevent hazardous voltages from being impressed on the system and to ensure the proper operation of overcurrent protective devices, the existing standard, 1971 NEC section 445–8, required grounding the frames of

generators operating at over 150 volts to ground. Lower voltage generators were to have their frames grounded or permanently and effectively insulated from ground. Recognizing the uncertain availability of a dependable ground for portable and vehicle-mounted generators, the final rule does not require the frames of such generators to be grounded, if certain conditions are met. These conditions, in § 1926.404(f)(3), have been taken from the 1984 NEC; and, in general, they require the generator to provide power only to equipment and receptacles on the generator and require the equipment grounding conductor to be connected to the generator frame. While permitting the frame of the generator to serve as the grounding electrode for the system supplied by the generator, the final rule continues to ensure the proper operation of protective devices.

The major issues raised concerning grounding and bonding are discussed in section IV of this preamble, under Issues 4, 5, and 9.

Section 1926.405 Wiring methods, components, and equipment for general use.

Paragraph (a) deals with wiring methods. General wiring requirements are the subject of § 1926.405(a)(1). In this paragraph, continuity of metal raceways and enclosures is required, and wiring in certain ducts is prohibited.

Paragraph (a)(2) gives requirements on temporary wiring, which is commonly used in construction when permanent wiring is not available. In general, temporary wiring is permitted to be of a class less than permanent wiring but must follow the rules for permanent installations, except as otherwise noted.

Some comments were received suggesting that the entire set of electrical installation requirements in Subpart K be limited to the provisions on temporary wiring, use of flexible cords and cables, and the use of portable electric equipment (Ex. 2–14, 2–30, 2–34; Tr. 56). These commenters suggested that all other wiring be required to comply with the electrical standards for general industry (29 CFR Part 1910, Subpart S). They argued that the remaining provisions were mostly irrelevant and unnecessary and would add confusion to the use of the standards.

OSHA disagrees with this point of view to the extent that it draws an artificial distinction between temporary and permanent wiring installation requirements. As noted in paragraph (a)(2)(i) of final § 1926.405, most of the installation requirements found throughout Subpart K are applicable to temporary wiring as well as to the permanent wiring which is both installed and used during the construction process. For example, the guarding requirements ofparagraphs (i) and (j) of final § 1926.403, the overcurrent protection requirements of § 1926.404(e), and the grounding requirements of § 1926.404(f) are all as vital to the safe installation of a temporary electrical system as they would be to a permanent installation. For these reasons, OSHA believes it is appropriate to include all applicable electrical standards for construction within Part 1926, and OSHA believes it is important to avoid the need to refer to the General Industry Standards for requirements which are so integral to construction. Therefore, OSHA has decided to retain the proposed format of having the temporary wiring provisions a separate paragraph among the other installation requirements, rather than limit Subpart K to temporary wiring alone.

The existing provisions on temporary wiring, § 1926.400(a) and 1926.401(h), incorporated Article 305 of the 1971 NEC by reference. Final § 1926.405(a)(2) carries forward the substance of these requirements, updated to the 1984 NEC, and supplements them with several new provisions, as proposed. The first of these, paragraph (a)(2)(ii)(C) of § 1926.405, prohibits the installation of receptacles on temporary lighting circuits. Derived from 1984 NEC section 305–(2)(d), this requirement is necessary to prevent construction areas from experiencing a loss of temporary lighting, which could occur if cord- and plug-connected equipment at the receptacle were to trip a circuit breaker or ground-fault circuit interrupter protecting the lighting circuit. Paragraph (a)(2)(ii)(H) is also new and has been taken from 1984 NEC Section 305–2(g). However, it does not add a requirement; it merely explains the extent to which provisions of the existing standard which address the need for junction boxs (1971 NEC sections 300–15 and 300–16) apply to temporary wiring (1971 NEC section 305–1). The final rule clarifies that junction boxes are required where a change is made from one wiring method to another and one of the wiring methods is a raceway system or a metal-clad or metal-sheathed cable system.

Paragraphs (a)(2)(ii) (E) and (F) of final § 1926.405 have been listed in the note to final § 1926.402(a) as requirements which must be met regardless of whether the employer follows the 1984 NEC. Although there are provisions in the 1984 NEC which are similar (NEC Sections 305–2(f) and 410–27, respectively), OSHA has determined that the provisions in the final rule are more effective in providing employee safety.

Existing § 1926.401(j)(1) addresses the protection of lamps for temporary lighting and reads as follows:

> Temporary lights shall be equipped with guards to prevent accidental contact with the bulb, except that guards are not required when the construction of the reflector is such that the bulb is deeply recessed.

The 1984 NEC also has a provision addressing the protection of lamps for temporary lighting. This requirement, which was not contained in the 1971 NEC, is contained in 1984 NEC section 305–2(f) and reads as follows:

> All lamps for general illumination shall be protected from accidental contact or breakage. Protection shall be provided by elevation of at least 7 feet (2.13 m) from normal working surface or by a suitable fixture or lampholder with a guard.
>
> Brass shell, paperlined sockets, or other metal-cased sockets shall not be used unless the shell is grounded.

The 1984 NEC provision allows installations of the lamps at a height of 7 feet (2.13 m) or more in lieu of a physical guard. Existing § 1926.401(j)(1) requires a guard for the lamp, regardless of height, unless the lamp is deeply recessed. In construction workplaces, these guards protect lamps from damage caused by the commonplace movement of ladders, long pipes, and similar material, whereas merely installing the lights at a height of more than 7 feet will not provide such protection. Therefore, in § 1926.405(a)(2)(ii)(E), OSHA proposed a requirement which combined the existing Subpart K regulation with the new provision from the NEC. As proposed, this requirement read as follows:

> All lamps for general illumination shall be protected from accidental contact or breakage. Temporary lights shall be equipped with guards to prevent accidental contact with the bulb, except that guards are not required when the construction of the reflector is such that the bulb is deeply recessed. Metal-case sockets shall be grounded.

One commenter noted that the proposed language, which was specific in nature, did not recognize that lamps could be safely guarded by location (Ex. 2–34). Although OSHA does not believe that installation of lamps at a height of 7 feet, as permitted by the 1984 NEC, sufficiently protects employees in construction areas, the Agency does recognize the possibility that there may be ways of guarding lamps by location (or, perhaps, by other means as well). Since the first sentence states the

requirement for lamps to be protected in terms of performance, the second sentence, which states a similar provision in specification language, is unnecessary for employee safety. Therefore, OSHA has not carried the second sentence of proposed § 1926.405(a)(2)(ii)(E) forward into the final rule. However, because OSHA does not believe that 1984 NEC section 305–2(f) provides sufficient safety to employees, final § 1926.405(a)(2)(ii)(E) is listed as a requirement that must be met regardless of an employer's compliance with the 1984 NEC.

Existing § 1926.401(j)(2) requires suspended lights and their cords to be designed for the use. Section 410–27 of the 1984 NEC addresses pendant conductors for lampholders. However, the NEC provision does not specifically cover cords or the lampholders themselves as does the paragraph in the existing Subpart K. Therefore, the final standard retains the equivalent requirement (§ 1926.404(a)(2)(ii)(F)) as one which must be met regardless of an employer's compliance with the 1984 NEC.

Paragraph (a)(2)(ii)(G) of final § 1926.405 is taken from existing § 1926.401(j)(4), which required portable electric lighting used in moist and/or other similarly hazardous locations to be operated at a maximum of 12 volts. As proposed, OSHA is amending this provision to allow the use of 120-volt lights if they are protected by ground-fault circuit interrupters. OSHA believes that either method can protect employees from the hazard of accidental electrocution due to lamp breakage in highly conductive locations. No opposition to this proposed exception was expressed during the rulemaking proceeding. Since final § 1926.405(a)(2)(ii)(G) has no counterpart in the NEC, it has been listed in final § 1926.402(c) as one of the requirements which must be followed in addition to the 1984 NEC.

Several comments were received concerning the proposed requirement (§ 1926.405(a)(2)(ii)(J)) for extension cord sets to be designed for hard or extrahard usage (Ex. 2–10, 2–28, 2–31, 2–32). In the proposal, this provision read as follows:

> (J) Extension cords used with portable electric tools and appliances shall be of three-wire type and shall be designed for hard [or] extrahard usage.

One comment noted the omission of the word "or", which occurred in the printing of the proposal and was later corrected (Ex. 2–10).

Two commenters argued that OSHA was using an undefined descriptive term ("hard or extra-hard usage") rather than explicitly specifying what is required (Ex. 2–31, 2–32). Noting that Table 400–4 of the NEC does use this terminology, one of these commenters claimed that further clarification was needed. OSHA agrees that this provision should be more explicit, but it should not be written so as to restrict unnecessarily the types of cords to be used. To satisfy both needs, OSHA has added a clarifying note to final paragraph (a)(2)(ii)(J) referencing NEC Table 400–4. Additionally, the note lists specific examples of types of flexible cords that are designed for hard or extra-hard usage. This should give employers guidance as to what types of cords will meet the requirement, but the rule will still accept new types of hard or extra-hard usage cords in the future.

The IBEW also commented on this provision in relation to their previously discussed issue concerning the former requirement for heavy-duty cords on temporary lights (existing § 1926.401(j)(2)) (Ex. 2–28). The IBEW correctly noted that proposed § 1926.405(a)(2)(ii)(J) would not apply to cords for temporary lights, though the preamble to the proposal incorrectly indicated that it did (Distribution Table, 48 FR 45875). On construction sites, they argued, cords used for temporary lighting are subjected to various kinds of damage, from workers, equipment, and the weather. Therefore, they claimed that "heavy duty" cords should be required.

OSHA agrees with the IBEW on this matter. As the IBEW noted, flexible cords (not just those used with temporary lights) are highly subject to damage in construction workplaces. The proposal did address this problem, though somewhat vaguely, in § 1926.405(g)(1)(i), requiring flexible cords to be "approved for conditions of use and locations." To eliminate any possible confusion as to what types of cords are required for temporary lights in construction, OSHA has added a sentence to final § 1926.405(a)(2)(ii)(J) requiring cords for temporary and portable lights to be suitable for hard or extra-hard usage.

Lastly, OSHA has changed the term "extension cords" to "extension cord sets" for consistency with final § 1926.404(b)(1)(iii). "Extension cord", "extension cord set", and "cord set" are synonymous (though "cord set" is the term used in Article 305 (Temporary Wiring) of the NEC). With the aforementioned changes, final § 1926.405(a)(2)(ii)(J) reads as follows:

> (J) Extension cord sets used with portable electric tools and appliances shall be three-wire type and shall be designed for hard or extra-hard usage. Flexible cords used with temporary and portable lights shall be designed for hard or extra-hard usage.
>
> Note.—The National Electrical Code, ANSI/NFPA 70, in Article 400, Table 400–4, lists various types of flexible cords, some of which are noted as being designed for hard or extra-hard usage. Examples of these types of flexible cords include hard service cord (types S, ST, SO, STO) and junior hard service cord (types SJ, SJO, SJT, SJTO).

Since there is no NEC provision comparable to paragraph (a)(2)(ii)(J) of final § 1926.405, this paragraph has been listed in § 1926.403(c) as one of the additional requirements in Subpart K which must be followed by employers who are complying with the 1984 NEC.

Paragraph (b) of final § 1926.405 requires cabinets, boxes, and fittings to provide a complete enclosure for conductors and to have only smooth surfaces in contact with conductors.

Paragraphs (c) and (d) relate to switches, switchboards, and panelboards, and these provisions require protection from live parts.

Weatherproof enclosures are required for wet locations in paragraph (e). Paragraph (f) requires conductors to have suitable insulation.

Paragraph (g) covers the use of flexible cords. Uses which are permitted and not permitted are listed in paragraph (g)(1), while paragraph (g)(2) details requirements for identification, splices, and termination of flexible cords.

Requirements applicable to portable cables for use over 600 volts are contained in paragraph (h).

Fixture wires are addressed in § 1926.405(i). This paragraph gives permitted uses for fixture wires and does not allow their use for general branch circuit wiring.

Paragraph (j) contains requirements for wiring of equipment for general use. Paragraphs (j) (1) and (2) cover lighting equipment, plugs, and receptacles. Marking, guarding, and disconnection requirements for appliances are given in paragraph (j)(3).

Requirements for motors are contained in paragraph (j)(4). Motors are required to have suitable overcurrent protection and disconnection means. Guarding requirements are also provided in this paragraph.

Paragraph (j)(5) gives safeguarding requirements for transformer installations. Depending on their rating, some transformers must be in a vault. Stated in performance language, § 1926.405(j)(5)(vi) requires such vaults to be able to contain fires and combustible liquids. Although no specific fire rating is given, any vault constructed in accordance with NEC

specifications in Article 450 would be acceptable.

Capacitor switching and charge drainage are addressed in paragraph (j)(6).

Section 1926.406 Specific purpose equipment and installations.

Paragraph (a) covers cranes and hoists and includes requirements for disconnects, control switches, required working clearance, and grounding. In § 1926.406(a)(1)(iii), the proposal contained a detailed specification related to the rating of a switch or circuit breaker used as a disconnecting means for a crane or hoist. This provision was intended to ensure that the disconnecting means had an adequate rating and stated the requirement in specifications. One commenter claimed that this requirement was unnecessarily specific and not directly related to employee safety (Ex. 2–37). OSHA agrees and notes that the hazard addressed by this requirement is covered in final § 1926.403(c), which requires disconnecting means to be of ample rating and which states the requirement in performance-oriented terms. Therefore, proposed § 1926.406(a)(1)(iii) has not been carried forward.

Paragraph (b) includes specific requirements for disconnects and location of control panels associated with elevators, dumbwaiters, escalators, and moving walks.

Specific requirements relating to disconnecting means, controls, guarding, grounding and labeling for electric welders and X-ray equipment are included in paragraphs (c) and (d).

Section 1926.407 Hazardous (classified) locations.

Paragraph (a) gives the scope of this section and designates the classes and divisions of hazardous (classified) locations.

Paragraph (b) contains the basic requirement that equipment, wiring methods, and installations be intrinsically safe or approved for the hazardous location or safe for the hazardous location.

Guidelines for determining what equipment and installations are "safe for the hazardous location" and thus meet § 1926.407(b)(3) of the final standard are contained in Chapter 5 of the National Electrical Code (NFPA 70). However, these guidelines are not the only means of complying with the standard. Any equipment or installation which is shown by the employer to provide protection from the hazards involved will be acceptable. This performance-oriented approach will allow the employer maximum flexibility in providing safety for employees.

Paragraph (c) requires conduits used in hazardous locations to be threaded and installed wrench tight.

Section 1926.408 Special Systems.

Paragraph (a) addresses electrical systems over 600 volts, nominal. Requirements are given for wiring methods, interrupting and isolating devices, mobile and portable equipment, and tunnel installations.

Requirements for remote control, signaling, and power-limited circuits are contained in paragraph (b). Depending on the voltage, current, and power limitation, these circuits have been designated as Class 1, Class 2, or Class 3.

Paragraph (c) applies to communications systems and contains provisions on protective devices, conductor and equipment locations, and grounding.

Safety-Related Work Practices

Section 1926.416 General requirements.

As noted in the Distribution Table, this section in the final rule has combined several requirements of existing Subpart K, without significant change. Paragraph (a) gives general requirements for the protection of employees from contact with energized power lines. In response to a suggestion from a commenter, paragraph (a)(3) has been modified so that action must be taken to determine the location of and to protect employees from *energized* circuits (Ex. 2–15). Although proposed paragraph (a)(3) (also existing § 1926.400(c)(2)) was intended to apply only to energized circuits, it could have been interpreted as requiring employers to determine the location of and post warning signs for deenergized circuits. The final rule should clarify this regulation.

Paragraph (b) gives requirements for keeping passageways and open spaces clear of electrical hazards. Paragraph (c) prohibits increasing the rating of fuses or circuit breakers in existing circuits, while paragraph (d) requires special tools for removing and installing fuses in energized circuits. Paragraph (e) deals with the use of cords and cables.

Section 1926.417 Lockout and tagging of circuits.

This section requires the tagging of controls, the locking and tagging of disconnects, and the identification of equipment whenever equipment or circuits are deenergized for work. These provisions have been taken, without substantive change, from § 1926.400(g) of the existing standard. Two commenters argued that proposed § 1926.417 was inadequate, and they suggested that the section be changed to require positive lockout (Ex. 2–3, 2–37).

Although, at this time, the Agency has not determined that existing § 1926.400(g) is inadequate, OSHA is currently reviewing the entire issue of lockout and tagging and is developing proposals for general industry which deal with this subject matter (i.e., hazardous energy control and electrical safety-related work practices). The Agency believes that a comprehensive approach to this problem is desirable and is reviewing the available data with regard to construction as well. Until the other proposals are further developed, OSHA believes that proposed § 1926.417 (existing § 1926.400(g)) should not be changed at this time and that revision of this section should await the receipt of further data and information in the related rulemakings for general industry.

Safety-Related Maintenance and Environmental Considerations

Section 1926.431 Maintenance of equipment—Equipment in hazardous locations.

Taken from existing § 1926.404(d), this provision requires the employer to maintain the integrity of equipment installed in hazardous locations.

Section 1926.432 Environmental deterioration of equipment.

Paragraph (a) requires equipment used under conditions which may cause deterioration to be identified for such use. Paragraph (b) requires corrosion protection for wiring elements and hardware, such as metal raceways, cable armor, boxes, fittings, and supports.

Safety Requirements for Special Equipment

Section 1926.441 Batteries and battery charging.

Taken, without substantive change, from existing § 1926.403, this section sets forth requirements for batteries and battery charging. Paragraph (a) contains provisions for ventilation, acid resistant floors, trays, and racks, and acid protection for employees. Paragraph (b) contains rules for battery charging installations.

Definitions

Section 1926.449 Definitions applicable to this subpart.

The definitions in existing § 1926.405 have been carried forward in § 1926.449

of the final rule. Some have been editorially modified to conform to their counterparts in the 1984 NEC and Subpart S of Part 1910. However, since the terms "hazard" and "shock hazard" are not used in the final rule or in the former standard, OSHA has removed the definitions for these terms. To supplement the definitions in existing § 1926.405, OSHA has defined additional terms used in the final standard. These additions have been taken from the 1984 NEC.

A definition of "intrinsically safe equipment and associated wiring" is being included to clarify the requirements in final § 1926.407 (existing requirement: 1971 NEC Article 500) pertaining to such equipment. The definition has been derived from the National Fire Protection Association Standard for Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1 Hazardous Locations, NFPA 493–1978. Although section 500–1 of the 1971 NEC describes intrinsically safe equipment, it does not contain a definition of the term. The definition adopted by OSHA is consistent with the descriptive language set out in the 1971 NEC and is identical to that given in the proposal, to which there was no objection.

Some of the proposed definitions were raised as issues at the public hearing. These definitions have previously been discussed in Issue 10 of Section IV of this preamble.

Miscellaneous Changes to Other Subparts

In addition to revising Subpart K, OSHA has made several miscellaneous changes to other subparts of Part 1926. All but one of these revisions eliminate references to the NEC or existing provisions of Subpart K and replace them with references to the corresponding provisions of revised Subpart K.

OSHA had also proposed to correct a reference in § 1926.600(a)(6). This correction has already been made in the Code of Federal Regulations, so it does not appear in this final rule.

VI. Regulatory Impact Analysis

(A) Final Regulatory Impact Analysis

The following Final Regulatory Impact and Regulatory Flexibility Analysis (RIA) of the final standard revising 29 CFR Part 1926, Subpart K (Electrical Construction) has been prepared in accordance with the requirements of Executive Order 12291 and the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C. 601] et seq.). The annual incremental savings resulting from this rule are estimated to be $29.3 million; since there is no increased cost the standard does not constitute a major rule under Executive Order 12291.

(1) Overview of the Construction Industry

The Electrical Construction standard covers all workers involved in construction activities. Construction establishments covered by the proposed standard include Standard Industrial Classification (SIC) Codes 15, 16, and 17. In 1982, there were 386,091 establishments in construction that had employees (*County Business Patterns*). The number of workers employed at that time was about 3,940,770. In addition, Workers' Compensation claims indicate that workers in all types of construction jobs are exposed to electrical hazards. In 1979, electrical work was associated with the highest single percentage of total claims (30.7 percent).

(2) Overview of the Effectiveness of Alternative Standards

Site visits performed by OSHA's contractor, the JACA Corporation, indicate that construction projects of all sizes have some degree of noncompliance with the existing Subpart K. OSHA estimates that the total electrical injuries in construction projects were 1,857 in 1981 and 1,738 in 1982, which included 241 and 226 fatalities in each year, respectively. Risk and electrical injuries averted by full compliance with the current standard are estimated to be 1,077 injuries, including 140 fatalities (1982). The major justification for this action is the greater degree of flexibility provided by the revised standard, with no reduction of employee safety, and a corresponding reduction in compliance costs, when compared to the current requirements. In addition, there are two new provisions in the final standard that are expected to increase employee safety. These are §§ 1926.403(i)(1) and 1926.405(a)(2)(ii)(C). The first provision increases the required distances for clearances and the other prohibits the use of receptacles on temporary lighting circuits. OSHA estimates that full compliance with these provisions will prevent an additional 84 lost workday injuries annually.

(3) Technological and Economic Feasibility

A comparison of the existing and final versions of the OSHA electrical construction standards reveals that the revisions introduced do not pose technological changes that would require major cost outlays for construction firms. The revisions having cost implications relative to the existing standard are presented in JACA Corporation's *Final Report* (January 1983, pp. 1–6 to 1–7). The final revised standard contains no additional cost implications from those presented for the proposed revisions. Several of the changes could reduce compliance costs for firms, because the final standard recognizes lower cost alternatives for compliance. Thus, no technological or economic constraints are envisioned.

(4) Overview of Compliance Costs of Final Standard

An important effect of the final standard is the expected cost savings from achieving full compliance with the revised standard compared to achieving full compliance with the existing standard. Savings will be achieved because the revised provisions of the standard allow greater flexibility in achieving compliance. Furthermore, a cost savings will be achieved because the employer will not have to review two standards (i.e., Subpart K and the National Electrical Code [NEC]) in order to determine OSHA compliance requirements. An itemization of the estimated industrywide compliance costs and savings is presented in Table 1. It is estimated that the annual industrywide cost of going from current practices to full compliance with the revised Subpart would be $47.9 million. By comparison, the annual cost of going from current practices to full compliance with the existing Subpart would be $78.5 million. The difference between these two costs ($30.6 million) would be the compliance cost savings realized from the recognition of lower cost of compliance options provided by the revised standard.

TABLE 1.—ESTIMATED AGGREGATE INDUSTRY COMPLIANCE COSTS

[1982 dollars]

Changes in level of compliance	Cost or savings
Current Practices to Full Compliance with Existing Subpart	78,545,826
Current Practices to Full Compliance with Proposed Subpart	47,968,059
Full Compliance with Existing Subpart to Full Compliance with Proposed Subpart	(30,577,769)
• Cost due to more stringent requirements	600,400
• Saving estimated from model projects	(31,360,435)
• Cost estimated from model projects	182,266

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

(5) Overview of Alternatives Considered

OSHA examined five alternative courses of action under Executive Order

12291. The first of these was to take no action at all and leave the existing standard in force. This action, however, would not address the language in the existing Subpart K, which requires clarification and simplification as outlined earlier. The next two alternatives considered were to issue program directives to clarify the application of the existing rule or to issue hazard alerts to inform employers of specific electrical hazards. In fact, directives and instructions already issued by OSHA in an effort to update and clarify the regulation have not served that purpose and, in fact, have made the existing standard more complicated. As for hazard alerts, which are generally issued to deal with hazards that are currently not covered by standards, the use of these alerts to address hazards which are clearly covered by existing regulations would not be appropriate. Moreover, the use of alerts in the absence of a regulation might not improve safety, as hazard alerts do not impose mandatory requirements. The fourth alternative was to modify the existing Subpart K to adopt the entire 1984 NEC and to clarify some of the provisions of that code. As with the other alternatives this approach also would not address the unnecessary burden of requiring employers to refer to two sets of published documents (Subpart K and the NEC), nor would it solve the problem of the large amount of technical detail in the NEC that is unrelated to construction worker safety.

Yet another alternative would be to eliminate the existing standard. The injuries discussed above, however, have resulted primarily from noncompliance with the current regulation. This suggests that neither market incentives nor NEC regulations have provided the desired level of safety. Given the nature of the construction industry—the ease of entry for firms, temporary conditions at worksites, and workers who have a variety of educational, occupational and skill backgrounds—it is very likely that without the OSHA standard, electrical safety would be undersupplied by the private market.

(B) Regulatory Flexibility Analysis and Certification

The Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [U.S.C. 601] et seq.) requires that special consideration be given to the economic impact of a proposed regulation on small entities. Most of the construction firms subject to Subpart K are small businesses.

If annual receipts of $350,000 are used as the cutoff for defining small firms, nearly 89 percent of the electrical contracting firms would be in the "small" category. For the construction industry as a whole (i.e., SIC groups 15, 16 and 17), assuming the same cutoff, the proportion of small firms would be approximately 90 percent.

The potential impact of compliance on individual construction firms was evaluated by developing large-, medium- and small-sized financial models of electrical contracting firms. Electrical contracting firms were usd as a model because the electrical contractor is responsible for most of the electrical work on the construction site and, consequently, would bear most of the costs of compliance with the final Subpart K. The analysis found that in the case of the large- and medium-sized models, the effects on profitability and capital availability would be negligible, even if compliance costs were fully absorbed by the electrical contractor.

The potential impact of achieving full compliance on the small model firm may not be negligible; however, the net effect of the revision is a savings. Using the midpoint of the range of estimated compliance costs for the small firms, for example, reveals that the revisions would result in a savings of $233 per firm (i.e., $798 to achieve compliance with the existing Subpart compared with $565 to achieve compliance with the final Subpart). In the worst-case scenario, which assumes full absorption of compliance costs, the decline in return on assets and profit margin for the small firm to achieve compliance with the final Subpart would be 8.6 and 8.7 percent, respectively; whereas, achieving compliance with the existing Subpart would imply declines of 12.1 and 12.0 percent, respectively. This worst-case scenario is not likely to apply, however, for the following reasons. First, public procurement rules allow the passthrough of the compliance costs of government regulations (i.e., special clauses in Federal Procurement Regulations). Second, in private markets, small firms are usually specialized and are therefore able to pass through increased costs to the customer over the long run. OSHA anticipates, therefore, that most small firms will not be significantly affected.

The relatively greater burden of compliance for small firms vis-a-vis larger firms arises not because of the provisions of the Subpart itself, but because the JACA survey indicates that small firms are farther from full compliance with the existing standard than their larger competitors. On the other hand, the greater flexibility in achieving compliance allowed by the final standard and the arrangement of one set of regulations, as opposed to two (i.e., existing Subpart plus the 1971 NEC), yield even greater benefits to small firms than to large firms. Thus, on balance, the standard leaves small firms in a much better position than they hold under the existing standard. For these reasons, the Assistant Secretary for OSHA certifies that for the purpose of the Regulatory Flexibility Act, the revision of Subpart K of Part 1926 will not have a significant impact on a substantial number of small entities.

The above discussion summarizes the key findings of the Final RIA of the revised Subpart K, Part 1926, as prepared by the Office of Regulatory Analysis of the Occupational Safety and Health Administration. The RIA includes assessments of estimated compliance costs, estimated benefits, risk, small business impacts, alternative regulatory and nonregulatory options, and a profile of the industry. The data in the RIA are based on contract work performed for OSHA by the JACA Corporation. The JACA report, *Economic Analysis of Proposed Revisions to Subpart K, Part 1926, Final Report, January 1983*, and OSHA's Final RIA are available to the public in Docket S106. (Ex. 5, 3).

VII. Effective Date

This revision of Subpart K, along with the other miscellaneous changes being made elsewhere in Part 1926, becomes effective on October 9, 1986.

VIII. State Standards

The 25 States with their own OSHA-approved occupational safety and health plans must revise their existing standard within six months or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States are: Alaska, Arizona, California, Connecticut*, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York*, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming.

IX. List of Index Terms

List of Subjects in 29 CFR Part 1926

Construction safety, Electric power, Fire prevention, Flammable materials, Hazardous materials, Occupational safety and health, Safety, Signs and symbols, Tools.

* Plan covers only State and local government employees.

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 Avenue, NW., Washington, DC 20210.

The information collection regulations contained in this regulation, 29 CFR Part 1926, have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 1218–0130.

Accordingly, pursuant to sections 6(b) and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96, 40 U.S.C. 333), Secretary of Labor's Order No. 983 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Part 1926 is amended as set forth below.

Signed at Washington, DC this 2nd day of July, 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

Part 1926 of Title 29 of the Code of Federal Regulations is amended as follows:

§ 1926.151 [Amended]

1. By amending paragraph (a)(1) of § 1926.151 to remove the words "the requirements of the National Electrical Code, NFPA 70–1971; ANSI Cl–1971 (Rev. of 1968), and".

2. By revising paragraph (b)(4)(v) of § 1926.152 to read as follows:

§ 1926.152 Flammable and combustible liquids.

* * * * *

(b) * * *

(4) * * *

(v) Electrical wiring and equipment located in inside storage rooms shall be approved for Class I, Division 1, Hazardous Locations. For definition of Class I, Division 1, Hazardous Locations, see § 1926.449.

* * * * *

3. By revising paragraph (d)(5) of § 1926.351 to read as follows:

§ 1926.351 Arc welding and cutting.

* * * * *

(d) * * *

(5) See § 1926.406(c) for additional requirements.

* * * * *

4. By revising paragraph (j)(3) of § 1926.803 to read as follows:

§ 1926.803 Compressed air.

* * * * *

(j) * * *

(3) All electrical equipment and wiring for light and power circuits shall comply with the requirements of Subpart K of this Part for use in damp, hazardous, high temperature, and compressed air environments.

* * * * *

5. By adding an authority citation for Subpart K of Part 1926 to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); Secretary of Labor's Order No. 9–83 (48 FR 35736); 29 CFR Part 1911.

6. By revising Subpart K of 29 CFR Part 1926 to read as follows:

Subpart K—Electrical

General

Sec.
1926.400—Introduction.
1926.401—[Reserved]

Installation Safety Requirements

1926.402—Applicability.
1926.403—General requirements.
1926.404—Wiring design and protection.
1926.405—Wiring methods, components, and equipment for general use.
1926.406—Specific purpose equipment and installations.
1926.407—Hazardous (classified) locations.
1926.408—Special systems.
1926.409—1926.415—[Reserved]

Safety-Related Work Practices

1926.416—General requirements.
1926.417—Lockout and tagging of circuits.
1926.418—1926.430—[Reserved]

Safety-Related Maintenance and Environmental Considerations

1926.431—Maintenance of equipment.
1926.432—Environmental deterioration of equipment.
1926.433—1926.440—[Reserved]

Safety Requirements for Special Equipment

1926.441—Battery locations and battery charging.
1926.442—1926.448—[Reserved]

Definitions

1926.449—Definitions applicable to this subpart.

Subpart K—Electrical

General

§ 1926.400 Introduction.

This subpart addresses electrical safety requirements that are necessary for the practical safeguarding of employees involved in construction work and is divided into four major divisions and applicable definitions as follows:

(a) *Installation safety requirements.* Installation safety requirements are contained in §§ 1926.402 through 1926.408. Included in this category are electric equipment and installations used to provide electric power and light on jobsites.

(b) *Safety-related work practices.* Safety-related work practices are contained in §§ 1926.416 and 1926.417. In addition to covering the hazards arising from the use of electricity at jobsites, these regulations also cover the hazards arising from the accidental contact, direct or indirect, by employees with all energized lines, above or below ground, passing through or near the jobsite.

(c) *Safety-related maintenance and environmental considerations.* Safety-related maintenance and environmental considerations are contained in §§ 1926.431 and 1926.432.

(d) *Safety requirements for special equipment.* Safety requirements for special equipment are contained in § 1926.441.

(e) *Definitions.* Definitions applicable to this Subpart are contained in § 1926.449.

§ 1926.401 [Reserved]

Installation Safety Requirements

§ 1926.402 Applicability.

(a) *Covered.* Sections 1926.402 through 1926.408 contain installation safety requirements for electrical equipment and installations used to provide electric power and light at the jobsite. These sections apply to installations, both temporary and permanent, used on the jobsite; but these sections do not apply to existing permanent installations that were in place before the construction activity commenced.

Note.—If the electrical installation is made in accordance with the National Electrical Code ANSI/NFPA 70–1984, exclusive of Formal Interpretations and Tentative Interim Amendments, it will be deemed to be in compliance with §§ 1926.403 through 1926.408, except for §§ 1926.404(b)(1) and 1926.405(a)(2)(ii) (E), (F), (G), and (J).

(b) *Not covered.* Sections 1926.402 through 1926.408 do not cover installations used for the generation, transmission, and distribution of electric energy, including related communication, metering, control, and transformation installations. (However, these regulations do cover portable and vehicle-mounted generators used to provide power for equipment used at the jobsite.) See Subpart V of this Part for the construction of power distribution and transmission lines.

§ 1926.403 General requirements.

(a) *Approval.* All electrical conductors and equipment shall be approved.

(b) *Examination, installation, and use of equipment*—(1) *Examination.* The employer shall ensure that electrical equipment is free from recognized hazards that are likely to cause death or serious physical harm to employees. Safety of equipment shall be determined on the basis of the following considerations:

(i) Suitability for installation and use in conformity with the provisions of this subpart. Suitability of equipment for an identified purpose may be evidenced by listing, labeling, or certification for that identified purpose.

(ii) Mechanical strength and durability, including, for parts designed to enclose and protect other equipment, the adequacy of the protection thus provided.

(iii) Electrical insulation.

(iv) Heating effects under conditions of use.

(v) Arcing effects.

(vi) Classification by type, size, voltage, current capacity, specific use.

(vii) Other factors which contribute to the practical safeguarding of employees using or likely to come in contact with the equipment.

(2) *Installation and use.* Listed, labeled, or certified equipment shall be installed and used in accordance with instructions included in the listing, labeling, or certification.

(c) *Interrupting rating.* Equipment intended to break current shall have an interrupting rating at system voltage sufficient for the current that must be interrupted.

(d) *Mounting and cooling of equipment*—(1) *Mounting.* Electric equipment shall be firmly secured to the surface on which it is mounted. Wooden plugs driven into holes in masonry, concrete, plaster, or similar materials shall not be used.

(2) *Cooling.* Electrical equipment which depends upon the natural circulation of air and convection principles for cooling of exposed surfaces shall be installed so that room air flow over such surfaces is not prevented by walls or by adjacent installed equipment. For equipment designed for floor mounting, clearance between top surfaces and adjacent surfaces shall be provided to dissipate rising warm air. Electrical equipment provided with ventilating openings shall be installed so that walls or other obstructions do not prevent the free circulation of air through the equipment.

(e) *Splices.* Conductors shall be spliced or joined with splicing devices designed for the use or by brazing, welding, or soldering with a fusible metal or alloy. Soldered splices shall first be so spliced or joined as to be mechanically and electrically secure without solder and then soldered. All splices and joints and the free ends of conductors shall be covered with an insulation equivalent to that of the conductors or with an insulating device designed for the purpose.

(f) *Arcing parts.* Parts of electric equipment which in ordinary operation produce arcs, sparks, flames, or molten metal shall be enclosed or separated and isolated from all combustible material.

(g) *Marking.* Electrical equipment shall not be used unless the manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified is placed on the equipment and unless other markings are provided giving voltage, current, wattage, or other ratings as necessary. The marking shall be of sufficient durability to withstand the environment involved.

(h) *Identification of disconnecting means and circuits.* Each disconnecting means required by this subpart for motors and appliances shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident. Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident. These markings shall be of sufficient durability to withstand the environment involved.

(i) *600 Volts, nominal, or less.* This paragraph applies to equipment operating at 600 volts, nominal, or less.

(1) *Working space about electric equipment.* Sufficient access and working space shall be provided and maintained about all electric equipment to permit ready and safe operation and maintenance of such equipment.

(i) *Working clearances.* Except as required or permitted elsewhere in this subpart, the dimension of the working space in the direction of access to live parts operating at 600 volts or less and likely to require examination, adjustment, servicing, or maintenance while alive shall not be less than indicated in Table K–1. In addition to the dimensions shown in Table K–1, workspace shall not be less than 30 inches (762 mm) wide in front of the electric equipment. Distances shall be measured from the live parts if they are exposed, or from the enclosure front or opening if the live parts are enclosed. Walls constructed of concrete, brick, or tile are considered to be grounded. Working space is not required in back of assemblies such as dead-front switchboards or motor control centers where there are no renewable or adjustable parts such as fuses or switches on the back and where all connections are accessible from locations other than the back.

TABLE K–1—WORKING CLEARANCES

Nominal voltage to ground	Minimum clear distance for conditions[1]		
	(a)	(b)	(c)
	Feet[2]	Feet[2]	Feet[2]
0–150	3	3	3
151–600	3	3½	4

[1] Conditions (a), (b), and (c) are as follows: (a) Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by insulating material. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts. (b) Exposed live parts on one side and grounded parts on the other side. (c) Exposed live parts on both sides of the workspace [not guarded as provided in Condition (a)] with the operator between.

[2] Note.—For International System of Units (SI): one foot = 0.3048m.

(ii) *Clear spaces.* Working space required by this subpart shall not be used for storage. When normally enclosed live parts are exposed for inspection or servicing, the working space, if in a passageway or general open space, shall be guarded.

(iii) *Access and entrance to working space.* At least one entrance shall be provided to give access to the working space about electric equipment.

(iv) *Front working space.* Where there are live parts normally exposed on the front of switchboards or motor control centers, the working space in front of such equipment shall not be less than 3 feet (914 mm).

(v) *Headroom.* The minimum headroom of working spaces about service equipment, switchboards, panelboards, or motor control centers shall be 6 feet 3 inches (1.91 m).

(2) *Guarding of live parts.* (i) Except as required or permitted elsewhere in this subpart, live parts of electric equipment operating at 50 volts or more shall be guarded against accidental contact by cabinets or other forms of enclosures, or by any of the following means:

(A) By location in a room, vault, or similar enclosure that is accessible only to qualified persons.

(B) By partitions or screens so arranged that only qualified persons will have access to the space within reach of the live parts. Any openings in such partitions or screens shall be so sized and located that persons are not likely to come into accidental contact with the live parts or to bring conducting objects into contact with them.

(C) By location on a balcony, gallery, or platform so elevated and arranged as to exclude unqualified persons.

(D) By elevation of 8 feet (2.44 m) or more above the floor or other working surface and so installed as to exclude unqualified persons.

(ii) In locations where electric equipment would be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.

(iii) Entrances to rooms and other guarded locations containing exposed live parts shall be marked with conspicuous warning signs forbidding unqualified persons to enter.

(j) *Over 600 volts, nominal.* (1) *General.* Conductors and equipment used on circuits exceeding 600 volts, nominal, shall comply with all applicable provisions of paragraphs (a) through (g) of this section and with the following provisions which supplement or modify those requirements. The provisions of paragraphs (j)(2), (j)(3), and (j)(4) of this section do not apply to equipment on the supply side of the service conductors.

(2) *Enclosure for electrical installations.* Electrical installations in a vault, room, closet or in an area surrounded by a wall, screen, or fence, access to which is controlled by lock and key or other equivalent means, are considered to be accessible to qualified persons only. A wall, screen, or fence less than 8 feet (2.44 m) in height is not considered adequate to prevent access unless it has other features that provide a degree of isolation equivalent to an 8-foot (2.44-m) fence. The entrances to all buildings, rooms or enclosures containing exposed live parts or exposed conductors operating at over 600 volts, nominal, shall be kept locked or shall be under the observation of a qualified person at all times.

(i) *Installations accessible to qualified persons only.* Electrical installations having exposed live parts shall be accessible to qualified persons only and shall comply with the applicable provisions of paragraph (j)(3) of this section.

(ii) *Installations accessible to unqualified persons.* Electrical installations that are open to unqualified persons shall be made with metal-enclosed equipment or shall be enclosed in a vault or in an area, access to which is controlled by a lock. Metal-enclosed switchgear, unit substations, transformers, pull boxes, connection boxes, and other similar associated equipment shall be marked with appropriate caution signs. If equipment is exposed to physical damage from vehicular traffic, guards shall be provided to prevent such damage. Ventilating or similar openings in metal-enclosed equipment shall be designed so that foreign objects inserted through these openings will be deflected from energized parts.

(3) *Workspace about equipment.* Sufficient space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment. Where energized parts are exposed, the minimum clear workspace shall not be less than 6 feet 6 inches (1.98 m) high (measured vertically from the floor or platform), or less than 3 feet (914 mm) wide (measured parallel to the equipment). The depth shall be as required in Table K–2. The workspace shall be adequate to permit at least a 90-degree opening of doors or hinged panels.

(i) *Working space.* The minimum clear working space in front of electric equipment such as switchboards, control panels, switches, circuit breakers, motor controllers, relays, and similar equipment shall not be less than specified in Table K–2 unless otherwise specified in this subpart. Distances shall be measured from the live parts if they are exposed, or from the enclosure front or opening if the live parts are enclosed. However, working space is not required in back of equipment such as deadfront switchboards or control assemblies where there are no renewable or adjustable parts (such as fuses or switches) on the back and where all connections are accessible from locations other than the back. Where rear access is required to work on de-energized parts on the back of enclosed equipment, a minimum working space of 30 inches (762 mm) horizontally shall be provided.

TABLE K-2—MINIMUM DEPTH OF CLEAR WORKING SPACE IN FRONT OF ELECTRIC EQUIPMENT

Nominal voltage to ground	Conditions[1]		
	(a)	(b)	(c)
	Feet[2]	Feet[2]	Feet[2]
601 to 2,500	3	4	5
2,501 to 9,000	4	5	6
9,001 to 25,000	5	6	9
25,001 to 75 kV	6	8	10
Above 75kV	8	10	12

[1] Conditions (a), (b), and (c) are as follows: (a) Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by insulating materials. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts. (b) Exposed live parts on one side and grounded parts on the other side. Walls constructed of concrete, brick, or tile are considered to be grounded surfaces. (c) Exposed live parts on both sides of the workspace [not guarded as provided in Condition (a)] with the operator between.

[2] NOTE.—For SI units: one foot=0.3048 m.

(ii) *Lighting outlets and points of control.* The lighting outlets shall be so arranged that persons changing lamps or making repairs on the lighting system will not be endangered by live parts or other equipment. The points of control shall be so located that persons are not likely to come in contact with any live part or moving part of the equipment while turning on the lights.

(iii) *Elevation of unguarded live parts.* Unguarded live parts above working space shall be maintained at elevations not less than specified in Table K–3.

TABLE K–3—ELEVATION OF UNGUARDED ENERGIZED PARTS ABOVE WORKING SPACE

Nominal voltage between phases	Minimum elevation
601–7,500	8 feet 6 inches.[1]
7,501–35,000	9 feet.
Over 35kV	9 feet + 0.37 inches per kV above 35kV.

[1] NOTE.—For SI units: one inch=25.4 mm; one foot=0.3048 m.

(4) *Entrance and access to workspace.* At least one entrance not less than 24 inches (610 mm) wide and 6 feet 6 inches (1.98 m) high shall be provided to give access to the working space about electric equipment. On switchboard and control panels exceeding 48 inches (1.22 m) in width, there shall be one entrance at each end of such board where practicable. Where bare energized parts at any voltage or insulated energized parts above 600 volts are located adjacent to such entrance, they shall be guarded.

(Information collection requirements contained in paragraphs (g) and (h) were approved by the Office of Management and Budget under control number 1218–0130)

§ 1926.404 Wiring design and protection.

(a) *Use and identification of grounded and grounding conductors*—(1) *Identification of conductors.* A conductor used as a grounded conductor shall be identifiable and distinguishable from all other conductors. A conductor used as an equipment grounding conductor shall be identifiable and distinguishable from all other conductors.

(2) *Polarity of connections.* No grounded conductor shall be attached to any terminal or lead so as to reverse designated polarity.

(3) *Use of grounding terminals and devices.* A grounding terminal or grounding-type device on a receptacle, cord connector, or attachment plug shall not be used for purposes other than grounding.

(b) *Branch circuits*—(1) *Ground-fault protection*—(i) *General.* The employer shall use either ground fault circuit interrupters as specified in paragraph (b)(1)(ii) of this section or an assured equipment grounding conductor program as specified in paragraph (b)(1)(iii) of

this section to protect employees on construction sites. These requirements are in addition to any other requirements for equipment grounding conductors.

(ii) *Ground-fault circuit interrupters.* All 120-volt, single-phase, 15- and 20-ampere receptacle outlets on construction sites, which are not a part of the permanent wiring of the building or structure and which are in use by employees, shall have approved ground-fault circuit interrupters for personnel protection. Receptacles on a two-wire, single-phase portable or vehicle-mounted generator rated not more than 5kW, where the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces, need not be protected with ground-fault circuit interrupters.

(iii) *Assured equipment grounding conductor program.* The employer shall establish and implement an assured equipment grounding conductor program on construction sites covering all cord sets, receptacles which are not a part of the building or structure, and equipment connected by cord and plug which are available for use or used by employees. This program shall comply with the following minimum requirements:

(A) A written description of the program, including the specific procedures adopted by the employer, shall be available at the jobsite for inspection and copying by the Assistant Secretary and any affected employee.

(B) The employer shall designate one or more competent persons (as defined in § 1926.32(f)) to implement the program.

(C) Each cord set, attachment cap, plug and receptacle of cord sets, and any equipment connected by cord and plug, except cord sets and receptacles which are fixed and not exposed to damage, shall be visually inspected before each day's use for external defects, such as deformed or missing pins or insulation damage, and for indications of possible internal damage. Equipment found damaged or defective shall not be used until repaired.

(D) The following tests shall be performed on all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and cord- and plug-connected equipment required to be grounded:

(*1*) All equipment grounding conductors shall be tested for continuity and shall be electrically continuous.

(*2*) Each receptacle and attachment cap or plug shall be tested for correct attachment of the equipment grounding conductor. The equipment grounding conductor shall be connected to its proper terminal.

(E) All required tests shall be performed:

(*1*) Before first use;

(*2*) Before equipment is returned to service following any repairs;

(*3*) Before equipment is used after any incident which can be reasonably suspected to have caused damage (for example, when a cord set is run over); and

(*4*) At intervals not to exceed 3 months, except that cord sets and receptacles which are fixed and not exposed to damage shall be tested at intervals not exceeding 6 months.

(F) The employer shall not make available or permit the use by employees of any equipment which has not met the requirements of this paragraph (b)(1)(iii) of this section.

(G) Tests performed as required in this paragraph shall be recorded. This test record shall identify each receptacle, cord set, and cord- and plug-connected equipment that passed the test and shall indicate the last date it was tested or the interval for which it was tested. This record shall be kept by means of logs, color coding, or other effective means and shall be maintained until replaced by a more current record. The record shall be made available on the jobsite for inspection by the Assistant Secretary and any affected employee.

(2) *Outlet devices.* Outlet devices shall have an ampere rating not less than the load to be served and shall comply with the following:

(i) *Single receptacles.* A single receptacle installed on an individual branch circuit shall have an ampere rating of not less than that of the branch circuit.

(ii) *Two or more receptacles.* Where connected to a branch circuit supplying two or more receptacles or outlets, receptacle ratings shall conform to the values listed in Table K–4.

(iii) *Receptacles used for the connection of motors.* The rating of an attachment plug or receptacle used for cord- and plug-connection of a motor to a branch circuit shall not exceed 15 amperes at 125 volts or 10 amperes at 250 volts if individual overload protection is omitted.

TABLE K–4—RECEPTACLE RATINGS FOR VARIOUS SIZE CIRCUITS

Circuit rating amperes	Receptacle rating amperes
15	Not over 15.
20	15 or 20.
30	30.
40	40 or 50.
50	50.

(c) *Outside conductors and lamps*—(1) *600 volts, nominal, or less.* Paragraphs (c)(1)(i) through (c)(1)(iv) of this section apply to branch circuit, feeder, and service conductors rated 600 volts, nominal, or less and run outdoors as open conductors.

(i) *Conductors on poles.* Conductors supported on poles shall provide a horizontal climbing space not less than the following:

(A) Power conductors below communication conductors—30 inches (762 mm).

(B) Power conductors alone or above communication conductors: 300 volts or less—24 inches (610 mm); more than 300 volts—30 inches (762 mm).

(C) Communication conductors below power conductors: with power conductors 300 volts or less—24 inches (610 mm); more than 300 volts—30 inches (762 mm).

(ii) *Clearance from ground.* Open conductors shall conform to the following minimum clearances:

(A) 10 feet (3.05 m)—above finished grade, sidewalks, or from any platform or projection from which they might be reached.

(B) 12 feet (3.66 m)—over areas subject to vehicular traffic other than truck traffic.

(C) 15 feet (4.57 m)—over areas other than those specified in paragraph (c)(1)(ii)(D) of this section that are subject to truck traffic.

(D) 18 feet (5.49 m)—over public streets, alleys, roads, and driveways.

(iii) *Clearance from building openings.* Conductors shall have a clearance of at least 3 feet (914 mm) from windows, doors, fire escapes, or similar locations. Conductors run above the top level of a window are considered to be out of reach from that window and, therefore, do not have to be 3 feet (914 mm) away.

(iv) *Clearance over roofs.* Conductors above roof space accessible to employees on foot shall have a clearance from the highest point of the roof surface of not less than 8 feet (2.44 m) vertical clearance for insulated conductors, not less than 10 feet (3.05 m) vertical or diagonal clearance for covered conductors, and not less than 15 feet (4.57 m) for bare conductors, except that:

(A) Where the roof space is also accessible to vehicular traffic, the vertical clearance shall not be less than 18 feet (5.49 m), or

(B) Where the roof space is not normally accessible to employees on foot, fully insulated conductors shall have a vertical or diagonal clearance of not less than 3 feet (914 mm), or

(C) Where the voltage between conductors is 300 volts or less and the roof has a slope of not less than 4 inches (102 mm) in 12 inches (305 mm), the clearance from roofs shall be at least 3 feet (914 mm), or

(D) Where the voltage between conductors is 300 volts or less and the conductors do not pass over more than 4 feet (1.22 m) of the overhang portion of the roof and they are terminated at a through-the-roof raceway or support, the clearance from roofs shall be at least 18 inches (457 mm).

(2) *Location of outdoor lamps.* Lamps for outdoor lighting shall be located below all live conductors, transformers, or other electric equipment, unless such equipment is controlled by a disconnecting means that can be locked in the open position or unless adequate clearances or other safeguards are provided for relamping operations.

(d) *Services*—(1) *Disconnecting means*—(i) *General.* Means shall be provided to disconnect all conductors in a building or other structure from the service-entrance conductors. The disconnecting means shall plainly indicate whether it is in the open or closed position and shall be installed at a readily accessible location nearest the point of entrance of the service-entrance conductors.

(ii) *Simultaneous opening of poles.* Each service disconnecting means shall simultaneously disconnect all ungrounded conductors.

(2) *Services over 600 volts, nominal.* The following additional requirements apply to services over 600 volts, nominal.

(i) *Guarding.* Service-entrance conductors installed as open wires shall be guarded to make them accessible only to qualified persons.

(ii) *Warning signs.* Signs warning of high voltage shall be posted where unauthorized employees might come in contact with live parts.

(e) *Overcurrent protection*—(1) *600 volts, nominal, or less.* The following requirements apply to overcurrent protection of circuits rated 600 volts, nominal, or less.

(i) *Protection of conductors and equipment.* Conductors and equipment shall be protected from overcurrent in accordance with their ability to safely conduct current. Conductors shall have sufficient ampacity to carry the load.

(ii) *Grounded conductors.* Except for motor-running overload protection, overcurrent devices shall not interrupt the continuity of the grounded conductor unless all conductors of the circuit are opened simultaneously.

(iii) *Disconnection of fuses and thermal cutouts.* Except for devices provided for current-limiting on the supply side of the service disconnecting means, all cartridge fuses which are accessible to other than qualified persons and all fuses and thermal cutouts on circuits over 150 volts to ground shall be provided with disconnecting means. This disconnecting means shall be installed so that the fuse or thermal cutout can be disconnected from its supply without disrupting service to equipment and circuits unrelated to those protected by the overcurrent device.

(iv) *Location in or on premises.* Overcurrent devices shall be readily accessible. Overcurrent devices shall not be located where they could create an employee safety hazard by being exposed to physical damage or located in the vicinity of easily ignitible material.

(v) *Arcing or suddenly moving parts.* Fuses and circuit breakers shall be so located or shielded that employees will not be burned or otherwise injured by their operation.

(vi) *Circuit breakers*—(A) Circuit breakers shall clearly indicate whether they are in the open (off) or closed (on) position.

(B) Where circuit breaker handles on switchboards are operated vertically rather than horizontally or rotationally, the up position of the handle shall be the closed (on) position.

(C) If used as switches in 120-volt, fluorescent lighting circuits, circuit breakers shall be marked "SWD."

(2) *Over 600 volts, nominal.* Feeders and branch circuits over 600 volts, nominal, shall have short-circuit protection.

(f) *Grounding.* Paragraphs (f)(1) through (f)(11) of this section contain grounding requirements for systems, circuits, and equipment.

(1) *Systems to be grounded.* The following systems which supply premises wiring shall be grounded:

(i) *Three-wire DC systems.* All 3-wire DC systems shall have their neutral conductor grounded.

(ii) *Two-wire DC systems.* Two-wire DC systems operating at over 50 volts through 300 volts between conductors shall be grounded unless they are rectifier-derived from an AC system complying with paragraphs (f)(1)(iii), (f)(1)(iv), and (f)(1)(v) of this section.

(iii) *AC circuits, less than 50 volts.* AC circuits of less than 50 volts shall be grounded if they are installed as overhead conductors outside of buildings or if they are supplied by transformers and the transformer primary supply system is ungrounded or exceeds 150 volts to ground.

(iv) *AC systems, 50 volts to 1000 volts.* AC systems of 50 volts to 1000 volts shall be grounded under any of the following conditions, unless exempted by paragraph (f)(1)(v) of this section:

(A) If the system can be so grounded that the maximum voltage to ground on the ungrounded conductors does not exceed 150 volts;

(B) If the system is nominally rated 480Y/277 volt, 3-phase, 4-wire in which the neutral is used as a circuit conductor;

(C) If the system is nominally rated 240/120 volt, 3-phase, 4-wire in which the midpoint of one phase is used as a circuit conductor; or

(D) If a service conductor is uninsulated.

(v) *Exceptions.* AC systems of 50 volts to 1000 volts are not required to be grounded if the system is separately derived and is supplied by a transformer that has a primary voltage rating less than 1000 volts, provided all of the following conditions are met:

(A) The system is used exclusively for control circuits,

(B) The conditions of maintenance and supervision assure that only qualified persons will service the installation,

(C) Continuity of control power is required, and

(D) Ground detectors are installed on the control system.

(2) *Separately derived systems.* Where paragraph (f)(1) of this section requires grounding of wiring systems whose power is derived from generator, transformer, or converter windings and has no direct electrical connection, including a solidly connected grounded circuit conductor, to supply conductors originating in another system, paragraph (f)(5) of this section shall also apply.

(3) *Portable and vehicle-mounted generators*—(i) *Portable generators.* Under the following conditions, the frame of a portable generator need not be grounded and may serve as the grounding electrode for a system supplied by the generator:

(A) The generator supplies only equipment mounted on the generator and/or cord- and plug-connected equipment through receptacles mounted on the generator, and

(B) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame.

(ii) *Vehicle-mounted generators.* Under the following conditions the frame of a vehicle may serve as the grounding electrode for a system

supplied by a generator located on the vehicle:

(A) The frame of the generator is bonded to the vehicle frame, and

(B) The generator supplies only equipment located on the vehicle and/or cord- and plug-connected equipment through receptacles mounted on the vehicle or on the generator, and

(C) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame, and

(D) The system complies with all other provisions of this section.

(iii) *Neutral conductor bonding.* A neutral conductor shall be bonded to the generator frame if the generator is a component of a separately derived system. No other conductor need be bonded to the generator frame.

(4) *Conductors to be grounded.* For AC premises wiring systems the identified conductor shall be grounded.

(5) *Grounding connections*—(i) *Grounded system.* For a grounded system, a grounding electrode conductor shall be used to connect both the equipment grounding conductor and the grounded circuit conductor to the grounding electrode. Both the equipment grounding conductor and the grounding electrode conductor shall be connected to the grounded circuit conductor on the supply side of the service disconnecting means, or on the supply side of the system disconnecting means or overcurrent devices if the system is separately derived.

(ii) *Ungrounded systems.* For an ungrounded service-supplied system, the equipment grounding conductor shall be connected to the grounding electrode conductor at the service equipment. For an ungrounded separately derived system, the equipment grounding conductor shall be connected to the grounding electrode conductor at, or ahead of, the system disconnecting means or overcurrent devices.

(6) *Grounding path.* The path to ground from circuits, equipment, and enclosures shall be permanent and continuous.

(7) *Supports, enclosures, and equipment to be grounded*—(i) *Supports and enclosures for conductors.* Metal cable trays, metal raceways, and metal enclosures for conductors shall be grounded, except that:

(A) Metal enclosures such as sleeves that are used to protect cable assemblies from physical damage need not be grounded; and

(B) Metal enclosures for conductors added to existing installations of open wire, knob-and-tube wiring, and nonmetallic-sheathed cable need not be grounded if all of the following conditions are met:

(*1*) Runs are less than 25 feet (7.62 m);

(*2*) Enclosures are free from probable contact with ground, grounded metal, metal laths, or other conductive materials; and

(*3*) Enclosures are guarded against employee contact.

(ii) *Service equipment enclosures.* Metal enclosures for service equipment shall be grounded.

(iii) *Fixed equipment.* Exposed noncurrent-carrying metal parts of fixed equipment which may become energized shall be grounded under any of the following conditions:

(A) If within 8 feet (2.44 m) vertically or 5 feet (1.52 m) horizontally of ground or grounded metal objects and subject to employee contact.

(B) If located in a wet or damp location and subject to employee contact.

(C) If in electrical contact with metal.

(D) If in a hazardous (classified) location.

(E) If supplied by a metal-clad, metal-sheathed, or grounded metal raceway wiring method.

(F) If equipment operates with any terminal at over 150 volts to ground; however, the following need not be grounded:

(*1*) Enclosures for switches or circuit breakers used for other than service equipment and accessible to qualified persons only;

(*2*) Metal frames of electrically heated appliances which are permanently and effectively insulated from ground; and

(*3*) The cases of distribution apparatus such as transformers and capacitors mounted on wooden poles at a height exceeding 8 feet (2.44 m) above ground or grade level.

(iv) *Equipment connected by cord and plug.* Under any of the conditions described in paragraphs (f)(7)(iv)(A) through (f)(7)(iv)(C) of this section, exposed noncurrent-carrying metal parts of cord- and plug-connected equipment which may become energized shall be grounded:

(A) If in a hazardous (classified) location (see § 1926.407).

(B) If operated at over 150 volts to ground, except for guarded motors and metal frames of electrically heated appliances if the appliance frames are permanently and effectively insulated from ground.

(C) If the equipment is one of the types listed in paragraphs (f)(7)(iv)(C)(*1*) through (f)(7)(iv)(C)(*5*) of this section. However, even though the equipment may be one of these types, it need not be grounded if it is exempted by paragraph (f)(7)(iv)(C)(*6*).

(*1*) Hand held motor-operated tools;

(*2*) Cord- and plug-connected equipment used in damp or wet locations or by employees standing on the ground or on metal floors or working inside of metal tanks or boilers;

(*3*) Portable and mobile X-ray and associated equipment;

(*4*) Tools likely to be used in wet and/or conductive locations; and

(*5*) Portable hand lamps.

(*6*) Tools likely to be used in wet and/or conductive locations need not be grounded if supplied through an isolating transformer with an ungrounded secondary of not over 50 volts. Listed or labeled portable tools and appliances protected by a system of double insulation, or its equivalent, need not be grounded. If such a system is employed, the equipment shall be distinctively marked to indicate that the tool or appliance utilizes a system of double insulation.

(v) *Nonelectrical equipment.* The metal parts of the following nonelectrical equipment shall be grounded: Frames and tracks of electrically operated cranes; frames of nonelectrically driven elevator cars to which electric conductors are attached; hand-operated metal shifting ropes or cables of electric elevators, and metal partitions, grill work, and similar metal enclosures around equipment of over 1kV between conductors.

(8) *Methods of grounding equipment*—(i) *With circuit conductors.* Noncurrent-carrying metal parts of fixed equipment, if required to be grounded by this subpart, shall be grounded by an equipment grounding conductor which is contained within the same raceway, cable, or cord, or runs with or encloses the circuit conductors. For DC circuits only, the equipment grounding conductor may be run separately from the circuit conductors.

(ii) *Grounding conductor.* A conductor used for grounding fixed or movable equipment shall have capacity to conduct safely any fault current which may be imposed on it.

(iii) *Equipment considered effectively grounded.* Electric equipment is considered to be effectively grounded if it is secured to, and in electrical contact with, a metal rack or structure that is provided for its support and the metal rack or structure is grounded by the method specified for the noncurrent-carrying metal parts of fixed equipment in paragraph (f)(8)(i) of this section. Metal car frames supported by metal hoisting cables attached to or running over metal sheaves or drums of grounded elevator machines are also considered to be effectively grounded.

(9) *Bonding.* If bonding conductors are used to assure electrical continuity, they shall have the capacity to conduct any fault current which may be imposed.

(10) *Made electrodes.* If made electrodes are used, they shall be free from nonconductive coatings, such as paint or enamel; and, if practicable, they shall be embedded below permanent moisture level. A single electrode consisting of a rod, pipe or plate which has a resistance to ground greater than 25 ohms shall be augmented by one additional electrode installed no closer than 6 feet (1.83 m) to the first electrode.

(11) *Grounding of systems and circuits of 1000 volts and over (high voltage)*—(i) *General.* If high voltage systems are grounded, they shall comply with all applicable provisions of paragraphs (f)(1) through (f)(10) of this section as supplemented and modified by this paragraph (f)(11).

(ii) *Grounding of systems supplying portable or mobile equipment.* Systems supplying portable or mobile high voltage equipment, other than substations installed on a temporary basis, shall comply with the following:

(A) Portable and mobile high voltage equipment shall be supplied from a system having its neutral grounded through an impedance. If a delta-connected high voltage system is used to supply the equipment, a system neutral shall be derived.

(B) Exposed noncurrent-carrying metal parts of portable and mobile equipment shall be connected by an equipment grounding conductor to the point at which the system neutral impedance is grounded.

(C) Ground-fault detection and relaying shall be provided to automatically de-energize any high voltage system component which has developed a ground fault. The continuity of the equipment grounding conductor shall be continuously monitored so as to de-energize automatically the high voltage feeder to the portable equipment upon loss of continuity of the equipment grounding conductor.

(D) The grounding electrode to which the portable or mobile equipment system neutral impedance is connected shall be isolated from and separated in the ground by at least 20 feet (6.1 m) from any other system or equipment grounding electrode, and there shall be no direct connection between the grounding electrodes, such as buried pipe, fence or like objects.

(iii) *Grounding of equipment.* All noncurrent-carrying metal parts of portable equipment and fixed equipment including their associated fences, housings, enclosures, and supporting structures shall be grounded. However, equipment which is guarded by location and isolated from ground need not be grounded. Additionally, pole-mounted distribution apparatus at a height exceeding 8 feet (2.44 m) above ground or grade level need not be grounded.

(Information collection requirements contained in paragraphs (b)(1)(iii)(A) and (b)(1)(iii)(G) were approved by the Office of Management and Budget under control number 1218-0062; information collection requirements contained in paragraph (f)(7)(iv)(C)(6) were approved by the Office of Management and Budget under control number: 1218-0130)

§ 1926.405 Wiring methods, components, and equipment for general use.

(a) *Wiring methods.* The provisions of this paragraph do not apply to conductors which form an integral part of equipment such as motors, controllers, motor control centers and like equipment.

(1) *General requirements*—(i) *Electrical continuity of metal raceways and enclosures.* Metal raceways, cable armor, and other metal enclosures for conductors shall be metallically joined together into a continuous electric conductor and shall be so connected to all boxes, fittings, and cabinets as to provide effective electrical continuity.

(ii) *Wiring in ducts.* No wiring systems of any type shall be installed in ducts used to transport dust, loose stock or flammable vapors. No wiring system of any type shall be installed in any duct used for vapor removal or in any shaft containing only such ducts.

(2) *Temporary wiring*—(i) *Scope.* The provisions of paragraph (a)(2) of this section apply to temporary electrical power and lighting wiring methods which may be of a class less than would be required for a permanent installation. Except as specifically modified in paragraph (a)(2) of this section, all other requirements of this subpart for permanent wiring shall apply to temporary wiring installations. Temporary wiring shall be removed immediately upon completion of construction or the purpose for which the wiring was installed.

(ii) *General requirements for temporary wiring.*—(A) Feeders shall originate in a distribution center. The conductors shall be run as multiconductor cord or cable assemblies or within raceways; or, where not subject to physical damage, they may be run as open conductors on insulators not more than 10 feet (3.05 m) apart.

(B) Branch circuits shall originate in a power outlet or panelboard. Conductors shall be run as multiconductor cord or cable assemblies or open conductors, or shall be run in raceways. All conductors shall be protected by overcurrent devices at their ampacity. Runs of open conductors shall be located where the conductors will not be subject to physical damage, and the conductors shall be fastened at intervals not exceeding 10 feet (3.05 m). No branch-circuit conductors shall be laid on the floor. Each branch circuit that supplies receptacles or fixed equipment shall contain a separate equipment grounding conductor if the branch circuit is run as open conductors.

(C) Receptacles shall be of the grounding type. Unless installed in a complete metallic raceway, each branch circuit shall contain a separate equipment grounding conductor, and all receptacles shall be electrically connected to the grounding conductor. Receptacles for uses other than temporary lighting shall not be installed on branch circuits which supply temporary lighting. Receptacles shall not be connected to the same ungrounded conductor of multiwire circuits which supply temporary lighting.

(D) Disconnecting switches or plug connectors shall be installed to permit the disconnection of all ungrounded conductors of each temporary circuit.

(E) All lamps for general illumination shall be protected from accidental contact or breakage. Metal-case sockets shall be grounded.

(F) Temporary lights shall not be suspended by their electric cords unless cords and lights are designed for this means of suspension.

(G) Portable electric lighting used in wet and/or other conductive locations, as for example, drums, tanks, and vessels, shall be operated at 12 volts or less. However, 120-volt lights may be used if protected by a ground-fault circuit interrupter.

(H) A box shall be used wherever a change is made to a raceway system or a cable system which is metal clad or metal sheathed.

(I) Flexible cords and cables shall be protected from damage. Sharp corners and projections shall be avoided. Flexible cords and cables may pass through doorways or other pinch points, if protection is provided to avoid damage.

(J) Extension cord sets used with portable electric tools and appliances shall be of three-wire type and shall be designed for hard or extra-hard usage. Flexible cords used with temporary and portable lights shall be designed for hard or extra-hard usage.

Note.—The National Electrical Code, ANSI/NFPA 70, in Article 400, Table 400–4, lists various types of flexible cords, some of which are noted as being designed for hard or

extra-hard usage. Examples of these types of flexible cords include hard service cord (types S, ST, SO, STO) and junior hard service cord (types SJ, SJO, SJT, SJTO).

(iii) *Guarding.* For temporary wiring over 600 volts, nominal, fencing, barriers, or other effective means shall be provided to prevent access of other than authorized and qualified personnel.

(b) *Cabinets, boxes, and fittings.* (1) *Conductors entering boxes, cabinets, or fittings.* Conductors entering boxes, cabinets, or fittings shall be protected from abrasion, and openings through which conductors enter shall be effectively closed. Unused openings in cabinets, boxes, and fittings shall also be effectively closed.

(2) *Covers and canopies.* All pull boxes, junction boxes, and fittings shall be provided with covers. If metal covers are used, they shall be grounded. In energized installations each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear.

(3) *Pull and junction boxes for systems over 600 volts, nominal.* In addition to other requirements in this section for pull and junction boxes, the following shall apply to these boxes for systems over 600 volts, nominal:

(i) *Complete enclosure.* Boxes shall provide a complete enclosure for the contained conductors or cables.

(ii) *Covers.* Boxes shall be closed by covers securely fastened in place. Underground box covers that weigh over 100 pounds (43.6 kg) meet this requirement. Covers for boxes shall be permanently marked "HIGH VOLTAGE." The marking shall be on the outside of the box cover and shall be readily visible and legible.

(c) *Knife switches.* Single-throw knife switches shall be so connected that the blades are dead when the switch is in the open position. Single-throw knife switches shall be so placed that gravity will not tend to close them. Single-throw knife switches approved for use in the inverted position shall be provided with a locking device that will ensure that the blades remain in the open position when so set. Double-throw knife switches may be mounted so that the throw will be either vertical or horizontal. However, if the throw is vertical, a locking device shall be provided to ensure that the blades remain in the open position when so set.

(d) *Switchboards and panelboards.* Switchboards that have any exposed live parts shall be located in permanently dry locations and accessible only to qualified persons. Panelboards shall be mounted in cabinets, cutout boxes, or enclosures designed for the purpose and shall be dead front. However, panelboards other than the dead front externally-operable type are permitted where accessible only to qualified persons. Exposed blades of knife switches shall be dead when open.

(e) *Enclosures for damp or wet locations* (1) *Cabinets, fittings, and boxes.* Cabinets, cutout boxes, fittings, boxes, and panelboard enclosures in damp or wet locations shall be installed so as to prevent moisture or water from entering and accumulating within the enclosures. In wet locations the enclosures shall be weatherproof.

(2) *Switches and circuit breakers.* Switches, circuit breakers, and switchboards installed in wet locations shall be enclosed in weatherproof enclosures.

(f) *Conductors for general wiring.* All conductors used for general wiring shall be insulated unless otherwise permitted in this Subpart. The conductor insulation shall be of a type that is suitable for the voltage, operating temperature, and location of use. Insulated conductors shall be distinguishable by appropriate color or other means as being grounded conductors, ungrounded conductors, or equipment grounding conductors.

(g) Flexible cords and cables.—(1) *Use of flexible cords and cables*—(i) *Permitted uses.* Flexible cords and cables shall be suitable for conditions of use and location. Flexible cords and cables shall be used only for:

(A) Pendants;

(B) Wiring of fixtures;

(C) Connection of portable lamps or appliances;

(D) Elevator cables;

(E) Wiring of cranes and hoists;

(F) Connection of stationary equipment to facilitate their frequent interchange;

(G) Prevention of the transmission of noise or vibration; or

(H) Appliances where the fastening means and mechanical connections are designed to permit removal for maintenance and repair.

(ii) *Attachment plugs for cords.* If used as permitted in paragraphs (g)(1)(i)(C), (g)(1)(i)(F), or (g)(1)(i)(H) of this section, the flexible cord shall be equipped with an attachment plug and shall be energized from a receptacle outlet.

(iii) *Prohibited uses.* Unless necessary for a use permitted in paragraph (g)(1)(i) of this section, flexible cords and cables shall not be used:

(A) As a substitute for the fixed wiring of a structure;

(B) Where run through holes in walls, ceilings, or floors;

(C) Where run through doorways, windows, or similar openings, except as permitted in paragraph (a)(2)(ii)(1) of this section;

(D) Where attached to building surfaces; or

(E) Where concealed behind building walls, ceilings, or floors.

(2) *Identification, splices, and terminations*—(i) *Identification.* A conductor of a flexible cord or cable that is used as a grounded conductor or an equipment grounding conductor shall be distinguishable from other conductors.

(ii) *Marking.* Type SJ, SJO, SJT, SJTO, S, SO, ST, and STO cords shall not be used unless durably marked on the surface with the type designation, size, and number of conductors.

(iii) *Splices.* Flexible cords shall be used only in continuous lengths without splice or tap. Hard service flexible cords No. 12 or larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

(iv) *Strain relief.* Flexible cords shall be connected to devices and fittings so that strain relief is provided which will prevent pull from being directly transmitted to joints or terminal screws.

(v) *Cords passing through holes.* Flexible cords and cables shall be protected by bushings or fittings where passing through holes in covers, outlet boxes, or similar enclosures.

(h) *Portable cables over 600 volts, nominal.* Multiconductor portable cable for use in supplying power to portable or mobile equipment at over 600 volts, nominal, shall consist of No. 8 or larger conductors employing flexible stranding. Cables operated at over 2000 volts shall be shielded for the purpose of confining the voltage stresses to the insulation. Grounding conductors shall be provided. Connectors for these cables shall be of a locking type with provisions to prevent their opening or closing while energized. Strain relief shall be provided at connections and terminations. Portable cables shall not be operated with splices unless the splices are of the permanent molded, vulcanized, or other equivalent type. Termination enclosures shall be marked with a high voltage hazard warning, and terminations shall be accessible only to authorized and qualified personnel.

(i) *Fixture wires*—(1) *General.* Fixture wires shall be suitable for the voltage, temperature, and location of use. A fixture wire which is used as a grounded conductor shall be identified.

(2) *Uses permitted.* Fixture wires may be used:

(i) For installation in lighting, fixtures and in similar equipment where enclosed or protected and not subject to bending or twisting in use; or

(ii) For connecting lighting fixtures to the branch-circuit conductors supplying the fixtures.

(3) *Uses not permitted.* Fixture wires shall not be used as branch-circuit conductors except as permitted for Class 1 power-limited circuits.

(j) *Equipment for general use*—(1) *Lighting fixtures, lampholders, lamps, and receptacles*—(i) *Live parts.* Fixtures, lampholders, lamps, rosettes, and receptacles shall have no live parts normally exposed to employee contact. However, rosettes and cleat-type lampholders and receptacles located at least 8 feet (2.44 m) above the floor may have exposed parts.

(ii) *Support.* Fixtures, lampholders, rosettes, and receptacles shall be securely supported. A fixture that weighs more than 6 pounds (2.72 kg) or exceeds 16 inches (406 mm) in any dimension shall not be supported by the screw shell of a lampholder.

(iii) *Portable lamps.* Portable lamps shall be wired with flexible cord and an attachment plug of the polarized or grounding type. If the portable lamp uses an Edison-based lampholder, the grounded conductor shall be identified and attached to the screw shell and the identified blade of the attachment plug. In addition, portable handlamps shall comply with the following:

(A) Metal shell, paperlined lampholders shall not be used;

(B) Handlamps shall be equipped with a handle of molded composition or other insulating material;

(C) Handlamps shall be equipped with a substantial guard attached to the lampholder or handle;

(D) Metallic guards shall be grounded by the means of an equipment grounding conductor run within the power supply cord.

(iv) *Lampholders.* Lampholders of the screw-shell type shall be installed for use as lampholders only. Lampholders installed in wet or damp locations shall be of the weatherproof type.

(v) *Fixtures.* Fixtures installed in wet or damp locations shall be identified for the purpose and shall be installed so that water cannot enter or accumulate in wireways, lampholders, or other electrical parts.

(2) *Receptacles, cord connectors, and attachment plugs (caps)*—(i) *Configuration.* Receptacles, cord connectors, and attachment plugs shall be constructed so that no receptacle or cord connector will accept an attachment plug with a different voltage or current rating than that for which the device is intended. However, a 20-ampere T-slot receptacle or cord connector may accept a 15-ampere attachment plug of the same voltage rating. Receptacles connected to circuits having different voltages, frequencies, or types of current (ac or dc) on the same premises shall be of such design that the attachment plugs used on these circuits are not interchangeable.

(ii) *Damp and wet locations.* A receptacle installed in a wet or damp location shall be designed for the location.

(3) *Appliances*—(i) *Live parts.* Appliances, other than those in which the current-carrying parts at high temperatures are necessarily exposed, shall have no live parts normally exposed to employee contact.

(ii) *Disconnecting means.* A means shall be provided to disconnect each appliance.

(iii) *Rating.* Each appliance shall be marked with its rating in volts and amperes or volts and watts.

(4) *Motors.* This paragraph applies to motors, motor circuits, and controllers.

(i) *In sight from.* If specified that one piece of equipment shall be "in sight from" another piece of equipment, one shall be visible and not more than 50 feet (15.2 m) from the other.

(ii) *Disconnecting means*—(A) A disconnecting means shall be located in sight from the controller location. The controller disconnecting means for motor branch circuits over 600 volts, nominal, may be out of sight of the controller, if the controller is marked with a warning label giving the location and identification of the disconnecting means which is to be locked in the open position.

(B) The disconnecting means shall disconnect the motor and the controller from all ungrounded supply conductors and shall be so designed that no pole can be operated independently.

(C) If a motor and the driven machinery are not in sight from the controller location, the installation shall comply with one of the following conditions:

(*1*) The controller disconnecting means shall be capable of being locked in the open position.

(*2*) A manually operable switch that will disconnect the motor from its source of supply shall be placed in sight from the motor location.

(D) The disconnecting means shall plainly indicate whether it is in the open (off) or closed (on) position.

(E) The disconnecting means shall be readily accessible. If more than one disconnect is provided for the same equipment, only one need be readily accessible.

(F) An individual disconnecting means shall be provided for each motor, but a single disconnecting means may be used for a group of motors under any one of the following conditions:

(*1*) If a number of motors drive special parts of a single machine or piece of apparatus, such as a metal or woodworking machine, crane, or hoist;

(*2*) If a group of motors is under the protection of one set of branch-circuit protective devices; or

(*3*) If a group of motors is in a single room in sight from the location of the disconnecting means.

(iii) *Motor overload, short-circuit, and ground-fault protection.* Motors, motor-control apparatus, and motor branch-circuit conductors shall be protected against overheating due to motor overloads or failure to start, and against short-circuits or ground faults. These provisions do not require overload protection that will stop a motor where a shutdown is likely to introduce additional or increased hazards, as in the case of fire pumps, or where continued operation of a motor is necessary for a safe shutdown of equipment or process and motor overload sensing devices are connected to a supervised alarm.

(iv) *Protection of live parts—all voltages*—(A) Stationary motors having commutators, collectors, and brush rigging located inside of motor end brackets and not conductively connected to supply circuits operating at more than 150 volts to ground need not have such parts guarded. Exposed live parts of motors and controllers operating at 50 volts or more between terminals shall be guarded against accidental contact by any of the following:

(*1*) By installation in a room or enclosure that is accessible only to qualified persons;

(*2*) By installation on a balcony, gallery, or platform, so elevated and arranged as to exclude unqualified persons; or

(*3*) By elevation 8 feet (2.44 m) or more above the floor.

(B) Where live parts of motors or controllers operating at over 150 volts to ground are guarded against accidental contact only by location, and where adjustment or other attendance may be necessary during the operation of the apparatus, insulating mats or platforms shall be provided so that the attendant cannot readily touch live parts unless standing on the mats or platforms.

(5) *Transformers*—(i) *Application.* The following paragraphs cover the installation of all transformers, except:

(A) Current transformers;

(B) Dry-type transformers installed as a component part of other apparatus;

(C) Transformers which are an integral part of an X-ray, high frequency, or electrostatic-coating apparatus;

(D) Transformers used with Class 2 and Class 3 circuits, sign and outline lighting, electric discharge lighting, and power-limited fire-protective signaling circuits.

(ii) *Operating voltage.* The operating voltage of exposed live parts of transformer installations shall be indicated by warning signs or visible markings on the equipment or structure.

(iii) *Transformers over 35 kV.* Dry-type, high fire point liquid-insulated, and askarel-insulated transformers installed indoors and rated over 35 kV shall be in a vault.

(iv) *Oil-insulated transformers.* If they present a fire hazard to employees, oil-insulated transformers installed indoors shall be in a vault.

(v) *Fire protection.* Combustible material, combustible buildings and parts of buildings, fire escapes, and door and window openings shall be safeguarded from fires which may originate in oil-insulated transformers attached to or adjacent to a building or combustible material.

(vi) *Transformer vaults.* Transformer vaults shall be constructed so as to contain fire and combustible liquids within the vault and to prevent unauthorized access. Locks and latches shall be so arranged that a vault door can be readily opened from the inside.

(vii) *Pipes and ducts.* Any pipe or duct system foreign to the vault installation shall not enter or pass through a transformer vault.

(viii) *Material storage.* Materials shall not be stored in transformer vaults.

(6) *Capacitors*—(i) *Drainage of stored charge.* All capacitors, except surge capacitors or capacitors included as a component part of other apparatus, shall be provided with an automatic means of draining the stored charge and maintaining the discharged state after the capacitor is disconnected from its source of supply.

(ii) *Over 600 volts.* Capacitors rated over 600 volts, nominal, shall comply with the following additional requirements:

(A) Isolating or disconnecting switches (with no interrupting rating) shall be interlocked with the load interrupting device or shall be provided with prominently displayed caution signs to prevent switching load current.

(B) For series capacitors the proper switching shall be assured by use of at least one of the following:

(*1*) Mechanically sequenced isolating and bypass switches,

(*2*) Interlocks, or

(*3*) Switching procedure prominently displayed at the switching location.

(Information collection requirements contained in paragraphs (g)(2)(ii), (j)(3)(iii), (j)(4)(ii)(A), (j)(5)(ii), and (j)(6)(ii)(B)(*3*) were approved by the Office of Management and Budget under control number 1218–0130)

§ 1926.406 Specific purpose equipment and installations.

(a) *Cranes and hoists.* This paragraph applies to the installation of electric equipment and wiring used in connection with cranes, monorail hoists, hoists, and all runways.

(1) *Disconnecting means*—(i) *Runway conductor disconnecting means.* A readily accessible disconnecting means shall be provided between the runway contact conductors and the power supply.

(ii) *Disconnecting means for cranes and monorail hoists.* A disconnecting means, capable of being locked in the open position, shall be provided in the leads from the runway contact conductors or other power supply on any crane or monorail hoist.

(A) If this additional disconnecting means is not readily accessible from the crane or monorail hoist operating station, means shall be provided at the operating station to open the power circuit to all motors of the crane or monorail hoist.

(B) The additional disconnect may be omitted if a monorail hoist or hand-propelled crane bridge installation meets all of the following:

(*1*) The unit is floor controlled;

(*2*) The unit is within view of the power supply disconnecting means; and

(*3*) No fixed work platform has been provided for servicing the unit.

(2) *Control.* A limit switch or other device shall be provided to prevent the load block from passing the safe upper limit of travel of any hoisting mechanism.

(3) *Clearance.* The dimension of the working space in the direction of access to live parts which may require examination, adjustment, servicing, or maintenance while alive shall be a minimum of 2 feet 6 inches (762 mm). Where controls are enclosed in cabinets, the door(s) shall open at least 90 degrees or be removable, or the installation shall provide equivalent access.

(4) *Grounding.* All exposed metal parts of cranes, monorail hoists, hoists and accessories including pendant controls shall be metallically joined together into a continuous electrical conductor so that the entire crane or hoist will be grounded in accordance with § 1926.404(f). Moving parts, other than removable accessories or attachments, having metal-to-metal bearing surfaces shall be considered to be electrically connected to each other through the bearing surfaces for grounding purposes. The trolley frame and bridge frame shall be considered as electrically grounded through the bridge and trolley wheels and its respective tracks unless conditions such as paint or other insulating materials prevent reliable metal-to-metal contact. In this case a separate bonding conductor shall be provided.

(b) *Elevators, escalators, and moving walks*—(1) *Disconnecting means.* Elevators, escalators, and moving walks shall have a single means for disconnecting all ungrounded main power supply conductors for each unit.

(2) *Control panels.* If control panels are not located in the same space as the drive machine, they shall be located in cabinets with doors or panels capable of being locked closed.

(c) *Electric welders—disconnecting means*—(1) *Motor-generator, AC transformer, and DC rectifier arc welders.* A disconnecting means shall be provided in the supply circuit for each motor-generator arc welder, and for each AC transformer and DC rectifier arc welder which is not equipped with a disconnect mounted as an integral part of the welder.

(2) *Resistance welders.* A switch or circuit breaker shall be provided by which each resistance welder and its control equipment can be isolated from the supply circuit. The ampere rating of this disconnecting means shall not be less than the supply conductor ampacity.

(d) *X-Ray equipment*—(1) *Disconnecting means*—(i) *General.* A disconnecting means shall be provided in the supply circuit. The disconnecting means shall be operable from a location readily accessible from the X-ray control. For equipment connected to a 120-volt branch circuit of 30 amperes or less, a grounding-type attachment plug cap and receptacle of proper rating may serve as a disconnecting means.

(ii) *More than one piece of equipment.* If more than one piece of equipment is operated from the same high-voltage circuit, each piece or each group of equipment as a unit shall be provided with a high-voltage switch or equivalent disconnecting means. This disconnecting means shall be constructed, enclosed, or located so as

to avoid contact by employees with its live parts.

(2) *Control—Radiographic and fluoroscopic types.* Radiographic and fluoroscopic-type equipment shall be effectively enclosed or shall have interlocks that deenergize the equipment automatically to prevent ready access to live current-carrying parts.

§ 1926.407 Hazardous (classified) locations.

(a) *Scope.* This section sets forth requirements for electric equipment and wiring in locations which are classified depending on the properties of the flammable vapors, liquids or gases, or combustible dusts or fibers which may be present therein and the likelihood that a flammable or combustible concentration or quantity is present. Each room, section or area shall be considered individually in determining its classification. These hazardous (classified) locations are assigned six designations as follows:

Class I, Division 1
Class I, Division 2
Class II, Division 1
Class II, Division 2
Class III, Division 1
Class III, Division 2

For definitions of these locations see § 1926.449. All applicable requirements in this subpart apply to all hazardous (classified) locations, unless modified by provisions of this section.

(b) *Electrical installations.* Equipment, wiring methods, and installations of equipment in hazardous (classified) locations shall be approved as intrinsically safe or approved for the hazardous (classified) location or safe for the hazardous (classified) location. Requirements for each of these options are as follows:

(1) *Intrinsically safe.* Equipment and associated wiring approved as intrinsically safe is permitted in any hazardous (classified) location included in its listing or labeling.

(2) *Approved for the hazardous (classified) location*—(i) *General.* Equipment shall be approved not only for the class of location but also for the ignitible or combustible properties of the specific gas, vapor, dust, or fiber that will be present.

Note.—NFPA 70, the National Electrical Code, lists or defines hazardous gases, vapors, and dusts by "Groups" characterized by their ignitible or combustible properties.

(ii) *Marking.* Equipment shall not be used unless it is marked to show the class, group, and operating temperature or temperature range, based on operation in a 40-degree C ambient, for which it is approved. The temperature marking shall not exceed the ignition temperature of the specific gas, vapor, or dust to be encountered. However, the following provisions modify this marking requirement for specific equipment:

(A) Equipment of the non-heat-producing type (such as junction boxes, conduit, and fitting) and equipment of the heat-producing type having a maximum temperature of not more than 100 degrees C (212 degrees F) need not have a marked operating temperature or temperature range.

(B) Fixed lighting fixtures marked for use only in Class I, Division 2 locations need not be marked to indicate the group.

(C) Fixed general-purpose equipment in Class I locations, other than lighting fixtures, which is acceptable for use in Class I, Division 2 locations need not be marked with the class, group, division, or operating temperature.

(D) Fixed dust-tight equipment, other than lighting fixtures, which is acceptable for use in Class II, Division 2 and Class III locations need not be marked with the class, group, division, or operating temperature.

(3) *Safe for the hazardous (classified) location.* Equipment which is safe for the location shall be of a type and design which the employer demonstrates will provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers.

Note.—The National Electrical Code, NFPA 70, contains guidelines for determining the type and design of equipment and installations which will meet this requirement. The guidelines of this document address electric wiring, equipment, and systems installed in hazardous (classified) locations and contain specific provisions for the following: wiring methods, wiring connections, conductor insulation, flexible cords, sealing and drainage, transformers, capacitors, switches, circuit breakers, fuses, motor controllers, receptacles, attachment plugs, meters, relays, instruments, resistors, generators, motors, lighting fixtures, storage battery charging equipment, electric cranes, electric hoists and similar equipment, utilization equipment, signaling systems, alarm systems, remote control systems, local loud speaker and communication systems, ventilation piping, live parts, lightning surge protection, and grounding. Compliance with these guidelines will constitute one means, but not the only means, of compliance with this paragraph.

(c) *Conduits.* All conduits shall be threaded and shall be made wrench-tight. Where it is impractical to make a threaded joint tight, a bonding jumper shall be utilized.

(Information collection requirements contained in paragraph (b)(2)(ii) were approved by the Office of Management and Budget under control number 1218-0130)

§ 1926.408 Special systems.

(a) *Systems over 600 volts, nominal.* Paragraphs (a)(1) through (a)(4) of this section contain general requirements for all circuits and equipment operated at over 600 volts.

(1) *Wiring methods for fixed installations*—(i) *Above ground.* Above-ground conductors shall be installed in rigid metal conduit, in intermediate metal conduit, in cable trays, in cablebus, in other suitable raceways, or as open runs of metal-clad cable designed for the use and purpose. However, open runs of non-metallic-sheathed cable or of bare conductors or busbars may be installed in locations which are accessible only to qualified persons. Metallic shielding components, such as tapes, wires, or braids for conductors, shall be grounded. Open runs of insulated wires and cables having a bare lead sheath or a braided outer covering shall be supported in a manner designed to prevent physical damage to the braid or sheath.

(ii) *Installations emerging from the ground.* Conductors emerging from the ground shall be enclosed in raceways. Raceways installed on poles shall be of rigid metal conduit, intermediate metal conduit, PVC schedule 80 or equivalent extending from the ground line up to a point 8 feet (2.44 m) above finished grade. Conductors entering a building shall be protected by an enclosure from the ground line to the point of entrance. Metallic enclosures shall be grounded.

(2) *Interrupting and isolating devices*—(i) *Circuit breakers.* Circuit breakers located indoors shall consist of metal-enclosed or fire-resistant, cell-mounted units. In locations accessible only to qualified personnel, open mounting of circuit breakers is permitted. A means of indicating the open and closed position of circuit breakers shall be provided.

(ii) *Fused cutouts.* Fused cutouts installed in buildings or transformer vaults shall be of a type identified for the purpose. They shall be readily accessible for fuse replacement.

(iii) *Equipment isolating means.* A means shall be provided to completely isolate equipment for inspection and repairs. Isolating means which are not designed to interrupt the load current of the circuit shall be either interlocked with a circuit interrupter or provided with a sign warning against opening them under load.

(3) *Mobile and portable equipment*—(i) *Power cable connections to mobile machines.* A metallic enclosure shall be

provided on the mobile machine for enclosing the terminals of the power cable. The enclosure shall include provisions for a solid connection for the ground wire(s) terminal to ground effectively the machine frame. The method of cable termination used shall prevent any strain or pull on the cable from stressing the electrical connections. The enclosure shall have provision for locking so only authorized qualified persons may open it and shall be marked with a sign warning of the presence of energized parts.

(ii) *Guarding live parts.* All energized switching and control parts shall be enclosed in effectively grounded metal cabinets or enclosures. Circuit breakers and protective equipment shall have the operating means projecting through the metal cabinet or enclosure so these units can be reset without locked doors being opened. Enclosures and metal cabinets shall be locked so that only authorized qualified persons have access and shall be marked with a sign warning of the presence of energized parts. Collector ring assemblies on revolving-type machines (shovels, draglines, etc.) shall be guarded.

(4) *Tunnel installations*—(i) *Application.* The provisions of this paragraph apply to installation and use of high-voltage power distribution and utilization equipment which is associated with tunnels and which is portable and/or mobile, such as substations, trailers, cars, mobile shovels, draglines, hoists, drills, dredges, compressors, pumps, conveyors, and underground excavators.

(ii) *Conductors.* Conductors in tunnels shall be installed in one or more of the following:

(A) Metal conduit or other metal raceway,

(B) Type MC cable, or

(C) Other suitable multiconductor cable.

Conductors shall also be so located or guarded as to protect them from physical damage. Multiconductor portable cable may supply mobile equipment. An equipment grounding conductor shall be run with circuit conductors inside the metal raceway or inside the multiconductor cable jacket. The equipment grounding conductor may be insulated or bare.

(iii) *Guarding live parts.* Bare terminals of transformers, switches, motor controllers, and other equipment shall be enclosed to prevent accidental contact with energized parts. Enclosures for use in tunnels shall be drip-proof, weatherproof, or submersible as required by the environmental conditions.

(iv) *Disconnecting means.* A disconnecting means that simultaneously opens all ungrounded conductors shall be installed at each transformer or motor location.

(v) *Grounding and bonding.* All nonenergized metal parts of electric equipment and metal raceways and cable sheaths shall be grounded and bonded to all metal pipes and rails at the portal and at intervals not exceeding 1000 feet (305 m) throughout the tunnel.

(b) *Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits*— (1) *Classification.* Class 1, Class 2, or Class 3 remote control, signaling, or power-limited circuits are characterized by their usage and electrical power limitation which differentiates them from light and power circuits. These circuits are classified in accordance with their respective voltage and power limitations as summarized in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(i) *Class 1 circuits*—(A) A Class 1 power-limited circuit is supplied from a source having a rated output of not more than 30 volts and 1000 volt-amperes.

(B) A Class 1 remote control circuit or a Class 1 signaling circuit has a voltage which does not exceed 600 volts; however, the power output of the source need not be limited.

(ii) *Class 2 and Class 3 circuits*—(A) Power for Class 2 and Class 3 circuits is limited either inherently (in which no overcurrent protection is required) or by a combination of a power source and overcurrent protection.

(B) The maximum circuit voltage is 150 volts AC or DC for a Class 2 inherently limited power source, and 100 volts AC or DC for a Class 3 inherently limited power source.

(C) The maximum circuit voltage is 30 volts AC and 60 volts DC for a Class 2 power source limited by overcurrent protection, and 150 volts AC or DC for a Class 3 power source limited by overcurrent protection.

(iii) *Application.* The maximum circuit voltages in paragraphs (b)(1)(i) and (b)(1)(ii) of this section apply to sinusoidal AC or continuous DC power sources, and where wet contact occurrence is not likely.

(2) *Marking.* A Class 2 or Class 3 power supply unit shall not be used unless it is durably marked where plainly visible to indicate the class of supply and its electrical rating.

(c) *Communications systems*—(1) *Scope.* These provisions for communication systems apply to such systems as central-station-connected and non-central-station-connected telephone circuits, radio receiving and transmitting equipment, and outside wiring for fire and burglar alarm, and similar central station systems. These installations need not comply with the provisions of §§ 1926.403 through 1926.408(b), except § 1926.404(c)(1)(ii) and § 1926.407.

(2) *Protective devices*— (i) *Circuits exposed to power conductors.* Communication circuits so located as to be exposed to accidental contact with light or power conductors operating at over 300 volts shall have each circuit so exposed provided with an approved protector.

(ii) *Antenna lead-ins.* Each conductor of a lead-in from an outdoor antenna shall be provided with an antenna discharge unit or other means that will drain static charges from the antenna system.

(3) *Conductor location*—(i) *Outside of buildings.*—(A) Receiving distribution lead-in or aerial-drop cables attached to buildings and lead-in conductors to radio transmitters shall be so installed as to avoid the possibility of accidental contact with electric light or power conductors.

(B) The clearance between lead-in conductors and any lightning protection conductors shall not be less than 6 feet (1.83 m).

(ii) *On poles.* Where practicable, communication conductors on poles shall be located below the light or power conductors. Communications conductors shall not be attached to a crossarm that carries light or power conductors.

(iii) *Inside of buildings.* Indoor antennas, lead-ins, and other communication conductors attached as open conductors to the inside of buildings shall be located at least 2 inches (50.8 mm) from conductors of any light or power or Class 1 circuits unless a special and equally protective method of conductor separation is employed.

(4) *Equipment location.* Outdoor metal structures supporting antennas, as well as self-supporting antennas such as vertical rods or dipole structures, shall be located as far away from overhead conductors of electric light and power circuits of over 150 volts to ground as necessary to avoid the possibility of the antenna or structure falling into or making accidental contact with such circuits.

(5) *Grounding*—(i) *Lead-in conductors.* If exposed to contact with electric light or power conductors, the metal sheath of aerial cables entering buildings shall be grounded or shall be interrupted close to the entrance to the building by an insulating joint or equivalent device. Where protective devices are used, they shall be grounded.

(ii) *Antenna structures.* Masts and metal structures supporting antennas shall be permanently and effectively grounded without splice or connection in the grounding conductor.

(iii) *Equipment enclosures.* Transmitters shall be enclosed in a metal frame or grill or separated from the operating space by a barrier, all metallic parts of which are effectively connected to ground. All external metal handles and controls accessible to the operating personnel shall be effectively grounded. Unpowered equipment and enclosures shall be considered grounded where connected to an attached coaxial cable with an effectively grounded metallic shield.

(Information collection requirements contained in paragraph (b)(2) were approved by the Office of Management and Budget under control number 1218-0130)

§§ 1926.409-1926.415 [Reserved]

Safety-Related Work Practices

§ 1926.416 General requirements.

(a) *Protection of employees*—(1) No employer shall permit an employee to work in such proximity to any part of an electric power circuit that the employee could contact the electric power circuit in the course of work, unless the employee is protected against electric shock by deenergizing the circuit and grounding it or by guarding it effectively by insulation or other means.

(2) In work areas where the exact location of underground electric powerlines is unknown, employees using jack-hammers, bars, or other hand tools which may contact a line shall be provided with insulated protective gloves.

(3) Before work is begun the employer shall ascertain by inquiry or direct observation, or by instruments, whether any part of an energized electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool, or machine into physical or electrical contact with the electric power circuit. The employer shall post and maintain proper warning signs where such a circuit exists. The employer shall advise employees of the location of such lines, the hazards involved, and the protective measures to be taken.

(b) *Passageways and open spaces*—(1) Barriers or other means of guarding shall be provided to ensure that workspace for electrical equipment will not be used as a passageway during periods when energized parts of electrical equipment are exposed.

(2) Working spaces, walkways, and similar locations shall be kept clear of cords so as not to create a hazard to employees.

(c) *Load ratings.* In existing installations, no changes in circuit protection shall be made to increase the load in excess of the load rating of the circuit wiring.

(d) *Fuses.* When fuses are installed or removed with one or both terminals energized, special tools insulated for the voltage shall be used.

(e) *Cords and cables.* (1) Worn or frayed electric cords or cables shall not be used.

(2) Extension cords shall not be fastened with staples, hung from nails, or suspended by wire.

§ 1926.417 Lockout and tagging of circuits.

(a) *Controls.* Controls that are to be deactivated during the course of work on energized or deenergized equipment or circuits shall be tagged.

(b) *Equipment and circuits.* Equipment or circuits that are deenergized shall be rendered inoperative and shall have tags attached at all points where such equipment or circuits can be energized.

(c) *Tags.* Tags shall be placed to identify plainly the equipment or circuits being worked on.

§§ 1926.418-1926.430. [Reserved]

Safety-Related Maintenance and Environmental Considerations

§ 1926.431 Maintenance of equipment.

The employer shall ensure that all wiring components and utilization equipment in hazardous locations are maintained in a dust-tight, dust-ignition-proof, or explosion-proof condition, as appropriate. There shall be no loose or missing screws, gaskets, threaded connections, seals, or other impairments to a tight condition.

§ 1926.432 Environmental deterioration of equipment.

(a) *Deteriorating agents*—(1) Unless identified for use in the operating environment, no conductors or equipment shall be located:

(i) In damp or wet locations;

(ii) Where exposed to gases, fumes, vapors, liquids, or other agents having a deteriorating effect on the conductors or equipment; or

(iii) Where exposed to excessive temperatures.

(2) Control equipment, utilization equipment, and busways approved for use in dry locations only shall be protected against damage from the weather during building construction.

(b) *Protection against corrosion.* Metal raceways, cable armor, boxes, cable sheathing, cabinets, elbows, couplings, fittings, supports, and support hardware shall be of materials appropriate for the environment in which they are to be installed.

§§ 1926.433-1926.440. [Reserved]

Safety Requirements for Special Equipment

§ 1926.441 Batteries and battery charging.

(a) *General requirements*—(1) Batteries of the unsealed type shall be located in enclosures with outside vents or in well ventilated rooms and shall be arranged so as to prevent the escape of fumes, gases, or electrolyte spray into other areas.

(2) Ventilation shall be provided to ensure diffusion of the gases from the battery and to prevent the accumulation of an explosive mixture.

(3) Racks and trays shall be substantial and shall be treated to make them resistant to the electrolyte.

(4) Floors shall be of acid resistant construction unless protected from acid accumulations.

(5) Face shields, aprons, and rubber gloves shall be provided for workers handling acids or batteries.

(6) Facilities for quick drenching of the eyes and body shall be provided within 25 feet (7.62 m) of battery handling areas.

(7) Facilities shall be provided for flushing and neutralizing spilled electrolyte and for fire protection.

(b) *Charging*—(1) Battery charging installations shall be located in areas designated for that purpose.

(2) Charging apparatus shall be protected from damage by trucks.

(3) When batteries are being charged, the vent caps shall be kept in place to avoid electrolyte spray. Vent caps shall be maintained in functioning condition.

§§ 1926.442-1926.448 [Reserved]

Definitions

§ 1926.449 Definitions applicable to this subpart.

The definitions given in this section apply to the terms used in Subpart K. The definitions given here for "approved" and "qualified person" apply, instead of the definitions given in § 1926.32, to the use of these terms in Subpart K.

Acceptable. An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart K:

(a) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a qualified testing laboratory capable of determining the suitability of materials

and equipment for installation and use in accordance with this standard; or

(b) With respect to an installation or equipment of a kind which no qualified testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with those provisions; or

(c) With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives.

Accepted. An installation is "accepted" if it has been inspected and found to be safe by a qualified testing laboratory.

Accessible. (As applied to wiring methods.) Capable of being removed or exposed without damaging the building structure or finish, or not permanently closed in by the structure or finish of the building. (See *"concealed"* and *"exposed."*)

Accessible. (As applied to equipment.) Admitting close approach; not guarded by locked doors, elevation, or other effective means. (See *"Readily accessible."*)

Ampacity. The current in amperes a conductor can carry continuously under the conditions of use without exceeding its temperature rating.

Appliances. Utilization equipment, generally other than industrial, normally built in standardized sizes or types, which is installed or connecetcd as a unit to perform one or more functions.

Approved. Acceptable to the authority enforcing this Subpart. The authority enforcing this Subpart is the Assistant Secretary of Labor for Occupational Safety and Health. The definition of "acceptable" indicates what is acceptable to the Assistant Secretary of Labor, and therefore approved within the meaning of this Subpart.

Askarel. A generic term for a group of nonflammable synthetic chlorinated hydrocarbons used as electrical insulating media. Askarels of various compositional types are used. Under arcing conditions the gases produced, while consisting predominantly of noncombustible hydrogen chloride, can include varying amounts of combustible gases depending upon the askarel type.

Attachment plug (Plug cap)(Cap). A device which, by insertion in a receptacle, establishes connection between the conductors of the attached flexible cord and the conductors connected permanently to the receptacle.

Automatic. Self-acting, operating by its own mechanism when actuated by some impersonal influence, as for example, a change in current strength, pressure, temperature, or mechanical configuration.

Bare conductor. See *"Conductor."*

Bonding. The permanent joining of metallic parts to form an electrically conductive path which will assure electrical continuity and the capacity to conduct safely any current likely to be imposed.

Bonding jumper. A reliable conductor to assure the required electrical conductivity between metal parts required to be electrically connected.

Branch circuit. The circuit conductors between the final overcurrent device protecting the circuit and the outlet(s).

Building. A structure which stands alone or which is cut off from adjoining structures by fire walls with all openings therein protected by approved fire doors.

Cabinet. An enclosure designed either for surface or flush mounting, and provided with a frame, mat, or trim in which a swinging door or doors are or may be hung.

Certified. Equipment is "certified" if it:

(a) Has been tested and found by a qualified testing laboratory to meet applicable test standards or to be safe for use in a specified manner, and

(b) Is of a kind whose production is periodically inspected by a qualified testing laboratory. Certified equipment must bear a label, tag, or other record of certification.

Circuit breaker.—(a) (600 volts nominal, or less.) A device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent without injury to itself when properly applied within its rating.

(b) (Over 600 volts, nominal.) A switching device capable of making, carrying, and breaking currents under normal circuit conditions, and also making, carrying for a specified time, and breaking currents under specified abnormal circuit conditions, such as those of short circuit.

Class I locations. Class I locations are those in which flammable gases or vapors are or may be present in the air in quantities sufficient to produce explosive or ignitible mixtures. Class I locations include the following:

(a) *Class I, Division 1.* A Class I, Division 1 location is a location:

(1) In which ignitible concentrations of flammable gases or vapors may exist under normal operating conditions; or

(2) In which ignitible concentrations of such gases or vapors may exist frequently because of repair or maintenance operations or because of leakage; or

(3) In which breakdown or faulty operation of equipment or processes might release ignitible concentrations of flammable gases or vapors, and might also cause simultaneous failure of electric equipment.

Note.—This classification usually includes locations where volatile flammable liquids or liquefied flammable gases are transferred from one container to another; interiors of spray booths and areas in the vicinity of spraying and painting operations where volatile flammable solvents are used; locations containing open tanks or vats of volatile flammable liquids; drying rooms or compartments for the evaporation of flammable solvents; inadequately ventilated pump rooms for flammable gas or for volatile flammable liquids; and all other locations where ignitible concentrations of flammable vapors or gases are likely to occur in the course of normal operations.

(b) *Class I, Division 2.* A Class I, Division 2 location is a location:

(1) In which volatile flammable liquids or flammable gases are handled, processed, or used, but in which the hazardous liquids, vapors, or gases will normally be confined within closed containers or closed systems from which they can escape only in case of accidental rupture or breakdown of such containers or systems, or in case of abnormal operation of equipment; or

(2) In which ignitible concentrations of gases or vapors are normally prevented by positive mechanical ventilation, and which might become hazardous through failure or abnormal operations of the ventilating equipment; or

(3) That is adjacent to a Class I, Division 1 location, and to which ignitible concentrations of gases or vapors might occasionally be communicated unless such communication is prevented by adequate positive-pressure ventilation from a source of clean air, and effective safeguards against ventilation failure are provided.

Note.—This classification usually includes locations where volatile flammable liquids or flammable gases or vapors are used, but which would become hazardous only in case of an accident or of some unusual operating condition. The quantity of flammable material that might escape in case of accident, the adequacy of ventilating equipment, the total area involved, and the record of the industry or business with respect to explosions or fires are all factors

that merit consideration in determining the classification and extent of each location.

Piping without valves, checks, meters, and similar devices would not ordinarily introduce a hazardous condition even though used for flammable liquids or gases. Locations used for the storage of flammable liquids or of liquefied or compressed gases in sealed containers would not normally be considered hazardous unless also subject to other hazardous conditions.

Electrical conduits and their associated enclosures separated from process fluids by a single seal or barrier are classed as a Division 2 location if the outside of the conduit and enclosures is a nonhazardous location.

Class II locations. Class II locations are those that are hazardous because of the presence of combustible dust. Class II locations include the following:

(a) *Class II, Division 1.* A Class II, Division 1 location is a location:

(1) In which combustible dust is or may be in suspension in the air under normal operating conditions, in quantities sufficient to produce explosive or ignitible mixtures; or

(2) Where mechanical failure or abnormal operation of machinery or equipment might cause such explosive or ignitible mixtures to be produced, and might also provide a source of ignition through simultaneous failure of electric equipment, operation of protection devices, or from other causes, or

(3) In which combustible dusts of an electrically conductive nature may be present.

Note.—Combustible dusts which are electrically nonconductive include dusts produced in the handling and processing of grain and grain products, pulverized sugar and cocoa, dried egg and milk powders, pulverized spices, starch and pastes, potato and woodflour, oil meal from beans and seed, dried hay, and other organic materials which may produce combustible dusts when processed or handled. Dusts containing magnesium or aluminum are particularly hazardous and the use of extreme caution is necessary to avoid ignition and explosion.

(b) *Class II, Division 2.* A Class II, Division 2 location is a location in which:

(1) Combustible dust will not normally be in suspension in the air in quantities sufficient to produce explosive or ignitible mixtures, and dust accumulations are normally insufficient to interfere with the normal operation of electrical equipment or other apparatus; or

(2) Dust may be in suspension in the air as a result of infrequent malfunctioning of handling or processing equipment, and dust accumulations resulting therefrom may be ignitible by abnormal operation or failure of electrical equipment or other apparatus.

Note.—This classification includes locations where dangerous concentrations of suspended dust would not be likely but where dust accumulations might form on or in the vicinity of electric equipment. These areas may contain equipment from which appreciable quantities of dust would escape under abnormal operating conditions or be adjacent to a Class II Division 1 location, as described above, into which an explosive or ignitible concentration of dust may be put into suspension under abnormal operating conditions.

Class III locations. Class III locations are those that are hazardous because of the presence of easily ignitible fibers or flyings but in which such fibers or flyings are not likely to be in suspension in the air in quantities sufficient to produce ignitible mixtures. Class 111 locations include the following:

(a) *Class III, Division 1.* A Class III, Division 1 location is a location in which easily ignitible fibers or materials producing combustible flyings are handled, manufactured, or used.

Note.—Easily ignitible fibers and flyings include rayon, cotton (including cotton linters and cotton waste), sisal or henequen, istle, jute, hemp, tow, cocoa fiber, oakum, baled waste kapok, Spanish moss, excelsior, sawdust, woodchips, and other material of similar nature.

(b) *Class III, Division 2.* A Class III, Division 2 location is a location in which easily ignitible fibers are stored or handled, except in process of manufacture.

Collector ring. A collector ring is an assembly of slip rings for transferring electrical energy from a stationary to a rotating member.

Concealed. Rendered inaccessible by the structure or finish of the building. Wires in concealed raceways are considered concealed, even though they may become accessible by withdrawing them. [See *"Accessible.* (As applied to wiring methods.)"]

Conductor.—(a) *Bare.* A conductor having no covering or electrical insulation whatsoever.

(b) *Covered.* A conductor encased within material of composition or thickness that is not recognized as electrical insulation.

(c) *Insulated.* A conductor encased within material of composition and thickness that is recognized as electrical insulation.

Controller. A device or group of devices that serves to govern, in some predetermined manner, the electric power delivered to the apparatus to which it is connected.

Covered conductor. See *"Conductor."*

Cutout. (Over 600 volts, nominal.) An assembly of a fuse support with either a fuseholder, fuse carrier, or disconnecting blade. The fuseholder or fuse carrier may include a conducting element (fuse link), or may act as the disconnecting blade by the inclusion of a nonfusible member.

Cutout box. An enclosure designed for surface mounting and having swinging doors or covers secured directly to and telescoping with the walls of the box proper. (See *"Cabinet."*)

Damp location. See *"Location."*

Dead front. Without live parts exposed to a person on the operating side of the equipment.

Device. A unit of an electrical system which is intended to carry but not utilize electric energy.

Disconnecting means. A device, or group of devices, or other means by which the conductors of a circuit can be disconnected from their source of supply.

Disconnecting (or Isolating) switch. (Over 600 volts, nominal.) A mechanical switching device used for isolating a circuit or equipment from a source of power.

Dry location. See *"Location."*

Enclosed. Surrounded by a case, housing, fence or walls which will prevent persons from accidentally contacting energized parts.

Enclosure. The case or housing of apparatus, or the fence or walls surrounding an installation to prevent personnel from accidentally contacting energized parts, or to protect the equipment from physical damage.

Equipment. A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like, used as a part of, or in connection with, an electrical installation.

Equipment grounding conductor. See *"Grounding conductor, equipment."*

Explosion-proof apparatus. Apparatus enclosed in a case that is capable of withstanding an explosion of a specified gas or vapor which may occur within it and of preventing the ignition of a specified gas or vapor surrounding the enclosure by sparks, flashes, or explosion of the gas or vapor within, and which operates at such an external temperature that it will not ignite a surrounding flammable atmosphere.

Exposed. (As applied to live parts.) Capable of being inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts not suitably guarded, isolated, or insulated. (See *"Accessible* and *"Concealed."*)

Exposed. (As applied to wiring methods.) On or attached to the surface or behind panels designed to allow access. [See *"Accessible.* (As applied to wiring methods.)"]

Exposed. (For the purposes of § 1926.408(d), Communications systems.) Where the circuit is in such a position that in case of failure of supports or insulation, contact with another circuit may result.

Externally operable. Capable of being operated without exposing the operator to contact with live parts.

Feeder. All circuit conductors between the service equipment, or the generator switchboard of an isolated plant, and the final branch-circuit overcurrent device.

Festoon lighting. A string of outdoor lights suspended between two points more than 15 feet (4.57 m) apart.

Fitting. An accessory such as a locknut, bushing, or other part of a wiring system that is intended primarily to perform a mechanical rather than an electrical function.

Fuse. (Over 600 volts, nominal.) An overcurrent protective device with a circuit opening fusible part that is heated and severed by the passage of overcurrent through it. A fuse comprises all the parts that form a unit capable of performing the prescribed functions. It may or may not be the complete device necessary to connect it into an electrical circuit.

Ground. A conducting connection, whether intentional or accidental, between an electrical circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

Grounded. Connected to earth or to some conducting body that serves in place of the earth.

Grounded, effectively (Over 600 volts, nominal.) Permanently connected to earth through a ground connection of sufficiently low impedance and having sufficient ampacity that ground fault current which may occur cannot build up to voltages dangerous to personnel.

Grounded conductor. A system or circuit conductor that is intentionally grounded.

Grounding conductor. A conductor used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

Grounding conductor, equipment. The conductor used to connect the noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor and/or the grounding electrode conductor at the service equipment or at the source of a separately derived system.

Grounding electrode conductor. The conductor used to connect the grounding electrode to the equipment grounding conductor and/or to the grounded conductor of the circuit at the service equipment or at the source of a separately derived system.

Ground-fault circuit interrupter. A device for the protection of personnel that functions to deenergize a circuit or portion thereof within an established period of time when a current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

Guarded. Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of approach to a point of danger or contact by persons or objects.

Hoistway. Any shaftway, hatchway, well hole, or other vertical opening or space in which an elevator or dumbwaiter is designed to operate.

Identified (conductors or terminals). Identified, as used in reference to a conductor or its terminal, means that such conductor or terminal can be recognized as grounded.

Identified (for the use). Recognized as suitable for the specific purpose, function, use, environment, application, etc. where described as a requirement in this standard. Suitability of equipment for a specific purpose, environment, or application is determined by a qualified testing laboratory where such identification includes labeling or listing.

Insulated conductor. See "*Conductor.*"

Interrupter switch. (Over 600 volts, nominal.) A switch capable of making, carrying, and interrupting specified currents.

Intrinsically safe equipment and associated wiring. Equipment and associated wiring in which any spark or thermal effect, produced either normally or in specified fault conditions, is incapable, under certain prescribed test conditions, of causing ignition of a mixture of flammable or combustible material in air in its most easily ignitible concentration.

Isolated. Not readily accessible to persons unless special means for access are used.

Isolated power system. A system comprising an isolating transformer or its equivalent, a line isolation monitor, and its ungrounded circuit conductors.

Labeled. Equipment or materials to which has been attached a label, symbol or other identifying mark of a qualified testing laboratory which indicates compliance with appropriate standards or performance in a specified manner.

Lighting outlet. An outlet intended for the direct connection of a lampholder, a lighting fixture, or a pendant cord terminating in a lampholder.

Listed. Equipment or materials included in a list published by a qualified testing laboratory whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

Location.—(a) *Damp location.* Partially protected locations under canopies, marquees, roofed open porches, and like locations, and interior locations subject to moderate degrees of moisture, such as some basements.

(b) *Dry location.* A location not normally subject to dampness or wetness. A location classified as dry may be temporarily subject to dampness or wetness, as in the case of a building under construction.

(c) *Wet location.* Installations underground or in concrete slabs or masonry in direct contact with the earth, and locations subject to saturation with water or other liquids, such as locations exposed to weather and unprotected.

Mobile X-ray. X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled.

Motor control center. An assembly of one or more enclosed sections having a common power bus and principally containing motor control units.

Outlet. A point on the wiring system at which current is taken to supply utilization equipment.

Overcurrent. Any current in excess of the rated current of equipment or the ampacity of a conductor. It may result from overload (see definition), short circuit, or ground fault. A current in excess of rating may be accommodated by certain equipment and conductors for a given set of conditions. Hence the rules for overcurrent protection are specific for particular situations.

Overload. Operation of equipment in excess of normal, full load rating, or of a conductor in excess of rated ampacity which, when it persists for a sufficient length of time, would cause damage or dangerous overheating. A fault, such as a short circuit or ground fault, is not an overload. (See "*Overcurrent.*")

Panelboard. A single panel or group of panel units designed for assembly in the form of a single panel; including buses, automatic overcurrent devices, and with or without switches for the control of light, heat, or power circuits; designed to be placed in a cabinet or cutout box placed in or against a wall or partition and accessible only from the front. (See "*Switchboard.*")

Portable X-ray. X-ray equipment designed to be hand-carried.

Power fuse. (Over 600 volts, nominal.) See "*Fuse.*"

Power outlet. An enclosed assembly which may include receptacles, circuit breakers, fuseholders, fused switches, buses and watt-hour meter mounting means; intended to serve as a means for distributing power required to operate mobile or temporarily installed equipment.

Premises wiring system. That interior and exterior wiring, including power, lighting, control, and signal circuit wiring together with all of its associated hardware, fittings, and wiring devices, both permanently and temporarily installed, which extends from the load end of the service drop, or load end of the service lateral conductors to the outlet(s). Such wiring does not include wiring internal to appliances, fixtures, motors, controllers, motor control centers, and similar equipment.

Qualified person. One familiar with the construction and operation of the equipment and the hazards involved.

Qualified testing laboratory. A properly equipped and staffed testing laboratory which has capabilities for and which provides the following services:

(a) Experimental testing for safety of specified items of equipment and materials referred to in this standard to determine compliance with appropriate test standards or performance in a specified manner;

(b) Inspecting the run of such items of equipment and materials at factories for product evaluation to assure compliance with the test standards;

(c) Service-value determinations through field inspections to monitor the proper use of labels on products and with authority for recall of the label in the event a hazardous product is installed;

(d) Employing a controlled procedure for identifying the listed and/or labeled equipment or materials tested; and

(e) Rendering creditable reports or findings that are objective and without bias of the tests and test methods employed.

Raceway. A channel designed expressly for holding wires, cables, or busbars, with additional functions as permitted in this subpart. Raceways may be of metal or insulating material, and the term includes rigid metal conduit, rigid nonmetallic conduit, intermediate metal conduit, liquidtight flexible metal conduit, flexible metallic tubing, flexible metal conduit, electrical metallic tubing, underfloor raceways, cellular concrete floor raceways, cellular metal floor raceways, surface raceways, wireways, and busways.

Readily accessible. Capable of being reached quickly for operation, renewal, or inspections, without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (See *"Accessible."*)

Receptacle. A receptacle is a contact device installed at the outlet for the connection of a single attachment plug. A single receptacle is a single contact device with no other contact device on the same yoke. A multiple receptacle is a single device containing two or more receptacles.

Receptacle outlet. An outlet where one or more receptacles are installed.

Remote-control circuit. Any electric circuit that controls any other circuit through a relay or an equivalent device.

Sealable equipment. Equipment enclosed in a case or cabinet that is provided with a means of sealing or locking so that live parts cannot be made accessible without opening the enclosure. The equipment may or may not be operable without opening the enclosure.

Separately derived system. A premises wiring system whose power is derived from generator, transformer, or converter windings and has no direct electrical connection, including a solidly connected grounded circuit conductor, to supply conductors originating in another system.

Service. The conductors and equipment for delivering energy from the electricity supply system to the wiring system of the premises served.

Service conductors. The supply conductors that extend from the street main or from transformers to the service equipment of the premises supplied.

Service drop. The overhead service conductors from the last pole or other aerial support to and including the splices, if any, connecting to the service-entrance conductors at the building or other structure.

Service-entrance conductors, overhead system. The service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop.

Service-entrance conductors, underground system. The service conductors between the terminals of the service equipment and the point of connection to the service lateral. Where service equipment is located outside the building walls, there may be no service-entrance conductors, or they may be entirely outside the building.

Service equipment. The necessary equipment, usually consisting of a circuit breaker or switch and fuses, and their accessories, located near the point of entrance of supply conductors to a building or other structure, or an otherwise defined area, and intended to constitute the main control and means of cutoff of the supply.

Service raceway. The raceway that encloses the service-entrance conductors.

Signaling circuit. Any electric circuit that energizes signaling equipment.

Switchboard. A large single panel, frame, or assembly of panels which have switches, buses, instruments, overcurrent and other protective devices mounted on the face or back or both. Switchboards are generally accessible from the rear as well as from the front and are not intended to be installed in cabinets. (See *"Panelboard."*)

Switches.—(a) *General-use switch.* A switch intended for use in general distribution and branch circuits. It is rated in amperes, and it is capable of interrupting its rated current at its rated voltage.

(b) *General-use snap switch.* A form of general-use switch so constructed that it can be installed in flush device boxes or on outlet box covers, or otherwise used in conjunction with wiring systems recognized by this subpart.

(c) *Isolating switch.* A switch intended for isolating an electric circuit from the source of power. It has no interrupting rating, and it is intended to be operated only after the circuit has been opened by some other means.

(d) *Motor-circuit switch.* A switch, rated in horsepower, capable of interrupting the maximum operating overload current of a motor of the same horsepower rating as the switch at the rated voltage.

Switching devices. (Over 600 volts, nominal.) Devices designed to close and/or open one or more electric circuits. Included in this category are circuit breakers, cutouts, disconnecting (or isolating) switches, disconnecting means, and interrupter switches.

Transportable X-ray. X-ray equipment installed in a vehicle or that may readily be disassembled for transport in a vehicle.

Utilization equipment. Utilization equipment means equipment which utilizes electric energy for mechanical, chemical, heating, lighting, or similar useful purpose.

Utilization system. A utilization system is a system which provides electric power and light for employee workplaces, and includes the premises wiring system and utilization equipment.

Ventilated. Provided with a means to permit circulation of air sufficient to remove an excess of heat, fumes, or vapors.

Volatile flammable liquid. A flammable liquid having a flash point below 38 degrees C (100 degrees F) or whose temperature is above its flash point, or a Class II combustible liquid having a vapor pressure not exceeding 40 psia (276 kPa) at 38° C (100° F) whose temperature is above its flash point.

Voltage. (Of a circuit.) The greatest root-mean-square (effective) difference of potential between any two conductors of the circuit concerned.

Voltage, nominal. A nominal value assigned to a circuit or system for the purpose of conveniently designating its voltage class (as 120/240, 480Y/277, 600, etc.). The actual voltage at which a circuit operates can vary from the nominal within a range that permits satisfactory operation of equipment.

Voltage to ground. For grounded circuits, the voltage between the given conductor and that point or conductor of the circuit that is grounded; for ungrounded circuits, the greatest voltage between the given conductor and any other conductor of the circuit.

Watertight. So constructed that moisture will not enter the enclosure.

Weatherproof. So constructed or protected that exposure to the weather will not interfere with successful operation. Rainproof, raintight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

Wet location. See *"Location."*

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July 11, 1986

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 60

Patent Term Restoration Regulations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 60

[Docket No. 85N-0300]

Proposed Patent Term Restoration Regulations

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations to implement the patent term restoration provisions (Title II) of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417). Patent term restoration, extending patent life, is available for certain patents related to human drug products, as defined in 35 U.S.C. 156(f)(2), and to medical devices, food additives, or color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.).

DATES: Comments by October 9, 1986. FDA proposes that any final rule based on this proposal become effective 60 days after its publication in the **Federal Register.**

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) (the act). Title II of the act amended the U.S. patent laws to provide patent term restoration for certain patents related to human drugs (including antibiotics and biologics) as defined in 35 U.S.C. 156(f)(2), and to medical devices, food additives, or color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.). In the **Federal Register** of June 28, 1985 (50 FR 26791), FDA published an advance notice of proposed rulemaking, soliciting comments on the agency's implementation of Title II. This proposal includes a discussion of the five comments that FDA received in response to that notice.

Administration of Title II is divided between FDA and the U.S. Patent and Trademark Office (PTO). PTO has issued guidelines (and will soon promulgate regulations) governing the format, content, and submission of patent term restoration applications. 1047 *Official Gazette Patent Office* 16 (October 9, 1984). PTO is responsible for accepting applications, determining whether a patent is eligible for patent extension, and, if appropriate, issuing a patent extension. FDA assists PTO in its eligibility determination, and is responsible for determining the length of the FDA review period for the product related to the patent. If petitioned to do so, FDA also will determine whether the applicant acted with due diligence and hold an informal hearing on a due diligence determination.

Title I of the act amended the Federal Food, Drug, and Cosmetic Act to greatly expand the number of drugs for which FDA may accept abbreviated new drug applications (ANDA's). It also provides partial marketing protection ("exclusivity") for certain human drugs requiring full new drug applications (NDA's). The ANDA provisions require FDA to address, for the first time, certain patent-related issues before allowing generic drug manufacturers to market patented drug products. Regulations implementing the provisions of Title I of the act will be the subject of a separate rulemaking proceeding.

The proposed regulations set forth in this document, if adopted as final regulations, will implement FDA's responsibilities under Title II.

II. Background

Patents grant patent holders the right to exclude others from making, using, or selling an invention. The granting of this exclusive right is designed to encourage innovation. The patent holder will reap greater profits if protected from direct competition. These profits are intended to serve as incentives for creating innovative products that benefit the public.

The patent term in the United States is 17 years. However, the effective patent term is frequently less than 17 years because patents are often obtained before products are actually marketed. Many factors influence the length of the effective patent term, including Federal regulation. The Federal Food, Drug, and Comestic Act and the Public Health Service Act require that certain products receive FDA approval before marketing. For example, new human drug products generally must undergo extensive testing in animals and humans to show that the drugs are both safe and effective before FDA will approve the product for marketing.

The prospect of short effective patent terms, coupled with rising research and development costs, led the pharmaceutical industry and others to assert that short effective patent terms "would result in decreased expenditures for reseach and development and, eventually, a decline in the introduction of new drugs." H. Rept. 857, 98th Cong., 2d Sess., Part 1, at 17 (1984). Consequently, in order to stimulate product development and innovation, Congress began considering ways to extend patent life to compensate patent holders for marketing time lost while awaiting government approval. The concept of patent term restoration was the result.

III. The Drug Price Competition and Patent Term Restoration Act of 1984

Since the late 1970's, Congress has considered legislation to address the problem of short effective patent terms. During the 96th Congress, the House of Representatives considered patent term restoration legislation, and in the 97th Congress, the Senate unanimously passed, and the House of Representatives narrowly failed to approve, a patent term restoration bill.

Comprehensive legislative proposals were not the only congressional actions on patent term restoration. For example, in 1983, Congress added sections 155 and 155A to the patent statute (Title 35 of the United States Code). These sections granted patent term restoration to specific products (e.g., section 155 pertains to aspartame). Congress has also passed private bills to extend patents for certain products.

In the 98th Congress, a bill was introduced that included both patent term restoration and ANDA provisions. The compromise bill, which eventually became the Drug Price Competition and Patent Term Restoration Act of 1984, was passed in the Senate on August 10, 1984, and then unanimously approved in the House on September 6, 1984. The President signed this bill into law on September 24, 1984.

Title II of the act contains the patent term restoration provisions under which patent holders can potentially receive an extension equal to approximately half the time required to test the product before submitting the marketing application, plus all the time require for FDA to approve the marketing application.

Title II places several limits, however, on the actual length of patent extension. The period of extension may not exceed 5 years. The period of patent extension plus the patent term remaining after approval of the product may not exceed 14 years. If a marketing applicant did not act with due diligence during a portion of the product's regulatory review period, that time may not be counted toward patent extension.

In the **Federal Register** of March 8, 1985 (50 FR 9424), the Commissioner of Food and Drugs redelegated to the Associate Commissioner for Health Affairs the performance of the functions required of the Secretary of Health and Human Services under 35 U.S.C. 156. See 21 CFR 5.27. This delegation, however, does not include the holding of informal hearings under 33 U.S.C. 156(d)(2)(B)(ii).

IV. Provisions of this Proposal

The agency is proposing to codify these regulations in new 21 CFR Part 60.

Subpart A of the proposed regulations contains general provisions, including definitions. Proposed Subpart B contains provisions relating to FDA's assistance to PTO in determining eligibility. In Subpart C, the agency is proposing regulations to govern the determination of regulatory review periods. Subpart D contains provisions for challenging a regulatory review period determination on the grounds that an applicant did not diligently pursue premarketing approval. Standards for determining due diligence are also proposed. In Subpart E, the agency is proposing regulations governing informal hearings on the issue of due diligence.

A. General Provisions

In Subpart A, the agency is proposing definitions for purposes of Title II that are consistent, wherever possible, with definitions used in other areas of food and drug law.

Proposed § 60.3(a) incorporates the definitions contained in Title II for "approved product," "due diligence," "product," "human drug product," "major health or environmental effects test," "informal hearing," "patent," and "regulatory review period." For the sake of completeness, proposed definitions in § 60.3(b) incorporate the definitions of "product" and "human drug product" along with the related terms defined in that paragraph. The incorporated definitions of "major health or environmental effects test," "due diligence," "informal hearing," and "regulatory review period" appear in other sections of the proposed regulations.

Proposed § 60.3(b) contains additional specific definitions for the terms "active ingredient," "medical device," "food additive," and "color additive." Although the term "active ingredient" appears in Title II's definition of human drug product, FDA has previously established a definition for this term. FDA regulations define "active ingredient" as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals" including those components that may undergo chemical change in the drug product's manufacture and be present in the drug product in a modified form intended to furnish the specified activity or effect. See 21 CFR 210.3(b)(7). Accordingly, this proposal adopts the established definition of active ingredient. Additionally, the definitions of "medical device," "food additive" and "color additive" in proposed § 60.3(b) refer to specific provisions of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to make clear that only products subject to a regulatory review period, as defined in Title II, are included in the definition.

Definitions of "applicant," "application," "marketing applicant," and "marketing application" are included in proposed § 60.3(b) to emphasize the distinction between applicants or applications for patent term extension and applicants or applications for marketing approval.

B. Eligibility Assistance

FDA is proposing in new § 60.10 to implement the agency's role in assisting PTO in determining eligibility for patent term restoration under 35 U.S.C. 156 (a) and (d)(1). Under those sections of the U.S. Code, a patent term restoration applicant must satisfy six conditions. First, the applicant must show that the patent has not expired (35 U.S.C. 156(a)(1)). Second, the applicant must establish that the patent has not been previously extended (35 U.S.C. 156(a)(2)). Third, the patent owner or its agent must submit the application, including details regarding the patent and the activities undertaken to secure FDA approval (35 U.S.C. 156(a)(3)). Fourth, the applicant must establish that the product was subject to a regulatory review period before its commercial marketing or use (35 U.S.C. 156(a)(4)). Fifth, the applicant must show that the product either represents the first permitted commercial marketing or use of the product after such regulatory review period or, in the case of a product manufactured under a process patent that primarily uses recombinant deoxyribonucleic acid (DNA) technology, represents the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent (35 U.S.C. 156(a)(5)). Finally, the applicant must submit the application for patent term restoration to PTO within 60 days of FDA approval of the commercial marketing application (35 U.S.C. 156(d)(1)).

Although the Commissioner of Patents and Trademarks is to decide whether an applicant has satisfied these six conditions, FDA possesses expertise and records essential to deciding whether the last four requirements have been satisfied. Consequently, to facilitate eligibility decisions, FDA, in cooperation with PTO, has developed the procedures proposed in § 60.10. These procedures will be explained in greater detail in a separate memorandum of understanding between PTO and FDA (currently in process).

The agency proposes that, upon written request from PTO, FDA will advise PTO whether the product underwent a regulatory review period within the meaning of 35 U.S.C. 156(g) before commercialization and whether such marketing approval represents the first commercial marketing or use of that product. In order to implement 35 U.S.C. 156(a)(5)(B), which provides for the special case of a process patent using recombinant DNA technology (techniques that involve recombination of heterologous nucleic acids, e.g., in vitro DNA or RNA gene splicing, cell fusion hybridoma technology), the agency proposes that in such cases FDA will state whether the approved commercial marketing of the product is the first use of the product manufactured under the process claimed in the patent. FDA also proposes to inform PTO whether the patent term restoration application was received within 60 days after the product was approved. Additionally, § 60.10 of the proposed rule explains that FDA may provide PTO with any other information relevant to PTO's determination whether the patent is eligible for extension. Finally, § 60.10(b) of the proposed rule would make such

correspondence available to the applicant and to the public.

C. Regulatory Review Period Determinations

1. FDA action or regulatory review period determinations.

Proposed § 60.20 would implement procedures currently employed by the agency for regulatory review period determinations.

Under the proposal, FDA will consult its records and experts to verify the dates contained in an application, where possible, and to determine a product's regulatory review period under proposed § 60.22. Once the regulatory review period has been determined, FDA will notify both PTO and the applicant of the determination, file a copy of the determination in a docket for the application located in FDA's Dockets Management Branch, and publish the determination in the **Federal Register**. The **Federal Register** notice will state the applicant's name, the product's trade name (and generic name, if the product is a drug), the product's approved uses and patent number, an explanation of any discrepancies between the dates in the application and FDA records, and the regulatory review determination, including a statement of the length of the testing and approval phases and the dates used in calculating each phase.

One comment submitted in response to the June 28, 1985, notice suggested that FDA include an eligibility section in a regulatory review period determination that would identify a drug product's active ingredient and list any previously approved drugs containing the same active ingredient.

The agency does not publish a regulatory review period determination if the human drug in question is not the first commercial use of the active ingredient. A reference to a drug's active ingredient is currently included in **Federal Register** notices of regulatory review period determination, and FDA considers this sufficient to inform interested parties about the drug product under consideration.

A second comment suggested that FDA insert a definition of "initially submitted" in the supplementary information section of its **Federal Register** notices and state the specific date on which a marketing application or petition was "initially submitted."

FDA does not believe it necessary to define the term "initially submitted" in every **Federal Register** notice. Proposed § 60.22(d) defines the term "initially submitted" consistent both with current agency practice and with the legislative history of the act. See H. Rept. 857, 98th Cong., 2d Sess., Part 1, at 44 (1984). FDA agrees that the specific date on which an application or petition is initially submitted should be referred to in its **Federal Register** notices setting forth a regulatory review period determination. Consequently, FDA includes in its **Federal Register** notices the dates used to determine a product's regulatory review peiod, including the date upon which the marketing application was "initially submitted."

2. Testing and Approval Phases of the Regulatory Review Period.

Proposed § 60.22 defines the testing and approval phases of a regulatory review period for human drugs, food and color additives, and medical devices in accordance with 35 U.S.C. 156(f)(3) and (g) (1), (2), and (3). Additionally, the proposal considers the "clinical investigation" portion of the testing phase for medical devices to begin when an investigational device exemption (IDE) is finally approved, or, if the marketing applicant has given conditional IDE approval pending institutional review board (IRB) approval, when IRB approval has been obtained. If an IDE is not required, the proposal considers a clinical investigation to begin when IRB approval has been obtained, or, if neither IDE or IRB approval is required, on the date on which the device is first used with human subjects as part of a clinical investigation to secure FDA market approval.

The proposal also defines the terms "major health or environmental effects test" for purposes of calculating the testing phase for food and color additives, and "initially submitted" and "approved" for purposes of calculating the end of the testing phase and beginning of the approval phase for all applications subject to Title II.

Two comments submitted in response to the June 28, 1985, notice concerned the measurement of the 6-month requirement for a major health or environmental effects test. One comment cited several regulations that it suggested could trigger the beginning of a major health or environmental effects test whether or not the test article is exposed to the test system. Another comment focused on the type of action that would initiate a major health or environmental effects test and recommended that "a test should be considered as initiated the day that compliance with the good laboratory practice regulations (GLP's) begins* * *."

The agency has not adopted these suggestions in this proposal. The proposed definition is consistent with the statutory language and the legislative history. See 35 U.S.C. 156(f)(3); H. Rept. 857, 98th Cong., 2d Sess., Part 1, at 43 (1984). Consequently, under the proposed rule, a major health or environmental effects test would be any test that is reasonably related to the evaluation of the product's health or environmental effects, produces data necessary for marketing approval, and is conducted over a 6-month period, excluding time spent analyzing or evaluating data.

In this proposal, FDA declines to treat any specific event as the start of the required 6-month period for a major health or environmental effects test. This decision is supported by the statutory language and made necessary by the differences between health and environmental effects tests. For example, compliance with GLP regulations might be inappropriate as a triggering event for an environmental effects test because an environmental effects test might not be subject to the GLP regulations. Furthermore, compliance with GLP regulations may not always signal the start of a test for health effects. A laboratory conducting studies for several products, for example, might have satisfied GLP regulations far in advance of testing the product at issue in the application. In such a case, compliance with GLP regulations would be unrelated to testing the product. The statutory language also argues against using GLP compliance as the start of a major health or environmental effects test because "the data [from a major health or environmental effects test must be] submitted to receive permission for commercial marketing or use." 35 U.S.C. 156(f)(3). Compliance with GLP regulations does not, in itself, yield such data.

Two other comments addressed an issue that FDA raised in the June 28, 1985, notice. In that notice, FDA asked for comment on whether multiphase studies, with discrete phases lasting less than 6 months but totalling more than 6 months, could constitute a major health or environmental effects test. One comment argued that human safety studies, animal studies, toxicity studies, and other tests required for premarket additive approval are interdependent (rather than independent) because the tests "have to be performed on a sequential basis for the results to be meaningful." Moreover, the comment declared, because most studies require several years of testing, FDA should not be overly concerned with short, multiphase studies. Another comment suggested that a "major health or environmental effects test" be construed

as a test or tests which by their overlapping nature "support or are intended to support applications for research or marketing permits for products regulated by the agency" whether or not each test individually takes 6 months or longer to perform.

Since the agency has not received a patent term restoration application for a food or color additive, the agency has elected to defer this issue until it has acquired sufficient information to make a decision. Hence, this proposed rule does not attempt to describe specifically which test might not constitute interdependent health or environmental effects tests, or whether the aggregate of interdependent, overlapping tests may meet the statutory 6-month period. Until FDA has acquired more experience in this area, each case will be reviewed on its own merits.

Under the proposed regulations, FDA will consider a marketing application "initially submitted" when the application or petition contains sufficient information to allow FDA to begin substantive review. For example, in the case of human drugs, an NDA that lacks the required manufacturing/controls section does not contain sufficient information to permit FDA review and would not be "initially submitted" under this proposal. On the other hand, if FDA has commenced substantive review of the NDA and simply requested additional miscellaneous information, the NDA would have been "initially submitted." The legislative history supports this interpretation of "initially submitted." See H. Rept. 857, 98th Cong., 2d Sess., Part 1, at 44 (1984).

A marketing application is "approved" under proposed § 60.22(d) only on the date FDA notifies the applicant in writing that the application is approved. For example, for human drug products, an approval letter will be issued when the only conditions which must be met prior to marketing relate to minor editorial labeling deficiencies as described in § 314.105, and will signify approval of a marketing application; while an "approvable" letter issued under § 314.110 (which requires the applicant to take further substantive actions to meet certain conditions or supply additional information prior to marketing) will not signify approval.

3. Revision of Regulatory Review Period Determinations

The proposed regulations would establish a procedure under § 60.24 that allows any person to request a revision of a regulatory review period determination within 60 days after the publication of that determination in the **Federal Register.** The person requesting a revision must explain the basis of the requested revision and may submit evidence to support its position. FDA may provide the applicant an opportunity to respond to the request for revision. Any revision under this section will be made under proposed § 60.24, and FDA will notify both PTO and the applicant of any revision and publish that revision in the **Federal Register.**

FDA intends proposed § 60.24 to apply to those situations in which a person believes that there was an error in the dates used by or supplied to FDA to determine a product's regulatory review period. FDA has already applied this procedure for an applicant who discovered a discrepancy between its records and FDA's records. The applicant informed FDA of the discrepancy and submitted written evidence to support its position. FDA reviewed the evidence, found the applicant correct, and amended its determination.

4. Final Action on Regulatory Review Period Determinations

Proposed § 60.26 describes the circumstances in which FDA will consider a regulatory review period determination final. In general, a regulatory review period determination is final upon expiration of the 180-day period allowed for filing a due diligence petition. Once this period expires, FDA will notify PTO and the applicant that the determination is final and will file a copy of the notification in the docket established for the application in FDA's Dockets Management Branch. The determination is not final if, before the expiration of the 180-day period, PTO or FDA receives new information that affects the regulatory review period determination, such as evidence that one of the dates used in the regulatory review period determination is erroneous, or receives a request for a regulatory review period revision, a due diligence petition, or a request for a due diligence hearing under other sections of the proposed regulations. If one of these events intercedes, the regulatory review period determination is not final until the 180-day period expires or the request or petition is resolved, whichever is later.

5. Time Frame for Determining Regulatory Review Periods

Proposed § 60.28 would implement 35 U.S.C. 156(d)(2)(A), which sets time limits for FDA to determine a product's regulatory review period, notify PTO of the determination, and publish the determination in the **Federal Register.** Additionally, FDA proposes to notify the applicant of the regulatory review period determination.

The proposal also addresses two situations not covered by Title II. First, under proposed § 60.28(b), FDA may extend the 30-day limit for regulatory review period determinations whenever the determination process is suspended due to FDA action, PTO action, or the receipt of new information by either agency that warrants an extension. Second, proposed § 60.28(c) would provide that the time limit does not apply whenever an applicant withdraws the application or PTO declares the patent ineligible for patent term restoration. These provisions would help avoid situations in which the 30-day time limit would require FDA to publish a regulatory review period determination based on incorrect or incomplete information, or a moot application.

D. Due Diligence Petitions

The proposed regulations contained in Subpart D govern the format and procedures to be followed when due diligence petitions are submitted and describe the standard by which due diligence will be measured. Under this proposed subpart, FDA would reduce the regulatory review period by the amount of time the applicant or the marketing applicant unreasonably delayed the agency's review.

1. Filing, Format, and Content of Petitions

Proposed § 60.30 would implement 35 U.S.C. 156(d)(2)(B)(i), which allows any person to file a petition with FDA challenging a regulatory review period determination by alleging that the applicant did not act with "due diligence" in pursuing FDA approval of the product. Proposed § 60.30(a) states that any person may file a due diligence petition but that the petition must be filed no later than 180 days after the publication of the product's regulatory review period determination in the **Federal Register.** Proposed § 60.30(b) establishes the general format and filing procedures for due diligence petitions by adopting, with the minor variations discussed below, existing FDA procedures contained in 21 CFR 10.20 and 10.30 applicable to citizen petitions.

In proposed § 60.30 (c) and (d), FDA sets forth additional requirements for due diligence petitions which are not contained in 21 CFR 10.20 and 10.30. For example, under proposed § 60.20(c), the petitioner must claim that the applicant did not act with due diligence during some part of the regulatory review period. However, even though the act

places the burden of proof on the petitioner to make the necessary showing that the applicant failed to act with due diligence, the proposed regulation does not require extensive evidence of the applicant's lack of due diligence, partly because this type of evidence usually is not readily available to prospective petitioners. See H. Rept. 857, 98th Cong., 2d Sess., Part 1, at 41 (1984). Instead, the proposed regulation adopts the standard enunciated in the legislative history by requiring "sufficent facts to merit an investigation by FDA of whether the applicant acted with due diligence." See *id.* at 42. Proposed § 60.34, discussed below, gives additional guidance regarding the petitioner's initial burden by stating the circumstances under which FDA may reject the petition without first conducting a due diligence investigation.

Proposed § 60.30(d) would require the petitioner to serve a copy of the petition on the applicant. The purpose of this requirement is to provide the applicant with an opportunity to respond to the petition within the short 90-day statutory time limit set for FDA action on the petition. See 35 U.S.C. 156(d)(2)(B)(i).

2. Applicant Response to Petition

Proposed § 60.32 provides the applicant with an opportunity to respond to the due diligence petition. Because FDA action on the petition could affect the length of patent term restoration granted to the applicant, the agency is proposing a mechanism by which the applicant may provide some input into the due diligence determination at an early stage.

The proposed rule requires the applicant to respond to the petition within 10 days of its receipt of a copy of the petition. Under the act, FDA must render a decision on the due diligence petition within 90 days of FDA's receipt of the petition. This short statutory period compels FDA to permit only 10 days for the applicant to file its response to the petition.

Proposed § 60.32(b) would limit the applicant's response to the issues raised in the due diligence petition. This provision is designed to exclude irrelevant or immaterial information in the applicant's response.

3. FDA Action on Petitions

Proposed § 60.34 contemplates two possible actions on a due diligence petition. FDA may deny the petition without conducting a due diligence investigation. Alternatively, FDA may investigate the applicant's due diligence and make a "due diligence determination" based on the investigation. The proposal also reflects the time limit contained at 35 U.S.C. 156(d)(2)(B)(i), which requires FDA action on a due diligence petition within 90 days after FDA receives the petition.

Under proposed § 60.34(b), FDA would be able to summarily deny a due diligence petition in four situations. These instances are where the petition: (1) Fails to conform to the filing requirements of 21 CFR 10.20; (2) fails to contain the information required by 21 CFR 10.30; (3) fails to provide sufficient facts or reasonable allegations that could be used to demonstrate a lack of due diligence; or (4) fails to allege a sufficient total amount of time during which the applicant did not exercise due diligence such that, even if true, the maximum patent extension sought in the application would not be affected. This last provision, proposed § 60.34(b)(4), would preclude the unnecessary expenditure of FDA resources in investigating due diligence petitions that are essentially moot because they cannot affect the potential patent extension.

Conversely, under proposed § 60.34(c), FDA may summarily grant a due diligence petition when there is no controversy over the petition. This provision, like § 60.34(b)(4), will help prevent useless due diligence investigations. If the applicant has no objection to a reduction in the regulatory review period, there is no reason to formally investigate the petition's allegations. Under proposed § 60.34(c), the agency would state in its due diligence determination that FDA granted the petition on the basis of the applicant's acquiescence.

4. Due Diligence Standard

The agency proposes that § 60.36(a) incorporate the definition of due diligence set forth in 35 U.S.C. 156(d)(3), which is that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period. This flexible definition is consistent with congressional intent to apply a rule of reason or balancing approach to due diligence determinations.

In giving FDA the responsibility for determining due diligence, Congress recognized the agency's considerable expertise and experience in approving regulated products. Therefore, in determining whether an applicant pursued marketing approval with due diligence, FDA will examine the applicant's actions in light of the agency's experience with similar situations and products.

For example, FDA will consider whether an allegedly nondiligent applicant's delay in submitting clinical results to FDA was reasonable considering the usual amount of time applicants need to analyze test results. Similarly, if an allegedly nondiligent applicant relies on the incapacity of a principal investigator to explain a long delay in concluding a study, FDA will use its scientific expertise to determine whether the study was one that could be disrupted by the absence of the principal investigator, or whether the applicant could have easily found a substitute investigator without disrupting or delaying the study.

In developing this due diligence standard, FDA recognizes that the term "diligence" is used elsewhere in patent law and practice. For example, the provision of the patent law concerning certain circumstances under which a person is not entitled to a patent states that "[i]n determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the *reasonable diligence* of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other." 35 U.S.C. 102(g) (emphasis added).

The courts have held, under the section above, that whether there has occurred a delay sufficient to constitute a lack of due diligence depends on the facts and circumstances of each case. *Correge* v. *Murphy*, 705 F.2d 1326 (Fed. Cir. 1983); *Shindelar* v. *Holdeman*, 628 F.2d 1337 (C.C.P.A. 1980). These decisions, while not controlling, can help illuminate the interpretation of "due diligence" under Title II. The proposed regulations reflect these decisions by establishing flexible rules, based on a case-by case approach, to determine whether an applicant acted with due diligence during the regulatory review period.

One comment submitted in response to the June 28, 1985, notice suggested that the agency determine due diligence by comparing the regulatory review period of the product to the so-called "ordinary" regulatory review period for similar products. Under the procedure proposed by the comment, if the applicant's regulatory review period was less than or equal to the time similar products ordinarily required, a conclusive presumption of due diligence would arise. However, if the regulatory review period exceeded the average, a rebuttable presumption of nondiligence would arise.

This proposal does not adopt the comment's suggestion because FDA believes that such a rule would be too inflexible. However, FDA does agree that comparisons of regulatory review periods may be relevant to a due diligence determination. Proposed § 60.36(a) explicitly refers to the regulatory review periods for comparable products as one of the factors that may be considered in FDA's due diligence determinations. Because the agency believes the length of regulatory review periods for comparable products is only one of several considerations which may be relevant to due diligence determinations, FDA has listed in proposed § 60.36(a) other factors that may affect due diligence determinations. FDA stresses that the eight factors listed in proposed § 60.36(a) merely illustrate the kinds of factors that FDA will consider in due diligence determinations.

The following examples indicate how FDA might apply this flexible approach to some of the eight factors. Under proposed § 60.36(a)(2), FDA may find a lack of due diligence where the regulatory review delay resulted from the applicant's failure to comply with FDA requirements. If, for example, FDA had informed the marketing applicant that it failed to conform to the current good manufacturing practice regulations, and the applicant took no steps toward compliance, the marketing applicant's inactivity could constitute a lack of due diligence. FDA's determination of a lack of due diligence might then result in a reduction of the regulatory review period equal to the amount of time the applicant took to conduct the inadequate study.

Proposed § 60.36(a)(3) would excuse delay solely attributable to FDA regulatory review action. This includes time spent by FDA scientists reviewing data submitted in support of a marketing application, and reasonable time attributable to FDA requests for additional information. The provision specifically would exclude delays caused by FDA enforcement or compliance action.

Under proposed § 60.36(a)4), non-FDA government action might excuse some delays. For example, if a State or local government enacted new laws, such as environmental protection statutes or worker safety ordinances, which interrupt the marketing applicant's testing phase, the delay caused by such governmental action might not constitute a lack of due diligence. Conversely, however, if the marketing applicant fails to comply with existing laws, the delay could constitute a lack of due diligence.

The unexpected unavailability of a principal investigator may, under proposed § 60.36(a)(5), be a valid excuse for some delay during the regulatory review period. Proposed § 60.36(a)(8), however, provides a check. For example, if the applicant could have replaced the investigator without interrupting the study itself, FDA could find that the delay demonstrated a lack of due diligence.

Proposed § 60.36(a) (6) and (8) together may permit an applicant to show that a delay resulted from the physical destruction of an essential testing facility and that the applicant acquired a new facility as soon as possible. This is consistent with the congressional direction that a temporary unavailability of test facilities would not constitute a lack of due diligence. See H. Rept. 857, 98th Cong., 2d Sess., Part 1, at 42 (1984).

The examples given above are intended only as illustrations of the types of factors that FDA may consider in its due diligence determinations. Principally, FDA will use its experience and expertise in premarketing approval to make the due diligence determination considering the facts and circumstances in each case.

Proposed § 60.36(b) would provide that, in making a due diligence determination, FDA may consider the actions of the patent term restoration applicant, the marketing applicant, and all those acting on behalf of them. This proposal recognizes that, due to business arrangements and other circumstances, the patent applicant frequently is not the same entity as the firm or person that pursues FDA approval of a marketing application.

E. Due Diligence Hearings

1. Request for Hearing

Proposed § 60.40 incorporates the statutory time-period requirement for filing a request for an informal hearing contained in 35 U.S.C. 156(d)(2)(B)(ii). Under this proposal, any person, including persons who filed a due diligence petition, the applicant, the marketing applicant, and third parties, may request a due diligence hearing. Because the agency proposes to adopt, with slight modifications, the hearing procedures at Part 16, the format for a hearing request is patterned on the format of the notice of opportunity for Part 16 hearings set forth at 21 CFR 16.22(a). The hearing request should be filed under the docket number of the **Federal Register** notice of the agency's regulatory review period determination and should specify the facts and the actions which are to be the subject of the hearing. The person requesting the hearing should be identified in the hearing request and certify that a true copy has been served upon interested parties, such as the patent term restoration applicant and the due diligence petitioner. This direct service on parties outside of FDA is necessary because of the requirement in Title II that FDA generally hold the hearing within 30 days of FDA's receipt of the request. Additionally, FDA must receive the hearing request within 60 days after the agency publishes its due diligence determination.

Proposed § 60.40(c) would require the person requesting a hearing to state whether it desires the hearing within 30 or 60 days after FDA's receipt of the request. This requirement implements the provision in Title II that a person requesting such a hearing may elect to have the hearing within 60 days. This requirement of an early decision by the party requesting the hearing will help FDA and the parties comply with the short statutory time frames applicable to due diligence hearings.

2. Notice of Hearing

Proposed § 60.42 would implement the hearing notice requirements contained in 35 U.S.C. 156(d)(2)(B)(ii). Title II request FDA to notify the patent holder and "any interested person" of the hearing and provide them with an opportunity to participate. The proposal would require that notice of the hearing be given to the applicant, the petitioner, and the person requesting the hearing (who might also be the applicant or the petitioner) 10 days before the hearing date.

3. Hearing Procedure

Proposed § 60.44 would establish the basic procedure, status of parties, standards, and burdens of proof to be used in due diligence hearings. Title II requires FDA, upon the request of any interested person, to hold an "informal hearing" on its due diligence determinations and defines an informal hearing as one having the meaning prescribed by section 201(y) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(y)). FDA's hearing regulations at 21 CFR Part 16 satisfy the requirements of section 201(y), and the agency proposes to adopt for its due diligence hearings the procedures contained in 21 CFR Part 16 with slight modifications.

Under the proposed rule, the basic procedures during and after the due diligence hearings would be governed

by Part 16 through a cross-reference in proposed § 60.44. Should any inconsistencies arise between the two parts, the provisions contained in Part 60 would be controlling. For example, proposed § 60.40 rather than § 16.22 would govern the initiation of due diligence hearings.

Proposed § 60.44 would also give all parties to a due diligence hearing the rights that are enjoyed by a single party under Part 16.

Proposed § 60.44 makes clear that the identical standards used in FDA's due diligence determinations will be applied to due diligence hearings and that the person requesting such a hearing has the burden of proof to show that the agency is in error.

4. Administrative Decision

Proposed § 60.46 describes the procedures for the decision the Commissioner must make after a due diligence hearing. The decision is termed a "due diligence redetermination" in the proposed regulations to distinguish this decision from the subject of the hearing, which is the agency's due diligence determination issued in response to a due diligence petition. The Commissioner may delegate both the authority to conduct the informal hearing and to make the redetermination to an official from within the Office of the Commissioner other than the Associate Commissioner for Health Affairs. See 21 CFR 5.27.

Proposed § 60.46 would implement the statutory requirement that the Commissioner notify PTO of the due diligence redetermination and publish the redetermination in the **Federal Register**. FDA also proposes to notify the person requesting the hearing, the petitioner, and the applicant of the redetermination by sending them copies of the notice sent to PTO.

V. Economic Assessment

The agency has considered the economic impact of this rule and the relationship of the requirements in this rule with Pub. L. 98–417. The patent extension provisions in Title II of Pub. L. 98–417 will result in economic consequences for affected patent holders and their potential competitors. However, the agency concludes that these impacts are directly attributable to the statute. This rule will affect neither the timing nor magnitude of these economic impacts. The procedural and interpretive nature of the rule will clarify and facilitate implementation of Title II, but this benefit by itself does not constitute a significant economic impact.

Thus, the agency concludes that this rule is not a "major rule" as defined by Executive Order 12291 and does not require a regulatory impact analysis. Similarly, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354).

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1980

Sections 60.24(a), 60.30(a), and 60.40 of this proposed rule contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information rquirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

VIII. Request for Comments

Interested persons may, on or before October 9, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 60

Administrative practice and procedure, Drugs, Medical devices, Food additives, Color additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Drug Price Competition and Patent Term Restoration Act of 1984, it is proposed that new Part 60 be added to read as follows:

PART 60—PATENT TERM RESTORATION

Subpart A—General Provisions

Sec.
60.1 Scope.
60.2 Purpose.
60.3 Definitions.

Subpart B—Eligibility Assistance

60.10 FDA assistance on eligibility.

Subpart C—Regulatory Review Period Determinations

60.20 FDA action on regulatory review period determinations.
60.22 Regulatory review period determinations.
60.24 Revision of regulatory review period determination.
60.26 Final action on regulatory review period determinations.
60.28 Time frame for determining regulatory review periods.

Subpart D—Due Diligence Petitions

60.30 Filing, format, and content of petitions.
60.32 Applicant response to petition.
60.34 FDA action on petitions.
60.36 Standard of due diligence.

Subpart E—Due Diligence Hearings

60.40 Request for hearing.
60.42 Notice of hearing.
60.44 Hearing procedure.
60.46 Administrative decision.

Authority: Secs. 409, 505, 507, 515, 706, 52 Stat. 1052–1053 as amended, 59 Stat. 463 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 90 Stat. 552–559 (21 U.S.C. 348, 355, 357, 360e, 376); secs. 215, 301, 351, 354–360f, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 241, 262, 263b–263n); secs. 201, 202, 203, 98 Stat. 1599–1604 (35 U.S.C. 156, 271, 282); 21 CFR 5.10, 5.11.

Subpart A—General Provisions

§ 60.1 Scope.

(a) This part sets forth procedures and requirements for Food and Drug Administration review of applications for the extension of the term of certain patents under 35 U.S.C. 156. Patent term restoration is available for certain patents related to human drug products (as defined in 35 U.S.C. 156(f)(2)), and to medical devices, food additives, or color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act. Food and Drug Administration actions in this area include:

(1) Assisting the United States Patent and Trademark Office in determining eligiblity for patent term restoration;

(2) Determining the length of a product's regulatory review period;

(3) If petitioned, reviewing and ruling on due diligence challenges to the Food and Drug Administration's regulatory review period determinations; and

(4) Conducting hearings to review initial Food and Drug Administration findings on due diligence challenges.

(b) References in this part to the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

§ 60.2 Purpose.

(a) The purpose of this part is to establish a thorough yet efficient process for Food and Drug Administration review of patent term restoration applications. To achieve this purpose, the regulations are intended to: (1) Facilitate concise determinations of patent term restoration eligibility and regulatory review period length, and (2) ensure that parties interested in due diligence challenges will have an opportunity to participate in that process, including informal hearings.

(b) The regulations are intended to complement those promulgated by the United States Patent and Trademark Office to implement those parts of the law which are under that agency's jurisdiction. These regulations shall be construed in light of these objectives.

§ 60.3 Definitions.

(a) The definitions contained in 35 U.S.C. 156 apply to those terms when used in this part.

(b) The following definitions of terms apply to this part:

(1) "Act" means the Federal Food, Drug, and Cosmetic Act (secs. 201–901, 52 Stat. 1040 et seq. as amended (21 U.S.C. 301–392)).

(2) "Active ingredient" means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure of any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

(3) "Applicant" means any person who submits an application or an amendment or supplement to an application under 35 U.S.C. 156 seeking patent term restoration.

(4) "Application" means an application for patent term restoration submitted under 35 U.S.C. 156.

(5) "Clinical investigation or study" means any experiment involving one or more human subjects in which a product subject to regulation under the act or the Public Health Service Act is used.

(6) "Color additive" means any substance that meets the definition in 21 U.S.C. 321(t) and which is subject to permanent listing under section 706 of the act.

(7) "Due diligence petition" means a petition submitted under § 60.30(a).

(8) "FDA" means the Food and Drug Administration.

(9) "Food additive" means any substance that meets the definition in 21 U.S.C. 321(s) and which is subject to approval under section 409 of the act.

(10) "Human drug product" means the active ingredient of a new drug, antibiotic drug, or human biological product (as those terms are used in the act and the Public Health Service Act), including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

(11) "Marketing applicant" means any person who submits an application for marketing approval by the FDA under:

(i) Section 505(b) or 507 of the act or section 351 of the Public Health Service Act (human drug products);

(ii) Section 515 of the act (medical devices); or

(iii) Section 409 or 706 of the act (food and color additives).

(12) "Marketing application" means an application for:

(i) Human drug products submitted under section 505(b) or 507 of the act or section 351 of the Public Health Service Act;

(ii) Medical devices submitted under section 515 of the act; or

(iii) Food and color additives submitted under section 409 or 706 of the act.

(13) "Medical device" means any article that meets the definition of 21 U.S.C. 321(h) and which is subject to premarket approval under section 515 of the act.

(14) "Product" means a human drug product, medical device, food additive, or color additive, as those terms are defined in this section.

(15) "PTO" means the United States Patent and Trademark Office.

Subpart B—Eligibility Assistance

§ 60.10 FDA assistance on eligibility.

(a) Upon written request from PTO, FDA will assist PTO in determining whether a patent related to a product is eligible for patent term restoration by:

(1) Verifying whether the product was subject to a regulatory review period before its commercial marketing or use;

(2) Determining whether the permission for commercial marketing or use of the product after the regulatory review period is the first permitted commercial marketing or use of the product either:

(i) Under the provision of law under which the regulatory review period occurred; or

(ii) Under the process claimed in the patent when the patent claims a method of manufacturing the product that primarily uses recombinant DNA technology in the manufacture of the product;

(3) Informing PTO whether the patent term restoration application was submitted within 60 days after the product was approved for marketing or use; and

(4) Providing PTO with any other information relevant to PTO's determination of whether a patent related to a product is eligible for patent term restoration.

(b) FDA will notify PTO of its findings in writing, send a copy of this notification to the applicant, and file a copy of the notification in the docket established for the application in FDA's Dockets Management Branch (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Subpart C—Regulatory Review Period Determinations

§ 60.20 FDA action on regulatory review period determinations.

(a) FDA will consult its records and experts to verify the dates contained in the application and to determine the length of the product's regulatory review period under § 60.22. The application must contain information relevant to the determination of the regulatory review period as stated in the "Guidelines for Extension of Patent Term Under 35 U.S.C. 156" published on October 9, 1984, in PTO's *Official Gazette,* and as required by 37 CFR Chapter I.

(b) After determining the length of the regulatory review period, FDA will notify PTO in writing of its determination, send a copy of this determination to the applicant, and file a copy of the determination in the docket established for the application in FDA's Dockets Management Branch (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

(c) FDA will also publish the regulatory review period determination in the **Federal Register.** The notice will include the following:

(1) The name of the applicant;

(2) The trade name and generic name (if applicable) of the product;

(3) The patent number of the product seeking patent extension;

(4) The approved indications or uses for the product;

(5) An explanation of any discrepancies between the dates in the application and FDA records;

(6) As appropriate, an explanation that FDA has no record on which to review the date(s) contained in the application; and

(7) The regulatory review period determination, including a statement of the length of the testing and approval phases and the dates used in calculating each phase.

§ 60.22 Regulatory review period determinations.

In determining a product's regulatory review period, which consists of the sum of the lengths of a testing phase and an approval phase, FDA will review the information in each application using the following definitions of the testing phase and the approval phase for the class of products.

(a) For human drugs:

(1) The testing phase begins on the date an exemption under section 505(i) or 507(d) of the act becomes effective and ends on the date a marketing application under section 351 of the Public Health Service Act or section 505 or 507 of the act is initially submitted to FDA; and

(2) The approval phase begins on the date a marketing application under section 351 of the Public Health Service Act or section 505(b) or 507 of the act is initially submitted to FDA and ends on the date the application is approved.

(b) For food and color additives:

(1) The testing phase begins on the date a major health or environmental effects test is begun and ends on the date a petition relying on the test requesting the issuance of a regulation for use of the additive under section 409 or 706 of the act is initially submitted to FDA. For purposes of this part, a "major health or environmental" effects test may be any test which:

(i) Is reasonably related to the evaluation of the product's health effects, environmental effects, or both;

(ii) Produces data necessary for marketing approval; and

(iii) Is conducted over a period of not less than 6 months duration, excluding time required to analyze or evaluate test results.

(2) The approval phase begins on the date a petition requesting the issuance of a regulation for use of the additive under section 409 or 706 of the act is initially submitted to FDA and ends upon whichever of the following occurs last:

(i) The regulation for the additive becomes effective; or

(ii) Objections filed against the regulation and resulting in a stay of its effectiveness are resolved and commercial marketing is permitted; or

(iii) Proceedings resulting from objections to the regulation, after commercial marketing has been permitted and later stayed pending resolution of the proceedings, are finally resolved and commercial marketing is permitted.

(c) For medical devices:

(1) The testing phase begins on the date a clinical investigation on humans is begun and ends on the date an application for premarket approval of the device or a notice of completion of a product development protocol is initially submitted under section 515 of the act. For purposes of this part, a clinical investigation is considered to begin on whichever of the following dates applies:

(i) If an investigational device exemption (IDE) under section 520(g) of the act is required, the effective date of the exemption.

(ii) If an IDE is not required, but institutional review board (IRB) approval under section 520(g)(3) of the act is required, the IRB approval date.

(iii) If neither an IDE nor IRB approval is required, the date on which the device is first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device.

(2) The approval phase either:

(i) Begins on the date a premarket approval application for the device is initially submitted under section 515 of the act and ends on the date the application is approved; or

(ii) Begins on the date notice of completion of a product development protocol is initially submitted under section 515(f)(5) of the act and ends on the date the protocol is declared to be complete under section 515(f)(6) of the act.

(d) For purposes of determining the regulatory review period for any product, a marketing application or petition is "initially submitted" on the date it contains sufficient information to allow FDA to commence review of the application. A marketing application or petition is "approved" on the date FDA sends the applicant a letter informing it of the approval or, in the case of food and color additives, on the effective date of FDA's **Federal Register** final rule listing the additive for use.

§ 60.24 Revision of regulatory review period determination.

(a) Any person may request a revision of the regulatory review period determination within 60 days after its publication in the **Federal Register**. The request shall be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. The request shall specify the following:

(1) The type of action requested;

(2) The identity of the product;

(3) The identity of the applicant;

(4) The FDA docket number; and

(5) The basis for the request for revision, including any documentary evidence.

(b) FDA will review the information contained in the request and, if necessary, give the applicant the opportunity to respond to the request for revision. A request for a revision is not equivalent to a due diligence petition under § 60.30 or a request for a hearing under § 60.40.

(c) FDA shall apply the provisions of § 60.22 in considering the request for a revision of the regulatory review period determination. When FDA revises its prior determination, FDA will notify PTO of the revision, publish its revision in the **Federal Register** including a statement giving the reasons for the revision, and send a copy of this notification to the applicant.

§ 60.26 Final action on regulatory review period determinations.

(a) FDA will consider a regulatory review period determination to be final upon expiration of the 180-day period for filing a due diligence petition under § 60.30 unless FDA receives:

(1) New information from PTO records, FDA records, or FDA centers that affects the regulatory review period determination;

(2) A request under § 60.24 for revision of the regulatory review period determination;

(3) A due diligence petition filed under § 60.30; or

(4) A request for a hearing filed under § 60.40.

(b) Upon the expiration of the 180-day period for filing a due diligence petition or, if FDA has received a request for a revision, due diligence petition, or request for a hearing, upon resolution of the request for a revision, petition, or hearing, whichever is later, FDA will consider the regulatory review period determination to be final. FDA will notify PTO when the determination is final, send a copy of the notification to the applicant, and file a copy of the notification in the docket established for the application in FDA's Dockets Management Branch (HFA-305), Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

§ 60.28 Time frame for determining regulatory review periods.

(a) FDA will determine the regulatory review period for each product within 30 days of the receipt of a written request from PTO for such a determination, accompanied by a copy of the patent term restoration application.

(b) FDA may extend the 30-day period if:

(1) A related FDA action that may affect the regulatory review period determination is pending; or

(2) PTO requests that FDA temporarily suspend the determination process; or

(3) PTO or FDA receives new information about the product that warrants an extension of the time required for the determination of the regulatory review period.

(c) This section does not apply to applications withdrawn by the applicant and applications that PTO determines are ineligible for patent term restoration.

Subpart D—Due Diligence Petitions

§ 60.30 Filing, format, and content of petitions.

(a) Any person may file a petition with FDA, no later than 180 days after the publication of a regulatory review period determination under § 60.20, that challenges FDA's determination by alleging that the applicant for patent term restoration did not act with due diligence in seeking FDA approval of the product during the regulatory review period.

(b) The petition shall be filed in accordance with § 10.20, under the docket number of the **Federal Register** notice of the agency's regulatory review period determination, and shall be in the format specified in § 10.30. The petition shall contain the information specified in § 10.30 and any additional information required by this subpart. If any provision of § 10.20 or § 10.30 is inconsistent with any provision of this part, FDA will consider the petition in accordance with this part.

(c) The petition must claim that the applicant did not act with due diligence during some part of the regulatory review period and must set forth sufficient facts to merit an investigation by FDA of whether the applicant acted with due diligence.

(d) The petition shall contain a certification that the petitioner has served a true and complete copy of the petition upon the applicant by certified or registered mail (return receipt requested) or by personal delivery.

§ 60.32 Applicant response to petition.

(a) The applicant may file with FDA a written response to the petition no later than 10 days after the applicant's receipt of a copy of the petition.

(b) The applicant's response may present additional facts and circumstances to address the assertions in the petition, but shall be limited to the issue of whether the applicant acted with due diligence during the regulatory review period.

§ 60.34 FDA action on petitions.

(a) Within 90 days after FDA receives a petition filed under § 60.30(a), the agency will either deny the petition under paragraphs (b) and (c) of this section or investigate and determine under § 60.36 whether the applicant acted with due diligence during the regulatory review period. FDA will publish its due diligence determination in the **Federal Register**, notify PTO of the due diligence determination in writing, and send copies of the notice to PTO, the applicant, and the petitioner.

(b) FDA may deny a due diligence petition without considering the merits of the petition if FDA determines that the petition is incomplete for any of the following reasons:

(1) The petition is not filed in accordance with § 10.20;

(2) The petition does not contain the information required by § 10.30;

(3) The petition fails to contain information or allegations upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period; or

(4) The petition fails to allege a sufficient total amount of time during which the applicant did not exercise due diligence such that, even if the petition were granted, the petition could not affect the maximum patent extension the applicant sought in the application.

(c) If the applicant acquiesces to a reduction in the regulatory review period determined under § 60.20 equal to the amount of time that the petitioner alleges the applicant did not act with due diligence, FDA may grant the petition without further action and without making specific findings on the issues presented in the petition. FDA will revise the regulatory review period determination, notify PTO in writing, and publish the revised determination in the **Federal Register** in accordance with paragraph (a) of this section. Any such notice will state that the revised determination is based on the acquiescence of the applicant and does not represent a finding by FDA that the applicant failed to act with due diligence during the regulatory review period.

§ 60.36 Standard of due diligence.

(a) In determining the due diligence of an applicant, FDA will examine the facts and circumstances of the applicant's actions during the regulatory review period to determine whether the applicant exhibited that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period. FDA will take into consideration all relevant factors affecting the applicant's actions. Relevant factors may include, but are not limited to, the following:

(1) The length of regulatory review periods for comparable products, where appropriate;

(2) Compliance or failure to comply with FDA requirements, including prescribed laws and regulations;

(3) Time solely attributable to FDA action as part of its regulatory review of the marketing application, not including enforcement or compliance action by the agency;

(4) Independent action by Federal, State, or local governments, not including FDA action, that interrupts testing, submission of data, or other activities required for regulatory review;

(5) Unavailability of any key person involved in the activities of the applicant during the regulatory review period;

(6) Physical destruction of essential testing facilities or essential data;

(7) Delay caused by financial considerations; and

(8) Implementation or failure to implement ordinary and necessary measures to minimize delay.

(b) For purposes of this part, the actions of the marketing applicant shall be imputed to the applicant for patent term restoration. The actions of an agent, attorney, contractor, employee, licensee, or predecessor in interest of the marketing applicant or applicant for patent term restoration shall be imputed to the applicant for patent term restoration.

Subpart E—Due Diligence Hearings

§ 60.40 Request for hearing.

(a) Any person may request, not later than 60 days after the publication under § 60.34(a) of FDA's due diligence determination, that FDA conduct an informal hearing on the due diligence determination.

(b) The request for a hearing under this section shall:

(1) Be sent by mail, personal delivery, or any other mode of written communication to the Dockets

Management Branch and filed under the relevant product file;

(2) Specify the facts and the action that are the subject of the hearing;

(3) Provide the name and address of the person requesting the hearing; and

(4) Certify that the requesting party has served a true and complete copy of the request upon the petitioner and the applicant by certified or registered mail (return receipt requested) or by personal delivery.

(c) The request shall state whether the requesting party seeks a hearing within 30 days or 60 days of FDA's receipt of the request.

§ 60.42 Notice of hearing.

The days before the hearing, FDA will notify the requesting party, the applicant, and the petitioner, orally or in writing, of the date, time, and location of the hearing. The agency will provide both the applicant and the petitioner with an opportunity to participate as a party in the hearing.

§ 60.44 Hearing procedure.

The due diligence hearing shall be conducted in accordance with this part, supplemented by those procedures in Part 16 that do not conflict with this part. During the due diligence hearing, the applicant and the petitioner shall enjoy all the rights and privileges accorded a person requesting a hearing under Part 16. The definition of due diligence set forth in § 60.36 will apply in the due diligence hearing. The party requesting the due diligence hearing shall have the burden of proof at the hearing.

§ 60.46 Administrative decision.

Within 30 days after the completion of the due diligence hearing, the Commissioner will affirm or revise the determination made under § 60.34(a) and will publish the due diligence redetermination in the **Federal Register**, notify PTO of the redetermination, and send copies of the notice to PTO and to the parties to the hearing.

Dated: June 11, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86-15631 Filed 7-10-86; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Parts 264 and 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL-3015-3]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: On August 21, 1985 (50 FR 33902), the Environmental Protection Agency (EPA or the Agency) published a notice of proposed rulemaking to amend the financial responsibility requirements concerning liability coverage for owners and operators of hazardous waste treatment, storage, and disposal facilities (50 FR 33902). The proposal set forth several regulatory options under consideration by the Agency to provide relief for owners and operators who have encountered difficulties in obtaining insurance necessary to comply with these requirements. EPA is today amending these requirements in interim final form to allow use of one additional financial responsibility mechanism: A corporate guarantee. This action will facilitate greater compliance with the liability coverage requirements. The Agency is also requesting comments on the form of the guarantee.

EFFECTIVE DATE: These regulations shall become effective September 9, 1986.

ADDRESSES: The public must send an original and two copies of their comments on the interim final rule no later than August 11, 1986, to: EPA RCRA docket, (S–212) (WH–562) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket #F–86–CGIF–FFFFF on your comments. The comments received plus the record supporting this rulemaking are available for public inspection at the docket room from 9:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The public must make an appointment to review docket materials. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424–9346 or at (202) 382–3000. For technical information, contact Carlos M. Lago, Office of Solid Waste (HW–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4780.

SUPPLEMENTARY INFORMATION:

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II. Background
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I. Authority

This regulation is being promulgated under the authority of sections 2002(a), 3004, and 3005 of the Solid Waste Disposal Act; as amended by the Resource Conservation and Recovery Act, as amended [42 U.S.C. 6912(a), 6924, and 6925].

II. Background

A. Current Liability Coverage Requirements

Section 3004(a)(6) of the Resource Conservation and Recovery Act, as amended (RCRA), requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment.

On April 16, 1982, EPA promulgated regulations requiring owners and operators to demonstrate liability coverage during the operating life of the facility for bodily injury and property damage to third parties resulting from accidental occurrences arising from facility operations (47 FR 16554). Under the liability coverage regulations (40 CFR 264.147 and 265.147), owners and operators of hazardous waste treatment, storage, and disposal facilities are required to demonstrate, on a per firm basis, liability coverage for sudden accidental occurrences in the amount of $1 million per occurrence and $2 million annual aggregate, exclusive of legal defense costs. Owners and operators of surface impoundments, landfills and land treatment facilities are also required to demonstrate, on a per firm basis, liability coverage for nonsudden accidental occurrences in the amount of $3 million per occurrence and $6 million annual aggregate, exclusive of legal defense costs. "First-dollar" coverage is required; that is, the amount of any deductible must be covered by the insurer, who may have a right of reimbursement of the deductible amount from the insured. Financial responsibility can be demonstrated through a financial test, liability insurance, or a combination of the two.

The requirements for coverage of sudden accidental occurrences became effective on July 15, 1982. The requirements for nonsudden accidental occurrences were phased in gradually according to annual dollar sales or revenue figures of the owner or operator. January 16, 1985 was the final phase-in date.

Congress has expressed its support for financial responsibility requirements in section 213 of the Hazardous and Solid Waste Amendments of 1984 (RCRA section 3005(e)). That section provides for the termination of interim status for all land disposal facilities by November 8, 1985, unless: (1) The owner or operator applies for a final determination regarding the issuance of a permit by that date and (2) certifies that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements for liability coverage, closure, and post-closure care. Prior to the enactment of HSWA, a facility's interim status could be terminated only when final administrative disposition of the permit application was made, or if the facility failed to furnish the necessary application information.

B. August 21, 1985, Proposed Rule

Some owners and operators have encountered difficulties in obtaining insurance necessary to comply with the liability coverage requirements. In the notice of proposed rulemaking published by EPA on August 21, 1985 (50 FR 33902), the Agency considered taking one or a combination of the following five regulatory actions in response to this problem:

(1) Maintain the existing requirements;

(2) Clarify the required scope of coverage and/or lower the required levels of coverage;

(3) Authorize other financial responsibility mechanisms;

(4) Authorize waivers; and

(5) Suspend or withdraw the liability coverage requirements.

The Agency has decided at this time to authorize owners and operators to use a corporate guarantee as another mechanism to comply with the liability coverage requirements. EPA is still considering the other options proposed in the August 21, 1985, Notice of Proposed Rulemaking, and will publish its decision in the future. Comments on the proposed rule that address the corporate guarantee are discussed in Section IV of this preamble. Comments on other issues raised by the proposal

will be addressed in subsequent publications.

III. Authorization of the Corporate Guarantee

To enable more firms to comply with the liability coverage required during a facility's operating life, the Agency has decided to revise 40 CFR 264.147, 264.151, and 265.147 to authorize, in addition to insurance and the financial test, the use of the corporate guarantee. The Agency believes this will provide owners and operators with greater flexibility while still ensuring that funds will be available to pay third-party liability claims. Use of the corporate guarantee is consistent with EPA's closure and post-closure financial responsibility regulations (40 CFR 264.143, 264.145, 265.143 and 265.145) and with Congressional intent. In the 1984 Hazardous and Solid Waste Amendments (HSWA), Congress provides that RCRA financial responsibility for liability insurance may be established by, among other options, guarantees and self-insurance (HSWA section 205; section 3004(t) of RCRA).

A corporate guarantee is a promise by one corporation to answer for the default of another. It is a collateral undertaking and presupposes another obligation which is identified in the guarantee. There is ordinarily a contract or other agreement between the principal (obligor) and a third party creating the primary obligations. The guarantee is then a contract between the principal and the guarantor, guaranteeing payment of the primary obligation. However, in the corporate guarantee that is the subject of today's rule, the obligation between the principal and third party will generally arise out of tort liability, not contract. In any case, if the principal defaults on the primary obligation, then the guarantor is liable to the third party on the obligation created by the guarantee. As provided in §§ 264.147(g)(1) and 265.147(g)(1) of today's rule, the guarantor must be the parent corporation of the owner or operator, directly owning at least 50 percent of the voting stock of the corporation that owns or operates the facility; the latter corporation is deemed a "subsidiary" of the parent corporation.

The Agency has decided to allow use of the corporate guarantee only if the guarantor is the parent corporation of the owner or operator because it believes such a guarantee is more likely to be enforceable under state law, and because the parent corporation is interested in its subsidiaries' performance, and is in a better position than other corporate entities to ensure that the facilities in question are being operated in conformance with EPA regulations.

The corporate guarantee that is the subject of today's rule differs from the corporate guarantee for closure or post-closure care in several ways. First, and most important, the guarantee is not made to the Environmental Protection Agency, as obligee. Instead, the corporate guarantee for liability coverage is made by the corporate parent on behalf of the owner or operator "to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facilities covered by [the] guarantee". Unlike the corporate guarantee for closure or post-closure care, EPA cannot take action to enforce the terms of the corporate guarantee for liability coverage. Action to notify the corporate guarantor of an obligation to pay under the terms of the guarantee will have to be taken by injured parties who are covered by the guarantee.

Second, the Agency has modified the cancellation provisions. The guarantee for closure and/or post-closure care may be terminated 120 days or later, after notice is provided to the EPA Regional Administrator. In that case, the guarantor is responsible for providing alternative financial assurance if the owner or operator fails to provide such assurance. Today's rule, however, provides guarantor cannot terminate a liability coverage guarantee unless and until the owner or operator obtains alternative liability coverage that the Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located approve(s). We believe that this formulation will better provide continued assurance of financial responsibility. In addition, while the Regional Administrator can require an owner or operator to undertake closer or post-closure actions, and may decide to invoke that authority upon receipt of a cancellation notice, no comparable authority exists for third-party liability.

Finally, the Agency has added a requirement, not found in the corporate guarantee for closure or post-closure care, that the guarantee is to be interpreted and enforced in accordance with the laws of the State of incorporation of the guarantor. This clause is intended to operate in conjunction with the regulatory requirement in § 264.147(g)(2) to ensure that the corporate guarantee for liability is valid and enforceable under the relevant State law. Section 264.147(g)(2) provides that the corporate guarantee may be used to satisfy the liability coverage requirements only if the Attorney General(s) or insurance commissioner(s) of the State(s) in which the guarantor is incorporated and the State(s) in which the facility(ies) covered by the guarantee is (are) located have submitted a written statement to EPA that a corporate guarantee executed as required is a legally valid and enforceable obligation in that State. The Agency expects in this way to ensure that State limitations on the powers of corporations to undertake guarantee obligations will not affect the operation of the corporate guarantee for liability.

Because EPA recognizes that a subsidiary's assets and liabilities are usually consolidated into the balance sheet of parent corporations, the Agency has decided not to allow a corporate subsidiary to use the financial test in combination with the corporate guarantee. However, an owner or operator may use insurance in combination with either the financial test or the corporate guarantee to comply with the liability requirements (§ 264.147(a)(3) and § 265.147(a)(3)).

EPA has decided to allow use of the corporate guarantee because it may provide relief for some owners and operators who are unable to obtain insurance. However, the Agency has concerns about the enforceability of the guarantee under State insurance law. This is a major reason why the guarantee is restricted to parents. In addition, because the validity of the corporate guarantee will depend on applicable state law, the guarantee will be allowed only for facilities in States where the State Attorney General or State insurance commissioner has certified to EPA that the guarantee is fully valid and enforceable by third-parties who are injured by accidents arising from the operations of the facility involved. EPA has sent requests to the Attorney General in each State for an opinion on this subject. A list of non-authorized States where the parent corporate guarantee is fully valid and enforceable will then be compiled by the Agency to be published in the **Federal Register** in the near future.

IV. Summary of and Response to Comments on Corporate Guarantee

In the August 21, 1985 notice of proposed rulemaking, the Agency requested comments on whether the corporate guarantee should be authorized as an alternative mechanism for demonstrating financial assurance for liability coverage. The Agency previously considered authorizing the corporate guarantee as an alternative

financial assurance mechanism for liability coverage, but had major questions about the validity and enforceability of such an arrangement, especially with respect to State insurance laws (47 FR 16547 (April 16, 1982)).

The Agency requested comments on the potential advantages and disadvantages of authorizing owners and operators to use a corporate guarantee to demonstrate financial assurance for liability coverage. In particular, comments were requested on the validity and the enforceability of this mechanism with respect to State laws. Most commenters on the proposed rule strongly endorsed the corporate guarantee as an additional financial responsibility alternative for satisfying liability coverage requirements.

Commenters stated that the corporate guarantee is a common commercial instrument and that most States' general corporation laws authorize corporations to enter into guarantee contracts. The commenters who provided information about State insurance laws generally stated that the corporate guarantee for liability coverage would be valid under their State's statutes. For example, one commenter from North Carolina said that initial research showed that the corporate guarantee would be a valid and enforceable obligation under North Carolina law. In addition, a commenter noted that Colorado and Montana currently allow the corporate guarantee for liability coverage. One commenter in Kentucky said that normal transporters, including hazardous waste transporters, are allowed to self-insure through their parent corporations to satisfy the Kentucky Department of Transportation's requirements for transporters.

Several commenters stated that if a corporate guarantee were allowed as an alternate mechanism, they would take advantage of that option. One commenter suggested that allowing the corporate guarantee to demonstrate financial assurance for liability coverage could increase compliance with the liability coverage requirements. Louisiana strongly supported the use of the corporate guarantee, stating that preliminary analysis showed that it would allow medium-sized companies and commercial hazardous waste disposers to comply with the liability coverage rules.

Several commenters noted that use of the corporate guarantee might simplify the task of preparing financial assurance documentation, which would result in increased compliance with the regulations. Because many subsidiaries consolidate their financial statements with parent corporations, they do not have separately audited financial statements. According to some commenters, requiring each subsidiary to comply with the financial test greatly increases the cost of compliance and generates significant quantities of duplicate documentation.

Commenters also offered various other arguments in support of use of the corporate guarantee for liability coverage. Several said that the guarantee is consistent with existing business practices. Financial institutions have used corporate guarantees to assure repayment of debt by a subsidiary. The commenters believed that corporate guarantees would provide a cost-effective alternative to obtaining insurance. One commenter suggested that the corporate guarantee would better achieve the goal of the liability coverage regulations, because, unlike many insurance policies, it would provide financial assurance for liability exposure from pre-existing contamination.

Commenters who opposed use of the corporate guarantee as an alternative mechanism for demonstrating financial assurance for liability coverage made several arguments. First, some commenters were concerned that the guarantee would not be valid or enforceable. The Agency shares that concern, and is thus requiring that before a corporate guarantee can be used to demonstrate financial assurance, the State Attorney General(s) or insurance commissioner(s) in the State(s) where the guarantor is incorporated and where the facility(ies) is (are) located must issue a written statement that under the laws of that (these) State(s) such a guarantee is valid and enforceable.

Second, some commenters suggested that the corporate guarantee would not be an effective financial assurance mechanism in the long run because parent corporations eventually would find themselves in the situation currently faced by some private insurance companies, that is, subject to extensive litigation and clean-up expenses. The Agnecy believes that a parent will have a strong interest in ensuring that a guaranteed subsidiary has sufficient pollution monitoring and safety measures to prevent and minimize accidential releases and third party damages from occurring at the subsidiaries' TSDFs. In addition, where third party damages occur, the parent guarantor's financial liability will be limited to the amount of the guarantee, exclusive of legal defense costs.

One commenter asked whether it was advisable for a corporate parent to advance a guarantee to a company that cannot obtain liability insurance, and wondered if that opened the door to a lawsuit against the parent's directors and officers. Parent corporations should use good judgment about the guarantees that they provide to subsidiaries. Nevertheless, the inability of a subsidiary to obtain liability insurance is not necessarily an indication that the subsidiary's facilities are likely to cause damages to third parties and should be closed.

Commenters argued that a parent corporation might guarantee subsidiaries for which the parent did not have the funding to provide liability coverage. The Agency disagrees. The requirement that a parent corporation seeking to provide a corporate guarantee must satisfy the requirements of the financial test will provide assurance that the parent corporation has sufficient financial strength to issue the guarantee.

Commenters who were concerned about the November 8, 1985, deadline for certifying compliance with the liability coverage requirements suggested combining the corporate guarantee with another alternative, such as waivers. Commenters suggested that the Agency should grant waivers to those facility owners and operators who could not certify compliance with the financial responsibility requirements for liability coverage, closure, and post-closure care on November 8, but who could use the corporate guarantee once it is authorized. The Agency cannot adopt this suggestion. Under section 3005(e) of RCRA, facilities who did not certify compliance with the liability coverage regulations by November 8, 1985, lost interim status. The Agency does not have authority to nullify that event.

One commenter suggested that the following concerns should be addressed in developing any corporate guarantee: (1) Whether funds would be required to be set aside or otherwise available for third party claims; and (2) whether, because of the complexity of the guarantee, third parties would be inhibited from obtaining access to "legitimate" compensation funds or whether inordinate time and resources would be required to enforce the guarantee. The Agency has considered these issues in promulgating the corporate guarantee. Although the guarantor is not required to set aside funds for third party compensation, it must pass the financial test and thereby demonstrate that it has sufficient funds to implement its guarantee, if necessary. Second, as discussed in detail in Section

III, the Agency has attempted to design the corporate guarantee to allow for the easiest possible enforcement by third parties.

In summary, the Agency disagrees with those commenters who opposed use of the corporate guarantee as an alternative mechanism. Although certain State laws may not authorize use of the corporate guarantee for liability coverage, the Agency believes that in most States the guarantee will be valid and enforceable. Under a corporate guarantee, the parent corporation guarantees its subsidiary's obligations and therefore has a direct financial stake in its subsidiaries' actions. The strict requirements of the financial test will deter a parent corporation from issuing a guarantee for a subsidiary when it does not have adequate financial strength to assure the availability of funds for third party liability claims. The Agency believes that expanding the number of available options is desirable, given the present state of the insurance market and the high level of assurance provided by the corporate guarantee.

V. Effective Date

This regulation is being published in "interim final form". This means that although the regulation will be effective in 60 days, the Agency solicits comments on the regulation (in particular the form of the corporate guarantee), and may modify it in response to additional public comment.

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto generally take effect six months after their promulgation. The purpose of this requirement is to allow sufficient lead time for the regulated community to prepare to comply with major new regulatory requirements. The statute allows for a shorter period prior to the effective date, however, for "good cause" (among other reasons), which the Agency believes exists here. The Agency believes that an effective date six months after promulgation for the amendment promulgated today, would cause substantial and unnecessary disruption in the implementation of the existing regulations and would be contrary to the interest of the regulated community and the public.

Today's amendment adopts the corporate guarantee as another mechanism for complying with third-party liability coverage requirements and thus makes it easier for some owners and operators to act in accordance with the RCRA liability coverage regulations. The Agency believes that it makes little sense to delay needed relief to owners or operators by an additional four months. However, because the Agency may wish to revise the form of the guarantee on the basis of public comment, the amendments to §§ 264.147, 264.151 and 265.147 promulgated in this rulemaking action will not be effective until 60 days from the date of this **Federal Register** notice.

VI. State Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Today's announcement will be automatically applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable unless and until the State revises its program to adopt equivalent requirements under State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose standards in addition to those in the Federal program.

The standards promulgated today are considered to be less stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above.

VII. Request for Public Comment

Although the use of a corporate guarantee was proposed August 21, 1985, the Agency did not specify what form the guarantee would take. We believe that the guarantee form included in § 264.151 of today's rule will generally be valid and enforceable. At a minimum, section 3004(t) of RCRA provides for a right of direct action against guarantors in the event of bankruptcy of the owner or operator, or if a court's jurisdiction cannot be obtained over an owner or operator likely to be insolvent at the time of judgment. Moreover, we believe that a right of action under the guarantee set forth in today's rule will lie against the guarantor whenever a judgment has been obtained against the owner or operator or a settlement agreement has been executed.

However, due to the unusual nature of the guarantee (i.e., it is a general guarantee designed to assure payment of tortious, rather than contractual, obligations to unidentified third parties), the Agency would appreciate public comments *on the form itself.* In particular, the Agency requests comments on whether any modifications to the form would be desirable to facilitate claims by injured third parties against the guarantor. We do *not* solicit comments on the § 264.147 and § 265.147 requirements themselves.

Two copies of all comments should be sent, no later than 30 days after the date of this notice to: EPA public docket, room S–212, U.S. EPA, 401 M Street SW., Washington, DC 20460, where they may be inspected by all interested parties.

VIII. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being considered today to the liability coverage requirements are not "major rules". The options under consideration will not likely result in a significant increase in costs (but are likely to decrease costs) and thus are not a major rule; no Regulatory Impact Analysis has been prepared.

IX. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0036.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1950 (5 U.S.C. 601 *et seq.*), Federal Agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The option under consideration relaxes the existing insurance requirements and thus commonly reduces costs associated with compliance.

Accordingly, I certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

XI. Supporting Documents

Supporting documents available for this interim final rule include comments on the August 21, 1985 proposed rule, summary of the comments, and background documents on the financial test for liability coverage. In addition, background documents prepared for previous financial assurance regulations are also available.

All of these supporting materials are available for review in the EPA public docket (RCRA docket #F-86-CGIF-FFFFF), Room S-212, Waterside Mall, 401 M Street SW., Washington, DC 20460.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

Dated: July 3, 1986.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

40 CFR Part 264 is amended as follows:

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. In § 264.147, paragraph (g) is redesignated as paragraphs (h), paragraph (a)(3), (b)(2), (a)(2), and (b)(3) are revised, and a new paragraph (g) is added, to read as follows:

§ 264.147 Liability requirements.

(a) * * *

(2) An owner operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraph (g) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amount of coverage demonstrated must total at least the minimum amounts required by this paragraph.

(b) * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.

* * * * *

(g) Corporate guarantee for liability coverage.

(1) Subject to subparagraph (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantee must meet the requirements for owners or operators in paragraphs (f)(1) through (7) of this section. The wording of the corporate guarantee must be identical to the wording specified in § 264.151(h)(2). A certified copy of the corporate guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Regional Administrator(s). This guarantee may not be terminated unless and until the EPA Regional Administrator(s) approve(s) alternate liability coverage complying with section 264.147 and/or 265.147.

(2) A corporate guarantee may be used to satisfy the requirements of this section only if the Attorney General(s) or insurance commissioner(s) of the State in which the guarantor is incorporated *and* the State(s) in which the facility(ies) covered by the guarantee is (are) located has (have) submitted a written statement to EPA that a corporate guarantee executed as described in this section and Section 264.151(h)(2) is a legally valid and enforceable obligation in that State.

* * * * *

3. In § 264.151, paragraph (g) is revised to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(g) A letter from the chief financial officer, as specified in § 264.147(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265:———.

The firm identified above guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following subsidiaries of the firm:———.

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:_____.

2. The firm identified above guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:_____.

3. In States where EPA is not administering the financial requirements of Subpart H of 40 CFR Parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility:_____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:_____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this form ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

* * * * *

4. In § 264.151, introductory paragraph (h) is redesignated as paragraph (h)(1) and a new paragraph (h)(2) is added to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(h)(2) A corporate guarantee, as specified in § 264.147(g) or § 265.147(g) of this Chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, on behalf of our subsidiary [owner or operator] of [business address], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.147(g) and 265.147(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for [insert dollar amount] of coverage.

3. For value received from [owner or operator], guarantor gurarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] acidential occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate liability coverage as specified in 40 CFR 264.147 and 265.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

5. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 40 CFR 264.147 or 265.147 in the name of [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 264.147 and 265.147, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 40 CFR 264.147 and 265.147 for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.

9. Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator], provided that this gurarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s) alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

10. This guarantee is to be interpreted and enforced in accordance with the laws of [State of incorporation of guarantor].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h)(2).

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

---

* * * * *

PART 265—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

40 CFR Part 265 is amended as follows:

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6908, 6912(a), 6924 and 6925).

2. In § 265.147, paragraph (g) is redesignated as paragraph (h), paragraphs (a)(2), (a)(3), (b)(2), and (b)(3) are revised, and a new paragraph (g) is added, to read as follows:

§ 265.147 Liability requirements.

(a) * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraph (g) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.

(b) * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.

* * * * *

(g) Corporate guarantee for liability coverage.

(1) Subject to subparagraph (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (7) of this section. The wording of the corporate guarantee must be identical to the wording specified in § 264.151(h)(2). A certified copy of the corporate guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Regional Administrator(s). This guarantee may not be terminated unless and until the EPA Regional Administrator(s) approve(s) alternate liability coverage complying with § 264.147 and/or 265.147.

(2) A corporate guarantee may be used to satisfy the requirements of this section only if the Attorney General(s) or insurance commissioner(s) of the State in which the guarantor is incorporated *and* the State(s) in which the facility(ies) covered by the guarantee is (are) located has (have) submitted a written statement to EPA that a corporate guarantee executed as described in this section and Section 264.151(h)(2) is a legally valid and enforceable obligation in that State.

* * * * *

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H.R. 4841/Pub. L. 99-357

To amend the Carl D. Perkins Vocational Education Act with respect to State allotments under the Act. (July 8, 1986; 100 Stat. 761; 2 pages) Price: $1.00

S. 1625/Pub. L. 99-358

To permit the use and leasing of certain public lands in Nevada by the University of Nevada. (July 8, 1986; 100 Stat. 763; 1 page) Price: $1.00

S. 2180/Pub. L. 99-359

To authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974. (July 8, 1986; 100 Stat. 764; 2 pages) Price: $1.00

S. 2414/Pub. L. 99-360

To amend title 18, United States Code. (July 8, 1986; 100 Stat. 766; 2 pages) Price: $1.00

H.R. 237/Pub. L. 99-361

To amend the Fair Debt Collection Practices Act to provide that any attorney who collects debts on behalf of a client shall be subject to the provisions of such Act. (July 9, 1986; 100 Stat. 768; 1 page) Price: $1.00

H.R. 5036/Pub. L. 99-362

To make technical corrections to the National Foundation on the Arts and the Humanities Act of 1965. (July 9, 1986; 100 Stat. 769; 1 page) Price: $1.00