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WHO: The Office of the Federal Register.

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DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-92-003IR]

Nectarines and Peaches Grown in California; Revision of Size, Maturity, Maturity Variance Procedure, and Container Marking Requirements for California Nectarines (M.O. 916) and California Peaches (M.O. 917)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule revises size, maturity, maturity variance procedure, and container marking requirements for fresh nectarines and peaches grown in California. The rule adds six new nectarine varieties and three new peache varieties to the variety-specific size requirements, and deletes six nectarine varieties and six peach varieties from those requirements, which become subject to the minimum size requirements for non-listed varieties. Also, this rule relaxes minimum maturity requirements for nectarines and peaches to "mature" from "well-matured". In addition, this rule changes the maturity variance procedures used when changes to the color chip guide assigned to a peach or nectarine variety as an indicator of "well-matured" are considered. As revised, all determinations of maturity will be made by the Federal-State Inspection Service, rather than the marketing order committees. Further, this action requires handlers to mark containers of fruit meeting the maturity requirements of U.S. No. 1 grade fruit as "U.S. Mature", or instead they may mark containers of fruit meeting the "well-matured" requirements specified in the marketing orders as "California Well Matured". These revisions are designed to provide handlers with more marketing flexibility, and to promote the marketing of these fruits.

DATES: This interim final rule becomes effective May 15, 1992. Comments which are received by June 15, 1992 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and fresh pears and peaches grown in California. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are about 300 California nectarine and peach handlers subject to regulation under the marketing orders covering nectarines and peaches grown in California, and about 1,800 producers of nectarines and peaches in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee and the Peach Commodity Committee (hereinafter referred to as the committees) met on January 10, 1992, and unanimously recommended revising

current size, maturity, maturity variance procedure, and container marking requirements for fresh nectarines and peaches beginning with 1992 season shipments. This rule is based upon the two committees' recommendations, information submitted by the committees, information received at a public meeting held by the Department last September to discuss the future of the California nectarine and peach marketing orders, and other available information. This rule reflects crop and market conditions experienced in 1991 and expected in 1992. The committees meet prior to and during each season to review the handling regulations that are effective on a continuous basis for nectarines and peaches regulated under the marketing orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committees and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Referenda were held in early 1991 to determine whether growers favored continuation of the nectarine and peach marketing orders. The results of the referenda showed only marginal grower support for the orders, and the Department held a public meeting in September 1991 to discuss the future of these programs. Most of the testimony favored continuation of the orders, although some speakers cited specific objections to certain aspects of the orders, including current maturity requirements and maturity variance procedures. Following the meeting, the Department advised the committees that it intended to establish a two-tiered maturity system, and revise maturity variance procedures currently specified in each order's regulations, beginning with 1992 season shipments. The Department requested the committees to recommend how such changes should be structured and implemented. The committees unanimously recommended establishment of a two-tiered maturity system and modified maturity variance procedures at their meeting of January 10, 1992. This rule incorporates the committees' recommendations regarding maturity changes, but modifies their recommendations concerning the maturity variance procedures to grant full authority and responsibility to the Federal or Federal-State Inspection Service to make all determinations regarding maturity. While the Department believes the committees should continue to cooperate with the inspection service in the development of appropriate color chips and other maturity tests, the inspection service has gained considerable experience over the years in applying the well matured standard. The Department has every confidence that the inspection service can successfully make well matured determinations on the basis of its own institutional expertise, just as it applies maturity requirements for numerous other fruits and vegetables.

California fresh nectarine shipments are currently regulated by size, grade, and maturity under § 916.356 (7 CFR 916.356, as amended at 56 FR 22107, May 14, 1991; 56 FR 40224, August 14, 1991; 57 FR 3918, February 3, 1992); and by container and pack under § 916.350 (7 CFR 916.350, as amended at 56 FR 40223, August 14, 1991). California fresh peach shipments are currently regulated by size, grade, and maturity under § 917.459 (7 CFR 917.459, as amended at 56 FR 40225, August 14, 1991), and by container and pack under § 917.442 (7 CFR 917.442, as amended at 56 FR 40225, August 14, 1991). Nectarine regulations are effective on a seasonal basis from April 15 through October 31, and the peach regulations are effective on a seasonal basis from April 15 through November 23.

Size Requirements

Section 916.356 currently specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9); and § 917.459 currently specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c).

This rule amends § 916.356 to establish variety-specific size requirements for six nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1991 season. Paragraph (a)(3) of § 916.356 is revised to include the Earli Glo variety; paragraph (a)(4) is revised to include the Sparkling May variety; and paragraph (a)(5) is revised to include the Alshire Red, Flavor Grand, King Jim, and Summer Bright varieties. This rule also removes the Ama Lyn, Kent Grand, Regal Grand, Sheri Red, One-One, and 61–61 nectarine varieties from the variety-specific size requirements specified in § 916.356, because less than 5,000 packages of each of these varieties were produced during the 1991 season. Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(6), (a)(7), and (a)(8) of § 916.356.

This rule amends § 917.459 by revising paragraph (a)(5) to establish variety-specific size requirements for the Champagne, Diamond Princess, and Prima Lady peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1991 season. This rule also removes the Coronet, Desertgold, July Sun, Pacifica, Red Lady, and Springold peach varieties from the variety-specific size requirements specified in § 917.459, because less than 5,000 packages of each of these varieties were produced during the 1991 season. Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

Variety-specific size requirements are applied to a particular nectarine or peach variety when that variety is first produced in commercially significant quantities during a particular season. Both committees consider such quantity to be 10,000 packages during a season, the same quantity used during the past several seasons. Those nectarine and peach varieties that exceeded 10,000 shipped packages for the first time during the 1991 season are included in this rule to be regulated under variety-specific size requirements for each fruit.

The nectarine and peach varieties being removed from the variety-specific size requirement lists for 1992 season shipments were not produced during the 1991 season in quantities significant enough to warrant variety-specific size coverage. The committees consider this quantity to be less than 5,000 packages during a particular season, the same quantity used during past seasons. These varieties become subject to minimum size requirements for non-listed varieties, because they are produced in quantities significant enough to warrant some size coverage. The size requirements established for non-listed varieties are generally less restrictive than those for listed varieties, but help provide retailers and consumers with the sizes of fruit they prefer.

This action is designed to establish minimum size requirements for these fruits consistent with expected crop and market conditions, and to help the California nectarine and peach industries to provide those sizes of fresh fruit desired by consumers. The size requirements for those nectarine and peach varieties not mentioned in this rule remain the same as those currently in effect.

Maturity Requirements

Section 916.356 currently specifies grade and maturity requirements for fresh nectarines, and § 917.459 currently specifies grade and maturity requirements for fresh peaches. This action removes from paragraph (a)(1) of § 916.356 the language "* * * except that the nectarines shall be "well-matured", rather than "mature", but not overripe or shriveled * * *"; and from paragraph (a)(1) of § 917.459 the language "* * * except that the peaches shall be "well-matured", rather than "mature", but not overripe or shriveled * * *". Related conforming changes revise paragraphs (a)(1)(i) in both § 916.356 and § 917.459 to specify that the maturity guides cited in Table I in each of these sections shall apply if the fruit is being inspected and certified as meeting the maturity requirements for "well-matured" fruit. Also, language in these sections pertaining to the committees' participation in maturity level determinations is being removed to reflect the Federal or Federal-State Inspection Service's assuming full responsibility for this activity.

This action relaxes the minimum maturity requirement to "mature" from the current "well-matured" standard. Fruit meeting the "mature" standard must meet the maturity requirements specified for U.S. No. 1 grade fruit, while fruit meeting the "well-matured" standard must meet the requirements specified for such standard under each marketing order. This action is designed to provide growers and handlers greater flexibility in marketing their fruit, since they will be able to ship fruit meeting either maturity standard. The maturity measurements for "well-matured" fruit for both nectarines and peaches currently specified in these marketing orders are maintained unchanged for 1992 season nectarine and peach shipments. Such maturity measurements are generally in terms of the maturity guides (e.g., color chips) specified in paragraph (a)(1)(i) and Table I, of § 916.356 for nectarines; and in paragraph (a)(1)(i) and Table I, of § 916.459 for peaches. However, this rule makes conforming changes in Table I in both of these sections to remove unnecessary language pertaining to supervisor discretion in making maturity determinations for certain varieties, since revised paragraph (a)(1) in each of these sections provides that the Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of the specified color chips or such other tests as determined appropriate by the inspection agency.

Maturity Variance Procedure Requirements

Section 916.356 currently specifies maturity variance procedure requirements for fresh nectarines, and § 917.459 currently specifies maturity variance procedure requirements for fresh peaches.

This action revises the maturity variance procedures used when changes to the color chip guide assigned to a peach or nectarine variety as an indicator of "well-matured" are considered. As revised, all final determinations of maturity will be made by the Federal or Federal-State Inspection Service, rather than a subcommittee of committee members. This is somewhat different from the committees' recommendation that committee employees and industry members remain involved in maturity appeals procedures. This action is designed to grant full authority and responsibility to the Federal or Federal-State Inspection Service to make all determinations regarding maturity, and to simplify maturity variance procedures.

Any grower or handler may appeal the inspection of any fruit which he/she believes is meeting the appropriate maturity level but has not been so graded by the inspector, by calling the officer-in-charge of the local Federal or Federal-State Inspection Service office to arrange for an on-site examination of the fruit. The Federal or Federal-State Inspection Service will utilize its regular practices and procedures regarding appeals of inspectors' decisions regarding the fruit's maturity.

Container Marking Requirements

Section 916.350 currently specifies container and pack requirements for fresh nectarines, and § 917.442 currently specifies container and pack requirements for fresh peaches. This rule adds a new paragraph (a)(3) to both § 916.350 and § 917.442; redesignates the current paragraphs (a)(3) to (a)(8) in § 916.350 as paragraphs (a)(4) to (a)(9) respectively; redesignates the current paragraphs (a)(3) to (a)(9) in § 917.442 as paragraphs (a)(4) to (a)(10) respectively; and revises the headings of these sections for clarity.

New paragraph (a)(3) of § 916.350 requires that each package or container of nectarines, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters the words "U.S. Mature" if such nectarines are mature as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 to 51.3160); or may instead bear on one outside end in plain sight and in plain letters the words "California Well Matured" if such nectarines are "well matured" as defined in § 916.356. Likewise, new paragraph (a)(3) of § 917.442 requires that each package or container of peaches, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters the words "U.S. Mature" if such peaches are mature as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); or may instead bear on one outside end in plain sight and in plain letters the words "California Well Matured" if such peaches are "well matured" as defined in § 917.459.

Consumer packages in master containers and consumer packages mailed directly to consumers are exempt from these container marking requirements, because of the space limitation on the consumer packages. Requiring maturity markings would give these packages a cluttered look.

This action requires nectarine and peach handlers to mark the maturity level of the fruit on the containers in which it is shipped. This requirement will differentiate shipments of "well-matured" fruit from "mature" fruit. This should help handlers realize any price premiums which they believe "well-matured" fruit may bring, since such container markings will inform buyers of the maturity level of the fruit purchased.

It is the Department's view that this action will provide handlers and growers additional opportunities for marketing the 1992 season California nectarine and peach crops.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach growers and handlers would find it beneficial to be apprised of this action

as soon as possible, since shipments of these fruits are expected to begin about mid-April; (2) this action relaxes maturity requirements for nectarines and peaches; (3) California nectarine and peach handlers are aware of the maturity relaxations and varietal size changes unanimously recommended by the committees at a public meeting and they will need no additional time to comply with these requirements; and (4) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements and orders, Nectarines, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

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

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.350 is amended by revising the section heading; by republishing the introductory text of paragraph (a); by redesignating paragraphs (a)(3) to (a)(8) as paragraphs (a)(4) to (a)(9) respectively; and by adding a new paragraph (a)(3) to read as follows:

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

§ 916.350 California Nectarine Container and Pack Regulation.

(a) During the period beginning April 15 and ending October 31, no handler shall ship any package or container of any variety of nectarines except in accordance with the following terms and conditions:

* * * * *

(3) Each package or container of nectarines, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters the words "U.S. Mature" if such nectarine are mature as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 to 51.3160); or may instead bear on one outside end in plain sight and in plain letters the words "California Well Matured" if such nectarines are "well matured" as defined in § 916.356.

* * * * *

3. Section 916.356 is amended by revising the section heading; by republishing the introductory text of paragraph (a); by revising paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), (a)(4), (a)(5); and by removing paragraphs (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) to read as follows:

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

§ 916.356 California Nectarine Grade and Size Regulation.

(a) During the period beginning April 15 and ending October 31, no handler shall ship:

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided,* that nectarines 2 inches in diameter of smaller, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided further,* that an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen. The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency.

(i) The Federal or Federal-State Inspection Service will use the maturity guides listed in TABLE I in making maturity determinations for the specified varieties when inspecting to the "well matured" level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Fairlane, Tom Grand, and 61–61 varieties of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in TABLE I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well matured."

TABLE I

Column A variety	Column B maturity guide
Alshir Red	L
Ama Lyn	G
Apache	G
Armking	B
August Red	J
Aurelio Grand	F
Autumn Delight	M
Autumn Grand	L
Bob Grand	L
Clinton-Strawberry	H
Desert Dawn	G
Early Diamond	J
Early May	F
Early May Grand	H
Early Star	G
Early Sungrand	H
Fairlane	M
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavortop	J
Flavortop I	K
Gee Red	H
Gold King	H
Granderli	J
Grand Stan	F
Hi-Red	J
Independence	H
July Red	H
June Glo	H
June Grand	G
Kent Grand	L
Larry's Grand	M
Late Le Grand	L
Late Tina Red	I
Le Grand	H
Maybelle	F
May Diamond	I
Mayfair	C
May Fire	H
May Glo	H
May Grand	H
Mayred	B
Mike Grand	H
Moon Grand	M
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	M
Red Delight	I
Red Free	L
Red Grand	H
Red Jim	L
Red June	G
Red Lion	J
Regal Grand	L
Rio Red	L
Royal Delight	F
Royal Giant	I
Ruby Grand	J
Scarlet Red	K
September Grand	L
September Red	L
Sherri Red	J
Son Red	L
Sparkling June	M
Sparkling Red	L
Spring Diamond	M
Spring Grand	G
Spring Red	H
Springtop	B
Stan's Grand	C
Star Bright	G
Star Brite	J
Star Grand	H
Summer Beaut	H

TABLE I—Continued

Column A variety	Column B maturity guide
Summer Diamond	M
Summer Grand	L
Summer Red	L
Summer Star	G
Sunfre	F
Sun Grand	G
Super Star	G
Tasty Free	J
Tasty Gold	H
Tom Grand	L
61-62	J
181-119/Sierra Star	G

Except not less than an aggregate area of 95 percent of the fruit surface shall meet the color standard established for the variety.

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

(ii) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

(2) Any package or container of May Glo variety of nectarines through May 5, 1992, or of Aurelio Grand, Maybelle, Mayfire, or Royal Delight variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22 D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(2)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines.

(3) Any package or container of May Glo variety of nectarines on or after May 5, 1992, or Earli Glo, or Early Diamond variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(3)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

(4) Any package or container of Apache, Early May, Early May Grand, Mike Grand, Grand Stan, June Glo, May Grand, Pacific Star, Red Delight, Sparkling May, Star Brite, Sunfre, or May Daimond variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(4)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines.

(5) Any package or container of Alshir Red, Alta Red, August Red, Autumn Delight, Autumn Grand, Bob Grand, Del Rio Rey Early Sungrand, Fairlane, Fantasia, Firebrite, Flamekist, Flaming Red, Flavor Grand, Flavortop, Flavortop I, Gold King, Grand Diamond, Independence, July Red, King Jim, Kism Grand, Larry's Grand, Late Le Grand, Le Grand, Mid Glo, Moon Grand, Niagara Grand, P-R Red, Red Diamond, Red Free, Red Grand, Red Jim, Red Lion, Rio Red, Royal Giant, Ruby Grand, Scarlet Red, September Grand, September Red, Son Red, Sparkling June, Sparkling Red, Spring Diamond, Spring Red, Summer Beaut, Summer Bright, Summer Diamond, Summer Grand, Summer Red, Summer Star, Sun Diamond, Sun Grand, Super Red, Super Star, Tasty Free, Tasty Gold, Tom Grand, Zee Glo, 181-119, or 80P-1135, variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(5)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 67 nectarines.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

4. Section 917.442 is amended by revising the section heading; by republishing the introductory text of paragraph (a); by redesignating paragraphs (a)(3) to (a)(9) as paragraphs (a)(4) to (a)(10) respectively; and by adding a new paragraph (a)(3) to read as follows:

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

§ 917.442 California Peach Container and Pack Regulation.

(a) During the period beginning April 15 and ending November 23, no handler shall ship any package or container of any variety of peaches except in accordance with the following terms and conditions:

* * * * *

(3) Each package or container of peaches, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters the words "U.S. Mature" if such peaches are mature as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); or may instead bear on one outside end in plain sight and in plain letters the words "California Well Matured" if such peaches are "well matured" as defined in § 917.459.

* * * * *

5. Section 917.459 is amended by revising the section heading; by republishing the introductory text of paragraph (a); by revising paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), (a)(4), and (a)(5); by republishing paragraph (a)(6); by revising Table I; and by removing paragraphs (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) to read as follows:

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

§ 917.459 California Peach Grade and Size Regulation.

(a) During the period beginning April 15 and ending November 23, no handler shall ship:

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade. The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color chips or other tests as determined appropriate by the inspection agency.

(i) The Federal or Federal-State Inspection Service will use the maturity guides listed in TABLE I in making maturity determinations for the specified varieties when inspecting to the "well matured" level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from

the application of the maturity guides specified in TABLE I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well matured."

(ii) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

(2) Any package or container of Flordaprince variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(2)(i) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(3) Any package or container of any type of Morning Sun variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 84 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(3) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 79 peaches.

(4) Any package or container of Babcock, David Sun, Early May Crest, First Lady, Flavorcrest, Flavor Red, Golden Crest, Golden Lady, Honey Red, June Lady, June Sun, Kern Sun, Kingscrest, Kings Red, May Crest, Merrill Gem, Merrill Gemfree, Queencrest, Ray Crest, Redtop, Regina, Royal May, Sierra Crest, Snow Flame, Springcrest, Spring Lady, Summer Crest, or 50–178 variety of peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(4) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches.

(5) Any package or container of Amber Crest, Angelus, August Sun, Autumn Crest, Autumn Gem, Autumn Lady, Belmont, Berenda Sun, Blum's Beauty, Cassie, Cal Red, Carnival, Champagne, Diamond Princess, Early O'Henry, Elberta, Elegant Lady, Fairmont, Fairtime, Fay Elberta, Fayette, Fire Red, Flamecrest, John Henry, July Lady, Kings Lady, Lacey, Mary Ann, O'Henry, Parade, Prima Lady, Red Cal, Redglobe, Rich Lady, Ryan's Sun, Scarlet Lady, September Sun, Sierra Lady, Sparkle, Sprague Last Chance, Summer Lady, Suncrest, Windsor or Zee Lady variety of peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack in accordance with the requirements of standard pack, not more than 72 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(5) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 64 peaches.

(6) Any package or container of Goldcrest or Topcrest variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 88 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(6)(i) of this section are of a size that a 16-pound sample representative of the peaches in the package or container, contains not more than 83 peaches.

TABLE I

Column A variety	Column B maturity guide
Angelus	I
Ambercrest	G
Armgold	D
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Bella Rosa	G
Belmont (Fairmont)	I
Berenda Sun	I
Blum's Beauty	G
Bonjour	F
Cardinal	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Desertgold	B
Early Coronet	D
Early Fairtime	I
Early O'Henry	I
Early Royal May	G
Early Top	G
Elberta	B
Elegant Lady	M
Fairtime	G
Fay Elberta	C
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Red	G
Fortyniner	F
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
Jody Gaye	F
Judy Elberta	C
July Lady	G
June Crest	G
June Lady	G
June Sun	H
Kearney	I
Kern Sun	H
Kings Lady	I
Lacey	I
Mardigras	G
Mary Ann	G
May Crest	G
May Lady	G
Merrill Gem	G
Merrill Gemfree	G
Morning Sun	D
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Preuss Suncrest	F
Prima Fire	H
Prime Crest	H
Queen Crest	G
Ray Crest	G
Red Cal	I
Redglobe	C
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rio Oso Gem	I
Royal April	D
Royal May	G
Ryan's Sun	I
Scarlet Lady	F
Sierra Crest	H

TABLE I—Continued

Column A variety	Column B maturity guide
Sparkle	I
Sprague Last Chance	L
Springcrest	G
Spring Lady	H
Springold	D
Summer Lady	M
Summerset	I
Suncrest	G
Sun Lady	I
Topcrest	H
Toreador	I
Treasure	F
Willie Red	G
Windor	I
50–178	G

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

Dated: May 12, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–11509 Filed 5–14–92; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1962 and 1965

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Programs Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; technical amendments.

SUMMARY: On April 18, 1991, the Farmers Home Administration (FmHA) published a final rule in the **Federal Register** (56 FR 15813–15832) on certain provisions of the Agricultural Credit Act of 1987 and additional amendments of portions of the FmHA regulations. The intent of this action is to correct these errors.

EFFECTIVE DATE: May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Edward R. Yaxley, Jr., Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 720–4572.

SUPPLEMENTARY INFORMATION:

List of Subjects

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan Programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is corrected by making the following technical amendments:

PART 1962—PERSONAL PROPERTY

1. The authority citation for part 1962 continues to read as follows:

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

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.6 [Amended]

2. Section 1962.6(c)(2)(i) is amended in the first sentence by changing the word "that" to "no."

PART 1965—REAL PROPERTY

3. The authority citation for part 1965 continues to read as follows:

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

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

§ 1965.11 [Amended]

4. Section 1965.11(c)(1) introductory text is amended in the first sentence by changing the second word "or" to "to."

Dated: April 28, 1992.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 92–11446 Filed 5–14–92; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 705

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This Part governs loans made from a revolving loan fund to certain low-income credit unions. The NCUA Board is modifying § 705.7(b)(2) of the regulations to provide that a credit union may receive the entire loan proceeds in a single payment without having to generate matching funds at the time of disbursement. The amendment provides expeditious disbursement of loan funds to participating credit unions.

EFFECTIVE DATE: May 15, 1992.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION: The purpose of the Community Development Revolving Loan Program ("Program") is to make reduced rate loans to both federal and state-chartered credit unions serving low-income communities so that those credit unions may provide needed financial services and help to stimulate the economy in the communities served. To implement the Program, the NCUA Board published a final rule on September 16, 1987 (52 FR 34891). The final regulation set forth, among other things, the scope and purpose of the program, application procedures, types of activities participating credit unions can perform, and the procedure for disbursing and collecting loans.

Currently, under § 705.7 of the Regulations, loans of up to $200,000 may be made to participating credit unions. Loan funds must be matched dollar for dollar with increased shares by the participating credit union. If a credit union hasn't met the dollar-for-dollar match at the time its loan is approved, it may receive only 50% of the loan proceeds. The remainder of the funds would be made available to the credit union after it has documented that it has met the match requirement for the total amount of the loan. This procedure was set forth to alleviate some of the perceived risk of the loan not being repaid in a timely manner. Any funds advanced but not matched within one year must be repaid immediately.

The NCUA Board issued a proposed rule on January 15, 1992 (57 FR 2484, 1/22/92) to amend § 705.7(b)(2). Under the proposal, a credit union would be eligible to receive the entire loan proceeds in a single payment without having to generate the match by the time of disbursement. Immediate repayment would still be required for unmatched funds. Five comment letters were received. One comment was received from a federal credit union, two were from national credit union trade associations and two were from state credit union leagues. Four commenters

enthusiastically favored the proposed amendment. Two commenters recommended that NCUA either set forth a procedure on the repayment of funds by those credit unions that are unable to meet the match within the one-year timeframe or extend the period to meet the match an additional 6 or 12 months. One of those commenters stated this is necessary because it would be difficult for a credit union that failed to meet its match to immediately repay the funds. One commenter opposed the amendment. This commenter believes the 50% limitation prevents undue financial hardship for a credit union that fails to meet the matching requirement since a credit union that received 100% of the loan and failed to meet the match would probably be unable to repay the unmatched portion of the loan.

The NCUA Board is convinced that the requirement for immediate repayment of the unmatched portion of the loan (match is required within one year of the approval of the loan) is essential to encourage credit unions to increase their share base. It also provides an incentive for credit unions to only apply for loans that they can realistically expect to match. Therefore, the NCUA Board will not set forth a different procedure for repayment of the loan.

The NCUA Board believes it is important to expeditiously disburse loan funds to participating credit unions to help them provide financial services in their communities. In the over two years since this Program was implemented, there has never been a delinquency in loan repayment. Therefore, the NCUA Board is amending § 705.7(b)(2) of the Regulations as proposed. The Board still retains the flexibility to withhold a portion of the loan proceeds where deemed appropriate for safety and soundness reasons. Furthermore, the matching requirement is still an important aspect of the Program and participating credit unions will have to match the loan amount received from the Program with increased shares, dollar for dollar, within one year of the approval of their loans. A participating credit union's failure to generate the required match within one year of the approval of the loan will result in the reduction of the loan proportionate to the amount of match actually generated. Any funds already advanced to the credit union in excess of the revised amount must be repaid immediately to NCUA.

Since this rule change does not have an adverse or restrictive effect on credit unions participating in the Program, this rule change is effective immediately.

On January 28, 1992, President Bush issued a memorandum requesting federal agencies to take certain steps to reduce unnecessary regulatory burden and foster economic growth. This amendment complies with the President's memorandum since it fosters economic growth by providing for the expeditious disbursement of loan funds to participating credit unions to help them provide financial services in their communities.

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in part 705 of NCUA's Regulations (OMB No. 3133-0109). The final amendment does not change the paperwork requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final amendment is less restrictive than the current regulation. Overall, the NCUA Board expects the change to benefit credit unions by permitting them to receive the entire loan proceeds before meeting the required match. Accordingly, the Board determines and certifies that this final amendment does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The Program is implemented in its entirety by the NCUA. The final amendment makes it easier for all credit unions participating in the Program, including state-chartered credit unions, to receive approved loans in their entirety. Therefore, the NCUA Board has determined that the final amendment does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 705

Community development, Credit unions, Loan programs-housing and community development, Reporting and recordkeeping requirements, Technical assistance.

By the National Credit Union Administration Board on May 7, 1992.

Hattie Ulan,

Acting Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 705 as follows:

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

1. The authority citation for part 705 is revised to read as follows:

Authority: Pub. L. 97-35, 42 U.S.C. 9822; Pub. L. 99-609, note to 42 U.S.C. 9822; Pub. L. 101-144, 12 U.S.C. 1766(k).

2. Section 705.7(b)(2) is revised as follows:

§ 705.7 Loans to participating credit unions.

* * * * *

(b) * * *

(2) Upon approval of its loan application, and before it meets its matching requirement, a participating credit union may receive the entire loan commitment in a single payment. If any funds are withheld, the remainder of the funds committed will be available to the participating credit union only after it has documented that it has met the match requirement for the total amount of the loan committed.

* * * * *

[FR Doc 92-11501 Filed 5-14-92; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-91-AD; Amdt. 39-8258; AD 92-11-08]

Airworthiness Directives; Aerostar Aircraft Corp. PA-60-600 and PA-60-700 Series (Formerly Piper) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) AD 80-02-09, which currently requires repetitive dye penetrant inspections of the main landing gear torque links for cracks on certain Aerostar Aircraft Corporation PA-60-600 and PA-60-700 series (formerly Piper) airplanes unless a replacement part is installed. Since issuance of AD 80-02-09, the Federal Aviation Administration (FAA) has received several reports of main landing gear torque links cracking or collapsing.

This action requires the replacement or upgrade of the main landing gear torque links. The actions specified by this AD are intended to prevent loss of directional control of the airplane during ground operation caused by torque link failure.

DATES: Effective July 7, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455–8872. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone (206) 227–2589.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Aerostar Aircraft Corporation PA–60–600 and PA–60–700 series airplanes was published in the **Federal Register** on January 21, 1992 (57 FR 2233). This action proposed an inspection to determine whether the main landing gear torque links are both single lug links or a single lug link fitting into a dual lug link. It also proposed either the installation of a main landing gear torque link upgrade kit or a main landing gear torque link replacement kit depending on the result of the inspection. The proposed actions would be accomplished in accordance with the instructions in Aerostar Service Bulletin No. 746B, dated June 11, 1991, or in accordance with the instructions in the Main Landing Gear Torque Link Replacement Kit, P/N 765–155 Rev F, which is referenced in Aerostar SB No. 746B. This action will supersede AD 80–02–09, which currently requires repetitive dye penetrant inspections of the main landing gear torque links for cracks unless a replacement part is installed on the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 400 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $550 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $264,000. AD 80–02–09, which will be superseded by this action, requires repetitive inspections of the main landing gear torque links. The cost of AD 80–02–09 is $22,000 (1 hour times $55 times 400). The required AD will pose an additional cost impact of $242,000 more than that already required by AD 80–02–09. In addition, since this action will eliminate the need for the repetitive inspections required by AD 80–02–09, the ongoing cost impact required by AD 80–02–09 action will be eliminated.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 80–02–09, Amendment 3991, and adding the following new AD:

92–11–08 Aerostar Aircraft, Inc: Amendment 39–8258; Docket No. 91–CE–91–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Nos.
PA–60–600 Aerostar 600	60–0001–003 through 60–0933–8161262.
PA–60–601 Aerostar 601	61–0001–004 through 61–0880–8162157.
PA–60–601P Aerostar 601P.	61P–0157–001 through 61P–0860–8163455.
PA–60–602P Aerostar 602P.	62P–0750–8165001 through 60–8365021.
PA–60–700P Aerostar 700P.	60–8223001 through 60–8423025.

Note 1: The manufacturing and ownership rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these rights were recently transferred to the Aerostar Aircraft Corporation.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

Note 2: The compliance time of this AD takes precedence over that specified in the referenced service information.

To prevent loss of directional control of the airplane during ground operation caused by torque link failure, accomplish the following:

(a) Visually inspect the main landing gear scissors assemblies to determine if the torque links on each main landing gear are both single lug links or are a single lug link fitting into a dual lug link in accordance with paragraph 1. of the Instructions section of Aerostar Aircraft Corporation Service Bulletin (SB) No. 746B, dated June 11, 1991.

(1) If the torque links are both single lug links, prior to further flight, install the main landing gear torque link upgrade kit, Kit No. 765–155A–B Rev N/C, in accordance with steps a through e of the Instructions section of Aerostar Aircraft Corporation SB No. 746B, dated June 11, 1991.

(2) If the torque links are a single lug link fitting into a dual lug link, prior to further flight, replace the torque links by installing Aerostar Main Landing Gear Torque Link Replacement Kit, Part Number (P/N) 765–155 Rev F, in accordance with the instructions on Aerostar Drawing No. 88030 Rev F. This drawing is contained in the Aerostar Main Landing Gear Torque Link Replacement Kit.

P/N 765-155 Rev F, and is referenced in Aerostar Aircraft Corporation SB No. 746B, dated June 11, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(d) The inspection and installations required by this AD shall be done in accordance with Aerostar Aircraft Corporation Service Bulletin No. 746B, dated June 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(e) This amendment (39-8258) supersedes AD 80-02-09, Amendment 3991.

(f) This amendment (39-8258) becomes effective on July 7, 1992.

Issued in Kansas City, Missouri, on May 6, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-11450 Filed 5-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-30-AD; Amendment 39-8259; AD 92-11-09]

Airworthiness Directives; Rockwell International/Collins Air Transport Division TPR-720 Air Traffic Control Radar Beacon System/Mode S Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all aircraft equipped with Rockwell International/Collins Air Transport Division (Collins) TPR-720 Air Traffic Control Radar Beacon System (ATCRBS)/Mode S transponders. This action requires modification of the software or hardware of these Mode S transponders. There have been numerous reports of an inability to track aircraft equipped with the affected transponders during arrival and departure from the air traffic control center. The actions specified by this AD are intended to prevent the loss of the ability to track aircraft positions by radar in high density air traffic areas that could result from transponder malfunction.

DATES: Effective May 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 1992.

Comments for inclusion in the Rules Docket must be received on or before July 15, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 92-CE-30-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that is applicable to this AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road NE., Cedar Rapids, Iowa 52498. This information may also be examined at the Rules Docket at the address above; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Klapprott, Systems and Equipment Branch Manager, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4131.

SUPPLEMENTARY INFORMATION: There have been numerous reports of an inability to track aircraft during arrival and departure from the air traffic control center. Further investigation by the FAA has revealed that the aircraft involved are equipped with Collins TPR-720 ATCRBS/Mode S transponders. These transponders are designed with a protective circuit to prevent overheating during bench tests that temporarily inactivates the transponder when a certain number of interrogations are exceeded (over-interrogation) in any given second. The referenced air traffic controller reports are a result of over-interrogations of these transponders while the aircraft is in flight. The transponder design allows the transponder to reset within two seconds, but, then could temporarily inactivate again in high density areas where the interrogation rate is high (e.g., Chicago, Illinois, at O'Hare International Airport). When the transponder temporarily becomes inactive, the air traffic controller's radar will show the aircraft in a "coasting" phase, which does not allow the controller to obtain an accurate position of the affected aircraft. The communication between the controller and the flight crew to regain radar tracking of the aircraft unnecessarily distracts air traffic control personnel from other aircraft they may be tracking.

Collins has issued Service Bulletin (SB) 8, TPR-720-34-08, dated September 19, 1990, which specifies procedures for modifying the software of the Collins TPR-720 ATCRBS/Mode S transponders. In addition, Collins has issued SB C, TPR-720-34-C, dated April 28, 1992, which specifies procedures for modifying the hardware of the Collins TPR-720 ATCRBS/Mode S transponders. The accomplishment of either of these procedures will prevent these transponders from becoming inactive because of excessive interrogations.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to prevent the loss of ability to track aircraft positions by radar in high density air traffic areas that could result from transponder malfunction. Since an unsafe condition has been identified that is likely to exist or develop in aircraft equipped with Collins TPR-720 ATCRBS/Mode S transponders of the same type design, this AD requires a modification to the transponder software or transponder hardware in accordance with the referenced service information.

The FAA has determined that the compliance time for this AD should be presented in calendar time instead of hours time-in-service in order to allow ample time for the operator to schedule the required modification and to prevent inadvertent grounding of the affected aircraft.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and,

thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-30-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-11-09 Rockwell International/Collins Air Transport Systems: Amendment 39-8259; Docket No. 92-CE-30-AD.

Applicability: TPR-720 Air Traffic Control Radar Beacon System/Mode S Transponders, part numbers (P/N) 622-7878-020, and P/N 622-7878-120, installed on, but not limited to, the following aircraft (all serial numbers), certificated in any category:

Boeing 737-300, 747, and 767 Series Airplanes
McDonnell Douglas DC-10 Series Airplanes
Fokker F.28 Mark 0100 Series Airplanes

Compliance: Required as indicated, unless already accomplished.

To prevent the loss of the ability to track aircraft positions by radar in high density air traffic areas that could result from transponder malfunction, accomplish the following:

(a) Within the next 6 calendar months after the effective date of this AD, accomplish either (1) or (2) below:

(1) Modify the transponder software in accordance with the instructions in Collins Service Bulletin (SB) 8, TPR-720-34-08, dated September 19, 1990. This modification converts transponder P/N 622-7878-020 and 622-7878-120 to P/N 622-7878-200 status.

Note 1: Although not required by this AD, accomplishment of Collins SB 14, TPR-720-34-14, dated February 26, 1991, Revision 1, dated June 28, 1991; or Collins SB 15, TPR-720-34-15, dated February 26, 1991, Revision 1, dated June 28, 1991, is recommended after accomplishment of Collins SB 8, TPR-720-34-08. Collins SB 14, TPR-720-34-14, and SB 15, TPR-720-34-15, convert transponder P/N 622-7878-200 to transponder P/N 622-7878-201 status or transponder P/N 622-7878-300 status, respectively.

(2) Modify the transponder hardware in accordance with the instructions in Collins SB C, TPR-720-34-C, dated April 28, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(c) The modification required by this AD shall be done in accordance with Collins Service Bulletin 8, TPR-720-34-08, dated September 19, 1990; or Collins Service Bulletin C, TPR-720-34-C, dated April 28, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE., Cedar Rapids, Iowa 52498. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(d) This amendment (39-8259) becomes effective on May 28, 1992.

Issued in Kansas City, Missouri, on May 6, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-11458 Filed 5-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASW-22]

Establishment of Transition Area; Los Alamos, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area at Los Alamos, NM. A special instrument approach procedure (SIAP) has been developed to provide services to the Los Alamos Airport, NM, under contract from the Department of Energy. This action will allow air traffic control to provide service to approved operators executing the new SIAP very high frequency omnidirectional range/distance measuring equipment (VOR/DME)-A and benefit the commerce and welfare at this location. This action provides controlled airspace for

approved operators executing the new SIAP. This action changes the status of the Los Alamos airport (private) from visual flight rules (VFR) only, to include operations under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5535.

SUPPLEMENTARY INFORMATION:

History

On October 21, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Los Alamos, NM. (56–FR–52491).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Six comments objecting to the proposal were received. All comments can be grouped into two areas. The first area concerns the effect that the SIAP to the Los Alamos Airport would have on IFR operations at Santa Fe Municipal Airport. The question of an approach control for Santa Fe is outside the scope of the airspace proposal. The second area of concern centers around a perceived increase in delays based upon an anticipated conflict between traffic flying into the Los Alamos and Santa Fe Airports. Currently, the aircraft operating IFR into Los Alamos can only receive a cruise clearance issued by the Albuquerque Air Route Traffic Control Center (ARTCC). In the event a landing cannot be made at Los Alamos Airport, the Santa Fe Municipal Airport is used as an alternate. This causes delays at the Santa Fe Airport. However, as a result of the input from the commenters, design changes to the new SIAP were made to the proposed Los Alamos SIAP. With these design changes to the new SIAP, simultaneous approaches to the Los Alamos and Santa Fe Airports are permitted. Enabling the Albuquerque ARTCC to provide separation services to the Santa Fe Airport and the Los Alamos Airport simultaneously will reduce the current delays at Santa Fe. Except for the changes discussed, this amendment is the same as that proposed in the notice. The Los Alamos transition area description will be published in section 71.181 of Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will establish a 700-foot transition area located at Los Alamos, NM. The development of a new SIAP VOR/DME–A to the Los Alamos Airport, NM, has necessitated this action. The intended effect of this action is to provide controlled airspace for approved operators executing the new SIAP. The status of the Los Alamos Airport, NM, will also be changed from VFR only to include IFR operations.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments 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, Transition Areas, Incorporation by Reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 [Transition Areas]

* * * * *

Los Alamos, NM [New]

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Los Alamos Airport (latitude 35°52'47" N., longitude 106°16'08" W.), excluding that airspace within restricted area R–5101.

* * * * *

Issued in Fort Worth, TX, on April 21, 1992.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 92–11473 Filed 5–14–92; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

Tracking and Data Relay Satellite System (TDRSS)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final Rule.

SUMMARY: NASA is amending 14 CFR part 1215, "Tracking and Data Relay Satellite System (TDRSS)," by revising appendix A to reflect the estimated service rates in 1993 dollars for TDRSS standard services, based on NASA escalation estimates. 14 CFR part 1215 sets forth the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to mobile terrestrial users such as aircraft or balloons.

EFFECTIVE DATE: May 15, 1992.

ADDRESSES: Office of Space Communications, Code O, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Eugene Ferrick, 202–453–2030.

SUPPLEMENTARY INFORMATION: This regulation was first published in the **Federal Register** on March 9, 1983 (48 FR 9845). Each year since that time, 14 CFR part 1215 has been amended by revising appendix A to reflect the rate changes for the appropriate calendar years (CY). Since this revision of appendix A to 14 CFR part 1215 reflects the rate changes for CY 1993 and involves NASA management procedures and decisions, no public comment is required.

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities, and it is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1215

Satellites.

1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

For reasons set out in the Preamble, 14 CFR part 1215 is amended to read as follows:

1. The authority citation for 14 CFR part 1215 continues to read as follows:

Authority: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Appendix A is revised to read as follows:

Appendix A to Part 1215—Estimated Service Rates in 1993 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY–93 based on current projections in 1993 dollars are as follows:

Single Access Serve—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $198.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $45.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $14.00 per minute for non-U.S. Government users.

Dated: April 29, 1992.

Charles T. Force,

Associate Administrator for Space Communications.

[FR Doc 92–11378 Filed 5–14–92; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8417]

RIN 1545–AQ53

Limitation on Passive Activity Losses and Credits—Technical Amendments to Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the limitation on passive activity losses and credits. This regulation adopts as final regulations amendments previously proposed that made corrective and clarifying changes to the existing regulations under section 469 of the Internal Revenue Code, as amended (the "Code"). This document also revises the temporary regulations to reflect where portions have been adopted as final. The final regulations affect taxpayers subject to the limitations on passive activity losses and passive activity credits and provide them with the guidance necessary to comply with the law.

EFFECTIVE DATES: The final regulations under §§ 1.469–0, 1.469.1, 1.469–2, 1.469–3 and 1.469–5, the addition of §§ 1.469–6 through 1.469–10, the removal of §§ 1.469–0T and 1.469.6T through 1.469.11T, and the amendments to §§ 1.469–1T, 1.469–2T, 1.469–3T and 1.469–5T are effective for taxable years ending after May 10, 1992. The final regulations under § 1.469–11 are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Donna J. Welch at (202) 566–4751 (not a toll-free number).

Background

Temporary regulations (TD 8175) under §§ 1.469–1T, 1.469–2T, 1.469–3T, 1.469–5T and 1.469–11T were first published in the **Federal Register** for February 25, 1988 (53 FR 5686). A cross-reference notice of proposed rulemaking (PS–014–88) was published in the **Federal Register** on the same day. These temporary regulations were amended by temporary regulations (TD 8253) published in the **Federal Register** for May 12, 1989 (54 FR 20527). A notice of proposed rulemaking (PS–001–89) was also published. These regulations amended the authority for part 602. Written comments were received on the amendments to the temporary regulations and a hearing was held on November 28, 1989. To avoid possible disputes about whether the amendments made to §§ 1.469–1T, 1.469–2T, 1.469–3T, 1.469–5T, and 1.469–11T (the "amendments") "sunset" under section 7805(e)(2) of the Code, this Treasury Decision adopts the amendments as final regulations. This document also reserves the corresponding temporary regulations and provides in the temporary regulations cross-references to the final regulations as appropriate.

Explanation of Provisions

In General

The final regulations generally adopt the amendments as originally proposed. They only make certain minor technical modifications to the amendments, including changes that conform them to the proposed regulations under § 1.469–4, relating to the definition of activity.

Until the remaining regulations under §§ 1.469–1T, 1.469–2T, 1.469–3T, and 1.469–5T are finalized, the portions of the regulations adopted as final in this Treasury Decision will appear separately in the Code of Federal Regulations from the portions still set forth as temporary regulations. To assist taxpayers, however, the Internal Revenue Service plans to publish a separate document in the Internal Revenue Bulletin that will integrate the final regulations with the temporary regulations.

Effective Dates

The final regulations include effective date rules for both the temporary regulations and the final regulations. Under these rules, the rules contained in the final regulations and the temporary regulations, as amended by this Treasury Decision, are effective for taxable years ending after May 10, 1992. The final regulations also include a transitional rule for the taxpayer's first taxable year ending after May 10, 1992, if it begins on or before May 10, 1992. In this case, the temporary regulations as they appeared prior to their amendment by this Treasury Decision may be applied. The final regulations also contain special effective date rules for investment credit property in order to take into account changes in the investment credit rules made by the Omnibus Reconciliation Act of 1990. This document also adopts the special effective date rules previously set forth in § 1.469–11T(a)(2) through (a)(5). The final regulations, however, do not adopt those provisions previously set forth in § 1.469–11T (b) and (c) relating to pre-enactment losses and credits and pre-enactment activites. Those rules related to the application of the phase-in rules of section 469(m) and were applicable only for taxable years beginning 1987 through 1990.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a regulatory Impact Analysis is not required. It is hereby certified that section 553(b) of the Administrative Procedure Act (5. U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comments on their impact on small businesses.

Drafting Information

The principal author of these regulations is Donna J. Welch, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

Adoption of Amendments to the Regulations.

Accordingly, title 26, chapter 1, part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "§§ 1.469–1T, 1.469–2T, 1.469–3T, 1.469–5T and 1.469–11T" and adding the following citations:

Authority: 26 U.S.C. 7805. * * * Sections 1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–5, 1.469–5T and 1.469–11 also issued under 26 U.S.C. 469( )(1). * * *

§ 1.469–0T [Removed]

Par. 2. Section 1.469–0T is removed.

Par. 2a. Section 1.469–0 is added to read as follows:

§ 1.469–O Table of contents.

This section lists the captions that appear in the regulations under section 469.

§ 1.469–1 General rules.

(a) through (d)(1) [Reserved].
(2) Coordination with sections 613A(d) and 1211.
(d)(3) through (e)(1) [Reserved].
(2) Trade or business activity.
(e)(3)(i) through (e)(3)(ii) [Reserved].
(iii) Average period of customer use.
(A) In general.
(B) Average use factor.
(C) Average period of customer use for class of property.
(D) Period of customer use.
(E) Class of property.
(F) Gross rental income and daily rent.
(e)(3)(iv) through (e)(3)(vi)(C) [Reserved].
(D) Lodging rented for convenience of employer.
(E) Unadjusted basis.
(e)(3)(vii) through (e)(4)(iii) [Reserved].
(iv) Definition of "working interest."
(e)(4)(v) through (vi) [Reserved].
(5) Rental of dwelling unit.
(e)(6) through (f)(3)(iii) [Reserved].
(4) Carryover of disallowed deductions and credits.
(i) In general.
(ii) Operations continued through C corporations or similar entities.
(iii) Examples
(g)(1) through (g)(4)(ii)(B) [Reserved].
(g)(4)(ii)(C) (no paragraph heading).
(g)(5) through (h)(3) [Reserved].
(4) Status and participation of members.
(i) Determination by reference to status and participation of group.
(ii) Determination of status and participation of consolidated group.
(h)(5) through (k) [Reserved].

§ 1.469–1T General rules (temporary).

(a) Passive activity loss and credit disallowed.
(1) In general.
(2) Exceptions.
(b) Taxpayers to whom these rules apply.
(c) Cross references.
(1) Definition of passive activity.
(2) Passive activity loss.
(3) Passive activity credit.
(4) Effect of rules for other purposes.
(5) Special rule for oil and gas working interests.
(6) Treatment of disallowed losses and credits.
(7) Corporations subject to section 469.
(8) Consolidated groups.
(9) Joint returns.
(10) Material participation.
(11) Effective date and transition rules.
(12) Future regulations.
(d) Effect of section 469 and the regulations thereunder for other purposes.
(1) Treatment of items of passive activity income and gain.
(2) Coordination with sections 613A(d) and 1211 [Reserved].
(3) Treatment of passive activity losses.
(e) Definition of "passive activity".
(1) In general.
(2) Trade or business activity [Reserved].
(3) Rental Activity.
(i) In general.
(ii) Exceptions.
(iii) Average period of customer use [Reserved].
(A) In general [Reserved].
(B) Average use factor [Reserved].
(C) Average period of customer use for class of property [Reserved].
(D) Period of Customer use [Reserved].
(E) Class of property [Reserved].
(F) Gross rental income and daily rent [Reserved].
(iv) Significant personal services.
(A) In general.
(B) Excluded services
(v) Extraordinary personal services.
(vi) Rental of property incidental to a nonrental activity of the taxpayer.
(A) In general.
(B) Property held for investment.
(C) Property used in a trade or business.
(D) Lodging rented for convenience of employer [Reserved].
(E) Unadjusted basis [Reserved].
(vii) Property made available for use in a nonrental activity conducted by a partnership, S corporation or joint venture in which the taxpayer owns an interest.
(viii) Examples.
(4) Special rules for oil and gas working interests.
(i) In general.
(ii) Exception for deductions attributable to a period during which liability is limited.
(A) In general.
(B) Coordination with rules governing the identification of disallowed passive activity deductions.
(C) Meaning of certain terms.
(*1*) Allocable deductions
(*2*) Disqualified deductions.
(*3*) Net loss.
(*4*) Ratable portion.
(iii) Examples.
(iv) Definition of "working interest" [Reserved].
(v) Entities that limit liability.
(A) General rule.
(B) Other limitations disregarded.
(C) Examples.
(vi) Cross reference to special rule for income from certain oil or gas properties.
(5) Rental of dwelling unit [Reserved].
(6) Activity of trading personal property.
(i) In general.
(ii) Personal property.
(iii) Example.
(f) Treatment of disallowed passive activity losses and credits.
(1) Scope of this paragraph.
(2) Identification of disallowed passive activity deductions.
(i) Allocation of disallowed passive activity deductions.
(A) General rule.
(B) Loss from an activity.
(C) Significant participation passive activities.
(D) Examples.
(ii) Allocation with loss activities.
(A) In general.
(B) Excluded deductions.
(iii) Separately identified deductions.
(3) Identification of disallowed credits from passive activities.
(i) General rule.
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(g) Application of these rules to C corporations.
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(i) Material participation.
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(4) Status and participation of members [Reserved].
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(ii) Determination of status and participation of consolidated group [Reserved].
(5) Modification of rules for identifying disallowed passive activity deductions and credits.
(i) Identification of disallowed deductions.
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(iii) Identification of disallowed credits.
(6) Transactions between members of a consolidated group.
(i) Scope.
(ii) Recharacterization of gain or loss from intercompany transactions other than deferred intercompany transactions.
(A) In general.
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(iii) Deferred intercompany transactions.
(A) In general.
(B) Deferred intercompany transactions involving property subject to depreciation, amortization or depletion.
(C) Restoration of deferred gain or loss of dispositions.
(D) Certain recharacterization items treated as portfolio items.
(E) Property involved in deferred intercompany transactions.
(iv) Definitions.
(A) Deferred intercompany transactions.
(B) Directly related.
(C) Intercompany transaction.
(D) Purchasing member.
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(7) Disposition of stock of a member of an affiliated group.
(8) Dispositions of property used in multiple activities.
(i) [Reserved].
(j) Spouses filing joint returns.
(1) In general.
(2) Exceptions of treatment as one taxpayer.
(i) Identification of disallowed deductions and credits.
(ii) Treatment of deductions disallowed under sections 704(d), 1366(d) and 465.
(iii) Treatment of losses from working interests.
(3) Joint return no longer filed.
(4) Participation of spouses.
(k) Former passive activities and changes in status of corporations [Reserved].

§ 1.469–2 Passive activity loss.

(a) through (c)(2)(ii) [Reserved].
(iii) Disposition of substantially appreciated property formerly used in a nonpassive activity.
(A) In general.
(B) Date of disposition.
(C) Substantially appreciated property.
(D) Investment property.
(E) Coordination with § 1.469–2T(c)(2)(ii).
(F) Coordination with section 163(d).
(G) Examples.
(iv) Taxable acquisitions.
(v) Property held for sale to customers.
(A) Sale incidental to another activity.
(*1*) Applicability.
(*i*) In general.
(*ii*) Principal purpose.
(*2*) Dealing activity not taken into account.
(B) Use in a nondealing activity incidental to sale.
(C) Examples.
(c) (3) through (c)(5) [Reserved].
(6) Gross income from certain oil or gas properties.
(i) In general.
(ii) Gross and net passive income from the property.
(iii) Property.
(iv) Examples 1 and 2.
(c)(6)(iv) Example 3 through (c)(7)(vi) [Reserved].
(d)(1) through (d)(2)(viii) [Reserved].
(d)(2)(ix) (no paragraph heading).
(d)(2)(x) through (d)(2)(xi) [Reserved].
(d)(2)(xii) (no paragraph heading).
(d)(3) through (d)(5)(ii) [Reserved].
(d)(5)(iii)(A) Applicability of rules in § 1.469–2T(c)(2).
(d)(5)(iii)(B) through (d)(6)(v)(D) [Reserved].
(d)(6)(v)(E) (no paragraph heading).
(d)(6)(v)(F) through (d)(7) [Reserved].
(8) Taxable year in which item arises.
(e)(1) through (e)(2)(i) [Reserved].
(ii) Section 707(c).
(iii) Payments in liquidation of a partner's interest in partnership property.
(A) In general.
(B) Payments in liquidation of a partner's interest in unrealized receivables and goodwill under section 736(a).
(e)(3)(i) through (iii)(A) [Reserved].
(e)(3)(iii)(B) (no paragraph heading).
(e)(3)(iii)(C) through (f)(4) [Reserved].
(5) Net income from certain property rented incidental to development activity.
(i) In general.
(f)(5)(ii)(B) through (f)(5)(iv) [Reserved].
(6) Property rented to a nonpassive activity.
(f)(7) through (f)(9)(ii) [Reserved].
(f)(9)(iii) through (f)(9)(iv) (no paragraph heading).
(10) Coordination with section 163(d).
(f)(11) [Reserved].

§ 1.469–2T Passive activity loss (temporary).

(a) Scope of this section.
(b) Definition of passive activity loss.
(1) In general.
(2) Cross reference.
(c) Passive activity group income.
(1) In general.
(2) Treatment of gain from disposition of an interest in an activity or an interest in property used in an activity.
(i) In general.
(A) Treatment of gain.
(B) Dispositions of partnership interest and S corporation stock.
(C) Interest in property.
(D) Examples.
(ii) Disposition of property used in more than one activity in 12-month period preceding disposition.
(iii) Disposition of substantially appreciated property used in nonpassive activity [Reserved].
(A) In general [Reserved].
(B) Date of disposition [Reserved].
(C) Substantially appreciated property [Reserved].
(D) Investment property [Reserved].
(E) Coordination with paragraph (c)(2)(ii) of this section [Reserved].
(F) Coordination with section 163(d) [Reserved].
(G) Examples [Reserved].
(iv) Taxable acquisitions [Reserved].
(v) Property held for sale to customers [Reserved].
(A) Sale incidental to another activity [Reserved].
(*1*) Applicability [Reserved].
(*i*) In general [Reserved].
(*ii*) Principal purpose [Reserved].
(*2*) Dealing activity not taken into account [Reserved].
(B) Use in a nondealing activity incidental to sale [Reserved].
(C) Examples [Reserved].
(3) Items of portfolio income specifically excluded.
(i) In general.
(ii) Gross income derived in the ordinary course of a trade or business.
(iii) Special rules.
(A) Income from property held for investment by dealer.
(B) Royalties derived in the ordinary course of the trade or business of licensing intangible property.
(*1*) In general.
(*2*) Substantial services or costs.
(*i*) In general.
(*ii*) Exception.
(*iii*) Expenditures taken into account.
(*3*) Passthrough entities.
(*4*) Cross reference.
(C) Mineral production payments.
(iv) Examples.
(4) Items of personal service income specifically excluded.
(i) In general.
(ii) Example.
(5) Income from section 481 adjustments.
(i) In general.
(ii) Positive section 481 adjustments.
(iii) Ratable portion.
(6) Gross income from certain oil or gas properties [Reserved].
(i) In general [Reserved].
(ii) Gross and net passive income from the properties [Reserved].
(iii) Property [Reserved].
(iv) Examples.
(7) Other items specifically excluded.
(d) Passive activity deductions.
(1) In general.
(2) Exceptions.
(3) Interest expense.
(4) Clearly and directly allocable expenses.
(5) Treatment of loss from disposition.
(i) In general.
(ii) Disposition of property used in more than one activity in 12-month period preceding disposition.
(iii) Other applicable rules.
(A) Applicability or rules in paragraph (c)(2).
(B) Dispositions of partnership interest and S corporation stock.
(6) Coordination with other limitations on deductions that apply before section 469.
(i) In general.
(ii) Proration of deductions disallowed under basis limitations.
(A) Deductions disallowed under section 704(d).
(B) Deductions disallowed under section 1366(d).

Par. 3. Section 1.469–1 is added to read as follows:

§ 1.469–1 General rules.

(a) through (d)(1). [Reserved]

(d)(2) *Coordination with sections 613A (d) and 1211.* A passive activity

deduction that is not disallowed for the taxable year under section 469 and the regulations thereunder may nonetheless be disallowed for the taxable year under section 613A(d) or 1211. The following example illustrates the application of this paragraph (d)(2):

Example. In 1993, an individual derives $10,000 of ordinary income from passive activity X, no gains from the sale or exchange of capital assets or assets used in a trade or business, $12,000 of capital loss from passive activity Y, and no income, gain, deductions, or losses from any other passive activity. The capital loss from activity Y is a passive activity deduction (within the meaning of § 1.469–2T(d)). Under section 469 and the regulations thereunder, the taxpayer is allowed $10,000 of the $12,000 passive activity deduction and has a $2,000 passive activity loss for the taxable year. Since the $10,000 passive activity deduction allowed under section 469 is a capital loss, such deduction is allowable for the taxable year only to the extent provided under section 1211. Therefore, the taxpayer is allowed $3,000 of the $10,000 capital loss under section 1211 and has a $7,000 capital loss carryover (within the meaning of section 1212(b)) to the succeeding taxable year.

(d)(3) through (e)(1). [Reserved].

(e)(2) *Trade or business activities. Trade or business activities* are activities that constitute trade or business activities within the meaning of § 1.469–4(b)(1).

(e)(3)(i) through (e)(3)(ii) [Reserved]

(e)(iii) *Average period of customer use*—(A) *In general.* For purposes of this paragraph (e)(3), the average period of customer use for property held in connection with an activity (the *activity's average period of customer use)* is the sum of the average use factors for each class of property held in connection with the activity.

(B) *Average use factor.* The average use factor for a class of property held in connection with an activity is the average period of customer use for that class of property multiplied by the fraction obtained by dividing—

(*1*) The activity's gross rental income attributable to that class of property; by

(*2*) The activity's gross rental income.

(C) *Average period of customer use for class of property.* In determining an activity's average period of customer use for a taxable year, the average period of customer use for a class of property held in connection with an activity is determined by dividing—

(*1*) The aggregate number of days in all periods of customer use for property in the class (taking into account only periods that end during the taxable year or that include the last day of the taxable year); by

(*2*) The number of those periods of customer use.

(D) *Period of customer use.* Each period during which a customer has a continuous or recurring right to use an item of property held in connection with the activity (without regard to whether the customer uses the property for the entire period or whether the right to use the property is pursuant to a single agreement or to renewals thereof) is treated for purposes of this paragraph (e)(3)(iii) as a separate period of customer use. The duration of a period of customer use that includes the last day of a taxable year may be determined on the basis of reasonable estimates.

(E) *Class of property.* Taxpayers may organize property into classes for purposes of this paragraph (e)(3)(iii) using any method under which items of property for which the amount of the daily rent differs significantly are not included in the same class.

(F) *Gross rental income and daily rent.* In determining an activity's average period of customer use for a taxable year—

(*1*) The activity's gross rental income is the gross income from the activity for the taxable year taking into account only income that is attributable to amounts paid for the use of property;

(*2*) The activity's gross rental income attributable to a class of property is the gross income from the activity for the taxable year taking into account only income that is attributable to amounts paid for the use of property in that class; and

(*3*) The daily rent for items of property may be determined on any basis that reasonably reflects differences during the taxable year in the amounts ordinarily paid for one day's use of those items of property.

(e)(3)(iv) through (e)(3)(vi)(C) [Reserved]

(e)(3)(vi)(D) *Lodging rented for convenience of employer.* The provision of lodging to an employee or to an employee's spouse or dependents is treated as incidental to the activity (or activities) of the taxpayer in which the employee performs services if the lodging is furnished for the taxpayer's convenience (within the meaning of section 119).

(E) *Unadjusted basis.* For purposes of this paragraph (e)(3)(vi), the term *unadjusted basis* means adjusted basis determined without regard to any adjustment described in section 1016 that decreases basis.

(e)(3)(vii) through (e)(4)(iii) [Reserved]

(e)(4)(iv) *Definition of "working interest."* For purposes of section 469 and the regulations thereunder, the term *working interest* means a working or operating mineral interest in any tract or parcel of land [within the meaning of § 1.612–4(a)].

(e)(4)(v) through (f)(3) [Reserved]

(f)(4) *Carryover of disallowed deductions and credits*—

(i) *In general.* In the case of an activity of a taxpayer with respect to which any deductions or credits are disallowed for a taxable year under § 1.469–1T (f)(2) or (f)(3) (the loss activity)—

(A) The disallowed deductions or credits is allocated among the taxpayer's activities for the succeeding taxable year in a manner that reasonably reflects the extent to which each activity continues the loss activity; and

(B) The disallowed deductions or credits allocated to an activity under paragraph (f)(4)(i)(A) of this section shall be treated as deductions or credits from the activity for the succeeding taxable year.

(ii) *Business continued through C corporations or similar entities.* If a taxpayer continues part or all of a loss activity through a C corporation or similar entity (C corporation entity), the taxpayer's interest in the C corporation entity shall be treated for purposes of this paragraph (f)(4) as an interest in a passive activity that continues that loss activity in whole or part. An entity is similar to a C corporation for this purpose if the owners of interests in the entity derive only portfolio income (within the meaning of § 1.469–2T(c)(3)(i)) from the interests.

(iii) *Examples.* The following examples illustrate the application of this paragraph (f)(4). In each example, the taxpayer is an individual whose taxable year is the calendar year.

Example 1. (i) The taxpayer owns interests in a convenience store and an apartment building. In each taxable year, the taxpayer's interests in the convenience store and the apartment building are treated under § 1.469–4 as interests in two separate passive activities of the taxpayer. A $5,000 loss from the convenience-store activity and a $3,000 loss from the apartment-building activity are disallowed under § 1.469–1T(f)(2) for 1993. Under § 1.469–1T(f)(2), the $5,000 loss from the convenience-store activity is allocated among the passive activity deductions from that activity for 1993, and the $3,000 loss from the apartment-building activity is treated similarly.

(ii) In 1994, the convenience store is continued in a single activity, and the section 469 activities that constituted the apartment building is similarly continued in a separate activity. Thus, the disallowed deductions from the convenience-store activity for 1993 must be allocated under paragraph (f)(4)(i)(A) of this section to the taxpayer's convenience-store activity in 1994. Similarly, the disallowed deductions from the apartment-

building activity for 1993 must be allocated to the taxpayer's apartment-building activity in 1994. Under paragraph (f)(4)(i)(B) of this section, the disallowed deductions allocated to the convenience-store activity in 1994 are treated as deductions from that activity for 1994, and the disallowed deductions allocated to the apartment-building activity for 1994 are treated as deductions from the apartment-building activity for 1994.

Example 2. (i) In 1993, the taxpayer acquires a restaurant and a catering business. Assume that in 1993 and 1994 the restaurant and the catering business are treated under § 1.469–4 as an interest in a single passive activity of the taxpayer (the restaurant and catering activity). A $10,000 loss from the activity is disallowed under § 1.469–1T(f)(2) for 1994. Assume that in 1995, the taxpayer's interests in the restaurant and the catering business are treated under § 1.469–4 as interests in two separate passive activities of the taxpayer.

(ii) Under § 1.469–1T(f) (2), the $10,000 loss from the restaurant and catering activity is allocated among the passive activity deductions from that activity for 1994. In 1995, the businesses that constituted the restaurant and catering activity are continued, but are treated as two separate activities under § 1.469–4. Thus, the disallowed deductions from the restaurant and catering activity for 1994 must be allocated under paragraph (f) (4) (i) (A) of this section between the restaurant activity and the catering activity in 1995 in a manner that reasonably reflects the extent to which each of the activities continues the single restaurant and catering activity. Under paragraph (f) (4) (i) (B) of this section, the disallowed deductions allocated to the restaurant activity in 1995 are treated as deductions from the restaurant activity for 1995, and the disallowed deductions allocated to the catering activity in 1995 are treated as deductions from the catering activity for 1995.

Example 3. (i) In 1993, the taxpayer acquires a restaurant and a catering business. Assume that in 1993 and 1994 the restaurant and the catering business are treated under§ 1.469–4 as an interest in a single passive activity of the taxpayer (the restaurant and catering activity). A $10,000 loss from the activity is disallowed under § 1.469–1T(f) (2) for 1994. Assume that in 1995, the taxpayer's interests in the restaurant and the catering business are treated under § 1.469–4 as interestes in two separate passive activities of the taxpayer. In addition, a $20,000 loss from the activity was disallowed under § 1.469–1T(f) (2) for 1993, and the gross income and deductions (including deductions that were disallowed for 1993 under § 1.469–1T(f) (2)) from the restaurant and catering business for 1993 and 1994 are as follows:

	Restaurant	Catering business
1993:		
Gross income	$20,000	$60,000
Deductions	40,000	60,000
Net income (loss)	(20,000)	
1994:		
Gross income	40,000	50,000
Deductions	[1] 30,000	[2] 70,000
Net income (loss)	10,000	(20,000)

[1] Includes $8,000 of deductions that were disallowed for 1993 ($20,000 x $40,000/$100,000).
[2] Includes $12,000 of deductions that were disallowed for 1993 ($20,000 x $60,000/$100,000).

(ii) Under paragraph (f)(4)(i)(A) of this section, the disallowed deductions from the restaurant and catering activity must be allocated among the taxpayer's activities for the succeeding year in a manner that reasonably reflects the extent to which those activities continue the restaurant and catering activity. The remainder of this example describes a number of allocation methods that will ordinarily satisfy the requirement of paragraph (f) (4)(i) (A) of this section. The description of specific allocation methods in this example does not preclude the use of other reasonable allocation methods for purposes of paragraph (f) (4) (i) (A) of this section.

(iii) Ordinarily, an allocation of disallowed deductions from the restaurant to the restaurant activity and disallowed deductions from the catering business to the catering activity would satisfy the requirement of paragraph (f) (4) (i) (A) of this section. Under § 1.469–1T (f) (2) (ii), a ratable portion of each deduction from the restaurant and catering activity is disallowed for 1994. Thus, $3,000 of the 1994 deductions from the rstaurant are disallowed ($10,000 x $30,000/$100,000), and $7,000 of the 1994 deductions from the catering business are disallowed ($10,000 x $70,000/$100,000). Thus, the taxpayer can ordinarily treat $3,000 of the disallowed deductions as deductions from the restaurant activity for 1995, and $7,000 of the disallowed deductions and deductions from the catering activity for 1995.

(iv) Ordinarily, an allocation of disallowed deductions between the restaurant activity and catering activity in proportion to the losses from the restaurant and from the catering business for 1994 would also satisfy the requirement of paragraph (f) (4) (i) (A) of this section. If the restaurant and the catering business had been treated as separate activities in 1994, the restaurant activity would have had net income of $10,000 and the catering activity would have had a $20,000 loss. Thus, the taxpayer can ordinarily treat all $10,000 or disallowed deductions as deductions from the catering activity for 1995.

(v) Ordinarily, an allocation of disallowed deductions between the restaurant activity and catering activity in proportion to the losses from the restaurant and from the catering business for 1994 (determined as if the restaurant and the catering business had been separate activities for all taxable years) would also satisfy the requirement of paragraph (f)(4)(i)(A) of this section. If the restaurant and the catering business had been treated as separate activities for all taxable years, the entire $20,000 loss from the restaurant in 1993 would have been allocated to the restaurant activity in 1994, and the gross income and deductions from the separate activities for 1994 would be as follows:

	Restaurant	Catering business
Gross income	$40,000	$50,000
Deductions	42,000	58,000
Net income (loss)	(2,000)	(8,000)

Thus, the taxpayer can ordinarily treat $2,000 of the disallowed deductions as deductions from the restaurant activity for 1995, and $8,000 of the disallowed deductions as deductions from the catering activity for 1995.

Example 4. (i) The taxpayer is a partner in a law partnership that acquires a building in December 1993 for use in the partnership's law practice. In taxable year 1993, four floors that are not needed in the law practice are leased to tenants; in taxable year 1994, two floors are leased to tenants; in taxable years after 1994, only one floor is leased to tenants and the rental operations are insubstantial. Assume that under § 1.469–4, the law practice and the rental property are treated as a trade or business activity and a separate rental activity for taxable years 1993 and 1994. Assume further that the law practice and the rental operations are a single trade or business activity for taxable years after 1994 under § 1.469–4. The trade or business activity is not a passive activity of the taxpayer. The rental activity, however, is a passive activity. Under § 1.469–T(f)(2), a $12,000 loss from the rental activity is disallowed for 1993 and a $9,000 loss from the rental activity is disallowed for 1994.

(ii) Under § 1.469–1T(f)(2), the $12,000 loss from the rental activity for 1993 is allocated among the passive activity deductions from that activity for 1993. In 1994, the business of the rental activity is continued in two separate activities. Only two floors of the building remain in the rental activity, and the other two floors (*i.e.*, the floors that were leased to tenants in 1993, but not in 1994) are used in the taxpayer's law-practice activity. Thus, the disallowed deductions from the rental activity for 1993 must be allocated under paragraph (f)(4)(i)(A) of this section between the rental activity and the law-practice activity in a manner that reasonably reflects the extent to which each of the activities continues business on the four floors that were leased to tenants in 1993. In these circumstances, the requirement of paragraph (f)(4)(i)(A) of this section would ordinarily be satisfied by any of the allocation methods illustrated in Example 3 or by an allocation of 50 percent of the disallowed deductions to each activity. Under paragraph (f)(4)(i)(B) of this section, the disallowed deductions allocated to the rental activity in 1994 are treated as deductions from the rental activity for 1994, and the disallowed deductions ($6,000) allocated to the law-practice activity in 1994

are treated as deductions from the law-practice activity for 1994.

(iii) Under § 1.469–1T(f)(2), the $9,000 loss from the rental activity for 1994 is allocated among the passive activity deductions from that activity for 1994. In 1995, the rental activity is continued in the taxpayer's law-practice activity. Thus, the disallowed deductions from the rental activity for 1994 must be allocated under paragraph (f)(4)(ii) of this section to the taxpayer's law-practice activity in 1995. Under paragraph (f)(4)(i)(B) of this section, the disallowed deductions allocated to the law-practice activity are treated as deductions from the law-practice activity for 1995.

(iv) Rules relating to former passive activities will be contained in paragraph (k) of this section. Under those rules, any disallowed deductions from the rental activity that are treated as deductions from the law-practice activity will be treated as unused deductions that are allocable to a former passive activity.

Example 5. (i) The taxpayer owns stock in a corporation that is an S corporation for the taxpayer's 1993 taxable year and a C coporation thereafter. The only activity of the corporation is a rental activity. For 1993, the taxpayer's pro rata share of the corporation's loss from the rental activity is $5,000, and the entire loss is disallowed under § 1.469–1T(f)(2) of this section.

(ii) Under § 1.469–1T(f)(2), the taxpayer's $5,000 loss from the rental activity is allocated among the taxpayer's deductions from that activity for 1993. In 1994, the rental activity is continued through a C corporation, and the taxpayer's interest in the C corporation is treated under paragraph (f)(4)(ii) of this section as a passive activity that continues the rental activity (the C corporation activity) for purposes of allocating the previously disallowed loss. Thus, the disallowed deductions from the rental activity for 1993 must be allocated under paragraph (f)(4)(i)(A) of this section to the taxpayer's C corporation activity in 1994, and are treated under paragraph (f)(4)(i)(B) of this section as deductions from the C corporation activity for 1994.

(iii) Treating the taxpayer's interest in the C corporation as an interest in a passive activity that continues the business of the rental activity does not change the character of the taxpayer's dividend income from the C corporation. Thus, the taxpayer's dividend income is portfolio income (within the meaning of § 1.469–2T(c)(3)(i)) and is not included in passive activity gross income. Accordingly, the taxpayer's loss from the C corporation activity for 1994 is $5,000.

Example 6. (i)(i) The taxpayer owns stock in a corporation that is an S corporation for the taxpayer's 1993 taxable year and a C corporation thereafter. The only activity of the corporation is a rental activity. For 1993, the taxpayer's pro rata share of the corporation's loss from the rental activity is $5,000, and the entire loss is disallowed under § 1.469–1T(f)(2). The taxpayer has $2,000 in income from other passive activities for 1994, and as a result, only 60% of the taxpayer's loss from the C corporation activity ($3,000) is disallowed for 1994 under § 1.469–1T(f)(2).

(ii) Under § 1.469–1T(f)(2), the $3,000 disallowed loss from the C corporation activity is allocated among the passive activity deductions from that activity for 1994. In effect, therefore, 60 percent of each disallowed deduction from the rental activity for 1993 is again disallowed for 1994.

(iii) Under paragraph (f)(4) of this section, the taxpayer's interest in the C corporation is treated as a loss activity and as an interest in a passive activity that continues the business of that loss activity for 1995. Thus, the disallowed deductions from the C corporation activity for 1994 must be allocated under paragraph (f)(4)(i)(A) of this section to the taxpayer's C corporation activity in 1995, and are treated under paragraph (f)(4)(i)(B) of this section as deductions from that activity for 1995.

(g)(1) through (g)(4)(ii)(B) [Reserved]

(g)(4)(ii)(C) Portfolio income (within the meaning of § 1.469–2T(c)(3)(i)), including any gross income that is treated as portfolio income under any other provision of the regulations (See, e.g., § 1.469–2(c)(2)(iii)(F) (relating to gain from the disposition of substantially appreciated property formerly held for investment) and § 1.469–2(f)(10) (relating to certain recharacterized passive activity gross income))

(g)(5) through (h)(3) [Reserved]

(h)(4) *Status and participation of members*—(i) *Determination by reference to status and participation of group.* For purposes of section 469 and the regulations thereunder—

(A) Each member of a consolidated group shall be treated as a closely held corporation or personal service corporation, respectively, for the taxable year, if and only if the consolidated group is treated (under the rules of paragraph (h)(4)(ii) of this section) as a closely held corporation or personal service corporation for that year; and

(B) The determination of whether a trade or business activity (within the meaning of paragraph (e)(2) of this section) conducted by one or more members of a consolidated group is a passive activity of the members is made by reference to the consolidated group's participation in the activity.

(ii) *Determination of status and participation of consolidated group.* For purposes of determining under § 1.469–1T(g)(2) whether a consolidated group is treated as a closely held corporation or a personal service corporation, and determining under § 1.469–1T(g)(3) whether the consolidated group materially or significantly participates in any activity conducted by one or more members of the group—

(A) The members of the consolidated group shall be treated as one corporation;

(B) Only the outstanding stock of the common parent shall be treated as outstanding stock of the corporation;

(C) An employee of any member of the group shall be treated as an employee of the corporation; and

(D) An activity is treated as the principal activity of the corporation if and only if it is the principal activity (within the meaning of § 1.441–4T(f)) of the consolidated group.

(h)(5) through (k) [Reserved]

Par. 4. Section 1.469–1T is amended by revising paragraphs (d)(2), (e)(2), (e)(3)(iii), (e)(3)(vi)(D) and (E), (e)(4)(iv), (e)(5), (f)(4), (g)(4)(ii)(C), and (h)(4) to read as follows:

§ 1.469–1T General rules.

* * * * *

(d) * * *

(2) *Coordination with sections 613A(d) and 1211.* [Reserved] See § 1.469–1(d)(2) for rules relating to this paragraph.

* * * * *

(e) * * *

(2) *Trade or business activity.* [Reserved] See § 1.469–1(e)(2) for rules relating to this paragraph.

* * * * *

(3) * * *

(iii) *Average period of customer use.* [Reserved] See § 1.469–1(e)(3)(iii) for rules relating to this paragraph.

* * * * *

(vi) * * *

(D) *Lodging for convenience of employer.* [Reserved] See § 1.469–1(e)(3)(vi)(D) for rules relating to this paragraph.

(E) *Unadjusted basis.* [Reserved] See § 1.469–1(e)(3)(vi)(E) for rules relating to this paragraph.

* * * * *

(4) * * *

(iv) *Definition of "working interest."* [Reserved] See § 1.469–1(e)(4)(iv) for rules relating to this paragraph.

* * * * *

(5) *Rental of dwelling unit.* [Reserved] See § 1.469–1(e)(5) for rules relating to this paragraph.

* * * * *

(f) * * *

(4) *Carryover of disallowed deductions and credits.* [Reserved] See § 1.469–1(f)(4) for rules relating to this paragraph.

* * * * *

(g) * * *

(4) * * *

(ii) * * *

(C) [Reserved] See § 1.469–1(g)(4)(ii)(C) for rules relating to this paragraph.

* * * * *

(h) * * *

(4) [Reserved] See § 1.469–1(h)(4) for rules relating to this paragraph.

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Par. 5. Section 1.469–2 is added to read as follows:

§ 1.469–2 Passive activity loss.

(a) through (c)(2)(ii) [Reserved]

(c)(2)(iii) *Disposition of substantially appreciated property formerly used in nonpassive activity*—(A) *In general.* If an interest in property used in an activity is substantially appreciated at the time of its disposition, any gain from the disposition shall be treated as not from a passive activity unless the interest in property was used in a passive activity for either—

(*1*) 20 percent of the period during which the taxpayer held the interest in property; or

(*2*) The entire 24-month period ending on the date of the disposition.

(B) *Date of disposition.* For purposes of this paragraph (c)(2)(iii), a disposition of an interest in property is deemed to occur on the date that the interest in property becomes subject to an oral or written agreement that either requires the owner or gives the owner an option to transfer the interest in property for consideration that is fixed or otherwise determinable on that date.

(C) *Substantially appreciated property.* For purposes of this paragraph (c)(2)(iii), an interest in property is substantially appreciated if the fair market value of the interest in property exceeds 120 percent of the adjusted basis of the interest.

(D) *Investment property.* For purposes of this paragraph (c)(2)(iii), an interest in property is treated as an interest in property used in an activity other than a passive activity and as an interest in property held for investment for any period during which the interest is held through a C corporation or similar entity. An entity is similar to a C corporation for this purpose if the owners of interests in the entity derive only portfolio income (within the meaning of § 1.469–2T) from the interests.

(E) *Coordination with § 1.469–2T(c)(2)(ii).* If § 1.469–2T(c)(2)(ii) applies to the disposition of an interest in property, this paragraph (6)(2)(iii) applies only to that portion of the gain from the disposition of the interest in property that is characterized as gain from a passive activity after the application of § 1.469–2T(c)(2)(ii).

(F) *Coordination with section 163(d).* Gain that is treated as not from a passive activity under this paragraph (c)(2)(iii) is treated as income described in section 469(e)(1)(A) and § 1.469–2T(c)(3)(i) if and only if the gain is from the disposition of an interest in property that was held for investment for more than 50 percent of the period during which the taxpayer held that interest in property in activities other than passive activities.

(G) *Examples.* The following examples illustrate the application of this paragraph (c)(2)(iii):

Example 1. A acquires a building on January 1, 1993, and uses the building in a trade or business activity in which A materially participates until March 31, 2004. On April 1, 2004, A leases the building to B. On Decemner 31, 2005, A sells the building. At the time of the sale, A's interest in the building is substantially appreciated (within the meaning of paragraph (c)(2)(iii)(C) of this section). Assuming A's lease of the building to B constitutes a rental activity (within the meaning of § 1.469–1T(e)(3)), the building is used in a passive activity for 21 months (April 1, 2004, through December 31, 2005). Thus, the building was not used in a passive activity for the entire 24-month period ending on the date of the sale. In addition, the 21-month period during which the building was used in a passive activity is less than 20 percent of A's holding period for the building (13 years). Therefore, the gain from the sale is treated under this paragraph (c)(2)(iii) as not from a passive activity.

Example 2. (i) A, an individual, is a stockholder of corporation X. X is a C corporation until December 31, 1993, and is an S corporation thereafter. X acquires a building on January 1, 1993, and sells the building on March 1, 1994. At the time of the sale, A's interest in the building held through X is substantially appreciated (within the meaning of paragraph (c)(2)(iii)(C) of this section). The building is leased to various tenants at all times during the period in which it is held by X. Assume that the lease of the building would constitute a rental activity (within the meaning of § 1.469–1T(e)(3)) with respect to a person that holds the building directly or through an S corporation.

(ii) Paragraph (c)(2)(iii)(D) of this section provides that an interest in property is treated for purposes of this paragraph (c)(2)(iii) as used in an activity other than a passive activity and as held for investment for any period during which the interest is held through a C corporation. Thus, for purposes of determining the character of A's gain from the sale of the building, A's interest in the building is treated as an interest in property held for investment for the period from January 1, 1993, to December 31, 1993, and as an interest in property used in a passive activity for the period from January 1, 1994, to February 28, 1994.

(iii) A's interest in the building was not used in a passive activity for the entire 24-month period ending on the date of the sale. In addition, the 2-month period during which A's interest in the building was used in a passive activity is less than 20 percent of the period during which A held an interest in the building (14 months). Therefore, the gain from the sale is treated under this paragraph (c)(2)(iii) as not from a passive activity.

(iv) Under paragraph (c)(2)(iii)(F) of this section, gain that is treated as nonpassive under this paragraph (c)(2)(iii) is treated as portfolio income (within the meaning of § 1.469–2T(c)(3)(i)) if the gain is from the disposition of an interest in property that was held for investment for more than 50 percent of the period during which the taxpayer held the interest in activities other than passive activities. In this case, A's interest in the building was treated as held for investment for the entire period during which it was used in activities other than passive activities (*i.e.*, the 12-month period from January 1, 1993, to December 31, 1993). Accordingly, A's gain from the sale is treated under this paragraph (c)(2)(iii) as portfolio income.

(iv) *Taxable acquisitions.* If a taxpayer acquires an interest in property in a transaction other than a nonrecognition transaction (within the meaning of section 7701(a)(45)), the ownership and use of the interest in property before the transaction is not taken into account for purposes of applying this paragraph (c)(2) to any subsequent disposition of the interest in property by the taxpayer.

(v) *Property held for sale to customers*—(A) *Sale incidental to another activity*—(*1*) *Applicability*—(*i*) *In general.* This paragraph (c)(2)(v)(A) applies to the disposition of a taxpayer's interest in property if and only if—

(*A*) At the time of the disposition, the taxpayer holds the interest in property in an activity that, for purposes of section 1221(1), involves holding the property or similar property primarily for sale to customers in the ordinary course of a trade or business (a dealing activity);

(*B*) One or more other activities of the taxpayer do not involve holding similar property for sale to customers in the ordinary course of a trade or business (nondealing activities) and the interest in property was used in the nondealing activity or activities for more than 80 percent of the period during which the taxpayer held the interest in property; and

(*C*) The interest in property was not acquired and held by the taxpayer for the principal purpose of selling the interest to customers in the ordinary course of a trade or business.

(*ii*) *Principal purpose.* For purposes of this paragraph (c)(2)(v)(A), a taxpayer is rebuttably presumed to have acquired and held an interest in property for the principal purpose of selling the interest to customers in the ordinary course of a trade or business if—

(*A*) The period during which the interest in property was used in nondealing activities of the taxpayer does not exceed the lesser of 24 months or 20 percent of the recovery period

(within the meaning of section 168) applicable to the property; or

(*B*) The interest in property was simultaneously offered for sale to customers and used in a nondealing activity of the taxpayer for more than 25 percent of the period during which the interest in property was used in nondealing activities of the taxpayer.

For purposes of the preceding sentence, an interest in property is not considered to be offered for sale to customers solely because a lessee of the property has been granted an option to purchase the property.

(*2*) *Dealing activity not taken into account.* If paragraph (c)(2)(v)(A) applies to the disposition of a taxpayer's interest in property, holding the interest in the dealing activity is treated, for purposes of § 1.469–2T(c)(2), as the use of the interest in the last nondealing activity of the taxpayer in which the interest in property was used prior to its disposition.

(B) *Use in a nondealing activity incidental to sale.* If paragraph (c)(2)(v)(A) of this section does not apply to the disposition of a taxpayer's interest in property that is held in a dealing activity of the taxpayer at the time of disposition, the use of the interest in property in a nondealing activity of the taxpayer for any period during which the interest in property is also offered for sale to customers is treated, for purposes of § 1.469–2T(c)(2), as the use of the interest in property in the dealing activity of the taxpayer.

(C) *Examples.* The following examples illustrate the application of this paragraph (c)(2)(v):

Example 1. (i) The taxpayer acquires a residential apartment building on January 1, 1993, and uses the building in a rental activity. In January 1996, the taxpayer converts the apartments into condominium units. After the conversion, the taxpayer holds the condominium units for sale to customers in the ordinary course of a trade or business of dealing in condominium units. (Assume that these are dealing operations treated as separate activities under § 1.469–4, and that the taxpayer materially participates in the activity.) In addition, the taxpayer continues to use the units in the rental activity until they are sold. The units are first held for sale on January 1, 1996, and the last unit is sold on December 31, 1996.

(ii) This paragraph (c)(2)(v) provides that holding an interest in property in a dealing activity (the marketing of the property) is treated for purposes of § 1.469–2t(c)(2) as the use of the interest in a nondealing activity if the marketing of the property is incidental to the nondealing use. Under paragraph (c)(2)(v)(A)(*2*) of this section, the interests in property are treated as used in the last nondealing activity in which they were used prior to their disposition. In addition, paragraph (c)(2)(v)(A)(*1*) of this section provides rules for determining whether the marketing of the property is incidental to the use of an interest in property in a nondealing activity. Under these rules, the marketing of the property is treated as incidental to the use in a nondealing activity if the interest in property was used in nondealing activities for more than 80 percent of the taxpayer's holding period in the property (the holding period requirement) and the taxpayer did not acquire and hold the interest in property for the principal purpose of selling it to customers in the ordinary course of a trade or business (a dealing purpose).

(iii) In this case, the apartments were used in a rental activity for the entire period during which they were held by the taxpayer. Thus, the apartments were used in a nondealing activity for more than 80 percent of the taxpayer's holding period in the property, and the marketing of the property satisfies the holding period requirement.

(iv) Paragraph (c)(2)(v)(A)(*1*)(*ii*) of this section provides that a taxpayer is rebuttably presumed to have a dealing purpose unless the interest in property was used in nondealing activities for more than 24 months or 20 percent of the property's recovery period (whichever is less). The same presumption applies if the interest in property was offered for sale to customers during more than 25 percent of the period in which the interest was held in nondealing activities. In this case, the taxpayer used each apartment in a nondealing activity (the rental activity) for a period of 36 to 48 months (*i.e.*, from January 1, 1993, to the date of sale in the period from January through December 1996). Thus, the apartments were used in nondealing activities for more than 24 months, and the first of the rebuttable presumptions described above does not apply. In addition, the apartments were offered for sale to customers for up to 12 months (depending on the month in which the apartment was sold) during the period in which the apartments were used in a nondealing activity. The percentage obtained by dividing the period during which an apartment was held for sale to customers by the period during which the apartment was used in nondealing activities ranges from zero in the case of apartments sold on January 1, 1996, to 25 percent (*i.e.*, 12 months/48 months) in the case of apartments sold on December 31, 1996. Thus, no apartment was offered for sale to customers during more than 25 percent of the period in which it was used in nondealing activities, and the second rebuttable presumption does not apply.

(v) Because neither of the rebuttable presumptions in paragraph (c)(2)(v)(A)(*1*)((*ii*) of this section applies in this case, the taxpayer will not be treated as having a dealing purpose unless other facts and circumstances establish that the taxpayer acquired and held the apartments for the principal purpose of selling the apartments to customers in the ordinary course of a trade or business. Assume that none of the facts and circumstances suggest that the taxpayer had such a purpose. If that is the case, the taxpayer does not have a dealing purpose.

(vi) The marketing of the property satisfies the holding period requirement, and the taxpayer does not have a dealing purpose. Thus, holding the apartments in the taxpayer's dealing activity is treated for purposes of this paragraph (c)(2) as the use of the apartments in a nondealing activity. In this case, the rental activity is the only nondealing activity in which the apartments were used prior to their disposition. Thus, the apartments are treated under paragraph (c)(2)(v)(A)(*2*) of this section as interests in property that were used only in the rental activity for the entire period during which the taxpayer held the interests. Accordingly, the rules in § 1.469–2T(c)(2)(ii) and paragraph (c)(2)(iii) of this section do not apply, and all gain from the sale of the apartments is treated as passive activity gross income.

Example 2. (i) The taxpayer acquires a residential apartment building on January 1, 1993, and uses the building in a rental activity. The taxpayer converts the apartments into condominium units on July 1, 1993. After the conversion, the taxpayer holds the condominium units for sale to customers in the ordinary course of a trade or business of dealing in condominium units. (Assume that these are dealing operations treated as separate activities under § 1.469–4, and that the taxpayer materially participates in the activities.) In addition, the taxpayer continues to use the units in the rental activity until they are sold. The first unit is sold on January 1, 1994, and the last unit is sold on December 31, 1996.

(ii) In this case, all of the apartments were simultaneously offered for sale to customers and used in a nondealing activity of the taxpayer for more than 25 percent of the period during which the apartments were used in nondealing activities. Thus, the taxpayer is rebuttably presumed to have acquired the apartments (including apartments that are used in the rental activity for at least 24 months) for the principal purpose of selling them to customers in the ordinary course of a trade or business. Assume that the facts and circumstances do not rebut this presumption. If that is the case, the taxpayer has a dealing purpose, and paragraph (c)(2)(v)(A) of this section does not apply to the disposition of the apartments.

(iii) Paragraph (c)(2)(v)(B) of this section provides that if paragraph (c)(2)(v)(A) of this section does not apply to the disposition of a taxpayer's interest in property that is held in a dealing activity of the taxpayer at the time of the disposition, the use of the interest in property in any nondealing activity of the taxpayer for any period during which the interest is also offered for sale to customers is treated as incidental to the use of the interest in the dealing activity. Accordingly, for purposes of applying the rules of § 1.469–2T(c)(2) to the disposition of the apartments, the rental of the apartments after July 1, 1993, is treated as the use of the apartments in the taxpayer's dealing activity.

Example 3. (i) The taxpayer acquires a residential apartment building on January 1, 1993, and uses the building in a rental activity. In January 1996, the taxpayer converts the apartments into condominium units. After the conversion, the taxpayer holds the condominium units for sale to customers in the ordinary course of a trade or business of dealing in condominium units.

(Assume that these are dealing operations treated as separate activities under § 1.469–4, and that the taxpayer materially participates in the activities.) In addition, the taxpayer continues to use the units in the rental activity until they are sold. The units are first held for sale on January 1, 1996, and the last unit is sold in 1997.

(ii) The treatment of apartments sold in 1996 is the same as in Example 1. The apartments sold in 1997, however, were simultaneously offered for sale to customers and used in a nondealing activity for more than 25 percent of the period during which the apartments were used in nondealing activities. (For example, an apartment that is sold on January 31, 1997, has been offered for sale for 13 months or 26.1 percent of the 49-month period during which it was used in nondealing activities.) Thus, the taxpayer is rebuttably presumed to have acquired the apartments sold in 1997 for the principal purpose of selling them to customers in the ordinary course of a trade of business. Assume that the facts and circumstances do not rebut this presumption. In that case, the marketing of the apartments sold in 1997 does not satisfy the principal purpose requirement, and paragraph (c)(2)(v)(A) of this section does not apply to the disposition of those apartments. Accordingly, for purposes of applying the rules of § 1.469–2T(c)(2) to the disposition of the apartments sold in 1977, the rental of the apartments after January 1, 1996, is treated, under paragraph (c)(2)(v)(B) of this section, as the use of the apartments in the taxpayer's dealing activity.

(c)(3) through (c)(5) [Reserved]

(c)(6) *Gross income from certain oil or gas properties*—(i) *In general.* Notwithstanding any other provision of the regulations under section 469, passive activity gross income for any taxable year does not include an amount of the taxpayer's gross passive income for the year from a property described in this paragraph (c)(6)(i) equal to the taxpayer's net passive income from the property for the year. Property is described in this paragraph (c)(6)(i) if the property is—

(A) An oil or gas property that includes an oil or gas well if, for any prior taxable year beginning after December 31, 1986, any of the taxpayer's loss from the well was treated, solely by reason of § 1.469–1T(e)(4) (relating to a special rule for losses from oil and gas working interests), and not by reason of the taxpayer's material participation in the activity, as a loss that is not from a passive activity; or

(B) Any property the basis of which is determined in whole or in part by reference to the basis of property described in paragraph (c)(6)(i)(A) of this section.

(ii) *Gross and net passive income from the property.* For purposes of this paragraph (c)(6)—

(A) The taxpayer's gross passive income for any taxable year from any property described in paragraph (c)(6)(i) of this section is any passive activity gross income for the year (determined without regard to this paragraph (c)(6) and § 1.469–2T(f)) from the property;

(B) The taxpayer's net passive income for any taxable year from any property described in paragraph (c)(6)(i) of this section is the excess, if any, of—

(*1*) The taxpayer's gross passive income for the taxable year from the property; over

(*2*) Any passive activity deductions for the taxable year (including any deduction treated as a deduction for the year under § 1.469–1T(f)(4)) that are reasonably allocable to the income; and

(C) if any oil or gas well or other item of property (the item) is included in two or more properties described in paragraph (c)(6)(i) of this section (the properties), the taxpayer must allocate the passive activity gross income (determined without regard to this paragraph (c)(6) and § 1.469–2T(f) from the item and the passive activity deductions reasonably allocable to the item among the properties.

(iii) *Property.* For purposes of paragraph (c)(6)(i)(A) of this section, the term "property" does not have the meaning given the term by section 614(a) or the regulations thereunder, and an oil or gas property that includes an oil or gas well is—

(A) The well; and

(B) Any other item of property (including any oil or gas well) the value of which is directly enhanced by any drilling, logging, seismic testing, or other activities the costs of which were taken into account in determining the amount of the taxpayer's income or loss from the well.

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(6):

Example 1. A is a general partner in partnership P and a limited partner in partnership R. P and R own oil and gas working interests in two separate tracts of land acquired from two separate landowners. In 1993, P drills a well on its tract, and A's distributive share of P's losses from drilling the well are treated under § 1.469–1T(e)(4) as not from a passive activity. In the course of selecting the drilling site and drilling the well, P develops information indicating that the reservior in which the well was drilled underlies R's tract as well as P's. Under these facts, P's and R's tracts are treated as one property for purposes of this paragraph (c)(6), even if A's interests in the mineral deposits in the tracts are treated as separate properties under section 614(a). Accordingly, in 1994 and subsequent years, A's distributive share of both P's and R's income and expenses from their respective tracts is taken into account in computing A's net passive income from the property for purposes of this paragraph (c)(6).

Example 2. B is a general partner in partnership S. S owns an oil and gas working interest in a single tract of land. In 1993, S drills a well, and B's distributive share of S's losses from drilling the well is treated under § 1.469–1T(e)(4) as not from a passive activity. In the course of drilling the well, S discovers two oil-bearing formations, one underlying the other. On December 1, 1993, S completes the well in the underlying formation. On January 1, 1994, B converts B's entire general partnership interest in S into a limited partnership interest. In 1994, S completes in, and commences production from, the shallow formation. Under these facts, the two mineral deposits in S's tract are treated as one property for purposes of this paragraph (c)(6), even if they are treated as separate properties under section 614(a). Accordingly, B's distributive share of S's income and expenses from both the underlying formation and from recompletion in and production from the shallow formation is taken into account in computing B's net passive income from the property for purposes of this paragraph (c)(6).

(c)(6)(iv) *Example 3* through (c)(7)(vi) [Reserved].

(c)(7)(vii) Gross income or gain allocable to business or rental use of a dwelling unit for any taxable year in which section 280A(c)(5) applies to such business or rental use.

(d)(1) through (d)(2)(viii) [Reserved].

(d)(2)(ix) An item of loss or deduction that is carried to the taxable year under section 172(a), section 613A(d), section 1212(a)(1) (in the case of corporations), or section 1212(b) (in the case of taxpayers other than corporations); and

(d)(2)(x) through (d)(2)(xi) [Reserved]

(d)(2)(xii) A deduction or loss allocable to business or rental use of a dwelling unit for any taxable year in which section 280(c)(5) applies to such business or rental use.

(d)(3) through (d)(5)(ii) [Reserved]

(d)(5)(iii) *Other applicable rules*—(A) *Applicability of rules in § 1.469–2T(c)(2).* For purposes of this paragraph (d)(5), a taxpayer's interests in property used in an activity and the amounts allocated to the interests shall be determined under § 1.469–2T(2)(i)(C). In addition, the rules contained in paragraph (c)(2) (iv) and (v) of this section apply in determining for purposes of this paragraph (d)(5) the activity (or activities) in which an interest in property is used at the time of its disposition and during the 12-month period ending on the date of its disposition.

(d)(5)(iii)(B) through (d)(6)(v)(D) [Reserved]

(d)(6)(v)(E) Are taken into account under section 613A(d) (relating to limitations on certain depletion deductions), section 1211 (relating to the limitation on capital losses), or section 1231 (relating to property used in a trade

or business and involuntary conversions); or

(d)(6)(v)(F) through (d)(7) [Reserved]

(d)(8) *Taxable year in which item arises.* For purposes of § 1.469–2T(d), an item of deduction arises in the taxable year in which the item would be allowable as a deduction under the taxpayer's method of accounting if taxable income for all taxable years were determined without regard to sections 469, 613A(d) and 1211.

(e)(1) through (e)(2)(i) [Reserved]

(e)(2)(ii) *Section 707(c).* Except as provided in paragraph (e)(2)(iii)(B) of this section, any payment to a partner for services or the use of capital that is described in section 707(c), including any payment described in section 736(a)(2) (relating to guaranteed payments made in liquidation of the interest of a retiring or deceased partner), is characterized as a payment for services or as the payment of interest, respectively, and not as a distributive share of partnership income.

(iii) *Payments in liquidation of a partner's interest in partnership property*—(A) *In general.* If any gain or loss is taken into account by a retiring partner (or any other person that owns (directly or indirectly) an interest in the partner if the partner is a passthrough entity) or a deceased partner's successor in interest as a result of a payment to which section 736(b) (relating to payments made in exchange for a retired or deceased partner's interest in partnership property) applies, the gain or loss is treated as passive activity gross income or a passive activity deduction only to the extent that the gain or loss would have been passive activity gross income or a passive activity deduction of the retiring or deceased partner (or the other person) if it had been recognized at the time the liquidation of the partner's interest commenced.

(B) *Payments in liquidation of a partner's interest in unrealized receivables and goodwill under section 736(a).* (*1*) If a payment is made in liquidation of a retiring or deceased partner's interest, the payment is described in section 736(a), and any income—

(*i*) Is taken into account by the retiring partner (or any other person that owns (directly or indirectly) an interest in the partner if the partner is a passthrough entity) or the deceased partner's successor in interest as a result of the payment; and

(*ii*) Is attributable to the portion (if any) of the payment that is allocable to the unrealized receivables (within the meaning of section 751(c)) and goodwill of the partnership;

the percentage of the income that is treated as passive activity gross income shall not exceed the percentage of passive activity gross income that would be included in the gross income that the retiring or deceased partner (or the other person) would have recognized if the unrealized receivables and goodwill had been sold at the time that the liquidation of the partner's interest commenced.

(*2*) For purposes of this paragarph (e)(2)(iii)(B), the portion (if any) of a payment under section 736(a) that is allocable to unrealized receivables and goodwill of a partnership shall be determined in accordance with the principles employed under § 1.736–1(b) for determining the portion of a payment made under section 736 that is treated as a distribution under section 736(b).

(e)(3)(i) through (iii)(A) [Reserved]

(e)(3)(iii)(B) An amount of gain that would have been treated as gain that is not from a passive activity under paragraph (c)(2)(iii) of this section (relating to substantially appreciated property formerly used in a nonpassive activity), paragraph (c)(6) of this section (relating to certain oil or gas properties), § 1.469–2T(f)(5) (relating to certain property rented incidental to development), paragraph (f)(6) of this section (relating to property rented to a nonpassive activity), or § 1.469–2T(f)(7) (relating to certain interests in a passthrough entity engaged in the trade or business of licensing intangible property) would have been allocated to the holder (or such other person) with respect to the interest if all of the property used in passive activity had been sold immediately prior to the disposition for its fair market value on the applicable valuation date (within the meaning of § 1.469–2T(e)(3)(ii)(D)(*1*)); and

(e)(3)(iii)(C) through (f)(4) [Reserved]

(f)(5) *Net income from certain property rented incidental to development activity*—(i) *In general.* An amount of the taxpayer's gross rental activity income for the taxable year from an item of property equal to the net rental activity income for the year from the item of property shall be treated as not from a passive activity if—

(A) Any gain from the sale, exchange, or other disposition of the item of property is included in the taxpayer's income for the taxable year;

(B) The taxpayer's use of the item of property in an activity involving the rental of the property commenced less than 12 months before the date of the disposition (within the meaning of paragraph (c)(2)(iii)(B) of this section) of such property; and

(C) The taxpayer materially participated (within the meaning of § 1.469–5T) or significantly participated (within the meaning of § 1.469–5T(c)(2)) for any taxable year in an activity that involved for such year the performance of services for the purpose of enhancing the value of such item of property (or any other item of property if the basis of the item of property that is sold, exchanged, or otherwise disposed of is determined in whole or in part by reference to the basis of such other item of property).

(f)(5)(ii) through (f)(5)(iv) [Reserved]

(f)(6) *Property rented to a nonpassive activity.* An amount of the taxpayer's gross rental activity income for the taxable year from an item of property equal to the net rental activity income for the year from that item of property is treated as not from a passive activity if the property—

(i) Is rented for use in a trade or business activity (within the meaning of paragraph (e)(2) of this section) in which the taxpayer materially participates (within the meaning of § 1.469–5T) for the taxable year; and

(ii) Is not described in § 1.469–2T(f)(5).

(f)(7) through (f)(9)(ii) [Reserved]

(f)(9)(iii) The gross rental activity income for a taxable year from an item of property is any passive activity gross income (determined without regard to § 1.469–2T(f)(2) through (f)(6)) that—

(A) Is income for the year from the rental or disposition of such item of property; and

(B) In the case of income from the disposition of such item of property, is income from an activity that involved the rental of such item of property during the 12-month period ending on the date of the disposition (see § 1.469–2T(c)(2)(ii)); and

(iv) The net rental activity income from an item of property for the taxable year is the excess, if any, of—

(A) The gross rental activity income from the item of property for the taxable year; over

(B) Any passive activity deductions for the taxable year (including any deduction treated as a deduction for the year under § 1.469–1(f)(4)) that are reasonably allocable to the income.

(10) *Coordination with section 163(d).* Gross income that is treated as not from a passive activity under § 1.469–2T(f)(3), (4), or (7) is treated as income described in section 469(e)(1)(A) and § 1.469–2T(c)(3)(i) except in determining whether—

(i) Any property is treated for purposes of section 469(e)(1)(A)(ii)(I) and § 1.469–2T(c)(3)(i)(C) as property that produces income of a type described in § 1.469–2T(c)(3)(i)(A);

(ii) Any property is treated for purposes of section 469(e)(1)(A)(ii)(II) and § 1.469–2T(c)(3)(i)(D) as property held for investment;

(iii) An expense (other than interest expense) is treated for purposes of section 469(e)(1)(A)(i)(II) and § 1.469–2T(d)(4) as clearly and directly allocable to portfolio income (within the meaning of § 1.469–2T(c)(3)(i); and

(iv) Interest expense is allocated under § 1.163–8T to an investment expenditure (within the meaning of § 1.163–8T(b)(3)) or to a passive activity expenditure (within the meaning of § 1.163–8T(b)(4)).

(11) [Reserved]

Par. 6. Section 1.469–2T is amended by revising paragraphs (c)(2)(iii), (c)(2)(iv), (c)(2)(v), (c)(6)(i), (c)(6)(ii), (c)(6)(iii), (c)(6)(iv) *Examples* (*1*) and (*2*), (d)(2)(ix), (d)(5)(iii)(A), (d)(6)(v)(E), (d)(8), (e)(2)(ii) and (iii), (e)(3)(iii)(B), (f)(5)(i), (f)(6), (f)(9)(iii), (f)(9) (iv) and (f)(10) to read as follows:

§ 1.469–2T Passive activity loss.

* * * * *

(c) * * *

(2) * * *

(iii) *Disposition of substantially appreciated property formerly used in nonpassive activity.* [Reserved] See § 1.469–4(c)(2)(iii) for rules relating to this paragraph.

(iv) *Taxable acquisitions.* [Reserved] See § 1.469–2(c)(iv) for rules relating to this paragraph.

(v) *Property held for sale to customers.* [Reserved] See § 1.469–2(c)(v) for rules relating to this paragraph.

* * * * *

(6) *Gross income from certain oil or gas properties*—(i) *In general.* [Reserved] See § 1.469–2(c)(6)(i) for rules relating to this paragraph.

(ii) *Gross and net passive income from the property.* [Reserved] See § 1.469–2(c)(6)(ii) for rules relating to this paragraph.

(iii) *Property.* [Reserved] See 1.469–2(c)(6)(iii) for rules relating to this paragraph.

(iv) *Examples.* * * *

Example 1. [Reserved] See § 1.469–2(c)(6)(iv) *Example 1.*

Example 2. [Reserved] See § 1.469–2(c)(6)(iv) *Example 2.*

* * * * *

(d) * * *

(2) * * *

(ix) [Reserved] See § 1.469–2(d)(2)(ix) for rules relating to this paragraph.

* * * * *

(5) * * *

(iii) * * *

(A) *Applicability of rules in paragraph (c)(2).* [Reserved] See § 1.469–2(d)(5)(iii)(A) for rules relating to this paragraph.

* * * * *

(6) * * *

(v) * * *

(E) [Reserved] See § 1.469–2(d)(6)(v)(E) for rules relating to this paragraph.

* * * * *

(8) *Taxable year in which item arises.* [Reserved] See § 1.469–2(d)(8) for rules relating to this paragraph.

* * * * *

(e) * * *

(2) * * *

(ii) *Section 707(c).* [Reserved] See § 1.469–2(e)(ii) for rules relating to this paragraph.

(iii) *Payments in liquidation of a partner's interest in partnership property.* [Reserved] See § 1.469–2(e)(iii) for rules relating to this paragraph.

(3) * * *

(iii) * * *

(B) [Reserved] See § 1.469–2(e)(3)(iii)(B) for rules relating to this paragraph.

* * * * *

(f) * * *

(5) * * *

(i) *In general.* [Reserved] See § 1.469–2(f)(5)(i) for rules relating to this paragraph.

* * * * *

(6) *Property rented to a nonpassive activity.* [Reserved] See § 1.469–2(f)(6) for rules relating to this paragraph.

* * * * *

(9) * * *

(iii) [Reserved] See § 1.469–2(f)(9)(iii) for rules relating to this paragraph.

(iv) [Reserved] See § 1.469–2(f)(9)(iv) for rules relating to this paragraph.

* * * * *

(10) *Coordination with section 163(d).* [Reserved] See paragraph 1.469–2(f)(10) for rules relating to this paragraph.

* * * * *

Par. 7. Section 1.469–3 is added to read as follows:

§ 1.469–3 Passive activity credit.

(a) through (d) [Reserved]

(e) *Coordination with section 38(b).* Any credit described in section 38(b) (1) through (5) is taken into account in computing the current year business credit for the first taxable year in which the credit is subject to section 469 and is not disallowed by section 469 and the regulations thereunder.

(f) *Coordination with section 50.* In the case of any cessation described in section 50(a) (1) or (2), the credits allocable to the taxpayer's activities under § 1.469–1(f)(4) shall be adjusted by reason of the cessation.

(g) [Reserved]

Par. 8. Section 1.469–3T is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.469–3T Passive activity credit.

* * * * *

(e) *Coordination with section 38(b).* [Reserved] See § 1.469–3(e) for rules relating to this paragraph.

(f) *Coordination with section 50.* [Reserved] See § 1.469–3(f) for rules relating to this paragraph.

* * * * *

Par. 9. Section 1.469–5 is added to read as follows:

§ 1.469–5 Material participation.

(a) through (e) [Reserved]

(f) *Participation*—(1) *In general.* Except as otherwise provided in this paragraph (f), any work done by an individual (without regard to the capacity in which the individual does the work) in connection with an activity in which the individual owns an interest at the time the work is done shall be treated for purposes of this section as participation of the individual in the activity.

(f)(2) through (h)(2) [Reserved]

(h)(3) *Coordination with rules governing the treatment of passthrough entities.* If a taxpayer takes into account for a taxable year of the taxpayer any item of gross income or deduction from a partnership or S corporation that is characterized as an item of gross income or deduction from an activity in which the taxpayer materially participated under § 1.469–2T(e)(1), the taxpayer is treated as materially participating in the activity for the taxable year for purposes of applying § 1.469–5T(a)(5) and (6) to any succeeding taxable year of the taxpayer.

(i) [Reserved]

(j) *Material participation for preceding taxable years*—(1) *In general.* For purposes of § 1.469–5T(a)(5) and (6), a taxpayer has materially participated in an activity for a preceding taxable year if the activity includes significant section 469 activities that are substantially the same as significant section 469 activities that were included in an activity in which the taxpayer materially participated (determined without regard to § 1.469–5T(a)(5)) for the preceding taxable year.

(2) *Material participation for taxable years beginning before January 1, 1987.* In any case in which it is necessary to determine whether an individual materially participated in any activity for a taxable year beginning before January 1, 1987 (other than a taxable year of a partnership, S corporation,

estate, or trust ending after December 31, 1986), the determination shall be made without regard to paragraphs (a)(2) through (7) of this section.

(k) *Examples.* Example (1) through Example (4) [Reserved]

Example (5). In 1993, D, an individual, acquires stock in an S corporation engaged in a trade or business activity (within the meaning of § 1.469–1(e)(2)). For every taxable year from 1993 through 1997, D is treated as materially participating (without regard to § 1.469–5T(a)(5)) in the activity. D retires from the activity at the beginning of 1998, and would not be treated as materially participating in the activity for 1998 and subsequent taxable years if material participation of those years were determined without regard to § 1.469–5T(a)(5). Under § 1.469–5T(a)(5) of this section, however, D is treated as materially participating in the activity for taxable years 1998 through 2003 because D materially participated in the activity (determined without regard to § 1.469–5T(a)(5) for five taxable years during the ten taxable years that immediately precede each of those years. D is not treated under § 1.469–5T(a)(5) as materially participating in the activity for taxable years beginning after 2003 because for those years D has not materially participated in the activity (determined without regard to § 1.469–5T(a)(5) for five of the last ten immediately preceding taxable years.

Par. 10. Section 1.469–5T is amended by revising paragraphs (f)(1), (h)(3), (j) and (k) *Example 5* to read as follows:

§ 1.469–5T Material participation.

* * * * *

(f)(1) [Reserved] See § 1.469–5(f)(1) for rules relating to this paragraph.

* * * * *

(h) * * *

(3) *Coordination with rules governing the treatment of passthrough entities.* [Reserved] See § 1.469–5(h)(3) for rules relating to this paragraph.

* * * * *

(j) *Material participation for preceding taxable years.* [Reserved] See § 1.469–5(j) for rules relating to this paragraph.

* * * * *

(k) * * *

Example 5. [Reserved] See § 1.469–5(k) *Example 5* for this example.

* * * * *

§§ 1.469–6T–1.468–11T [Removed]

Par. 11. Sections 1.469–6T through 1.468–11T are removed.

Par. 12. Sections 1.469–6 through 1.469–10 are added and reserved and § 1.469–11 is added to read as follows:

§ 1.469–6 Treatment of losses upon certain dispositions. [Reserved]

§ 1.469–7 Treatment of self-charged items of income and expense. [Reserved]

§ 1.469–8 Application of section 469 to trust, estates, and their beneficiaries. [Reserved]

§ 1.469–9 Treatment of income, deductions and credits from certain rental real estate activities. [Reserved]

§ 1.469–10 Application of section 469 to publicly traded partnerships. [Reserved]

§ 1.469–11 Effective date and transition rules.

(a) *Generally applicable effective dates.* Except as otherwise provided in this section—

(1) The rules contained in §§ 1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–5, and 1.469–5T apply for taxable years ending after May 10, 1992.

(2) The rules contained in 26 CFR 1.469–1T, 1.469–2T, 1.469–3T, 1.469–4T, 1.469–5T, 1.469–11T (b) and (c) (as contained in the CFR edition revised as of April 1, 1992) apply for taxable years beginning after December 31, 1986, and ending on or before May 10, 1992; and

(3) This section applies for taxable years beginning after December 31, 1986.

(b) *Additional effective dates.*—(1) *Transition rule for 1992 amendments.* If a taxpayer's first taxable year ending after May 10, 1992, begins on or before that date, the taxpayer may treat the taxable year, for purposes of paragraph (a) of this section, as a taxable year ending on or before May 10, 1992.

(2) *Certain investment credit property.* (i) The rules contained in § 1.469–3(f) apply with respect to property placed in service after December 31, 1990 (other than property described in section 11813 (c)(2) of the Omnibus Reconciliation Act of 1990 (P.L. 101–508)).

(ii) The rules contained in 26 CFR 1.469–3T(f) (as contained in the CFR edition revised as of April 1, 1992) apply with respect to property placed in service on or before December 31, 1990, and property described in section 11813(c)(2) of the Omnibus Reconcilation Act of 1990.

(c) *Special rules*—(1) *Application of certain income recharacterization rules*—(i) *In general.* No amount of gross income shall be treated under § 1.469–2T(f)(3) through (7) as income that is not from a passive activity for any taxable year of the taxpayer beginning before January 1, 1988.

(ii) *Property rented to a nonpassive activity.* In applying § 1.469–2(f)(6) or § 1.469–2T(f)(6) to a taxpayer's rental of an item of property, the taxpayer's net rental activity income (within the meaning of § 1.469–2(f)(9)(iv) or § 1.469–2T(f)(9)(iv)) from the propety for any taxable year beginning after December 31, 1987, does not include the portion of the income (if any) that is attributable to the rental of that item of property pursuant to a written binding contract entered into before February 19, 1988.

(2) *Qualified low-income housing projects.* For a transitional rule concerning the application of section 469 to losses from qualified low-income housing projects, see section 502 of the Tax Reform Act of 1986.

(3) *Effect of events occurring in years prior to 1987.* The treatment for a taxable year beginning after December 31, 1986, of any item of income, gain, loss, deduction, or credit as an item of passive activity gross income, passive activity deduction, or credit from a passive activity, is determined as if section 469 and the regulations thereunder had been in effect for taxable years beginning before January 1, 1987, but without regard to any passive activity loss or passive activity credit that would have been disallowed for any taxable year beginning before January 1, 1987, if section 469 and the regulations thereunder had been in effect for that year. For example, in determining whether a taxpayer materially participates in an activity under § 1.469–5T(a)(5) (relating to taxpayers who have materially participated in an activity for five of the ten immediately preceding taxable years) for any taxable year beginning after December 31, 1986, the taxpayer's participation in the activity for all prior taxable years (including taxable years beginning before 1987) is taken into account. See § 1.469–5(j) (relating to the determination of material participation for taxable years beginning before January 1, 1987).

(d) *Examples.* The following examples illustrate the application of paragraph (c) of this section:

Example 1. A, a calendar year individual, is a partner in a partnership with a taxable year ending on January 31. During its taxable year ending January 31, 1987, the partnership was engaged in a single activity involving the conduct of a trade or business. In applying section 469 and the regulations thereunder to A for calendar year 1987, A's distributive share of partnership items for the partnership's taxable year ending January 31, 1987, is taken into account. Therefore, under § 1.469–2T(e)(1) and paragraph (c)(3) of this section, A's participation in the activity throughout the partnership's taxable year beginning February 1, 1986, and ending January 31, 1987, is taken into account for purposes of determining the character under section 469 of the items of gross income, deduction, and credit allocated to A for the

partnership's taxable year ending January 31, 1987.

Example 2. B, a calendar year individual, is a beneficiary of a trust described in section 651 that has a taxable year ending January 31. The trust conducts a rental activity (within the meaning of § 1.469–1T(e)(3)). Because the trust's taxable year ending January 31, 1987, began before January 1, 1987, section 469 and the regulations thereunder do not applying to the trust for that year. Section 469 and the regulations thereunder do apply, however, to B for B's calender year 1987. Therefore, income of the trust from the rental activity for the trust's taxable year ending January 31, 1987, that is included in B's gross income for 1987 is taken into account in apply section 469 to B for 1987.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: May 7, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–11310 Filed 5–11–92; 4:45 pm]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–322; Re: Notice No. 726]

RIN 1512–AA07

Escondido Valley Viticultural Area (91F004P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as Escondido Valley which is located totally within Pecos County, Texas. The petition was submitted by Mr. Leonard Garcia of Cordier Estates, Inc. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make their wines were grown and enables consumers to better identify wines they purchase.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2), title 27 CFR outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Mr. Leonard Garcia of Cordier Estates, Inc., proposing a viticultural area in Pecos County, Texas, to be known as "Escondido Valley." The viticultural area has a land area of approximately 50 square miles and contains one commercial winery which is operated by the petitioner. The petitioner also has about 250 acres of vineyards within the area.

Comments

ATF received one comment during the 45-day comment period which ended on October 25, 1991. The comment was from Mr. Max Goldman of York Mountain Winery. Mr. Goldman does not think the name Escondido Valley should be used for this viticultural area because it might be confused with the Escondido of California. Currently, the Escondido area in California is not a viticultural area nor is it called a valley. However, Mr. Goldman states that it could possibly be called a valley at some future time as are Yucca Valley and Morongo Valley. Mr. Goldman indicates that the Escondido of California is only 30 miles from the well known viticultural area of Temecula and that the whole area south of Temecula and east of Escondido could all become a vast vineyard area in the future. For the reasons mentioned above, Mr. Goldman states that the Escondido name should be reserved for a possible California viticultural area and should not be approved for a Texas viticultural area.

After carefully reviewing Mr. Goldman's comment, ATF has determined that there is no current justification for denying the use of the name Escondido Valley for the Texas viticultural area. The petitioner has submitted historical evidence which justifies the use of the name Escondido. Since no one has submitted a petition for a viticultural area in California to be named Escondido Valley, ATF has no justification for denying the Texas petitioner's request. If and when a petition is submitted for the Escondido of California, then ATF will have to determine what name should be used to ensure that there is no consumer confusion between the two viticultural areas.

Evidence of Name

The petitioner presented a series of old maps and accounts of early travelers to Pecos County which referred to the creek which runs through the area as Escondido Creek, and to the three springs which feed the creek as Upper, Middle and Lower Escondido Springs. The petitioner also stated that "many members of the old settler families told me that the Indians called the area * * * 'Valle Escondido' (Hidden Valley—in Spanish)." The petitioner submitted an extract from The Springs of Texas, by Gunnar Brune, which quotes a description of the proposed area by a traveler in 1849: " * * * we came upon a clear and beautiful spring gushing from the limestone bluff on the N side of the valley. This is the Escondido." In the late 19th century, the name Tunis, or Tunas, began to be used for the creek and springs, and these features are presently known as Tunas Creek and Tunas Springs. However, the petitioner pointed out the name East Escondido Spring still appears on the 1973 revision of the United States Geological Survey map used to delineate the boundaries of the proposed area. The petitioner also presented a letter from the Curator of the Fort Stockton Historical Society, who said "Escondido is the historical name for the springs and creek as well as the draw or valley now known as Tunas. In essence Tunas and Escondido are synonymous."

Boundary Description

The "Escondido Valley" viticultural area is bounded on the north and south by ranges of mesas. The boundary on the eastern end of the viticultural area is a trail which crosses the draw, or valley. Northeast of the trail, the valley floor begins to drop in elevation, and to the east and southeast of the trail are mesa ranges of higher elevation. The western boundary is represented by a line drawn between the western ends of the north and south boundaries just before the

distance between mesas increases and the ground begins to rise.

Distinguishing Features

The petitioner provided the following evidence relating to features which distinguish the viticultural area from the surrounding areas:

Topography

The valley floor which is the site of the viticultural area is 2600 to 2700 feet above sea level. The bases of the mesa ranges which are used as the north and south boundaries of the area are approximately 2900 feet in elevation, and the mesa ranges rise to an elevation of 3200 to over 3400 feet. East of the area, the valley floor drops to 2200 feet, and west of the western boundary of the area, the land rises to 3100 feet or more. Until the 1960s, the area had three natural springs.

Soils

The petitioner submitted a U.S. Department of Agriculture General Soil Map of Pecos County, Texas, showing the predominant soils in the viticultural area are of the Reagan-Hodgkins-Iraan association. These soils extend beyond the boundary to the east and west, but the map shows that the predominant soils on the higher ground to the north and south belong to the Ector-Sanderson-Rock outcrop group.

Climate

The petitioner notes that bud break occurs in the second or third week of March in the viticultural area, and the harvest begins in the third or fourth week of August. The petitioner submitted temperature and rainfall data from the National Oceanic and Atmospheric Administration's Climatological Data Annual Summary, supplemented by measurements taken in his vineyard during the last two years. There are no official weather stations within the viticultural area; the closest is in Bakersfield, Texas, six miles to the east. The petitioner contrasted the Bakersfield readings with those from Fort Stockton, Texas, 19 miles to the west of the viticultural area, and Ozona, Texas, 81 miles to the east of the viticultural area. According to this summary, the average annual temperature from 1979 to 1989 at Bakersfield was 66.6 degrees, 75.0 degrees during the growing season. During the same period, the annual average for Fort Stockton was 64.4 degrees, 72.5 degrees during the growing season, and in Ozona the average was 63.6 for the year and 72.0 for the growing season. The summary also showed the average annual rainfall from 1979 to 1989 was 14.6 inches at Bakersfield, of which 7.2 inches fell during the growing season. The average for this same period at Fort Stockton was 15 inches for the year and 7.07 inches for the growing season. In Ozona, the average was 18.1 inches for the year, and 9.7 inches for the growing season. The petitioner's own record of temperature and rainfall during the last two years showed slightly warmer temperatures and less rainfall than at Bakersfield. The vineyards are irrigated from wells, using the pressurized drip system. The petition included two letters from Terry Wigham of the U.S. Department of Agriculture's Soil Conservation Service which describe the well water within the viticultural area as lower in total dissolved solids, and therefore higher in quality, than well water elsewhere within Pecos County.

Boundary

The boundary of the Escondido Valley viticultural area may be found on one United States Geological Survey map with a scale of 1:250,000. The boundary is described in § 9.141.

Miscellaneous

ATF does not wish to give the impression by approving the Escondido Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Escondido Valley wines.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required 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 for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The Table of Sections in subpart C is amended to add the title of § 9.141 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.141 Escondido Valley.

Par. 3. Subpart C is amended by adding § 9.141 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.141 Escondido Valley.

(a) *Name.* The name of the viticultural area described in this section is "Escondido Valley."

(b) *Approved map.* The appropriate map for determining the boundaries of the "Escondido Valley" viticultural area is 1 U.S.G.S. (scale 1:250,000) map. It is titled Fort Stockton, Texas, 1954 (revised 1973).

(c) *Boundary.* The Escondido Valley viticultural area is located in Pecos County, Texas. The boundary is as follows:

(1) The beginning point is the intersection of Interstate Route 10 (I–10) and an intermittent stream approximately 18 miles east of the city of Fort Stockton (standard reference GE3317 on the Fort Stockton, Texas, U.S.G.S. map);

(2) From the beginning point, the boundary follows I–10 in an easterly direction approximately 9 miles until a southbound trail diverges from I–10 just past the point where it intersects horizontal grid line 2 of square GE on the Fort Stockton, Texas, U.S.G.S. map;

(3) The boundary then follows the trail in a generally southeasterly direction about 5 miles until it intersects the 3000 foot contour line;

(4) The boundary follows the 3000 foot contour line in a generally westerly direction approximately 17 miles;

(5) The boundary continues to follow the 3000 foot contour line as it turns sharply northwest, but diverges from the contour line when the contour line turns south again;

(6) From the point where it diverges from the contour line, the boundary follows a straight north-northwesterly line as it returns to the beginning point at I–10.

Signed: February 6, 1992.

Stephen E. Higgins,

Director.

Approved: April 28, 1992.

Dennis M. O'Connell,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).

[FR Doc. 92–11363 Filed 5–14–92; 8:45 am]

BILLING CODE 4810–31–M

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27 CFR Part 9

[T.D. ATF–321:RE:Notice No. 722]

RIN 1512–AA07

Santa Lucia Highlands, CA 91F016P

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area located entirely within Monterey County, California, to be known as "Santa Lucia Highlands." This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on August 15, 1991, at 56 FR 40583, Notice No. 722.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to specify further the origin of wines they offer for sale to the public.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1979, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wines.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25a(e)(1), title 27, CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2), title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition from Mr. Barry Jackson of the Harmony Wine Company proposing a viticultural area in central Monterey County, California, to be known as "Santa Lucia Highlands." The area consists of the eastern flank of the Santa Lucia Mountain Range and is located completely within the boundaries of the current Monterey viticultural area. The general boundaries are: Limekiln Creek to the north; the Salinas River and its associated terraces to the east; the western border of the "Arroyo Seco" viticultural area in the Southeast; and the western border of the "Monterey" viticultural area to the west.

The total area of the appellation is approximately 22,000 acres. There are currently 1,850 acres committed to active viticulture, with plans underway to plant an additional 400 acres to winegrapes. Commercial viticulture in the area began in the early 1970's. The following factors differentiate the proposed Santa Lucia Highlands from the adjacent Salinas Valley floor and other viticultural areas in Monterey County: (1) A well defined alluvial terrace running the length of the eastern boundary; (2) Generally cooler microclimate: cool Region I/II vs. Region II/III; (3) Different soil types: gravelly, sandy loam vs. silty clay loam; (4) Higher elevation: initially 40 to 120 feet higher than the valley floor and climbing to 1200 feet above the valley floor; (5) Climate: less wind and earlier fog burn-off with morning sun and; (6) East facing slopes receiving morning sun first.

There are three wineries located within the viticultural area: Smith & Hook, Paraiso Springs, and Robert Talbot.

Evidence of Name

Both wine trade and general publications recognize the Santa Lucia Highlands viticultural area as a grape-growing region. The May, 1990, "Mead on Wine" trade publication discusses the 1987 Smith and Hook "Monterey" Merlot, as having been "grown entirely in the Santa Lucia Highlands." An article in the "Vail Trails Daily Options" entitled, "California Wine Comes To Vail," refers to the Smith and Hook

Vineyards as "nestled in the Santa Lucia Highlands of central California's Monterey County." The 1990 Orange County Fair and Orange County Wine Society Judges Dinner menu includes Smith and Hook 1987 "Santa Lucia Highlands" Merlot. Additionally, a newspaper article in the "Bakersfield Californian" on May 10, 1990, discussing Smith and Hook, states it to be "the isolated winery located in the Santa Lucia Highlands overlooking Soledad and Salinas Valley."

Geographical Evidence

Topography

The Santa Lucia Highlands comprise the eastern flank of the Santa Lucia Mountains that extend westward to the Pacific Ocean.

The dominant feature of the Santa Lucia Highlands are the alluvial terraces. These terraces are one of the major factors differentiating the "highlands" from the Salinas valley floor. The main terrace formation runs from just southwest of Gonzales to the area due south of Soledad. The most northerly section of the proposed area, from Limekiln Creek to the area near the junction of River Road and Gonzales Road, is characterized by multiple terrace formations.

Climate

Proximity to the Pacific Ocean results in a strong maritime influence on temperature, wind, and fog formation.

Examination of the heat summation data shows a generally cooler climate on the west side of the valley. Precipitation is concentrated in the winter months and averages 10 to 15 inches annually. Due to the maritime influence, fog is a constant feature in the Salinas Valley, particularly during summer months. The fog burns off earlier in the day in the areas above the valley floor. This earlier burn-off results in greater light intensity for a longer period for vineyards located in the highlands.

The north-south orientation of the valley causes cool marine air to be drawn into the valley by warm air rising off the valley floor. The narrow aspect of the valley (approximately 6 miles wide at Gonzales and 3 miles at Soledad) creates somewhat of a wind-tunnel effect. Windspeeds average 5 to 16 miles per hour, but higher velocities are not uncommon, particularly around Soledad where the valley narrows. Windspeeds are highest through the center of the valley and diminish at the valley edges and in the highlands.

Soils

The "soil survey of Monterey County, California" issued by the Department of Agriculture Soil Conservation Service, April 18, 1978, show the primary soils associated with the alluvial terraces of the Santa Lucia Highlands to be of the Arroyo Seco and Chualar series. These are well-drained soils formed from granitic alluvium, and in the case of the Chualar series, some schistose rocks on alluvial fans and terraces. These soils are generally loam or gravelly, sandy loam, with an underlying very gravelly material. Permeability is moderately rapid. Roots can penetrate to a depth of sixty inches or more. These soils form slopes of 2 percent to 9 percent on most of the alluvial fans and terraces.

Included in the alluvial fans and terraces are small areas of Placentia, Rincon, Tujunga, Lockwood, Gorgonio, and Hanford soils.

The upper slopes of the Santa Lucia Mountains are composed of Cieneba, Sheridan, Vista, Junipero, McCoy, Gazos, Linne, and Santa Lucia-Relize association soils, on slopes of 15 percent to 75 percent grade.

The geology of the Santa Lucia range consists of large masses of granitic and metamorphic rock in the northern section, diatomaceous shale and massive sandstone in the central area, and masses of shale, sandstone, and serpentine to the south.

In contrast, the soils of the valley floor are primarily from the Mocho, Cropley, Pico and Danville series. The Mocho soils of the valley floor are silty clay loams of 0 percent to 2 percent grade. The Pico and Danville soils are sandy clay loams of 0 percent to 2 percent grade.

Notice of Proposed Rulemaking

On August 15, 1991, Notice No. 722 was published in the **Federal Register** with a 45-day comment period. In that notice, ATF requested comments regarding the proposal to establish the Santa Lucia Highlands as an American viticultural area. Since the U.S.G.S. maps included with the petition showed that the proposed area is located on the leeward side of a ridge named "Sierra de Salinas," ATF was particularly interested in receiving comments concerning whether the name "Santa Lucia Highlands" is locally or nationally known as referring to the proposed area. During the comment period, one comment was received, and it supported the establishment of the Santa Lucia Highlands as a viticultural area. This comment did not specifically address ATF's concern as noted above. The commenter stated that, "The Santa Lucia Highlands is an area that is geographically and climatologically distinct from surrounding and contiguous areas. The alluvial fans and bench lands forming the Santa Lucia Highlands are discernible with the naked eye from many miles away."

Miscellaneous

ATF does not wish to give the impression by approving the "Santa Lucia Highlands" as a viticultural area that it is approving or endorsing the quality of the wine derived from the area. ATF is approving this area as being distinct and not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from the Santa Lucia Highlands.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required 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 for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pubic Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

27 CFR part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.139 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.139 Santa Lucia Highlands.

(a) *Name.* The name of the viticultural area described in this section is "Santa Lucia Highlands."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "Santa Lucia Highlands" viticultural area are 7 U.S.G.S. Quadrangle 7.5 minute series topographic maps. They are titled:

(1) Chualar, Calif., 1947 (photorevised 1984)

(2) Gonzales, Calif., 1955 (photorevised 1984)

(3) Rana Creek, Calif., 1956 (photoinspected 1973)

(4) Palo Escrito Peak, Calif., 1956 (photorevised 1984)

(5) Soledad, Calif., 1955 (photorevised 1984)

(6) Sycamore Flat, Calif., 1956 (photorevised 1984)

(7) Paraiso Springs, Calif., 1956 (photorevised 1984)

(c) *Boundaries.* The Santa Lucia Highlands viticultural area is located in Monterey County, California. The beginning point is found on the "Chualar, California" U.S.G.S. map, where Limekiln Creek crosses the 360 foot contour interval. This point also coincides with the western boundary of the Guadalupe Y Llanitos de los Correos Land Grant and the eastern boundary of section 28, T. 16S., R. 4E. The boundary is as follows:

(1) From the beginning point the boundary follows Limekiln Creek for approximately 1.25 miles northeast to the 100 foot elevation.

(2) Then following the 100 foot contour in a southeasterly direction for approximately 1 mile, where the boundary intersects the west bank of the Salinas River.

(3) Then following the west bank of the Salinas River in a southeasterly direction on the Gonzales, California U.S.G.S. map for approximately 2.50 miles to the point on the Palo Escrito Peak, California U.S.G.S. map where the river channel crosses the 120 foot elevation.

(4) Then following the 120 foot elevation due south for approximately 2,200 feet where it climbs to the 160 foot elevation.

(5) Then following the 160 foot elevation in a southeasterly direction for approximately 6.50 miles, to the point where the 160 foot elevation crosses River Road.

(6) Then following River Road in a southeasterly direction for approximately 1 mile to the junction of River, Fort Romie and Foothill Roads.

(7) Then following Foothill Road in a southeasterly direction for approximately 4 miles to the junction of Foothill and Paraiso Roads on the Soledad, California U.S.G.S. map.

(8) Then following Paraiso Road in a southerly direction to the intersection with Clark Road on the Paraiso Springs, California U.S.G.S. map.

(9) Then south for approximately 1.8 miles to the southeast corner of section 32, T. 18S., R. 6E.

(10) Then due west along the southern boundaries of sections 32 and 31, to the southwest corner of section 31, T. 18S., R. 6E.

(11) Then north along the western boundaries of sections 31 and 30, to the northwestern corner of section 30 T. 18S., R. 6E.

(12) Then northwest in a straight diagonal line to the northwest corner of section 24, T. 18S., R. 5E on the Sycamore Flat, California U.S.G.S. map.

(13) Then north along the western boundary of section 13, T. 18S., R. 5E., to the northwestern corner of section 13, T. 18S., R. 5E.

(14) Then northwest in a diagonal line across sections 11 and 3, to the northwest corner of section 3, T. 18S., R. 5E on the Palo Escrito Peak, California U.S.G.S. map.

(15) Then due west along the southern boundary of section 33, T. 17S., R. 5E., to the southwestern corner of section 33, T. 17S., R. 5E.

(16) Then north along the western boundary of section 33 to the southeast corner of section 29, T. 17S., R. 5E.

(17) Then northwest in a diagonal line through sections 29, 19, 13, and 11, to the northwest corner of section 11, T. 17S., R. 4E on the Rana Creek, California U.S.G.S. map.

(18) Then north along the western boundary of section 2, T. 17S., R. 4E., to the northwestern corner of section 2, T. 17S., R. 4E.

(19) Then west along the southern boundary of section 34, T. 16S., R. 4E., to the southwestern corner of section 34, T. 16S., R. 4E.

(20) Then north along the eastern boundary of sections 33 and 28, T. 16S., R. 4E., for approximately 1 mile, to the point where the eastern boundary of section 28 T. 165., R. 4E., coincides with the western boundary of the Guadalupe Y Llanitos de los Correos Land Grant on the Chualar, California U.S.G.S. map.

(21) Then northwest along the grant line for approximately 2,500 feet to the point of beginning on Limekiln Creek.

Signed: February 3, 1992.

Stephen E. Higgins,

Director.

Approved: February 7, 1992.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Trade, and Tariff Enforcement).

[FR Doc. 92-11364 Filed 05-14-92; 8:45 am]

BILLING CODE 4810-31-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calender month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table that rate series for the month of June 1992.

EFFECTIVE DATE: June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice or proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*		*			*		*		*			*			*	
June 1992.....	.0675	.06625	.0650	.06375	.0625	.06125	.06125	.06125	.06125	.06125	.06	.06	.06	.06	.06	.05875

Issued at Washington, DC, on this 11th day of May 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–11481 Filed 5–14–92; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments.

SUMMARY: As a further step in the process of normalization of relations between the United States and Vietnam, the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), are being amended to authorize non-governmental organizations to conduct humanitarian projects in Vietnam by general license, and to announce the availability of specific licenses authorizing on a case-by-case basis all transactions incidental to provision by persons subject to U.S. jurisdiction of goods and services to Vietnam to meet basic human needs.

EFFECTIVE DATE: May 11, 1992.

FOR FURTHER INFORMATION: Steven I. Pinter, Chief of Licensing (tel.: 202/535–9449), or William B. Hoffman, Chief Counsel (tel.: 202/535–6020), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Office of Foreign Assets Control ("FAC") is amending the FACR to add § 500.572, a general license authorizing non-governmental organizations to engage in all transactions incident to the carrying out of humanitarian projects in Vietnam. Organizations utilizing this license are required to register with FAC within 10 business days of the formal commencement of activities on the project in the United States. The exportation or reexportation of U.S.-origin goods or foreign goods containing U.S.-origin content or produced from U.S.-origin technical data may require additional authorization from the Bureau of Export Administration of the Department of Commerce.

The FACR are also being amended to add § 500.573, announcing the availability of specific licenses authorizing all transactions incidental to the provision (by commercial sale or by donation) of goods and services to Vietnam to meet basic human needs. Section 500.573 references the definition of "goods to meet basic human needs" in the Humanitarian License Procedure set forth in § 773.5 of the Export Administration Regulations, 15 CFR 773.5. Specific licenses will be required only for transactions not covered by the general license in § 500.533 for U.S. exportations authorized by the Department of Commerce and related transactions.

Because the FACR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

This rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collection of information contained in FACR § 500.572(b) has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1505–0096. Comments concerning the average annual burden and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to

the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220. Any such comments should be submitted not later than 60 days from publication.

The collection of information in this rule is contained in FACR § 500.572(b). This information is required by the Office of Foreign Assets Control for compliance and enforcement purposes. This information will be used to determine the identity of organizations availing themselves of the general license in § 500.572, and to determine whether persons subject to the requirements of the FACR are in compliance with applicable requirements, and to determine whether and to what extent enforcement action is appropriate. The likely respondents are private voluntary and non-governmental organizations.

Estimated total annual reporting and or recordkeeping burden: 25 hours.

The estimated annual burden per respondent/recordkeeper is expected to be 0.5 hour.

The estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: One time only.

List of Subjects in 31 CFR Part 500

Banking, Exports, Finance, Reporting and recordkeeping requirements, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The Authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Sections 500.572 and 500.573 are added to read as follows:

§ 500.572 Humanitarian projects authorized.

(a) All transactions by non-governmental organizations incident to carrying out humanitarian projects in Vietnam are authorized. For purposes of this section, the term "non-governmental organization" shall mean any private voluntary organization accorded tax exempt status under § 501(c)(3) of the Internal Revenue Code, as well as any other organization engaged in voluntary charitable assistance activities that receives funding from private sources, including but not limited to accredited degree-granting institutes of education, private foundations and research institutions.

(b) The non-governmental organization carrying out humanitarian projects in Vietnam pursuant to this authorization shall file an initial report within 10 business days after the formal commencement of U.S. activities on the project with the Office of Foreign Assets Control, Compliance Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW.—Annex, Washington, DC 20220, stating:

(1) The name, address, and telephone number of the non-governmental organization, and the officer charged with supervision of the project in Vietnam; and

(2) The nature, scope, purpose, and location of the project in Vietnam.

§ 500.573 Provision of goods and services to meet basic human needs authorized.

(a) With respect to transactions not within the scope of the general license contained in § 500.533 of this part, specific licenses may be issued on a case-by-case basis for all transactions incidental to the provision (by commercial sale or by donation) to Vietnam of goods or services to meet basic human needs.

(1) For purposes of this section, *goods to meet basic human needs* shall be defined by reference to the Humanitarian License Procedure set forth in 15 CFR 773.5 (c) and (d) and Supplement No. 7 to part 773 of the Export Administration Regulations.

(2) Services to meet basic human needs shall include those services related to health, food, clothing, shelter, and education. Such services are considered to extend beyond those of an emergency nature to encompass those that meet direct needs for mere subsistence.

(b) Note: Exports or reexports to Vietnam of U.S.-origin goods, or foreign goods containing U.S.-origin content or produced from U.S.-origin technical data, to meet basic human needs may require authorization from the U.S. Department of Commerce. (For information, please contact 202/377–0061.)

Dated: May 1, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 6, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–11414 Filed 5–11–92; 3:55 pm]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–4133–5]

Hazardous Waste Management System: Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to Approve Hazardous Debris Case-By-Case Capacity Variance.

SUMMARY: In response to the January 9, 1992, Proposed Rule on Land Disposal Restrictions (LDR) for Newly Listed Wastes and Hazardous Debris (see 57 FR 958), EPA received numerous comments regarding the availability of treatment capacity for hazardous debris, including comments from owners and operators of treatment, storage, and disposal facilities (TSDs), state regulatory agencies, Federal agencies, and industry trade associations. Most of the commenters indicated that owners and operators of TSDs will have an extremely difficult, if not impossible, task in obtaining treatment capacity that meets the proposed standards for hazardous debris, or that could meet the existing treatment standards, by May 8, 1992, when the national capacity variance for most debris expires. EPA agrees with these comments, which confirm its own independent study.

Under 40 CFR 268.5, EPA is therefore taking regulatory action to approve today a generic, one-year extension of the LDR effective date applicable to all persons managing hazardous debris. (This document explains more fully which hazardous debris is covered by the extension.) No further applications will be required from persons granted the extension by this action. However, EPA is requiring such persons to do certain recordkeeping, and to meet certain other requirements to qualify for the extension.

EFFECTIVE DATE: This document becomes effective on May 8, 1992.

ADDRESSES: The official record for this notice is identified as Docket Number F–92–CD2P–FFFFF, and is located in the EPA RCRA Docket, room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at

no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 toll-free or (703) 920–9810 locally. For information on specific aspects of this notice, contact William Kline, Office of Solid Waste, Capacity Programs Branch (OS–321W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308–8440.

SUPPLEMENTARY INFORMATION:

Outline

I. Background

A. History

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984, which amended the Resource Conservation and Recovery Act (RCRA). Among other things, HSWA required EPA to develop regulations that would impose, on a phased schedule, restrictions on the land disposal of hazardous wastes. In particular, sections 3004 (d), (e), and (g) prohibit the land disposal of all wastes identified or listed as hazardous as of November 1984 unless the wastes are treated (or meet treatment standards) before disposal in a manner that "substantially diminish(es) the toxicity of the waste or substantially reduce(s) the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." The alternative to satisfying these treatment standards is disposal in a unit from which there will be no migration of hazardous constituents for as long as the waste remains hazardous.

In developing such a broad program, Congress recognized that adequate alternative treatment, recovery, or protective disposal capacity (i.e., no-migration disposal units) may not be available by the applicable effective dates. Therefore, section 3004(h)(2) authorizes EPA to grant a national capacity variance (based on the earliest date that such capacity will be available but not to exceed two years) from the effective date which would otherwise apply to specific hazardous wastes. In addition, under section 3004(h)(3), EPA can grant an additional capacity extension of the deadline on a case-by-case basis for up to one year beyond the applicable deadline.

On June 1, 1990, EPA published a final rule (55 FR 22520) establishing prohibitions and treatment standards for wastes in the final third of scheduled prohibitions. Among other things, the rule established prohibitions and treatment standards for debris contaminated with all hazardous wastes (except for the solvents and dioxins prohibited under section 3004(e)). Because of a lack of treatment capacity, however, EPA granted a two-year national capacity variance for most hazardous debris (40 CFR 268.35(e)). As such, these wastes are prohibited from land disposal on May 8, 1992, unless the treatment standards are met. The existing treatment standards for debris are the same as for the waste with which the debris is contaminated.

B. Revised Treatment Standards for Hazardous Debris

On January 9, 1992, EPA published proposed treatment standards for hazardous debris. These standards would replace the existing standards published in the June 1, 1990 final rule (see 55 FR 22520, June 1, 1990). The final rule has been delayed, due in part to a delay in publishing the proposed rule necessitated by the review process, but is expected to be issued shortly, by June 30, 1992. The Agency intends that the final treatment standards to be promulgated will be similar to those proposed; thus, any differences will likely be irrelevant to this extension.

The Agency received over 130 comments on the January 9, 1992 proposed rule, many expressing that there would be inadequate capacity for hazardous debris as of May 8, 1992. The complexity of the proposed rule, the large volumes of hazardous debris that require treatment, and numerous technical uncertainties with the proposed treatment standards were among the reasons provided by commenters that obtaining immediate capacity is beyond their control and capabilities. Additionally, commenters felt that several years may be required to obtain necessary capacity due to the time needed for design and construction of treatment units and delay necessary to modify or to obtain permits.

EPA has been and continues to be cognizant of the existing capacity shortfall for hazardous debris and agrees that adequate treatment capacity for hazardous debris cannot be provided by the prohibition effective date. As such, it appears that the affected hazardous debris generators need an extension of that date.

Although one commenter specifically suggested that a 90-day case-by-case extension is appropriate, based on all the comments received, and considering the large volumes of hazardous debris that will require treatment, and the logistic delays necessary to comply with the new standards, EPA believes that 90 days will be insufficient for all owners and operators to obtain or utilize treatment capacity.

For the purpose of this extension, the terms debris and hazardous debris are defined as follows:

For this notice, EPA is continuing to use the current definition of debris set out in the preamble to the June 1, 1990 final rule. See 55 FR 22650. This definition includes both organic debris and inorganic solid debris. *Id.* and § 268.2(g). EPA wishes to clarify, however, that the extension adopted today includes more types of debris than granted a national capacity extension in the June 1 rule. In that rule, only inorganic solid debris and other debris contaminated with a waste whose treatment standard was based on incineration, mercury retorting, or vitrification received a variance. In this action, all debris (defined as explained above) which is hazardous, with several exceptions, is receiving an extension. These exceptions include debris contaminated with listed solvent or dioxin waste covered by the section 3004(e) prohibition and debris contaminated with non-liquid "California List Wastes" pursuant to section 3004(d). The time for granting national and case-by-case capacity extensions for these wastes has expired, so that further extension is not possible. 55 FR 22650/2. For all other types of debris which are hazardous, as explained below, the logistic difficulties in obtaining treatment appear to be the same, so EPA is granting the extension for all such debris.

Finally, EPA notes that the final rule to be issued on June, 30, 1992 is likely to amend the definition of debris in response to comment on the January, 1992 proposal. EPA will explain in that rule how any such change affects the case-by-case extension promulgated today.

Hazardous Debris means debris that contains a hazardous waste listed in subpart D of part 261 that is subject to the land disposal restrictions of this part, or that exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 that is subject to the land disposal restrictions of this part.

II. Justification for this Extension

A. Demonstration Under 40 CFR 268.5

In this notice, EPA is taking final regulatory action to grant a national case-by-case extension of the effective date for treatment standards for hazardous debris.

40 CFR 268.5 specifies seven demonstrations that must be made for a case-by-case extension of the prohibition effective date to be approved. From the comments and information submitted, EPA has made an evaluation of these seven required demonstrations as follows:

Demonstration 40 CFR 268.5(a)(1)

The applicant must demonstrate that he has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under subpart C of this part.

A large number of commenters indicated that they are unable at this time to locate and contract with treatment, recovery, or disposal facilities. One commenter, the principal association of hazardous waste treatment and management firms, believes that although EPA's proposed treatment standards appeared to be environmentally protective, it would be impossible to implement as of the rule's effective date. This commenter stated that most of the treatment technologies that have been proposed as BDAT are not widely available currently. After reviewing EPA's data on generation and treatment capacity, and making its own assessment of capacity from member firms, this commenter found a substantial shortfall in the availability of technologies and pointed out that substantial capital investments would be required to bring the BDAT technologies on line.

EPA believes these comments accurately portray the existing availability of capacity for treatment of hazardous debris. Nor is there sufficient capacity to meet existing standards. While there may be isolated capacity to treat limited volumes of such waste in some locations, EPA agrees that there is, in general, very little treatment capacity available, so that generators are unable at this time to locate and contract with treatment, recovery, or disposal facilities.

Demonstration 40 CFR 268.5(a)(2)

The applicant has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in subpart D or, where treatment standards specified in subpart D or, where treatment standards have not been specified, such capacity is protective of human health and the environment.

As pointed out by the commenters, the availability of treatment technologies to meet the proposed treatment standards is very limited and will require substantial capital investment to bring such technology on-line. In fact, until the Agency promulgates the final treatment standards for hazardous debris, it will be difficult for most regulated entities to construct or enter into such contractual commitments. Thus the ability to utilize the technology and ultimately enter a binding contractual commitment to construct or otherwise provide the necessary treatment capacity will be difficult by the LDR effective date. One difficulty in meeting this criterion is largely caused by the revision of the treatment standards so close to the effective date.

EPA believes, however, that there is no ultimate difficulty in constructing or otherwise developing the needed treatment technology because the types of treatment technologies involved all exist and are commonly available given time. Here, where there is little question that the needed treatment can ultimately be provided, the Agency believes that granting the extension is in keeping with the statutory mandate.

EPA is requiring that any generator of hazardous debris who is participating in this extension must make a good faith effort to enter into such a contract at the earliest date practicable to provide the treatment capacity for his hazardous debris. See discussion below.

Demonstration 40 CFR 268.5(a)(3)

Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

The commenters provided numerous examples regarding technical and practical difficulties associated with providing the alternative capacity. EPA believes many of these to be valid concerns and agrees that additional time is needed to resolve these concerns. Further, EPA recognized in both the Advance Notice of Proposed Rulemaking (ANPRM) (see 57 FR 24444, May 30, 1991) and the proposed rule (57 FR 982) that many significant technical issues remained unresolved. EPA believes that these circumstances are beyond the control of the generators who need to treat or dispose of their hazardous debris. In addition, the precise details of the final treatment standards are not available until EPA promulgates a final rule, a circumstance also out of the applicants' control.

Demonstration 40 CFR 268.5(a)(4)

The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application.

The commenters have indicated that they have difficulties in determining at this time the capacity needed for hazardous debris. One commenter stated that the volume of debris generated has been seriously underestimated and that the proposed rule will result in large volumes being regulated under RCRA subtitle C for the first time.

EPA believes that the commenters have shown that these uncertainties make it difficult for many owners and operators from determining their capacity requirements at this time. More important, the key timing concern relates to immediate logistical problems documented in the comments relating to time needed for permit modifications, plus (in some cases) time needed to construct specialized debris treatment units like containment buildings. As noted previously in the discussion of needed contractual commitments, EPA believes that adequate treatment capacity can be provided once these logistical obstacles are overcome.

Demonstration 40 CFR 268.5(a)(5)

He provides a detail schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available.

It will be difficult for owners and operators to provide a detailed schedule for obtaining operating and construction permits if they are unable to determine their capacity needs, the appropriate technology to treat their hazardous debris and the means by which they will obtain access to such technology. In keeping with the 40 CFR 268.5(a)(5) demonstration, EPA is requiring that this demonstration be made by placing this schedule into their facility operating record as required by the conditions of this variance.

Demonstration 40 CFR 268.5(a)(6)

The applicant must demonstrate that he has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed.

Due to the generic nature of this extension, EPA has little facility-specific information that demonstrates that generators or owners and operators have arranged for adequate capacity to manage their hazardous debris during this one-year extension or the locations at which these wastes will be managed. However, on a nationwide basis, EPA believes that treatment capacity will be available, given time. As discussed below, consistent with 40 CFR 268.5(a)(5), EPA is requiring owners and operators to include documentation in the facility record describing the means by which their hazardous debris will be managed between May 8, 1992 and May 8, 1993.

Demonstration 40 CFR 268.5(a)(7)

Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of paragraph (h)(2) of 40 CFR 268.5.

It is a requirement of this extension (and an absolute legal requirement) that any generator or owner or operator who intends to manage his hazardous debris in a surface impoundment (which is highly unlikely) or landfill during the one-year extension must ensure that the unit meets the requirements of 40 CFR 268.5(h)(2) (see RCRA section 3004(h)(4)). As discussed below, any owner or operator who participates in this one-year extension and intends to use this type of unit(s) must so indicate in the facility record and include certification that such unit(s) meets the requirements of 40 CFR 268.5(h)(2), i.e., meeting the minimum technology requirements set out in that regulation.

B. Consultation With the States

In addition to the above seven demonstrations, EPA is required under 40 CFR 268.5(e) to consult with appropriate State agencies in all affected States. In this case, because of the extremely limited time available, EPA has considered comments already received from two State agencies; these support the need for an extension of the LDR effective date for hazardous debris.

C. Conclusion

Based on its evaluation of the demonstrations required under 40 CFR 268.5, and for the reasons stated above, EPA is approving, a one year extension to the Land Disposal Restrictions for hazardous debris, which are subject to the national capacity variance for debris. This extension is effective from May 8, 1992 to May 8, 1993. Any such waste disposed after May 8, 1993 will be subject to the LDRs unless the generator obtains a site-specific extension beyond that date. EPA is taking this exceptional regulatory action because of the unique circumstances which have resulted in the lack of treatment, recovery, and disposal capacity for hazardous debris, including the promulgation of revised standards, and EPA's conclusion that treatment capacity meeting those standards is presently extremely limited, or is limited due to logistic problems such as obtaining permit modifications, but can be provided by the end of the extension period.

III. Requirements for this Extension

To receive the benefit of this extension, a generator, or facility owner or operator must include the following information in the facility's operating record by July 8, 1992, or at the time the hazardous debris is generated or treated, whichever is later:

(1) The name, mailing address, location, and EPA identification number (if assigned) of facility. The term "facility" includes any site, whether permanent (such as a manufacturing plant), or temporary (such as a demolition project) where hazardous debris will be generated as of May 8, 1992;

(2) A description of the hazardous debris waste stream, including the RCRA waste code(s); and

(3) Waste generation rates (cu.m./yr.), and estimated inventories (cu.m.) on May 8, 1992, and as of May 8, 1993.

In addition, by July 8, 1992, or at the time the hazardous debris is generated or treated, whichever is later, each owner and operator must maintain in the facility record (or, for generators, in the files maintained pursuant to § 268.7(a)(5)) a written plan that describes how the facility will obtain adequate treatment capacity. At a minimum, this plan must include a schedule of how the owner or operator plans to design, construct, and obtain the necessary permits to provide on-site treatment, recovery, or disposal capacity or a description of the binding contractual commitment for off-site capacity. Also required in the plan is: (1) The method of storage for hazardous debris, storage capacity, and RCRA permit status (i.e., interim status, permitted, or 90-day generator) of the storage unit during the extension period, (2) If management of hazardous debris during the extension includes the use of a surface impoundment or landfill, the owner or operator must certify that such unit meets the requirements of 40 CFR 268.5(h)(2), and (3) Certification as required under 40 CFR 268.5(b).

This plan must be furnished upon request, and made available at all reasonable times for inspection by any officer, employee, or representative of EPA, or the appropriate State agency who is duly designated by EPA or the State agency.

Under 40 CFR 268.5(e), the Administrator may renew this extension for up to one year beyond the effective date. Any owner or operator who believes that he may need a renewal of this one year extension must submit an application not later than November 8, 1992. The application must address the seven demonstrations in accordance with 40 CFR 268.5, and must justify the requested renewal period. In reviewing an application for renewal of the extension, EPA will closely evaluate the degree to which the applicant has progressed in providing the necessary treatment, recovery, or disposal capacity. For example, an applicant must show that he has made a good-faith effort to obtain treatment capacity and has entered into a binding contractual commitment as required by 40 CFR 268.5(a)(2). As a further measure of progress, EPA also expects that, by that time, an applicant will be able to provide a detailed and final engineering, construction, and permitting schedule in accordance with 40 CFR 268.5(a)(5). If a renewal of today's one-year extension is approved by EPA, an owner or operator could be allowed until May 1994 to construct or otherwise provide the necessary treatment, recovery, or disposal capacity for his hazardous debris.

List of Subjects in 40 CFR Part 268

Administrative practice and procedure, Designated facility, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: May 8, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.35 paragraph (e) is revised to read as follows:

§ 268.35 Waste specific prohibitions—Third Third wastes.

(e) Effective May 8, 1993, debris that is contaminated with wastes listed in 40 CFR 268.10, 268.11, and 268.12, and debris that is contaminated with any characteristic waste for which treatment standards are established in subpart D of this part, are prohibited from land disposal.

* * * * *

[FR Doc. 92-11384 Filed 5-14-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-4133-6]

Utah; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Utah has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Utah's application and has made a decision, subject to public review and comment, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Utah's hazardous waste program revisions. Utah's application for program revision is available for public review and comment.

DATES: Final authorization for Utah shall be effective July 14, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Utah's program revision application must be received by the close of business June 15, 1992.

ADDRESSES: Copies of Utah's program revision application are available during regular business hours at the following addresses for inspection and copying: Division of Solid and Hazardous Waste, Utah Department of Environmental Quality, 288 North 1460 West, Cannon Health Building, 4th Floor, Salt Lake City, Utah, 84116-0690; U.S. EPA Region VIII Library, 999 18th Street, suite 500, Denver, CO 80204-2405, Phone 303/293-1444. Written comments should be sent to: Marcella DeVargas (HWM-WM), U.S. Environmental Protection Agency, 999 18th Street, suite 500, Denver Colorado 80202-2405, Phone 303/293-1670.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, Waste Management Branch, U.S. EPA, 999 18th Street, suite 500, Denver, CO 80202-2405, Phone: 303/293-1670.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929 (b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-268 and 124 and 270.

B. Utah

Utah initially received final authorization in October 1984. Utah received authorization for revisions to its program on March 7, 1989 and July 22, 1991. On September 4, 1991, Utah submitted a program revision application for additional program approvals. Today, Utah is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Utah's application, and has made an immediate final decision that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Utah. The public may submit written comments on EPA's immediate final decision up until June 15, 1992. Copies of Utah's application for program revision are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

Approval of Utah's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In July 1990, Utah submitted a draft application for EPA review. EPA's comments on the draft application were addressed in the final application. Thus, the Utah program is only granted final authorization for those provisions specifically listed in Table 1.

Utah has not requested hazardous waste program authority on Indian lands. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian lands in Utah.

Today Utah is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the Utah program authorization revision sought today are listed in Table 1 below.

TABLE 1.—PROVISIONS

Federal Register reference	State equivalent*
1. California List Waste Restrictions, 52 FR 25792, 7/8/87, amended 10/27/87, FR 41295-41296	R450-2-1.7, R450-5-10, R450-8-2.4, R450-7-9.4, R450-13, R450-50-1S, R450-3-9.1, R450-3-20

TABLE 1.—PROVISIONS—Continued

Federal Register reference	State equivalent*
2. List of Hazardous Constituents for Ground Water Monitoring 52 FR 25942-25953, 7/9/87	R450-8-6.9, R450-8-6.10, R450-50-1R, R450-3-3,2
3. Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894-35899, 9/23/87	R450-5-6, R450-5-11
4. HSWA Codification Rule 2 52 FR 45788-45799 12/1/87	R450-3-3.2, R450-8-6.11-12, R450-7-8.1, R450-3.11, R450-3-9, R450-3-7, R450-3-2
5. Hazardous Waste Miscellaneous Units, 52 FR 46946-46965, 12/10/87	R450-1, R450-8-2, R450-8-5, R450-8-6, R450-R450-8-7, R450-8-8, R450-8-24
6. Technical Corrections; Identification and Listing of Hazardous Waste, 53 FR 13382-13393, 04/22/88	R450-2-1, R450-50L
7. Identification and Listing of Hazardous Waste, Technical Correction, 53 FR 27162-27163	R450-2-1.4
8. Farmer Exemptions; Technical Corrections, 53 FR 27164-27165, 7/19/88	R450-5-0, R450-8-1, R450-7-8, R450-13-1, R450-3-3
9. Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators, 54 FR 615-617, 1/9/89	R450-3-3.2

*Rule referenced are to the Utah Solid and Hazardous Waste Rules.

Note—State Authorities: UCA 19-6-102, enacted 1981, amended 1981, effective 7/1/91. UCA 19-6-104, enacted 1981, amended 1991, effective 7/1/91. UCA 19-6-105, enacted 1981, amended 1991, effective 7/1/91.

C. Decision

I conclude that Utah's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Utah is granted final authorization to operate its hazardous waste program as revised.

Utah now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Utah also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013, and 7003 of RCRA. The State of Utah will submit an application for Non-HSWA cluster 5 by August 31, 1992. Non-HSWA Cluster 6 and HSWA Cluster 2 will be submitted by April 30, 1993.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the Provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Utah's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 4, 1992.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 92-11416 Filed 5-14-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-135; RM-7697]

Radio Broadcasting Services; Boonville and Columbia, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 230A to Boonville, Missouri, as that community's second FM broadcast service in response to a petition filed by Big Country of Missouri, Inc. See 56 FR 22841, May 17, 1991. There is a site restriction 11.5 kilometers (7.2 miles) east of the community. The coordinates for Channel 230A are 38-58-56 and 92-36-09. To accommodate Channel 230A at Boonville, we will substitute Channel 272A for Channel 230A at Columbia, Missouri, and modify the construction permit (BPH-880531MZ) of NCD Broadcasting Company, Inc., to specify operation on Channel 272A. The coordinates for Channel 272A are 38-57-24 and 92-19-48. With this action, this proceeding is terminated.

DATES: Effective June 22, 1992. The window period for filing applications for Channel 230A, Boonville, Missouri, will open on June 23, 1992, and close on July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-135, adopted April 21, 1992, and released May 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 230A and adding Channel 272A at Columbia and by adding Boonville, Channel 230A.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-11419 Filed 5-14-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Determination of Endangered of Threatened Status for 15 Plants From the Island of Maui, HI

AGENCY: Fish and Wildlife Sevice, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 14 plants: *Acaena exigua* (liliwai), *Alectryon macrococcus* (mahoe), *Bidens micrantha* ssp. *kalealaha* (ko'oko'olau), *Clermontia oblongifolia* ssp. *mauiensis* ('oha wai), *Cyanea lobata* (haha), *Cyanea mceldowneyi* (haha), *Cyrtandra munroi* (ha'iwale), *Geranium multiflorum* (nohoanu), *Hedyotis coriacea* (kio'ele), *Huperzia mannii* (wawa'iole), *Lipochaeta kamolensis* (nehe), *Lysimachia lydgatei* (no common name (NCN)), *Melicope mucronulata* (alani), and *Schiedea haleakalensis* (NCN). The Service also determines threatened status for one plant, *Argyroxiphium sandwicense* ssp. *macrocephalum* (Haleakala silversword, 'ahinahina). Fourteen of these taxa are known primarily from the Island of Maui, Hawaii. One of two recognized varieties of *Alectryon macrococcus* is known only from East Maui and the other is known primarily from the island of Oahu, Hawaii, Three of these taxa are also known from one or more sites on the islands of Kauai, Oahu, Molokai, and Hawaii. The 15 plant taxa and their habitats have been variously affected and are threatened by one or more of the following: Trampling and/or predation by feral animals (goats, cattle, deer, pigs, rodents); habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat loss from fires. One of these taxa has been subject to overcollection. Because of the depauperate number of extant individuals and their severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction from stochastic events. This rule implements the protection and recovery provisions provided by the Act for these plants.

EFFECTIVE DATES: June 15, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Acaena exigua, *Argyroxiphium sandwicense* ssp. *macrocephalum*, *Bidens micrantha* ssp. *kalealaha*, *Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea lobata*, *Cyanea mceldowneyi*, *Cyrtandra munroi*, *Geranium multiflorum*, *Hedyotis coriacea*, *Huperzia mannii*, *Lipochaeta kamolenis*, *Lysimachia lydgatei*, *Melicope mucronulata*, and *Schiedea haleakalensis* are endemic to, or have their largest or best known population on the island of Maui, Hawaii. Of the two recognized varieties of *Alectryon macrococcus*, one is found solely on East Maui and the other variety is widely spread over four islands: Kauai, the Waianae Mountains of Oahu, Molokai, and West Maui. *Hedyotis coriacea* and *Huperzia mannii* are also known from the island of Hawaii, and *Melicope mucronulata* from Molokai.

The island of Maui is formed from the remnants of two large shield volcanoes, the older West Maui volcano on the west and the larger but much younger Haleakala volcano on the east. These two volcanoes and the connecting isthmus formed by lava flows comprise an island 729 square miles (sq mi) (1,888 sq kilometers (km)) in area. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 5,787 feet (ft) (1,764 meters (m)) elevation with an average rainfall of 400 inches (in) (1,020 centimeters (cm)) per year, making it the second wettest spot in Hawaii (Walker 1990) and possibly the world. Having erupted just 200 years ago, East Maui's Haleakala, 10,023 ft (3,055 m) in elevation, has retained its classic shield shape and lacks the diverse vegetation typical of the older and more eroded West Maui mountain. Rainfall on Haleakala is about 350 in (890 cm) per year, with its windward slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is below the level at which precipitation develops and is sheltered from moisture-laden winds (Gagne and Cuddihy 1990).

The 15 taxa grow in a wide variety of vegetation communities (shrublands, forests, and bogs), elevational zones (lowland to alpine), and moisture regimes (dry to wet). Four of the 15 taxa (*Alectryon macrococcus*, *Hedyotis coriacea*, *Lipochaeta kamolensis*, and *Melicope mucronulata*) are members of the Lowland Dry Vegetation type that includes several plant communities and occurs on the leeward side of the main Hawaiian Islands at an elevation of 15 to 2,000 ft (5 to 610 m). The climate of this vegetation type is distinctly seasonal with hot dry summers and winter rainfall, usually less than 40 in (100 cm), but ranging up to 80 in (200 cm) annually. These four species grow in forests and shrublands in the wetter parts of this vegetation type, extending into the Lowland Mesic Vegetation type (Gagne and Cuddihy 1990).

Two species, *Cyanea lobata* and *Lysimachia lydgatei*, are found in Lowland Mesic Shrubland and Forest habitats on West Maui and other Hawaiian Islands, occurring mainly between 100 and 5,300 ft (30 and 1,600 m) in elevation in areas topographically unsuitable for agriculture. Annual precipitation ranges from less than 40 to 150 in (100 to 380 cm). The substrate is diverse: Shallow rocky soils on steep slopes to deep soils in gulches and erosional plains (Gagne and Cuddihy 1990, Walker 1990).

The Lowland West Forest habitat of *Cyrtandra munroi* is composed primarily of native vegetation with canopies from 10 to 130 ft (3 to 40 m) high in sheltered, well drained, leeward slopes at elevations between 300 and 3,900 ft (100 and 1,200 m). Annual rainfall is generally between 60 and 200 in (150 and 500 cm). The substrate ranges from clay or organic muck over 'a'a lava to volcanic ash beds or young lava flows (Gagne and Cuddihy 1990).

Four of the plant taxa occur primarily on the windward slopes of Maui and the island of Hawaii in Montane Wet communities. Included in this vegetation type are Wet Montane Bogs and Wet Montane Forest communities. *Acaena exigua* is found in the *Metrosideros* ('ohi'a) Montane Bog Community, characterized by thick peat overlaying an impervious clay substrate with hummocks of sedges and grasses, stunted trees, and shrubs. The Montane Wet Forests to which *Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea mceldowneyi*, and *Huperzia mannii* belong occur on Molokai, Maui, and Hawaii islands at 3,900 to 7,200 ft (1,200 to 2,200 m) in elevation, mainly on steep windward valley walls. This vegetation type is characterized by rich soil development, high rainfall (100 in (250 cm) or more annually), high diversity,

and a rich understory (Gagne and Cuddihy 1990).

Schiedea haleakalensis is found in the Subalpine Dry Vegatation type that occurs on East Maui and the island of Hawaii between 5,600 and 9,800 ft (1,700 and 3,000 m) in elevation. The substrate is of cinder or weathered volcanic ash or bare lava with little or no soil development, partly due to the low annual precipitation of 15 to 40 in (40 to 100 cm). Periodic frost and occasional snow cover characterize the upper limits of this vegetation type (Gagne and Cuddihy 1990).

Argyroxiphium sandwicense ssp. *macrocephalum* is found within the Alpine Dry Shrubland community that occurs above 9,800 ft (3,000 m) elevation. Precipitation is only 30 to 50 in (75 to 125 cm) annually. This community is subject to frequent frosts and arid extremes, limiting vegetation (grasses, mosses, and alphine-adapted shrubs) to near the lower boundary of the community, on bare gravel, debris, and cinders (Gagne and Cuddihy 1990).

The last two plant taxa, *Bidens micrantha* ssp. *kalealaha* and *Geranium multiflorum*, grow in diverse vegetation types. *Bidens micrantha* ssp. *kalealaha* is found in open-canopy Dry Montane Forests to Dry Subalpine Shrublands extending from 1,600 to 9,800 ft (500 to 3,000 m) in elevation. Annual precipitation ranges from 10 to 50 in (25 to 125 cm) in seasonally Dry Montane Forests, to about 60 in (150 cm) in subalpine shrublands. The substrate is comprised mostly of blocky lava flows with little or no soil development. The habitat of *Geranium multiflorum* also spans diverse vegetation types, from montane grasslands to wet forests and swamps, extending into the subalpine zone (1,600 to 8,900 ft (500 to 2,700 m)) with an annual range of precipitation from as low as 15 in (40 cm) to over 100 in (250 cm). Occurring on the windward side of East Maui, this species is found mostly within wet forests. Subtrates range from lava flows to rich soils (Gagne and Cuddihy 1990).

The land that supports these 15 plant taxa is owned by the City and County of Honolulu, the State of Hawaii (including State parks, forest reserves, Natural Area Reserves, wilderness reserves, and land leased by the U.S. Army on Makua Military Reservation), the Federal government (Haleakala National Park on East Maui and portions of Schofield Barracks under the jurisdiction of the U.S. Army on Oahu), and private parties (including several with easement agreements with private conservation organizations).

Discussion of the 15 Taxa Included in This Final Rule

Asa Gray (1854) described *Acaena exigua* based on a specimen collected on Kauai in 1840 by personnel of the U.S. Exploring Expedition. He chose the specific epithet in reference to the small size of the plant as compared to other members of the genus. Heinrich Wawra later collected another specimen on Kauai, which was used by F.A. Georg Bitter (1910–1911) as the type specimen for two varieties, *glabriuscula* and *subtusstrigulosa*. Bitter described a third variety, *glaberrima*, from a specimen collected on Maui by Wilhelm Hillebrand. The current taxonomic treatment (Wagner *et al.* 1990) considers Bitter's varieties to represent only populational variation and recognizes no varieties.

Acaena exigua of the rose family (Rosaceae) is a perennial herb with leafy stems 0.4 to 1.6 in (1 to 4 cm) long and flowering stems 2 to 6 in (5 to 15 cm) long. The leaves are about 0.4 to 1 in (1 to 2.5 cm) long, comprising 6 to 17 oval leaflets, each about 0.04 to 0.12 in (1 to 3 millimeters (mm)) long, 0.04 to 0.08 in (1 to 2 mm) wide, glossy above, and whitish beneath. The petalless flowers are in short, dense spikes 0.2 to 0.4 in (5 to 10 mm) long. The receptacle (base of flower) is urn-shaped and encloses the fruit, which is a pale brown, cone-shaped achene (dry, one-seeded fruit) about 0.04 in (1 mm) long. The only member of the genus native to Hawaii, this species is distinguished from other Hawaiian members of the rose family in that it is a small, compact, high-elevation bog species with flowers which lack petals (Hillebrand 1888, Neal 1965, Wagner *et al.* 1990).

Historically, *Acaena exigua* was known from Puu Kukui on West Maui and from Mount Waialeale on Kauai (Hawaii Heritage Program (HHP) 1990a1, 1990a2; Wagner *et al.* 1990). Although this species has not been observed since 1973, it is still believed to be extant on Puu Kukui on privately owned land (HHP 1990a1, Wagner *et al.* 1990). The plants are small, inconspicuous, and easily overlooked among the tussocks of grasses and sedges with which it grows. Because it is likely that future surveys will show that *Acaena exigua* is still extant (Derral Herbst, U.S. Fish and Wildlife Service, pers. comm., 1990), this species is included here to extend to it the protection warranted by the Act if and when it is rediscovered. While Puu Kukui encompasses about 40 acres (ac) (16 hectares (ha)), it contained only a single observed individual in 1973. *Acaena exigua* typically grows in montane bogs at an elevation of 5,300 to 6,000 ft (1,600 to 1,800 m) (HHP 1990a1, 1990a2, 1990p; Sohmer and Gustafson 1987). Associated species include the native sedges and grasses *Deschampsia nubigena*, *Dichanthelium* spp., and *Oreobolus furcatus*, and the native shrubs *Metrosideros polymorpha* ('ohi'a) and *Vaccinium* ('ohelo) (Sohmer and Gustafson 1987). Habitat degradation by feral pigs is the major threat to all the native vegetation within the historic range of this species.

Hillebrand collected specimens of *Alectryon macrococcus*, which he discussed in his flora (Hillebrand 1888) under the name "*Mahoe*, gen. nov.?" Emmanuel Drake del Castillo (1890) referred to Hillebrand's plant as "*Dodonaea* sp." in a note under his description of *D. viscosa*. Ludwig Adolph Timotheus Radlkofer (1890) published the name *Alectryon macrococcus*, the specific epithet referring to the large fruit, and later added a Latin description (Radlkofer and Rock 1911). Harold St. John and Lafayette Frederick (1949) segregated the Oahu population of the species into *A. mahoe*, based mostly on a difference in the amount of hair on the undersides of the leaves. George Linney (1987), in the currently accepted treatment, considered this difference too trivial to support maintaining the Oahu plants as a distinct taxon; however, he did formally recognize the East Maui plants, with their densely hairy leaf undersurface, as variety *auwahiensis*. Some botanists, retaining Joseph Gaertner's original neuter designation of the genus, have used the specific epithet *macrococcum* (St. John and Frederick 1949). However, when monographing *Alectryon*, Radlkofer (1890) treated the genus as masculine. He changed the endings of older epithets to agree and published new ones, including *macrococcus*, as masculine.

Alectryon macrococcus of the soapberry family (Sapindaceae) is a tree up to 36 ft (11 m) tall with reddish brown branches. The leaves are usually 8 to 22 in (20 to 55 cm) long, typically with two to five pairs of egg-shaped, slightly asymmetrical leaflets, each 4 to 11 in (10 to 28 cm) long and 1.6 to 4.7 in (4 to 12 cm) wide. Glossy and smooth above, the leaves have a conspicuous netted pattern of veins. A dense covering of rust-colored hairs persists on the lower surfaces of mature leaves of *A. macrococcus* var. *auwahiensis*, whereas the mature leaves of *A. macrococcus* var. *macrococcus* lack hairs or are only slightly hairy. In both varieties, the flowers, which may be either bisexual or male, are borne in branched clusters up

to 12 in (30 cm) long and lack petals. The hard, spherical fruit, borne singly or sometimes in pairs, encloses a single glossy brown seed with a scarlet aril (fleshy covering over the seed). The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 1 in (2.5 cm) or more in diameter (Degener 1937a, Kimura and Nagata 1980, Lamb 1981, Rock 1913, Wagner *et al.* 1990).

The historical range of *Alectryon macrococcus* var. *auwahiensis* encompasses Auwahi on East Maui, where a single population of nine individuals remains within a 72 ac (29 ha) area on privately owned land (HHP 1990b1 to 1990b4; Medeiros *et al.* 1986). *Alectryon macrococcus* var. *macrococcus* has a much wider distribution. This variety was found historically on four islands: From Kahana Gulch to Olowalu Valley on West Maui; at Kalaupapa, Kamakou Preserve, and Puu Kolekole on East Molokai; in Waimea Canyon and as far south as Makaweli and in Kalalau Valley on Kauai; and widely distributed throughout the Waianae Mountains and more restricted in the Koolau Mountains on Oahu (HHP 1990c1 to 1990c4, 1990c6 to 1990c12, 1990c14, 1990c16, 1990c22 to 1990c24, 1990c26, 1990c27; Hawaii Plant Conservation Center (HPCC) 1990a, 1990b, 1991a, 1991b). *Alectryon macrococcus* var. *macrococcus* still occurs on those four islands, but within a much smaller range. The three existing populations on West Maui are along the Honokowai Ditch Trail and in Launiupoko Valley on privately owned land and total just a few plants. The five extant populations of *A. macrococcus* var. *macrococcus* on Molokai are restricted to Puu Kolekole jeep road, Kaunakakai Gulch, and Kamakou Preserve, with a total of six plants on State and private land. The 6 populations of this taxon on Kauai occur in Waimea Canyon and in Na Pali Coast State Park on State-owned land and number less than 100 plants. The distribution of the plants on Oahu is now spotty, with most recent sightings in the Waianae Mountains, from as far north as Kaluakauila Gulch to as far south as the ridge above Lualualei. These 28 populations are on City and County, State, Federal, and private land, most numbering only 1 or 2 individuals, but 2 populations number between 50 and 200 individuals. The total number of individuals on Oahu is estimated to be about 400. The entire species currently numbers about 500 individuals. Both varieties of *Alectryon macrococcus* typically grow on dry slopes or in gulches in north-facing, dry to mesic lowland forests at an elevation of 1,200 to 3,500 ft (360 to 1,070 m) (HPP 1990c2; Wagner *et al.* 1990; Steven Perlman, HPCC, pers. comm., 1990). Associated native species include 'ohi'a, *Aleurites moluccana* (kukui), *Diospyros sandwicensis* (lama), *Nestegis sandwicensis* (olopua), and *Psychotria* (kopiko) (HHP 1990c2, 1990c4, 1990c5, 1990c10, 1990c13, 1990c15, 1990c18 to 1990c20; S. Perlman, pers. comm., 1990). The threats to both recognized varieties of *Alectryon macrococcus* are infestations by the black twig borer; habitat degradation by feral pigs; competition for light, space, and water with the alien plants *Melinis minutiflora* (molasses grass), *Pennisetum clandestinum* (kikuyu grass), *Psidium cattleianum* (strawberry guava), and *Schinus terebinthifolius* (Christmasberry); fire; and predation of fruits and flowers by rodents. Predation and habitat degradation by cattle and the small number of remaining individuals are threats specific to *Alectryon macrococcus* var. *auwahiensis*, whereas goat activity and the resultant habitat destruction are immediate threats to *Alectryon macrococcus* var. *macrococcus*.

Charles Pickering, a naturalist on the U.S. Exploring Expedition, first collected *Argyroxiphium sandwicense* ssp. *macrocephalum* on Haleakala, Maui, in 1841. Gray (1852) named that plant *A. macrocephalum*, the specific epithet referring to the large flower heads. Hillebrand (1888) treated the taxon as variety *macrocephalum* of *A. sandwicense*, while David D. Keck (1936a) did not recognize any varieties of *A. sandwicense*, placing the taxon into synonymy. Alain K. Meyrat renamed this taxon subspecies *macrocephalum*, based on quantitative, geographic, and evolutionary differences (Meyrat *et al.* 1983; Gerald Carr, University of Hawaii, pers. comm., 1990). This is the status accepted in the most recent treatment (Carr 1990).

Argyroxiphium sandwicense ssp. *macrocephalum* of the aster family (Asteraceae) usually is a single-stemmed shrub with a rosette of narrowly sword-shaped leaves 5 to 13 in (13 to 33 cm) long and 0.3 to 0.9 in (8 to 23 mm) wide at the midpoint. A dense mat of silky, silvery hairs covers the leaves, which are more or less three-angled in cross section. The narrow, branched flowering stalk is elliptic to lance-shaped in outline, 9 to 31 in (23 to 78 cm) wide, 2.3 to 4.9 ft (0.7 to 1.5 m) long in unbranched plants, and 2.3 to 3.3 ft (0.7 to 1 m) long in branched plants. Each flowering head is about 1 in (2.5 cm) in diameter and has 11 to 42 pinkish petal-like ray florets. Central disk florets, pink to wine-red at the tip and yellowish at the base, number 120 to 600 per head. Fruits are achenes, 0.3 to 0.6 in (7 to 15 mm) long. Plants with a single rosette die after flowering; each rosette of a multi-stemmed plant also dies after flowering. This subspecies is distinguished from *A. sandwicense* ssp. *sandwicense* by having wider leaves, more ray flowers per head, and a broader flowering stalk, less than four times as long as wide. In addition to those characteristics, *A. sandwicense* ssp. *macrocephalum* differs from other members of the genus by the combination of its longer, three-angled leaves; its silvery leaf hairs which completely hide the leaf surface; and its longer achenes (Carr 1985, 1990; Degener 1936a; Degener and Degener 1957; Herbst 1986; Kepler 1983; Kimura and Nagata 1980; Meyrat 1982a, 1982b; Neal 1965; Wilson 1985).

Argyroxiphium sandwicense ssp. *macrocephalum* apparently occupies essentially all of its historical range (Loope and Crivallone 1986). This taxon occurs only in Haleakala National Park on East Maui, mainly within Haleakala Crater. The 7 known populations, which extend over an area of 2,400 ac (970 ha), contain an estimated 50,000 individuals (HHP 1990d1 to 1990d8; Lloyd Loope, Haleakala National Park, pers. comm., 1990). *Argyroxiphium sandwicense* ssp. *macrocephalum* typically grows on barren cinder cones and young 'a'alava flows in dry alpine areas at an elevation of 7,200 to 9,800 ft (2,200 to 3,000 m) (Carr 1990; HHP 1990d1, 1990d2, 1990d8; Loope and Crivellone 1986; Whiteaker 1983). Associated native shrubs include 'ohi'a, *Dubautia menziesii* (na'ena'e), *Silene struthioloides*' and *Styphelia tameiameiae* (pukiawe) (HHP 1990d2, 1990d8; Kobayashi 1973b). Historically, *Argyroxiphium sandwicense* ssp. *macrocephalum* has sustained numerous threats to its survival: Overcollection and vandalism by humans, and trampling and predation by goats, cattle, and other feral ungulates. Today, although this taxon receives legal protection within Haleakala National Park, vandalism and illegal collection continue on a small scale. The goats and cattle have been removed from silversword habitat but still pose a potential threat due to the possibility of ingress. Currently, the greatest threat to this taxon is restricted range. One destructive event could possibly extirpate a significant portion of the plants. The predation of silversword pollinators by Argentine ants (*Iridomyrmex humilis*) and yellow

jackets (*Vespula pennsylvanica*) are probable threats to this taxon.

A specimen of *Bidens* collected by Charles Noyes Forbes on Lanai in 1918 was described and named *B. distans* by Earl Edward Sherff in 1930. In 1950 William H. Hatheway and Amy B.H. Greenwell collected a specimen of *Bidens* on Haleakala, Maui, which Sherff (1951b) named *Bidens micrantha* var. *rudimentifera*. Kenneth M. Nagata and Fred R. Ganders determined that the Maui and Lanai populations formed a natural taxon, which they named *B. micrantha* ssp. *kalealaha*, devising an anagram of the word "Haleakala" as the subspecific epithet. Because they believed that Sherff based his variety *rudimentifera* on a plant of this subspecies with abnormal fruits, Ganders and Nagata (1983) did not recognize that name.

Bidens micrantha ssp. *kalealaha* of the aster family (Asteraceae) is an erect perennial herb, slightly woody at the base, and 1.6 to 4.9 ft (0.5 to 1.5 m) tall. Leaves are 2.4 to 7.5 in (6 to 19 cm) long, usually with three to seven and sometimes up to nine lance-shaped leaflets, each 1 to 4 in (2.5 to 10 cm) long and 0.2 to 1.2 in (0.5 to 3 cm) wide. Flower heads are arranged at the top of the plant and on side branches in open clusters of 15 to 50. Each flower head is 1 to 1.8 in (2.5 to 4.5 cm) in diameter and comprises 5 sterile, yellow ray florets, 0.6 to 1.1 in (15 to 27 mm) long and 0.2 to 0.3 in (5 to 7 mm) wide, and 9 to 15 bisexual disk florets in the center of the head. Fruits are black achenes, 0.3 to 0.6 in (8 to 14 mm) long and 0.03 to 0.06 in (0.8 to 1.5 mm) wide, with two awns and no wings. This taxon differs from other subspecies of *B. micrantha* by its larger flower heads and the intermediate number of ray and disk florets in each head. It is distinguished from other species of *Bidens* by its erect habit and the loose arrangement of the relatively large flower heads on both terminal and lateral branches (Degener 1938; Degener and Sherff 1932; Ganders and Nagata 1983, 1990; Hillebrand 1888).

Historically, *Bidens micrantha* ssp. *kalealaha* was known from Lanai, the south slope of Haleakala on East Maui, and from one collection on West Maui (Ganders and Nagata 1990; HHP 1990e3, 1990e4, 1990e6 to 1990e10, 1990e12, 1990e13). This taxon only remains on East Maui, in Kahua, Manawainui to Wailaulau, and in Haleakala National Park, on State and Federal land (HHP 1990e1, 1990e2, 1990e5, 1990e11). The 4 known populations, which extend over a distance of about 9.5 by 2 mi (15.3 by 3.2 km), number no more than 2,000 individuals (Art Medeiros, Haleakala National Park, pers. comm., 1990). *Bidens micrantha* ssp. *kalealaha* typically grows on sheer rock walls in dry montane forests to subalpine shrubland at an elevation of 5,200 to 7,600 ft (1,600 to 2,300 m) (Ganders and Nagata 1990; HHP 1990e1, 1990e2, 1990e5, 1990e11; Sohmer and Gustafson 1987). Associated native shrubs include pukiawe, *Coprosma* spp. (pilo), *Dodonaea viscosa* ('a'ali'i), and *Dubautia platyphylla* (na'ena'e) (Ganders and Nagata 1990, HHP 1990e2). The major threats to *Bidens micrantha* ssp. *kalealaha* are habitat destruction by feral goats and cattle, predation by goats and possibly cattle, competition from the alien kikuyu grass, and fire.

In 1911 Joseph F. Rock collected the first specimen of *Clermontia oblongifolia* ssp. *mauiensis* on Maui and two years later described and named it *C. oblongifolia* var. *mauiensis* (Rock 1913). However, in his monograph of the Hawaiian members of the bellflower family (Campanulaceae), Rock (1919) no longer recognized the variety. Later Otto Degener (1937b) distinguished the taxon as *C. oblongifolia* f. *mauiensis*. Thomas G. Lammers (1988) raised the taxon to the subspecific level with his publication of the new combination *C. oblongifolia* ssp. *mauiensis*.

Clermontia oblongifolia ssp. *mauiensis* of the bellflower family grows only terrestrially as a shrub or tree, reaching a height of 6.6 to 23 ft (2 to 7 m). Leaves, on petioles (leaf stems) 1 to 4.5 in (2.5 to 11.5 cm) long, are oblong or elliptic; have thickened, rounded teeth; and reach a length of 3 to 7.5 in (8 to 19 cm) and a width of 0.8 to 2 in (2 to 5 cm). Two flowers, or sometimes three, are grouped together on a stalk 0.2 to 1.8 in (0.5 to 4.5 cm) long, each individual flower having a stalk 0.4 to 1.8 in (1 to 4.5 cm) long. The flower is 2.4 to 3.1 in (6 to 7.8 cm) long; the calyx (sepals) and corolla (petals) are similar in size and appearance, each forming an arched tube which is greenish white or purplish on the outside and white or cream-colored on the inside. The nearly spherical, orange fruit is a berry, 0.7 to 1.2 in (17 to 30 mm) long. This subspecies differs from others of the species by its leaf shape; the lengths of its leaf, leaf stalk, and flower stalk; the shapes of the leaf tip and the flower bud; and the purple or magenta color of the fused stamens. This species is distinguished from others in the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages, as well as by the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium) (Degener 1937b; Lammers 1988, 1990; Rock 1913).

Historically, *Clermontia oblongifolia* ssp. *mauiensis* was known from Mahana and Kaiholena valleys on Lanai and from Honomanu Valley on Haleakala, East Maui (Degener 1937b, Lammers 1990, Rock 1913). Although this taxon was not reported earlier from West Maui, the only currently known individual of *Clermontia oblongifolia* ssp. *mauiensis* grown along a trail to Puu Kukui in the Honokowai section of the West Maui Natural Area Reserve on State land (HHP 1990f1, Lammers 1990). This taxon typically grows on the sides of ridges in 'ohi'a-dominated wet montane forests at an elevation of 2,800 to 3,000 ft (850 to 900 m) (HHP 1989b, 1990f1; Rock 1913). Associated species include pilo, *Clermontia* ('oha wai), *Hedyotis* (manono), and *Melicope* (alani) (Robert Hobdy, Hawaii Division of Forestry and Wildlife, pers. comm., 1990). Because only a single individual of *Clermontia oblongifolia* ssp. *mauiensis* is known to exist, the lack of a genetic pool is likely to result in reduced reproductive vigor, and any collecting (mainly for scientific purposes) also could produce the same results. The rooting activities of feral pigs also pose a serious threat to this taxon.

Based on a specimen collected by Horace Mann, Jr., and William Tufts Brigham on Maui, Mann (1867) described *Cyanea lobata*, the specific epithet referring to the lobed leaves. In 1919 George C. Munro collected a plant on Lanai, named *C. baldwinii* by him and Forbes (Forbes and Munro 1920) and later synonymized under *C. lobata* by Lammers (1990). St. John (1987, St. John and Takeuchi 1987), believing there to be no generic distinctions between *Cyanea* and *Delissea*, transferred both species to the genus *Delissea*, the older name, creating *D. baldwinii* and *D. lobata*. The current treatment does not follow this course (Lammers 1990). *Cyanea lobata* var. *hamakuae*, described by Rock (1919), is currently considered to be *C. grimesiana* ssp. *grimesiana* (Lammers 1988).

Cyanea lobata, a member of the bellflower family, is a shrub with few branches 4.3 to 7.5 ft (1.3 to 2.3 m) tall that may be smooth or occasionally rough due to small projections on the stems and lower leaf surfaces. Leaves are 12 to 20 in (30 to 50 cm) long and 4 to 6 in (10 to 15 cm) wide, with 12 to 25 irregular lobes on each side of the leaf. Flowers, clustered in groups of 5 to 12, have greenish white or purplish petals fused into a curved tube 2.4 to 2.8 in (60 to 70 mm) long and 0.2 to 0.4 in (5 to 11

mm) wide. Berries are yellow and spherical. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Degener 1936b, Hillebrand 1888, Lammers 1990, Rock 1919).

Historically, *Cyanea lobata* was known from Lanai and scattered locations throughout West Maui from Honokohau to Wailuku Valley (HHP 1990g3, 1990g4; Lammers 1990). Within the past eight years, this taxon was only found in Waikapu Valley on West Maui on privately owned land (HHP 1990g5). Although that population of one to four individuals was recently destroyed by a landslide following heavy rains (HHP 1990g5, Hobdy *et al.* 1990), the species is still believed to be extant, owing to its wide historical range and the lack of adequate surveys due to the inaccessibility of the area (D. Herbst and R. Hobdy, pers. comms., 1990). *Cyanea lobata* typically grows on steep stream banks in mesic lowland forests at an elevation of 1,800 to 3,000 ft (550 to 900 m) (HHP 1990g1, 1990g2, 1990g5; Hobdy *et al.* 1990; Lammers 1990). Associated species include *Diplazium sandwichianum* (ho'i'o) and *Touchardia latifolia* (olona) (Hobdy *et al.* 1990). Major threats to *Cyanea lobata* are the small number of individuals and habitat degradation by feral pigs.

Rock collected a new species of *Cyanea* in 1954, which he later described and named *Cyanea mceldowneyi* in honor of George McEldowney, a forester on Maui (Rock 1957). St. John (1987) transferred the species to the genus *Delissea*, but the current treatment of these genera (Lammers 1990) does not accept the transfer.

Cyanea mceldowneyi, an unbranched shrub in the bellflower family, has adult leaves which are 8 to 14 in (20 to 35 cm) long by 2 to 3.5 in (5 to 9 cm) wide and have wedge-shaped bases, hardened teeth, and sometimes a few short prickles on the upper surface. Young leaves are the same width as adult leaves but shorter, and have rounded bases, hardened marginal teeth, and a greater number of prickles. Flowers are in clusters of five to seven, each cluster with a stalk 0.6 to 1.2 in (15 to 30 mm) long and each flower with a stalk 0.4 to 0.6 in (10 to 14 mm) long. Petals, white with purple stripes, are fused into a curved tube 1.6 in (40 mm) long and 0.3 in (8 mm) wide and have small prickles on the lobes. Berries have not been observed. This species is distinguished from other species of *Cyanea* by the size of the leaves, the differing morphology of young and mature leaves, the length of the floral stalks, and the size and proportions of the flowers (Lammers 1990, Rock 1957).

Historically, *Cyanea mceldowneyi* was known from Honomanu on East Maui (HHP 1990h2). This species remains in Waikamoi on East Maui on privately owned land (HHP 1990h1, 1990h2). The 2 known populations, about 0.5 mi (0.8 km) apart and measuring not more than 100 sq ft (9 sq m) in area, total less thn 30 individuals (HHP 1990h1; R. Hobdy, pers. comm., 1990). *Cyanea mceldowneyi* typically grows in wet montane forests at an elevation of 3,030 to 4,200 ft (925 to 1,280 m) (HHP 1990h1, 1990h2; Lammers 1990). Associated native vegetation includes alani, manono, and 'ohi'a (R. Hobdy, pers. comm., 1990). The major threats to *Cyanea mceldowneyi* are the same as for *Clermontia oblongifolia* ssp. *mauiensis* and *Cyanea lobata*: Habitat degradation by feral pigs and the small number of remaining individuals.

Cyrtandra munroi was first collected by Forbes on Lanai in 1913 and was named by him (Forbes 1920) in honor of George C. Munro, who had collected other specimens of the species.

Cyrtandra munroi of the gesneria family (Gesneriaceae) is a shrub with opposite, elliptic to almost circular leaves, 3.7 to 8.3 in (9.5 to 21 cm) long and 2.2 to 3.7 in (5.5 to 9.5 cm) wide, which are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. The flowers are usually arranged in clusters of three on stalks emerging from the leaf axils. The white petals are fused into a tube, 0.6 to 0.8 in (15 to 20 mm) long, which flares into two upper lobes, 0.1 in (3 mm) long, and three lower lobes, about 0.2 in (5 to 6 mm) long. The white berries, covered with fine hair, are somewhat egg-shaped and 0.7 to 0.9 in (1.8 to 2.3 cm) long. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Forbes 1920, Wagner *et al.* 1990).

Historically, *Cyrtandra munroi* was known from scattered collections from Lanaihale on Lanai and Makamakaole on West Maui (HHP 1990i1, 1990i2; Wagner *et al.* 1990). This species was considered common in the Makamakaole area on State land in 1971, but has not been sighted there since (HHP 1990i1). The only known existing plant on West Maui is one individual discovered in 1989 in privately owned Honolua Valley (Randy Bartlett, Maui Land and Pineapple Company, pers. comm., 1990). Located about 5 mi (8 km) from the Makamakaole population, this discovery suggests that the historical distribution of this species was more widespread than previously thought. In 1991, two new populations of the taxon were discovered on Lanai. One population of about 20 individuals was found in the Waiapaa and Kapohaku drainages, and a single plant was seen in the Maunalei drainage in the gulch between Kunoa and Waialala Gulches. *Cyrtandra munroi* typically grows on rich, moist talus slopes in wet lowland forests at an elevation of 1,000 to 3,020 ft (300 to 920 m) (HHP 1990i1; 1990i2; Wagner *et al.* 1990). Associated native species include kukui, lama, 'oha wai, 'ohi'a, and *Hedyotis acuminata* (au) (HHP 1990i1; R. Bartlett, pers. comm., 1990). The major threat to *Cyrtandra munroi* is the small number of existing individuals. On Lanai, strawberry guava is competing with both populations, while the population of about 20 individuals also is being impacted by deer (J. Lau, HP, *in litt.*, 1991).

The first specimens of *Geranium multiflorum* were collected by Pickering in 1841 while the U.S. Exploring Expedition was on Maui. It was later described by Gray (1854), who named it for its many flowers in each flower cluster. Other published names which refer to this taxon are: *G. ovatifolium* (Gray 1854), *G. multiflorum* var. *canum* (Hillebrand 1888), *G. multiflorum* var. *ovatifolium* (Fosberg 1936), and *G. multiflorum* ssp. *ovatifolium* (Carlquist and Bissing 1976). Degener elevated Gray's section Neurophyllodes of *Geranium* to the generic level and published the following new varieties and combinations which refer to this taxon: *Neurophyllodes ovatifolium* and *N. multiflorum* (Degener and Greenwell 1952), *N. ovatifolium* var. *forbesii* (Degener and Degener 1967), and *N. ovatifolium* var. *superbum* (Degener and Degener 1967). St. John (1973) rejected Degener's taxonomy and transferred his new taxa back to the genus *Geranium*, resulting in the new combinations *G. multiflorum* var. *forbesii* and *G. multiflorum* var. superbum. The current treatment (Wagner *et al.* 1990), however, does not recognize any infraspecific taxa of *G. multiflorum*.

Geranium multiflorum is a 3.3 to 9.8 ft (1 to 3 m) tall, many-branched shrub of the geranium family (Geraniaceae). The leaves, typically oval, 1.8 to 2.8 in (4.5 to 7 cm) long and 0.6 to 1.2 in (1.5 to 3 cm) wide, have 7 to 11 veins, grayish silky hairs, especially on the lower surface, and 7 to 15 teeth on each side. Flowers are in clusters of 25 to 50, and have 5 white petals which are 0.4 to 0.6 in (10 to

15 mm) long with purple veins or bases. One reddish brown seed, about 0.08 in (2 mm) long, is contained in each carpel body (the seed-containing section of the fruit). The carpel body, about 0.1 in (3 mm) long, is topped with an elongated style, 0.6 to 0.8 in (14 to 20 mm) long, which twists to aid dispersal. This species is distinguished from others of the genus by its white, regularly symmetrical flowers and by the shape and pattern of teeth on its leaf margins (Fosberg 1936, Hillebrand 1888, Wagner *et al.* 1990).

Historically, *Geranium multiflorum* was known from Ukulele, Waieleele, and Waianapanapa on East Maui (HHP 1990j3, 1990j5, 1990j13). This species is now known from Haleakala National Park, Hanawi Natural Area Reserve, Koolau Forest Reserve, and Waikamoi Preserve on Federal, State, and private land (HHP 190j1 to 1990j14). The 11 known populations extend over a distance of about 6.5 by 3.5 mi (10.5 by 5.5 km). Due to the inaccessibility of the populations and the difficulty in determining the number of individuals (due to the plant's multi-branched form), the total number of individuals of this species is not known. However, it probably does not exceed 3,000 plants (HHP 1990j1 to 1990j14; A. Medeiros, pers. comm., 1990). *Geranium multiflorum* grows in a wide variety of habitats between 5,180 and 8,040 ft (1,580 and 2,450 m) in elevation: Montane grasslands, open sedge swamps, fog-swept lava flows, gulch slopes of montane wet forests, and occasionally in subalpine shrublands dominated by *Sophora chrysophylla* (mamane) (HHP 1990j1 to 1990j14, Wagner *et al.* 1990). Associated species in montane wet forests include 'ohelo, 'ohi'a, pilo, pukiawe, and *Sadleria* ('ama'u) (HHP 1990j1, 1990j2, 1990j10, 1990j14). Species associated with those populations on lava flows are *Dactylis glomerata* (cocksfoot) and *Ranunculus* (makou) (HHP 1990j6). The major threats to *Geranium multiflorum* are habitat destruction by feral pigs and goats and competition with the encroaching alien plant species, *Rubus argutus* (prickly Florida blackberry).

Based on a specimen collected by Archibald Menzies, Sir James Edward Smith described *Hedyotis coriacea* in 1811, the specific epithet referring to the plant's leathery leaves. Other names by which this taxon has been known, not all validly published, include *H. conostyla* (Gaudichaud-Beaupre 1830), *H. coriacea* f. *conostyla* (Fosberg 1943), *H. menziesiana* (Steudel 1840), *H. smithii* (Walpers 1842–47), *Kadua arnottii* (Don 1834), *K conostyla* (Hooker and Arnott 1832), *K. menziesiana* (Chamisso and Schlechtendal 1829), *K. smithii* (Hooker and Arnott 1832), and *Oldenlandia conostyla* (A.P. de Candolle 1830). The current treatment (Wagner *et al.* 1990) recognizes only *H. coriacea.*

Hedyotis coriacea of the coffee family (Rubiaceae) is a small shrub with leathery leaves which are generally elliptic to oblong in shape, 1.2 to 3.1 in (3 to 8 cm) long and usually 0.6 to 1.2 in (1.5 to 3 cm) wide. Flowers are arranged in clusters at the ends of the branches, a few flowers per cluster. The fleshy petals are fused into a tube 0.2 to 0.4 in (5 to 10 mm) long. The capsules, which split open to release dark brown seeds, are cup- to top-shaped, 0.2 to 0.3 in (4 to 7 mm) long and 0.1 to 0.2 in (3 to 4 mm) in diameter. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are longer than wide and flower buds which are square in cross section (Fosberg 1943, Hillebrand 1888, Wagner *et al.* 1990).

Historically, *Hedyotis coriacea* was known from the Waianae and Koolau Mountains on Oahu and the U.S. Army's Pohakuloa Training Area on the island of Hawaii (HHP 1990k1 to 1990k3). Considered extinct in recent years, this species was rediscovered in 1990 by Steve Perlman in the State-owned Lihau section of the West Maui Natural Area Reserve (HHP 1990k4, HPCC 1991c); it conceivably could exist elsewhere on Maui. In September, 1991, two individuals of the taxon were rediscovered on the 1859 lava flow in the Pohakuloa Training Area, island of Hawaii (Robert Shaw, Colorado State University, pers. comm., 1991). Currently, only a single individual is known from West Maui and two from Hawaii Island. *Hedyotis coriacea* is found on steep, rocky, slopes in dry to mesic 'a' ali'i-dominated shrublands or forests at an elevation of 1,560 to 7,500 ft (470 to 2,300 m) (HHP 1990k1 to 1990k4; S. Perlman, pers. comm., 1990). Associated species include 'ohi'a, pukiawe, *Alyxia oliviformis* (maile), *Bidens menziesii* (ko'oko'olau), and *Gouania* (HHP 1990k4). The major threats to *Hedyotis coriacea* are the small number of remaining individuals and fire.

Mann (1867–68) first collected *Huperzia mannii* on Maui, referring to it as "*Lycopodium phlegmaria?*" Hillebrand (1888) named the taxon *L. phlegmaria* var. *Mannii* in Mann's honor. Hermann Nessel (1939) later transferred the taxon to the genus *Urostachys.* Carl Skottsberg (1942), believing the plant's characters to warrant specific status and retaining the genus *Lycopodium,* published the combination *L. mannii.* Some species of *Lycopodium* have recently been placed in the genus *Huperzia* (Ollgaard 1989); the combination for *H. mannii* was published by Josef Holub (1991) after the proposed rule appeared in the **Federal Register.** As this new combination has been accepted by most botanists specializing in this plant family, the new name has been incorporated into this final rule.

Huperzia mannii, a member of the clubmoss family (Lycopodiaceae), is a pendent epiphyte (plant not rooted in the ground) with clustered, delicate, red stems which are 1.6 to 3.9 in (4 to 10 cm) long and less than 0.04 in (1 mm) thick. Leaves, arranged in three rows on the stem, are pointed, flat, and lance-shaped and measure 0.2 to 0.5 in (4 to 12 mm) long and 0.04 to 0.08 in (1 to 2 mm) wide. Fruiting spikes branch four to six times and are 4.7 to 8 in (12 to 20 cm) long and 0.4 to 0.8 in (1 to 2 cm) wide. Bracts on the fruiting spiked are arranged in two to four ranks, measure 0.04 in (1 mm) long, and conceal the spore capsules. This species can be distinguished from others of the genus in Hawaii by its epiphytic habit, its delicate red stems, and its forked fruiting spikes (Degener and Degener 1959, Hillebrand 1888, St. John 1981).

Historically, *Huperzia mannii* was known from Haelaau and Hanaula on West Maui, Captain Cook-Kona on the island of Hawaii, and Waiakoali on Kauai (HHP 1990L1, 1990L5, 1990L9, 1990L10). Although not recorded from East Maui before 1982, this species is now known from Kipahulu and Manawainui on East Maui, Lihau and Puu Kukui on West Maui, and Laupahoehoe Natural Area Reserve on the island of Hawaii, on State and private land (HHP 1990L2 to 1990L4, 1990L6 to 1990L8; HPCC 1991d, 1991e). Of the 6 known populations, 5 occupy an area of not more than 30 sq ft (2.8 sq m), while the other is scattered over an area of 650 ac (260 ha); the 6 populations total about 35 individuals (A. Medeiros and L. Loope, *in litt.,* 1989; Linda Cuddihy, Hawaii Volcanoes National Park, and R. Hobdy, pers. comms., 1990; HPCC 1991d, 1991e). *Huperzia mannii* typically grows on plants such as 'ohi'a or *Acacia koa* (koa) in mesic to wet montane 'ohi'a/koa forests on Maui and the island of Hawaii at an elevation of 2,900 to 5,200 ft (900 to 1,600 m) (HHP 1989a, 1990L1 to 1990L10). Other associated species include pilo, *Cheirodendron trigynum* ('olapa), *Ilex anomala* (kawa'u), and

Myrsine (kolea) (HHP 1990L2 to 1990L7). Additional associates on the island of Hawaii are mamane and *Astelia menziesiana* (kaluaha) (Cuddihy *et al.* 1982; HHP 1990L5). The major threats to *Huperzia mannii* are habitat degradation by pigs and cattle, alien plants (prickly Florida blackberry), and the small number of extant individuals. Recently, the Manawainui population has been fenced to protect it from feral animals (Corn 1991, Hawaii Department of Land and Natural Resources 1990).

Lipochaeta kamolensis, first collected in 1948 by Otto Degener, Horace F. Clay, and R. Bertram, was named by Degener and Sherff (Sherff 1951a) after Kamole Gulch, where it was found.

Lipochaeta kamolensis, a perennial herb of the aster family (Asteraceae), has trailing or climbing stems which are woody at the base and reach a length of 1 to 10 ft (0.3 to 3 m). Leaves are variable, ranging from long and narrow to triangular in shape, 1.2 to 2.6 in (3 to 6.5 cm) long and 0.5 to 1.7 in (1.2 to 4.4 cm) wide. Both leaf surfaces are covered with small flat hairs, and the leaf margins are lobed or deeply cut. Flower heads, arranged singly or in pairs, are 0.8 to 1.0 in (2 to 2.5 cm) in diameter, and each comprises 6 yellow, ray florets, about 0.3 in (8.5 to 9 mm) long by less than 0.2 in (3.7 to 4 mm) wide, and approximately 15 disk florets. Fruits are grayish-brown, wingless achenes about 0.08 in (2 mm) long. This species is distinguished from others of the genus by the simple leaves which are pinnately lobed or cut and by the size of the flower heads (Sherff 1951a, Wagner *et al.* 1990).

Historically, *Lipochaeta kamolensis* was known from Kamole Gulch, west of Kepuni Gulch, and 11.8 mi southeast of Ulupalakua Ranch Office (Gardner 1979, Sherff 1951a, Wagner *et al.* 1990). This species still occurs in the Kamole Gulch area, both above and below Highway 31 on State-owned land (Gardner 1979; HPCC 1990c; Wagner *et al.* 1990; R. Hobdy, pers. comm., 1990). The only known population, which extends over an area of about 100 ac (40 ha), contains an estimated several hundred individuals (R. Hobdy, pers. comm., 1990). *Lipochaeta kamolensis* typically grows along the bottom of rock ledges in dry to mesic scrub or dry lowland forests at an elevation of about 820 ft (250 m) (Gardner 1979; Wagner *et al.* 1990; R. Hobdy, pers. comm., 1990). Associated vegetation includes 'a'ali'i, grasses, and *Lantana camara* (lantana) (Gardner 1979). The major threats to *Lipochaeta kamolensis* are habitat destruction by cattle and goats, predation by goats and probably by cattle, fire, and the small number of populations subject to extinction by stochastic events.

Lysimachia lydgatei was first collected before 1871 and named by Hillebrand in 1888, the specific epithet honoring the Reverend John M. Lydgate. Amos Arthur Heller (1897) created a new genus, *Lysimachiopsis*, into which he placed all endemic Hawaiian species of *Lysimachia*. The current treatment (Wagner *et al.* 1990) recognizes *Lysimachiopsis* as a section of *Lysimachia*.

Lysimachia lydgatei of the primrose family (Primulaceae) is a sprawling, branched shrub with stems from 3 to 4 ft (1 to 1.3 m) long. Older stems are smooth, but young ones have a dense covering of rust-colored hairs. The leathery, elliptic leaves, 1.9 to 2.8 in (49 to 70 mm) long by 0.6 to 0.9 in (14 to 22 mm) wide, are densely covered with rust-colored hairs. Flowers are arranged singly in the leaf axils. Entire flowers have not been seen, and fruits are capsules about 0.2 in (6 mm) long. This species is distinguished from others in the genus by the dense hairs on both the upper and lower surfaces of mature leaves (Hillebrand 1888, Wagner *et al.* 1990).

Lysimachia lydgatei is only known from two West Maui collections: A historical collection from a gulch behind Lahaina and a recent collection from the Lihau section of the West Maui Natural Area Reserve on State-owned land (HHP 1990m1, 1990m2; HPCC 1991f, 1991g; Wagner *et al.* 1990). The Lihau population of one to several individuals measures just a few feet across (R. Hobdy, pers. comm., 1990). *Lysimachia lydgatei* typically grows on the sides of steep ridges in 'ohi'a-dominated lowland mesic shrubland at an elevation of about 3,600 ft (900 m) (HHP 1989b, 1990m2; S. Perlman, pers. comm, 1990). Associated vegetation includes 'a'ali'i, 'ohelo, pukiawe, and mat ferns such as *Dicranopteris* (uluhe) (HHP 1989b; R. Hobdy, pers. comm., 1990). The greatest threats to *Lysimachia lydgatei* are the small number of extant individuals, subject to extinction by a single destructive human-caused or natural event; competition with the alien plant species, prickly Florida blackberry; and fire.

St. John (1944) based *Pelea mucronulata* on a specimen collected in 1920 by Forbes, the specific epithet referring to the small sharp point at the end of the fruit. Thomas C. Hartley and Benjamin C. Stone (1989) synonymized *Pelea* under *Melicope*, resulting in the current name (Wagner *et al.* 1990).

Melicope mucronulata of the citrus family (Rutaceae) is a small tree up to 13 ft (4 m) tall with oval to elliptic-oval leaves, 3.1 to 6.3 in (8 to 16 cm) long and 1.4 to 2.6 in (3.5 to 6.5 cm) wide. Flower clusters composed of three to nine flowers are arranged in the leaf axils (point between petiole and branch); floral morphology is unknown. The fruit is 0.9 to 1.1 in (2.4 to 2.8 cm) wide and is made up of separate sections, each containing one or two 0.2 in (6 mm) long seeds. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1990).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983. This species was also found 2 years later in Kupaia on Kamakou Preserve on East Molokai (HHP 1990n1, 1990n2; HPCC 1990d; Stone *et al.* 1990). The Maui population occurs on State land and the Molokai population on private land (HHP 1990n1, 1990n2). The two populations, which together extend over an area of 950 ac (380 ha), contain a total of only five plants (HHP 1990n1, 1990n2; A. Medeiros and S. Perlman, pers. comms., 1990). *Melicope mucronulata* typically grows on steep, west- or north-facing, dry to mesic, forested lowland slopes at an elevation of 2,200 to 2,850 ft (670 to 870 m) (HHP 1990n1, 1990n2). Associated native species include 'a'ali'i, 'ohi'a pukiawe, and *Dubautia linearis* (na'ena'e). The major threat to the continued existence of this species is the small number of extant individuals. Like most of the taxa, each population of *Melicope mucronulata* is susceptible to destruction by a single stochastic event. Habitat degradation by goats and pigs, predation by goats, and competition with alien plants (molasses grass) also pose immediate threats to this species.

Schiedea haleakalensis was discovered by Otto Degener, Emilio Ordonez, and Felix C. Salucop in 1939 and named by Degener and Sherff (Sherff 1942) after the mountain on which it grows.

Schiedea haleakalensis of the pink family (Caryophyllaceae) is a hairless shrub, 1 to 2 ft (30 to 60 cm) tall with slightly fleshy, narrow leaves with a single vein, 1.6 to 3.1 in (4 to 8 cm) long and 0.04 to 0.12 in (1 to 3 mm) wide. Flowers are arranged in clusters 1.2 to 2 in (3 to 5 cm) long at the ends of the branches. The flower has 5 green, oval sepals, which are about 0.1 in (3 mm) long; no petals; 5 nectaries, which are 0.04 to 0.05 in (1 to 1.3 mm) long; and 10 stamens. Capsules are about 0.2 in (4

mm) long and contain grayish to reddish brown seeds which are less than 0.04 in (1 mm) long. This species differs from other species of the genus on East Maui by its crowded, hairless inflorescence composed of bisexual flowers (Degener and Degener 1956, Degener and Greenwell 1956, Sherff 1942, Wagner *et al.* 1990).

Due to the lack of early collections or sightings, the historical range of *Schiedea haleakalensis* is unknown. This species is known only from two areas in Haleakala National Park on East Maui: Holua and on the west side of Kaupo Gap (HHP 1990o1, 1990o2; Wagner *et al.* 1990; L. Loope, pers. comm., 1990). The two populations are estimated to contain a total of 100 to 200 individuals, which together extend over a total area of 28 ac (11 ha) (A. Medeiros and L. Loope, *in litt.*, 1989; A. Medeiros, pers. comm., 1990). *Schiedea haleakalensis* typically grows on sheer, arid subalpine cliffs at an elevation of 6,000 to 7,020 ft (1,830 to 2,140 m) (Wagner *et al.* 1990, Weller *et al.* 1990). Associated vegetation includes *Artemisia mauiensis* ('ahinahina), *Bidens micrantha* (ko'oko'olau), *Dubautia mensiezii* (na'ena'e), and *Viola chamissoniana* (pamakani) (Medeiros *et al.* 1986). The greatest threats to *Schiedea haleakalensis* are fire and the small number and restricted distribution of remaining individuals and populations. Habitat degradation and predation by feral goats are probable threats.

Previous Federal Act

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Acaena exigua* (as *A. exigua* var. *glaberrima*), *Alectryon macrococcus* (as *A. macrococcum* var. *macrococcum* and *A. mahoe*), *Cyanea lobata* (as *C. baldwinii*), *Cyanea mceldowneyi*, and *Geranium multiflorum* (as *G. multiflorum* var. *ovatifolium* and *G. multiflorum* var. *superbum*) were considered to be endangered. *Acaena exigua* (as *A. exigua* var. *exigua*, *A. exigua* var. *glabriuscula*, and *A. exigua* var. *subtusstrigulosa*), and *Cyrtandra munroi* were considered to be threatened. *Bidens micrantha* ssp. *kalealaha* (as *B. distans*), *Hedyotis coriacea*, *Huperzia mannii* (as *Lycopodium mannii*), and *Melicope mucronulata* (as *Pelea mucronulata*) were considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered, plus all the above taxa thought to be extinct. *Argyroxiphium sandwicense* ssp. *macrocephalum* (as *A. macrocephalum*) was considered endangered in the proposed rule. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 20, 1990 (55 FR 6183). In these notices, 10 of the taxa that had been in the proposed rule were treated as Category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. The aforementioned taxa that were proposed as endangered in the June 16, 1976, proposed rule were considered Category 1 candidates on all three of the notices of review. *Acaena exigua* and *Lipochaeta kamolensis* were also included as Category 1 species on the 1980 notice and remained so on the 1985 and 1990 notices. *Alectryon macrococcus* appeared as a Category 1 species (as *Alectryon macrococcum*) and a Category 3C species (as *A. mahoe*) on the 1980 and 1985 notices, but as a Category 1 species (as *A. macrococcus*) on the 1990 notice, after *A. mahoe* was put into synonymy with *A. macrococcus* in a taxonomic revision (Linney 1987). Category 3C taxa are those which have been found to be more abundant or widespread than previously thought and/or those that are not subject to any identifiable threat. *Argyroxiphium sandwicense* ssp. *macrocephalum* was classified as a Category 1 taxon on all three notices (as *A. sandwicensis* on the 1980 notice, as *A. sandwicense* var. *macrocephalum* on the 1985 notice, and as *A. sandwicense* ssp. *macrocephalum* on the 1990 notice). *Bidens micrantha* ssp. *kalealaha* (as *Bidens distans*) was classified as a Category 1 taxon on the 1980 notice, a Category 3B taxon (as *B. distans*) on the 1985 notice, and a Category 1 taxon (as *Bidens micrantha* ssp. *kalealaha*) on both the 1985 and 1990 notices. Category 3B taxa are those which, on the basis of current taxonomic understanding, do not represent distinct taxa meeting the Act's definition of "species." *Cyrtandra munroi* was included as a Category 2 species on the 1980 and 1985 notices but was included as a Category 1 species on the 1990 notice. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. *Geranium multiflorum* was included as Category 1 (as *G. multiflorum* var. *multiflorum*) and Category 2 (as *G. multiflorum* var. *ovatifolium* and *G. multiflorum* var. *superbum*) taxa on the 1980 and 1985 notices and as a Category 1 species on the 1990 notice (as *G. multiflorum*) after the most recent taxonomic treatment (Wagner *et al.* 1990) recognized no varietal differences. *Schiedea haleakalensis* first appeared on the 1985 notice as a Category 1 species and remained so on the 1990 notice. *Clermontia oblongifolia* ssp. *mauiensis* and *Lysimachia lydgatei* first appeared on the 1990 notice as Category 1 taxa.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of

1984, 1985, 1986, 1987, 1988, 1989, and 1990.

On May 24, 1991, the Service published in the **Federal Register** (56 FR 23842) a proposal to list 14 plant taxa from the island of Maui as endangered and one taxon, the Haleakala silversword ('ahinahina), as threatened. This proposal was based primarily on information supplied by the Hawaii Heritage Program, the Hawaii Plant Conservation Center, and observations of botanists and naturalists, notably Robert Hobdy, Lloyd Loope, and Arthur Medeiros. The Service now determines 14 taxa primarily from the island of Maui to be endangered, and an additional taxon to be threatened, with the publication of this rule.

Summary of Comments and Recommendations

In the May 24, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information relevant to a final decision on the listing proposal. The public comment period ended on July 23, 1991. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in The Honolulu Advertiser on June 1, 1991, and in the Maui News on June 2, 1991. Three letters of comment, including one from the Department of the Navy, one from the Governor of Hawaii, and one The Nature Conservancy of Hawaii, were received. Two of the letters had no comments, but one furnished additional information which has been incorporated into this final rule. The third letter had a single comment which is discussed below.

Issue 1: One respondent was concerned that *Acaena exigua* was being listed as the species has not been seen in recent years and may be extinct.

Response: The species is known historically from two islands, and, although it has not been seen for about 19 years, it may still be extant. The species is a small, inconspicuous plant, easily hidden among the other low, tufted bog plants with which it grows. It is restricted to high-elevation bogs comprising rugged, poorly explored terrain, of difficult access. Because there is a good probability that future surveys will show that *Acaena exigua* is still extant (D. Herbst, pers. comm., 1990), the Service has included the taxon in this final rule to extend to it the protection warranted by the Act.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) 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). The threats facing these 15 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity				Alien plants	Fire	Disease/ insects	Rodents	Limited Nos.[1]
	Goats	Cattle	Pigs	Deer					
Acaena exigua			X						
Alectryon macrococcus	X	X	X		X	X	X	X	X
Argyroxiphium sandwicense ssp. *macrocephalum*	P	P					P		
Bidens micrantha ssp. *kalealaha*	X	X			X	X			
Clermontia oblongifolia ssp. *mauiensis*			X						X
Cyanea lobata			X						X
Cyanea mceldowneyi			X						X
Cyrtandra munroi				X	X				X
Geranium multiflorum	X		X		X				X
Hedyotis coriacea						X			
Huperzia mannii		X	X		X				X
Lipochaeta kamolensis	X	X				X			X
Lysimachia lydgatei					X	X			X
Melicope mucronulata	X		X		X				X
Schiedea haleakalensis	P					X			X

X = Immediate and significant threat.
P = Potential threat.

[1] No more than 100 individuals and/or fewer than 5 populations.

These factors and their application to *Acaena exigua* A. Gray (liliwai), *Alectryon macrococcus* Radlk. (mahoe), *Argyroxiphium sandwicense* DC ssp. *macrocephalum* (A. Gray) Meyrat (Haleakala silversword, 'ahináhina), *Bidens micrantha* Gaud. ssp. *kalealaha* Nagata and Ganders (ko'oko'olau), *Clermontia oblongifolia* Gaud. ssp. *mauiensis* (Rock) Lammers ('oha wai), *Cyanea lobata* H. Mann (haha), *Cyanea mceldowneyi* Rock (haha), *Cyrtandra munroi* C. Forbes (ha'iwale), *Geranium multiflorum* A. Gray (nohoanu), *Hedyotis coriacea* Sm. (kio'ele), *Huperzia mannii* (Hillebr.) Holub (wawae'iole), *Lipochaeta kamolensis* Degener and Sherff (nehe), *Lysimachia lydgatei* Hillebr. (NCN), *Melicope mucronulata* (St. John) T. Hartley and B. Stone (alani), and *Schiedea haleakalensis* Degener and Sherff (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The native vegetation of Maui and other Hawaiian Islands has undergone extreme alterations because of past and present land management practices, including deliberate alien plant and animal introductions, agricultural development, and military use (Cuddihy and Stone 1990, Frierson 1973, Wagner *et al.* 1985). Degradation of habitat by feral animals and competition with alien plants are considered the greatest present threats to the 15 taxa.

First introduced to Maui in 1793 (Stone and Loope 1987), goats (*Capra hircus*) became established on other Hawaiian islands by the 1820s (Cuddihy and Stone 1990, Culliney 1988). Far from controlling their numbers, the era of trade in goatskins (mid-1800s) saw the feral goat population increase into the millions (Culliney 1988). As a result of their agility, they were able to reach more remote areas than other ungulates (Culliney 1988). Feral goats now occupy a wide variety of habitats, from dry lowland forests to alpine grasslands, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Scott *et al.* 1986, Stone 1985, Stone and Loope 1987, Yocom 1967).

Currently, goats contribute to the substantial decline of the habitat of all four populations of *Alectryon macrococcus* var. *macrococcus* in Waimea Canyon on Kauai, due to ongoing management of goats by the State for recreational hunting (Daehler 1973, Tomich 1986). In the Waianae Mountains of Oahu, encroaching urbanization and hunting pressure tend to restrict goats to the drier upper slopes (Tomich 1986). Over half of the Oahu populations of *Alectryon macrococcus* var. *macrococcus* are affected by increasing numbers of goats in scattered locations along the Waianae Mountains, especially in Makua and Makaleha (J. Lau, pers. comm., 1990). On Molokai, five populations of *Alectryon macrococcus* var. *macrococcus* and the population of *Melicope mucronulata* are immediately threatened by habitat degradation by goats (Medeiros *et al.* 1986). The populations of both taxa are restricted to a 3 sq mi (7.5 sq km) area that goats are known to frequent. Feral goats had nearly extirpated the populations of *Argyroxiphium sandwicense* ssp. *macrocephalum*, *Bidens micrantha* ssp. *kalealaha*, *Geranium multiflorum*, and *Schiedea haleakalensis* within Haleakala National Park by the 1930s. However, an active management program eradicated all but 100 feral goats from the Park by 1988. While they are no longer an immediate threat to plants within the park, the potential for the ingress and reestablishment of goats is still a possibility (L. Loope, pers. comm., 1990). The effects of past feral goat activity have taken their toll on *Schiedea haleakalensis*, which is now restricted to vertical cliff faces inaccessible to goats. Even after the removal of these feral ungulates, there has thus far been no evidence that *S. haleakalensis* is spreading (Bryan Harry, National Park Service, *in litt.*, 1990; A. Medeiros and L. Loope, *in litt.*, 1989).

Of the four taxa just mentioned, *Argyroxiphium sandwicense* ssp. *macrocephalum* has undergone the most extreme population fluctuation due to goats and cattle (*Bos taurus*). Until the 1920s, these animals grazed in what is now Haleakala National Park (Medeiros *et al.* 1986). As a result of the park's eradication program, numbers of *Argyroxiphium sandwicense* ssp. *macrocephalum* have increased significantly: from a low of between 100 and 1,500 to the present estimate of 50,000 plants (Degener 1948, Loope and Crivellone 1986). However, goats and cattle still threaten plants outside the park's managed areas. Until recently, goats were among the most pervasive threats to the adjacent Waikamoi Preserve (Holt 1983), where 5 of the 11 populations of *Geranium multiflorum* are located (HHP 1990j6, 1990j8 to 1990j10, 1990j12). Management practices initiated by The Nature Conservancy of Hawaii in that preserve within the past 3 years have reduced the number of goats from a high of several thousand to the current estimate of less than 50. Although the reduction is substantial, there is still a possibility of ingress from adjacent parkland areas (Mark White, The Nature Conservancy of Hawaii, pers. comm., 1990). The remaining goats continue to degrade the habitat of *Geranium multiflorum*. Also found along much of the southern slope of Haleakala, goats are known to frequent the area where the only remaining population of *Lipochaeta kamolensis* persists in small depressions and along cattle trails (Medeiros *et al.* 1986).

The impact of cattle on the native vegetation is similar to that described for goats (Scott *et al.* 1986). These two ungulate species are considered the most damaging alien vertebrates to Hawaii's native ecosystems (Culliney 1988). Introduced to Maui in the early 1800s (Tomich 1986) and permitted to range freely, cattle became so abundant that by the 1840s, the northwestern slopes of Haleakala above Makawao were described as "endless bullock paths" (Culliney 1988). On the southern slope of Haleakala, cattle ranching dates from before 1910 (Rock 1913) and still continues in the vicinity of four of the taxa: *Bidens micrantha* ssp. *kalealaha*, *Huperzia mannii*, and the last known populations of *Alectryon macrococcus* var. *auwahiensis* and *Lipochaeta kamolensis* (R. Hobdy, pers. comm., 1990). The long history of cattle grazing has so altered this area that only pockets of native vegetation remain. As mentioned above, cattle also played a significant role in the decline of *Argyroxiphium sandwicense* ssp. *macrocephalum* in Haleakala National Park. Decades of uncontrolled grazing had devastating effects on native vegetation in Kula and Kahikinui forest reserves on Haleakala's southern and southwestern slopes (Medeiros *et al.* 1986). Although most cattle have been eradicated from these reserves through incentive permits, some were encountered there as recently as 1983 (Medeiros *et al.* 1986). Populations of the taxa occurring outside Maui are also threatened by cattle. Two of the six known populations of *Huperzia mannii* in Laupahoehoe Natural Area Reserve on the island of Hawaii occupy sites frequented by cattle that stray from adjacent State-leased ranches (L. Cuddihy, pers. comm., 1990). An additional effect of cattle is that their trails provide new routes for feral pigs (*Sus scrofa*) to expand their range (Paul Higashino, The Nature Conservancy of Hawaii, pers. comm., 1981).

On the island of Lanai, axis deer have caused extensive habitat degradation similar to that of goats and cattle. The axis deer is now considered to be the

major threat to the forests of Lanai (Culliney 1988). Deer browse on native vegetation, destroying or damaging the habitat. Also, their trampling removes vegetation and litter important to soil-water relations, compacts the soil, promotes erosion, and opens areas, allowing exotic plants to invade. Deer are common throughout Lanaihale; very few patches of forest are untouched by them. Ridge tops in particular are being invaded, but so are gulches (R. Hobdy, pers. comm., 1990). The largest known population of *Cyrtandra munroi* (and the only population with more than a single individual) is being impacted by deer (J. Lau, *in litt.*, 1991). If hunting pressure decreases, deer could potentially destroy both Lanai's populations of this species (J. Lau, pers. comm., 1992).

In contrast to goats, cattle, and deer, pigs occupy the wetter regions of Hawaii's forests and are one of the major current modifiers of wet forest habitats (Stone 1985). Pigs damage the native vegetation by rooting and trampling the forest floor, and encourage the expansion of alien plants that are better able to exploit the newly tilled soil than are native species (Stone 1985). Pigs also disseminate alien species through their feces and on their bodies, accelerating the spread of alien plants within the native forest. Of the 15 plant taxa, *Acaena exigua*, both varieties of *Alectryon macrococcus*, *Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea lobata*, *Cyanea mceldowneyi*, *Geranium multiflorum*, *Huperzia mannii*, and *Melicope mucronulata* are threatened by or have already sustained loss of individual plants or habitat as the result of feral pig activity (HHP 1990c17; HHP and Hawaii Division of Forestry and Wildlife (DOFAW) 1989; Sohmer and Gustafson 1987; L. Cuddihy, R. Hobdy, J. Lau, and A. Medeiros, pers. comms., 1990). Present throughout the Waianae Mountains of Oahu in low numbers, feral pigs pose a significant threat to the scattered populations of *Alectryon macrococcus* var. *macrococcus* (J. Lau, pers. comm., 1990). At the time of the last sighting of *Acaena exigua* on Puu Kukui on West Maui (1973), there was no sign of pigs on that plateau. Since then, the montane bog habitat of *A. exigua* has become threatened by the ingress of feral pigs from adjacent areas (Betsy Gagne, Haleakala National Park, pers. comm., 1990). On West Maui, *Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea lobata*, and *Cyanea mceldowneyi* are also threatened by feral pigs (HHP and DOFAW 1989; R. Hobdy, pers. comm., 1990). Pigs are considered one of the most pervasive threats to the wet forests of Waikamoi Preserve on East Maui, an area where *Geranium multiflorum* populations are susceptible to rooting and trampling by pigs (Holt 1983).

Since 1989, flocks of escaped or released domestic European rabbits (*Oryctolagus cuniculus*) have invaded Hosmer's Grove in Haleakala National Park. These animals are extremely prolific and, like feral goats and pigs, can deplete vast areas of vegetation (Tanji 1990a, 1990c). Although the rabbits are currently restricted to Hosmer's Grove, their range is increasing and has the potential of reaching five populations *Geranium multiflorum*, the closest of which is only 0.7 mi (1.2 km) away.

Six of the 15 taxa are threatened by competition with 1 or more alien plant species (see Table 1). *Schinus terebinthifolius* (Christmasberry), introduced to Hawaii before 1911, has had particularly detrimental impacts (Cuddihy and Stone 1990). This fast-growing tree is able to form dense thickets that displace other plants (Cuddihy and Stone 1990, Smith 1985). It is now replacing the native vegetation of much of the southern Waianae Mountains and threatens to occupy the range of all Oahu populations of *Alectryon macrococcus* var. *macrococcus* (HHP 1990c13, 1990c15, 1990c17, 1990c19, 1990c21; J. Lau, pers. comm., 1990).

Psidium cattleianum (strawberry guava) is a pervasive alien tree in the southern Waianae Mountains of Oahu and the wet forests of Maui. It is also found on the other Hawaiian Islands. Like Christmasberry, strawberry guava is capable of forming dense stands that exclude other plant species (Cuddihy and Stone 1990) and is distributed mainly by feral pigs and fruit-eating birds (Smith 1985). The Maui populations of *Alectryon macrococcus* var. *macrococcus* are immediately threatened by competition with this alien plant as are Lanai's populations of *Cyrtandra munroi* (J. Lau, pers. comms., 1990 and 1992).

With the introduction of cattle and goats and the development of organized ranching, the native forests in many parts of the State were converted to vast pastures of alien grasses. Such species as *Melinis minutiflora* (molasses grass) and *Pennisetum clandestinum* (kikuyu grass) were introduced as fodder (Cuddihy and Stone 1990) and quickly spread to areas previously disturbed by ungulates. Today, these alien species have infested many dry to mesic forests on most of the Hawaiian Islands (Cuddihy and Stone 1990). Native vegetation on dry mountain ridges of Kauai, Oahu, Maui, Lanai, and Molokai is being replaced by molasses grass. This species and Christmasberry are considered the two most serious alien plant problems in the Waianae Mountains of Oahu (J. Lau, pers. comm., 1990). Molasses grass produces a dense mat capable of smothering plants, provides fuel for fire, and carries fire into areas with woody plants (Cuddihy and Stone 1990). Most populations of *Alectryon macrococcus* var. *macrococcus* on Oahu and Molokai as well as the sole population of *Melicope mucronulata* on Molokai are immediately threatened by this alien plant (HHP 1990n1; J. Lau, pers. comm., 1990). Kikuyu grass is invading dry to mesic habitats as well as disturbed wet forests on all of the Hawaiian Islands. Like molasses grass, kikuyu grass forms a thick mat that prevents the reproduction of native plant taxa, such as *Alectryon macrococcus* var. *auwahiensis* at Auwahi (Cuddihy and Stone 1990; Medeiros *et al.* 1986; S. Perlman, pers. comm., 1990) and populations of *Bidens micrantha* ssp. *kalealaha* on East Maui (L. Loope, pers. comm., 1990).

Rubus argutus (prickly Florida blackberry), recognized as a noxious weed by the Hawaii State Department of Agriculture, is adapted to open disturbed areas, where it forms impenetrable thickets (Smith 1985). This invasive alien plant poses a serious threat to the habitat of *Geranium multiflorum* and *Lysimachia lydgatei* on Maui (Berger *et al.* 1975, HHP and DOFAW 1989) and, to a lesser degree, threatens *Huperzia mannii* on Hawaii Island (HHP 1989a; L. Cuddihy, pers. comm., 1990).

Fire threatens six plant taxa growing in dry to mesic grassland, shrubland, and forests on the leeward slopes of West Maui, Haleakala on East Maui, and the Waianae Mountains of Oahu (Center for Plant Conservation (CPC) 1990; HHP and DOFAW 1989; R. Hodby, pers. comm., 1990) (see Table 1). Human-set fires and wildfires are known to destroy native Hawaiian vegetation and usually favor fire-resistant alien plants (Cuddihy and Stone 1990). A dump located near the Lihau Section of the West Maui Natural Area Reserve regularly burns and starts wildfires, immediately threatening the only known plant of *Hedyotis coriacea* on Maui (HHP and DOFAW 1989; S. Perlman, pers. comm., 1990). A single fire could also extirpate the only known population of *Alectryon macrococcus* var. *auwahiensis*, *Lipochaeta kamolensis*, or *Lysimachia lydgatei* (CPC 1990; R. Hobdy, pers. comm., 1990)

or affect a significant portion of the population of *Bidens micrantha* ssp. *kalealaha* and *Schiedea haleakalensis* (A. Medeiros, pers. comm., 1990). Unintentionally ignited fires have resulted from ordnance training practices in Makua Military Reservation on Oahu. Although most fires have been contained within 0.02 ac (0.01 ha), a single 300 ac (120 ha) fire in July 1989 spread upslope and came to within 0.2 mi (0.3 km) of a population of *Alectryon macrococcus* var. *macrococcus*, also threatening seven other populations in the area (Colonel William Chastain, U.S. Army, Fort Shafter, Hawaii, *in litt.*, 1989a, 1989b, 1990a, 1990b).

Natural fires and fires accidentally set by hunters or military ordnance or personnel within Pohakuloa Training Area (PTA) on the island of Hawaii threaten native vegetation on the leeward side of Mauna Kea (Herbst and Fay 1979), including the habitat of the largest population of *Hedyotis coriacea*. Habitat disturbance caused by military exercises at PTA on the island of Hawaii may have threatened *Hedyotis coriacea* in the past. Planned military maneuvers are now being reevaluated in light of the recent discovery of several endangered plants on PTA.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously threaten six of these taxa *(Acaena exigua, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Hedyotis coriacea, Lysimachia lydgatei,* and *Melicope mucronulata)*. Because for each of these taxa fewer than 10 individuals exist, any collection of whole plants or reproductive parts would adversely impact the gene pool and threaten their survival.

Argyroxiphium sandwicense ssp. *macrocephalum* is of horticultural, ornamental, and scientific interest, and, in the past, collection of seed for propagation or of entire plants for ornamental purposes, combined with habitat degradation by ungulates, nearly extirpated this taxon (Degener 1948, Keck 1936b, Kepler 1983, Kimura and Nagata 1980). Illegal silversword collecting and vandalism continues to this day (Tanji 1990b); however, these activities are now minimal and represent only a potential threat. Propagation of *A. sandwicense* ssp. *macrocephalum* is difficult, since both seed production and germination are quite low (Kobayashi 1974). According to Kobayashi (1973a), trampling by humans and subsequent erosion of the loose cinder substrate, now mainly confined to the western rim of Haleakala Crater, may become a more serious threat as the number of visitors to the national park increases. Such disturbance to the substrate causes serious mechanical damage to *A. sandwicense* ssp. *macrocephalum* by injuring or exposing the shallow root system (Doria 1979, Kobayashi 1973c).

The montane bog habitat of *Acaena exigua* is extremely sensitive to excessive visitation. Habitat degradation may result from trampling, which destroys vegetation and creates pools of mud and standing water (Sohmer and Gustafson 1987).

C. Disease or Predation

Xylosandrus compactus (black twig borer) has been cited as an immediate threat to the extant populations of both varieties of *Alectryon macrococcus* (CPC 1990; Hara and Beardsley 1979; HHP 1990c25; J. Lau and S. Perlman, pers. comms., 1990). The black twig borer burrows into the branches and introduces a pathogenic fungus, pruning the host severely, often killing branches or whole plants (Hara and Beardsley 1979, Howarth 1985). The Waimea Canyon populations of *Alectryon macrococcus* var. *macrococcus*, most populations on Oahu, and the single population of *Alectryon macrococcus* var. *auwahiensis* suffer severe defoliation and reduced vigor due to infestations of this alien insect (J. Lau, pers. comm., 1990). Most populations of this species probably sustain some damage from the borer (J. Lau, pers. comm., 1990).

The three remaining individuals of *Melicope mucronulata* on Molokai have been browsed by goats (HHP 1990n2, Medeiros *et al.* 1986). Although the plants appeared vigorous when last seen (HHP 1990n2), continued predation would severely threaten the population. *Bidens micrantha* ssp. *kalealaha* is apparently highly palatable to goats (HHP 1990e2). Predation and habitat degradation have destroyed all plants in areas accessible to goats, restricting this taxon to sheer cliffs (HHP 1990e1, 1990e2). It is likely that browsing reduced *Argyroxiphium sandwicense* ssp. *macrocephalum* numbers in Haleakala Crater. Although probably not a preferred food item, goats, cattle, and horses will browse the plant if it is available (Bryan 1948, Kimura and Nagata 1980, Kobayashi 1973a to 1973c, Loope and Crivellone 1986).

Cattle ranching continues on private and leased State land in Auwahi and on the southern slope of Haleakala, where the only known remaining populations of *Alextryon macrococcus* var. *auwahiensis* and *Lipochaeta kamolensis* exist. Not only do cattle threaten the mature plants by their browsing activities (Medeiros *et al.* 1986), but they also trample seedlings. While there is no direct evidence of predation of the other taxa, none are known to be unpalatable to goats or cattle. Predation is therefore a probable threat at sites where those animals have been reported, potentially affecting *Geranium multiflorum, Huperzia mannii,* and *Schiedea haleakalensis*.

Of four rodent species that have been introduced to the Hawaiian Islands, the arboreal black rat *(Rattus rattus)* has probably had the greatest impact on the native flora and fauna (Stone and Loope 1987). Rodents (the arboreal black rat and, to a lesser degree, the Polynesian rat *(Rattus exulans)* and the house mouse *(Mus musculus)*) feed on the fleshy fruits and flowers of Hawaiian plants and/or girdle and strip tender branches (Cuddihy and Stone 1990). Evidence of such predation has been seen on both varieties of *Alectryon macrococcus* (CPC 1990, HPCC 1990, Wagner *et al.* 1990). The combined effect of the black twig borer and predation by goats and rats has inhibited germination and reproduction of this plant for many years (Medeiros *et al.* 1986).

Argyroxiphium sandwicense ssp. *macrocephalum* is predated by the larvae of a phycitid moth *(Rhynchephestia rhabdotis)* and tephritid fly *(Tephritis cratericola)*, which were found to have damaged 60% of the seeds produced on average (Kobayashi 1974, Loope and Crivellone 1986). Since these are native insects which evolved with the silversword, they may not pose a threat to the plant, at least under normal conditions (Kobayashi 1973a). Two alien insects, the Argentine ant *(Iridomyrmex humilis)* and yellow jacket *(Vespula pennsylvanica)* are potential threats to the pollinators of *A. sandwicense* ssp. *macrocephalum* (Beardsley 1980, Stone and Loope 1987) and are moving into the silversword habitat (Loope and Crivellone 1986). In 1985, the highly aggressive Argentine ant had become established within the elevational limits of silversword distribution. Although not currently within Haleakala Crater (Loope and Crivellone 1986), the ant is found in similar habitat (Stone and Loope 1987). The rapid increase in the yellow jacket population following its introduction in the late 1970s is also of concern. The decline in native invertebrates as the yellow jacket population has increased suggests that

this species may become a more serious threat in the future (Howarth 1985; L. Loope, pers. comm., 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

Of the 15 taxa, a total of 7 have populations located on private land, 1 on City and County land, 10 on State land, and 5 on Federal land. While six of the taxa occur in more than one of those three ownership categories, the other nine are restricted to a single category: Three taxa are found only on private land, four only on State land, and two only on Federal land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under the provision of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these 15 plant taxa therefore reinforces and supplements the protection available under State law. The Act also offers additional protection because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy any endangered plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations and of individual plants of all of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals (or the only known extent population of these taxa. For example, *Acaena exigua* and *Clermontia oblongifolia* ssp. *mauiensis* are known from a single individual and *Cyanea lobata, Hedyotis coriacea, Lysimachia lydgatei,* and *Melicope mucronulata* from less than 10 individuals. Eleven of the 15 taxa are known from fewer than 5 populations, and 10 of the taxa are estimated to number no more than 100 individuals (see Table 1).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these 15 taxa in determining to make this rule final. Based on this evaluation, the preferred action is to list 14 taxa, *Acaena exigua, Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Geranium multiflorum, Hedyotis coriacea, Huperzia mannii, Lipochaeta kamolensis, Lysimachia lydgatei, Melicope mucronulata,* and *Schiedea haleakalensis,* as endangered and one taxon, *Argyroxiphium sandwicense* ssp. *macrocephalum,* as threatened. Eleven of the 14 taxa determined to be endangered either number no more than about 100 individuals or are known from fewer than 5 populations. The 14 taxa are threatened by 1 or more of the following: Habitat degradation and/or predation by feral goats, cattle, deer, and pigs; competition from alien plants; military training exercises; and fire. Small population size makes these taxa particularly vulnerable to extinction from stochastic events. Because these 14 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, the determination of endangered status for these 14 taxa appears warranted.

All populations of *Argyroxiphium sandwicense* ssp. *macrocephalum* are located within Haleakala National Park. Since ongoing management practices have eradicated goats and cattle from the park, those animals no longer pose an immediate threat to this taxon. However, these populations are vulnerable to a variety of alien insects and animals that have the potential of invading the habitat of *A. sandwicense* ssp. *macrocephalum.* As recreation use of the park increases, vandalism or unintentional damage to the plants may become a more serious threat. Although the relatively large number of existing plants provides greater flexibility in recovery and reduces the likelihood that the taxon will go extinct in the immediate future, all populations are threatened to some degree. Because of the limited threats facing *A. sandwicense* ssp. *macrocephalum,* this taxon is not now in immediate danger of extinction throughout all or a significant portion of its range. However, *A. sandwicense* ssp. *macrocephalum* is likely to become endangered in the foreseeable future. As a result, *Argyroxiphium sandwicense* ssp. *macrocephalum* fits the definition of threatened species as defined by the Act. Critical habitat is not being designated for these taxa for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. As discussed under Factor B in the "Summary of Factors Affecting the Species," the taxa face numerous anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required when critical habitat is designated would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and, in some cases, through the section 7 consultation process.

There are only three known Federal activities within the currently known habitats of these plants. Four taxa are found in Haleakala National Park, where laws protect all plants from damage or removal. One taxon is located on Federal property under

control of the military, on State property leased to the Federal government for use by the military, and on nearby State lands. Although military and ordnance training takes place on Schofield Barracks, which is Federal property, and Makua Military Reservation, which is leased from the State of Hawaii, the impact areas and buffer zones for these activities are outside the area where the taxon occurs, so it is unlikely that the activities would directly affect the continued existence of these plants. Another taxon is located on PTA, on land owned by the Department of the Army. Planned military maneuvers are now being reevaluated in light of the recent discovery of several endangered plants on PTA. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

Available 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 activities. 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 State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants 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 its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure 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 formal consultation with the Service. Two of these taxa, *Argyroxiphium sandwicense* ssp. *macrocephalum* and *Schiedea haleakalensis*, are located only in Haleakala National Park. Some populations of two other taxa, *Bidens micrantha* ssp. *kalealaha* and *Geranium multiflorum*, also are found in this park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. Two populations of *Alectryon macrococcus* are located on Federal property, one population on Schofield Barracks and the other on Lualualei Naval Reservation. Eight populations of *A. macrococcus* are located on State land, three in areas leased to the Federal government as part of Makua Military Reservation and five in a nearby State Conservation District. Makua Military Reservation and Schofield Barracks are controlled by the U.S. Army, and portions are used by them and other branches of the military for ordnance training of their troops, including a buffer zone adjacent to impact areas. These plants are not located inside impact or buffer zones and thus are not directly affected by military activities. The Army has constructed firebreaks on the Makua Military Reservation to minimize damage from unintentional fires that occasionally result from stray bullets (Herve Messier, U.S. Army, Ft. Shafter, pers. comm., 1990). The largest known population of *Hedyotis coriacea* is located on the Pohakuloa Training Area on the island of Hawaii. Fires accidentally set by military ordnance or personnel and habitat disturbance caused by military exercises in the Pohakuloa Training Area on the island of Hawaii may have adversely impacted *Hedyotis coriacea* in the past, however planned military maneuvers are now being reevaluated in light of the recent discovery of several endangered plants on PTA. There are no other known Federal activities that occur within the present known habitat of these 15 plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered and threatened plant species. With respect to the 14 plant taxa listed as endangered in this rule, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. The Haleakala silversword, listed as threatened, is subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E), 50 CFR 17.71). Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2093 or FTS 921–2093; FAX 703/358–2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, 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

A complete list of all references cited herein is available upon request from the Pacific Islands Office. (See **ADDRESSES** above.)

Author

The authors of this final rule are Derral R. Herbst, Joan E. Canfield, Joan M. Yoshioka, and Z.E. Ellshoff, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307.

P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749 or FTS 551-2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Public Law 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding three new families, "Gesneriaceae—Gesneria family," "Lycopodiaceae—lubmoss family," and "Sapinaceae—Soapberry family," in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*		*	
Asteraceae—Aster family:						
Argyroxiphium sandwicense ssp. *macrocephalum.*	Haleakala silversword, 'ahinahina	U.S.A. (HI)	T	467	NA	NA.
*	*	*	*		*	
Bidens micrantha ssp. *kalealaha*	ko'oko'olau	U.S.A. (HI)	E	467	NA	NA.
Lipochaeta kamolensis	nehe	U.S.A. (HI)	E	467	NA	NA.
Campanulaceae—Bellflower family:						
Clermontia oblongifolia ssp. *mauiensis.*	'oha wai	U.S.A. (HI)	E	467	NA	NA.
Cyanea lobata	haha	U.S.A. (HI)	E	467	NA	NA.
Cyanea mceldowneyi	haha	U.S.A. (HI)	E	467	NA	NA.
Caryophyllaceae—Pink family:						
Schiedea haleakalensis	none	U.S.A. (HI)	E	467	NA	NA.
Gesneriaceae—Gesneria family:						
Geraniaceae—Geranium family:						
Geranium multiflorum	nohoanu	U.S.A. (HI)	E	467	NA	NA.
Cyrtandra munroi	ha'iwale	U.S.A. (HI)	E	467	NA	NA.
Lycopodiaceae—Clubmoss family:						
Huperzia mannii	wawae'iole	U.S.A. (HI)	E	467	NA	NA.
Primulaceae—Primrose family:						
Lysimachia lydgatei	none	U.S.A. (HI)	E	467	NA	NA.
Rosaceae—Rose family:						
Acaena exigua	liliwai	U.S.A. (HI)	E	467	NA	NA.
Rubiaceae—Coffee family:						
Hedyotis coriacea	kio'ele	U.S.A. (HI)	E	467	NA	NA.
Rutaceae—Citrus family:						
Melicope mucronulata	alani	U.S.A. (HI)	E	467	NA	NA.
Sapindaceae—Soapberry family:						
Alectryon macrococcus	mahoe	U.S.A. (HI)	E	467	NA	NA.
*	*	*	*		*	

Dated: May 1, 1992.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 92-11503 Filed 5-15-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 620

[Docket No. 920239-2039]

General Provisions for Domestic Fisheries

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule that closes a portion of the Mid-Atlantic Area to all fishing due to the adverse environmental conditions created by the loss of 414 drums of powdered arsenic trioxide, is in effect through May 12, 1992, and extended by this action for an additional 90 days from May 13, 1992, through August 10, 1992. This action is taken to prevent fishermen from coming into contact with arsenic trioxide and aid in the salvage operation which is attempting to locate and recover arsenic drums that may be intact.

EFFECTIVE DATES: The emergency regulations amending part 620 from February 6, 1992, through May 12, 1992 (57 FR 5078, February 12, 1992, as corrected at 57 FR 9076, March 16, 1992) are extended from May 13, 1992 through August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Myles Raizin at (508) 281-9252, or One Blackburn Drive, Gloucester, Massachusetts 01930-2298.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule (57 FR 5078; February 12, 1992) that implemented a closure of a 16-square mile area of the Mid-Atlantic. This action was taken in response to the loss of 414 drums (35 gallons each) of arsenic trioxide in this area on January 3, 1992, and the subsequent rupture of several of those drums. The amount of drums lost represents an adjustment of 27 less than the figure reported in the original emergency rule (441) as estimated by the shipper of the drums. Although 320 drums have been recovered and removed from the ocean, as many as 94 drums may still be in the closure area.

Since salvage operations have not been completed, and the threat of environmental degradation of the marine environment represented by the presence of drums of arsenic trioxide continues, the Secretary extends the emergency interim rule for another 90 days under section 305(c)(3)(B) of the Magnuson Act. The emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order and was reported to the Director of the Office of Management and Budget with an explanation of why following procedures of that order are not possible.

List of Subjects in 50 CFR Part 620

Fisheries.

Dated: May 11, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-11435 Filed 5-11-92; 4:56 pm]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket Number 60549-6141]

Northeast Multispecies Fishery

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

ACTION: Notice of reopening of a closed area.

SUMMARY: NOAA issues this notice to reopen the currently closed spawning area designated as Closed Area I earlier than its scheduled reopening of June 1. This action is taken because there is no evidence of spawning concentrations of groundfish, especially haddock, in the area. The intent of this notice is to relieve unnecessary regulatory and administrative burdens imposed by the continued closure of the area.

EFFECTIVE DATE: May 11, 1992.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (NMFS, Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: The regulations implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) specify at § 651.21(a)(1) that an area designated as Closed Area I be closed to fishing annually in order to protect spawning fish. Closed Area I was determined to be a location where spawning haddock were found to be in concentration. The area is closed from February 1 through May 31 but may be reopened earlier if the Director, Northeast Region determines under § 651.21(a)(4) that concentrations of spawning fish are no longer present in the area.

The New England Fishery Management Council (Council) has proposed suspending the closing of Closed Area I in an upcoming amendment to the FMP. An analysis of research trawl survey information provided by the Northeast Fisheries Science Center (NEFSC) for the past ten years demonstrated that there have been no large concentrations of spawning haddock in this area since 1981. Atlantic cod and pollock are also present in the area but the major spawning grounds for these species do not include Closed Area I. The analysis also evaluated commercial catches from the area adjacent to Closed Area I and it was determined that only small numbers of haddock were present. In response to this information, the Cape Ann Vessel Association requested that closure of the area be suspended this year.

In order to verify that spawning haddock were not present in the area, several fishing tows were made in the area using a commercial fishing vessel with a sea sampler on board and a research vessel of the NEFSC through its spring trawl survey. Tows were made in February through April with the results being that there were no concentrations of spawning haddock located within the area.

Having determined that there is no longer any need to continue the closure of Closed Area I, the Director, Northeast Region has decided to reopen Closed Area I earlier than its scheduled opening. Closed Area I will open effective 0001 hours on May 11, 1992. The area to be opened is bounded by six straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
a	40°53′ N.,	68°53′ W.;
b	41°35′ N.,	68°30′ W.;
c	41°50′ N.,	68°45′ W.;
d	41°50′ N.,	69°00′ W.;
e	41°30′ N.,	69°00′ W.;
f	41°30′ N.,	69°23′ W.; and
a	40°53′ N.,	68°53′ W.

The early opening of this area should reduce operating costs to the harvesters by allowing access to more nearshore grounds that have not been available since January. The opening will also allow enforcement resources that have been dedicated to surveillance of the closed area to be redirected to more appropriate areas.

The areas designated as Closed Area II and the Southern New England/Mid Atlantic Closed Area remain closed

until their scheduled opening date of 2400 hours on May 31.

Classification

This action is taken under the authority of 50 CFR part 651 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: May 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-11436 Filed 5-11-92; 4:43 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 95
Friday, May 15, 1992

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

[Docket No. AO-14-A66, etc; DA-92-11]

RIN 0581-AA57

Milk in the New England and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO-14-A66
1002	New York-New Jersey	AO-71-A81
1004	Middle Atlantic	AO-160-A69
1005	Carolina	AO-368-A6
1006	Upper Florida	AO-356-A30
1007	Georgia	AO-366-A35
1011	Tennessee Valley	AO-251-A37
1012	Tampa Bay	AO-347-A33
1013	Southeastern Florida	AO-286-A40
1030	Chicago Regional	AO-361-A30
1032	Southern Illinois-Eastern Missouri.	AO-313-A40
1033	Ohio Valley	AO-166-A63
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A58
1040	Southern Michigan	AO-225-A44
1044	Michigan Upper Peninsula.	AO-299-A28
1046	Louisville-Lexington-Evansville.	AO-123-A64
1049	Indiana	AO-319-A41
1050	Central Illinois	AO-355-A28
1064	Greater Kansas City	AO-23-A61
1065	Nebraska-Western Iowa	AO-86-A49
1068	Upper Midwest	AO-178-A47
1075	Black Hills, South Dakota.	AO-248-A22
1076	Eastern South Dakota	AO-260-A31
1079	Iowa	AO-295-A43
1093	Alabama-West Florida	AO-386-A13
1094	New Orleans-Mississippi	AO-103-A55
1096	Greater Louisiana	AO-257-A42
1097	Memphis, Tennessee	AO-219-A48
1098	Nashville, Tennessee	AO-184-A57
1099	Paducah, Kentucky	AO-183-A47
1106	Southwest Plains	AO-210-A54
1108	Central Arkansas	AO-243-A45
1124	Pacific Northwest	AO-368-A22
1126	Texas	AO-231-A62
1131	Central Arizona	AO-271-A31
1134	Western Colorado	AO-301-A23
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A12
1137	Eastern Colorado	AO-326-A27
1138	New Mexico-West Texas	AO-335-A38
1139	Great Basin	AO-309-A32

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider alternative pricing proposals to replace the Minnesota-Wisconsin (M-W) price that is currently used to establish minimum prices for milk under all Federal milk orders. The M-W price is an average of prices paid for manufacturing grade milk by plants in the two States that manufacture butter, nonfat dry milk and cheese.

A study of possible alternative pricing mechanisms and the requirement that a public hearing be held to consider a replacement for the M-W price were mandated by Congress in the 1990 Farm Bill. A study of possible pricing alternatives was released in November 1991 and interested parties were invited to submit proposals to replace the M-W price. These and other proposals are the subject of consideration in this proceeding.

The proposals to be considered generally fall into four major categories. The various proposals would replace the M-W price with: (1) Other competitive pay prices; (2) product price formulas; (3) the cost of producing milk; or (4) the price support level. Several of the competitive pay prices have been proposed in conjunction with product price formulas.

DATES: The hearing will convene at 9 a.m. on June 15, 1992.

ADDRESSES: The hearing will be held at the Holiday Inn—Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia 22314, (703) 960-3400.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn—Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia 22314, beginning at 9 a.m., on June 15, 1992, with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the New England and other marketing areas.

The hearing is called pursuant to section 103 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624; Nov. 28, 1990), the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to proposed alternatives, hereinafter set forth, to the current use of the Minnesota-Wisconsin price series as the basic formula price under the tentative marketing agreements and the orders. Appropriate changes and modifications of the basic formula price alternatives set forth herein may also be considered at the hearing. Since the hearing is to address only replacement of the M-W price, proposals regarding product classification and class price issues, as well as other issues that are not directly related to the basic formula price, have not been included.

Some of the proposed alternatives, if adopted, could lead to an increase or decrease in milk costs to handlers and in returns to producers under the orders. Proponents of those alternatives will need to substantiate the need for such a change in price levels under the supply and demand pricing standard set forth in section 8c(18) of the Act (7 U.S.C. 608c(18)).

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act,

a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with at least six copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001–1139

Milk marketing orders.

The authority citation for 7 CFR parts 1001–1139 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the National Farmers Organization, Inc.

Proposal No. 1:

Replace the Minnesota-Wisconsin (M–W), price series with an A/B price series as the basic formula price using a product formula for updating and provide that the basic formula price cannot be less than the economic cost of milk production, as follows:

§ .21 Product prices for basic formula price.

The following product prices shall be used in calculating the basic formula price pursuant to § .51:

(a) *Butter price. Butter price* means the simple average, for the month, of the daily prices per pound of Grade AA (93-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price. Cheddar cheese price* means the simple average, for the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price. Nonfat dry milk price* means the simple average, for the month, of the daily prices per pound of nonfat dry milk. The prices used shall be the prices (using the midpoint of any price range as one price) of extra grade and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each succeeding day until the next price is reported.

(d) *Edible whey price. Edible whey price* means the simple average, for the month, of the daily price per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each succeeding day until the day the next price is reported.

(e) *Buttermilk powder price. Buttermilk powder price* means the simple average, for the month, of the daily prices per pound of buttermilk powder (min. 30% protein). The prices used shall be the price (using the midpoint of any price range as one price) of buttermilk powder (min. 30% protein) for the Central States production area, as reported and published weekly by the Daily Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each succeeding day until the day the next price is reported.

(f) *Butter (from whey cream) price.* The *Butter (from whey cream) price* means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each succeeding day until the day the next price is reported.

§ .51 Basic formula price.

The *basic formula price* shall be the sum of: (1) The average A/B price per hundredweight, including hauling subsidies, for milk F.O.B. plants in Minnesota and Wisconsin as reported by the Department for the preceding month, adjusted to a 3.5% butterfat basis and rounded to the nearest cent (For such adjustment, the butterfat differential shall be calculated pursuant to § .74); (2) An adjustment, plus or minus, for the difference in the basic formula price and the A/B price for the preceding month; and (3) An adjustment for changes in product prices during the current month. The Department shall

compute the basic formula price as follows:

(1) Calculate the average A/B price for milk, paid by plants in Minnesota and Wisconsin (including hauling subsidies, but net of any draw from the Federal order pool) for the preceding month;

(2) Compare the pay price in (1) to the basic formula price applicable during the same month and adjust for the difference, plus or minus; and

(3) To the result of the foregoing, add or subtract an amount per hundredweight reflecting changes in product price values from the preceding month to the current month, calculated by determining the weighted average of the adjustment for cheese product prices and the adjustment for butter-powder product prices. The product price adjustments and the weighting formula shall be as follows:

(a) Adjustment for cheese product prices. The adjustment for cheese product prices shall be the sum of the values reflecting changes in the cheddar cheese price, the edible whey price, and the butter (from whey cream) price.

(i) The adjustment for the cheddar cheese price shall be calculated by converting the difference per pound in cheddar cheese prices calculated pursuant to § .21 for the preceding month and for the current month to price per hundredweight of milk by using a yield of 10.1 pounds.

(ii) The adjustment for the edible whey price shall be calculated by converting the difference per pound in edible whey prices calculated pursuant to § .21 for the preceding month and the current month to a price per hundredweight of milk by using a yield of 5.5 pounds.

(iii) The adjustment for the butter (from whey cream) price shall be calculated by converting the difference per pound in Grade A butter prices pursuant to § .21 for the preceding month and the current month to a price per hundredweight of milk by using a yield factor of 10.1 pounds.

(b) Adjustment for change in butter and powder product prices. The adjustment for the change in butter and powder product prices shall be the sum of the adjustments in the butter price, the nonfat milk powder price and the buttermilk powder price.

(i) The adjustment for the butter price shall be calculated by converting the difference per pound in Grade AA butter prices pursuant to § .21 for the preceding month and the current month to price per hundredweight of milk by using a yield of 4.48 pounds.

(ii) The adjustment for the nonfat dry milk price shall be calculated by converting the difference per pound in nonfat dry milk price pursuant to § .21 for the preceding month and the current month to a price per hundredweight of milk using the yield of 8.13 pounds;

(iii) The adjustment for buttermilk price shall be calculated by converting the difference per pound in buttermilk powder prices as set forth in § .21 for the preceding month and the current month to a price per hundredweight of milk using the yield of .42 pounds;

(c) The foregoing product price changes shall be weighted by the proportions of milk used to produce butter and nonfat milk powder versus cheese in the states of M–W for the preceding calendar year.

(4) The resulting price shall be announced on the first of the month and shall be the basic formula price for the immediately preceding month.

§ Floor price for basic formula price.

The basic formula price resulting from § .51 shall not be less than the economic (full ownership) cost of milk production, national average, as reported by the ERS, USDA, for the most recently reported calendar year.

Proposed by the Trade Association of Proprietary Plants, Inc. and the Farmers Union Milk Marketing Cooperative

Proposal No. 2:

Replace the M–W price series with an A/B price series updated by a weekly formula price as follows:

§ Competitive price (M–W A/B Price).

The Class III price shall be the competitive prices paid by plants to producers for Grade "A" and "B" milk used for manufacturing purposes in the states of Minnesota and Wisconsin.

Reporting plants in the series shall meet the following criteria:

a. Receive and manufacture Grade "A" and/or Grade "B" from producers.

b. Are supply plants regulated by Orders No. 30 and 68 which ship less than 10% of the Grade "A" milk for fluid purposes.

c. Do not process Class I or II milk products or are not affiliated through ownership of distributing plants.

d. Primarily manufacture producer milk rather than sell it for fluid and/or manufacturing purposes.

e. The plant sample or mix shall be weighted according to M–W milk volumes, percent "A" and "B" milk and percentages used in butter-powder, cheese and varied products.

The reported competitive price shall include quality, volume, protein (or solids) and over order premiums.

Cheese whey values, hauling subsidies and Federal order pool draws shall be excluded from reported prices paid for milk.

The monthly competitive price, referred to as the "M–W A/B" pricing series shall be collected (phone or fax), compiled and reported by the Dairy Division, Agricultural Marketing Service, USDA on or before the 20th of each month for Grade "A" and "B" milk produced in the prior month.

§ Current weekly formula price.

On Friday of each week USDA shall determine a weekly formula price based on a combined butter-powder and cheese formula.

a. Weighted according to the butter-powder and cheese milk volumes in Minnesota and Wisconsin. Presently 95% cheese, 5% butter-powder.

b. Yields-product*	Pounds per Cwt. of milk
Butter	4.27
Nonfat Dry Milk (NFDM)	8.07
Dry buttermilk	.42
Chedder Cheese	9.87
Whey cream butter	.238

* Annual, not seasonalized yields.

c. Price support make allowances used including $1.22 for butter-powder and $1.37/cwt for cheese milk.

d. Sources of weekly formula products prices.

—Grade AA butter, Chicago Mercantile Exchange

—NFDM, Central States area, Extra grade high and low heat

—Dry buttermilk, Central States area, sweet cream buttermilk

—Chedder cheese, 40# blocks, Green Bay Cheese Exchange

—Whey cream butter, Grade A butter, Chicago Mercantile Exchange

The weekly formula price is used to update the previous months competitive price.

§ Current weekly tentative M–W price.

On Friday of each week, USDA shall announce a tentative M–W price to be used on a voluntary basis by the dairy industry for marketing transactions in the following Monday through Sunday period.

The tentative weekly M–W price shall include the butter-powder cheese formula value plus the latest computed competitive premium value per hunderweight which is computed on the 20th of each month.

The competitive premium per hunderweighty shall be determined by

subtracting the average weekly formula price (BPC) from the average price actually paid by plants for Grade "A" and Grade "B" milk used for manufacturing purposes in M–W.

This competitive premium shall be added to the weekly formula price and be announced by USDA as the tentative weekly M–W price, until the next competitive premium is determined in the following month.

§ The final M–W Class III price.

USDA shall announce by the 5th of the following month the current month's M–W price. Such price shall be the current month's weighted average weekly tentative M–W prices.

Proposed by the Wisconsin Federation of Cooperatives, the Northeast Ad Hoc Federal Order Committee, the Iowa Dairy Products Association, Inc., Hills Valley Foods, Inc., Armour Foods Ingredients, John E. Esh, David R. Harrop, E. J. Johannsen and Jeff Scott

Proposal No. 3:

Replace the M–W price series with a price series obtained from an expanded sample of manufacturing plants. Some of the proposals are limited to plants that receive Grade B milk while others would include plants that receive Grade A milk. Also, some of the proposals are limited to the States of Minnesota and Wisconsin while others would include plants in other states. An example is as follows:

§ .51 Basic formula price.

The basic formula price for the current month shall be the estimated weighted average producer pay price during the current month for all Grade B and selected Grade A plants engaged in manufacturing Class III products in the states accounting for a combined total of at least 50 percent of the aggregate U.S.. production of Class III products as reported by the National Agricultural Statistics Service (NASS).

Proposed by Land O'Lakes, Inc.

Proposal No. 4:

Replace the M–W with a published Grade A/B manufacturing price series updated by a product price formula.

§ .51 Basic formula price.

The basic formula for the month should be the Grade A/B manufacturing price described on pages 15–21 of *Study of Alternatives to Minnesota-Wisconsin Price*, (Dairy Division, AMS, USDA, September 1991), for the preceding month adjusted by changes in cheese and whey market prices from the preceding month to the current month.

Proposed by the Milk Industry Foundation/International Ice Cream Association, Southern Foods Group, Inc., Anderson-Erickson Dairy Co. and Kraft General Foods

Proposal No. 5:

Replace the current M–W price with a price series that uses the expanded survey of Grade B milk in Minnesota and Wisconsin that is compiled by NASS and referred to as the "base month price". Update the price with a product price formula or, per Kraft, lag the price one additional month without an update:

§ .51 Basic formula price.

The basic formula price shall be the average actual full month's pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series reported by the Department adjusted by the most recent month's change in the gross value yielded by the butter, nonfat dry milk and cheddar cheese formula.

§ Formula to update the Grade B price.

The method to update the full month Grade B price to yield a current month price is the change in gross values yielded by the proposed product price formula between the preceding month (for which the full month Grade B price is available) and the current month.

The actual formula is:

M–W Prod. Weight for NFDM and DBM × ((4.27 × AAB) + (8.07 × NFDM) + (.42 × DBM))

Plus

M–W Prod. Weight for Cheese × ((9.87 × NCE) + (.238 × AB))

Where:

AAB = Grade AA Butter Price, Chicago, Mercantile Exchange
NFDM = Nonfat dry milk price, Central States, extra grade high and low heat
DBM = Dry butter milk price, Central States, sweetcream buttermilk
NCE = Cheddar cheese, 40 lb. block price, National Cheese Exchange
AB = Grade A butter, Chicago Mercantile Exchange
Annual Yields—Are shown in formula

M–W Product Weights—Milk equivalent used in the production of nonfat dry milk and American cheese in Minnesota and Wisconsin in the second previous month (for example, July product price calculations would be based on weights from production of NFDM and American Cheese in May). Weights would be calculated as follows:

• American cheese production in Minnesota and Wisconsin divided by 9.87 = milk equivalent (ME) divided by total ME = weighing factor for cheese.

• NFDM production in M–W divided by 8.07 = milk equivalent (ME) divided by total ME = weighing factor for butter/powder.

Proposed by Associated Milk Producers, Inc., Central Milk Producers Cooperative, Darigold Farms, Land O'Lakes, Inc, Mid-America Dairymen, Inc., National Milk Producers Federation and Olympia Cheese Company

Proposal No. 6:

Replace the M–W price with the Agricultural Prices M–W price using a product price formula for updating as follows:

§ Product prices.

The following product prices shall be used in calculating the basic formula price pursuant to § .51.

(a) Agricultural prices M–W price. *Agricultural price M–W price* means the average price per hundredweight of the full-month pay prices for manufacturing grade (Grade B) milk for the individual states of Minnesota and Wisconsin as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department as the "Agricultural Prices M–W Price" for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92–score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

(b) *Butter Price. Butter price* means the simple average, for the month, of the daily prices per pound of Grade A (92–score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Divison, using the price reported each week as the daily price for that day and for each following day until the next price is reported. For any week that the Exchange does not

meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Cheddar cheese price. Cheddar cheese price* means the simple average, for the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, Wisconsin) as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Divison, using the price reported each week as the daily price for that day and for each following day until the next price is reported. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(d) *Nonfat dry milk price. Nonfat dry milk price* means the simple average, for the month, of the daily prices per pound of nonfat dry milk. The prices used shall be the prices of extra grade and Grade A nonfat dry milk, respectively, for the Central States production area. The average shall be computed by the Director of the Dairy Division, using the prices as announced in the Monthly Summary and Averages as published in the Dairy Market News.

(e) *Edible whey price. Edible whey price* means the simple average, for the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices of edible whey powder for the Central States production area. The average shall be computed by the Director of the Dairy Division, using the prices as announced in the Monthly Summary and Averages as published in the Dairy Market News.

§ .51 Basic formula price.

The *basic formula price* for the month shall be the Agricultural prices M–W price as reported by the Department and described in § (a) for the preceding month plus or minus the amount computed for the month (rounded to nearest cent) pursuant to paragraphs (a) through (d) of this section.

(a) The gross value per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computation:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the current month exceed or is less than the respective gross value of the previous month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c)(i) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the second preceding month, and divided by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the second preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

Proposed by the United States Cheese Markers Association, the American Producers of Italian-Type Cheese Association, the Ohio Swiss Cheese Association, and the Wisconsin Cheese Makers Association

Proposal No. 7:

Replace the M–W price with a cheese product formula price that is adjusted by changes in a competitive pay price as follows:

1. Revise § .51 to read as follows:

§ .51 Basic formula price.

The Director of the Dairy Division shall, for each month, determine and announce a current competitive price for milk used for manufacturing purposes, which shall be the basic formula price, as follows:

(a) *Definitions.* (1) The *competitive price* shall be the weighted average price paid to producers of Grade A and manufacturing grade milk, f.o.b. manufacturing plants in Minnesota and Wisconsin, adjusted to 3.5 percent butterfat and rounded to the nearest cent. For such adjustment the butterfat differential pursuant to § .74 shall be used. In calculating and reporting Grade A prices under this section the Director shall subtract the difference (positive difference only) between the federal order blend price at the plant of first receipt and the Class III or II price, as the case may be, for Grade A milk which is pooled as producer milk under any federal milk marketing order.

(2) *Cheddar cheese price* means the simple average, for the month, of the daily prices per pound of cheddar cheese in 40-pound blocks and in barrels. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(3) *Nonfat dry milk price* means the simple average, for the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(i) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area.

as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(ii) For each week, determine the simple average of the price reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding day until the day such prices were previously reported. For any day for which a reported price is not otherwise available, the price shall be the last reported price.

(iii) Add the prices determined in paragraph (3)(ii) of this section for each day of the month and divide by the number of days in the month.

(4) *Butter price* means the simple average, for the month, of the daily prices per pound of Grade A (92-score) butter. The price used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(5) *Value of milk used for cheddar cheese* means the per pound cheese price for the month times seasonalized cheedar yeild for the month less (i) make allowance used under their Price Support Program for cheddar cheese ($1.37/cwt. milk if no Support Program make allowance is in effect), and (ii) whey cream credit calculated by miltiplying seasonalized whey cream butter yield for the month by the butter price for the month.

(6) *Seasonalized cheese yield* is intended to reflect variations in monthly yield of cheese from milk of producers included in the competitive survey, based on variable average monthly protein and butterfat content and employing the Van Slyke cheese yield formula. Except as otherwise determined by the Director, based upon changes in the component content of such milk seasonalized cheese yield shall be:

Jan	10.069
Feb	9.974
Mar	9.897
Apr	9.785
May	9.673
Jun	9.574
Jul	9.442
Aug	9.569
Sep	9.870
Oct	10.169
Nov	10.221
Dec	10.142
Avg	9.87

(7) *Seasonalized whey cream butter yield* is intended to reflect variations in monthly yields of whey cream, a cheese manufacturing byproduct, based on variable average butterfat and protein content of milk of producers included in the competitive price survey. Except as otherwise determined by the Director, seasonalized whey cream butter yield shall be:

Jan	.244
Feb	.242
Mar	.241
Apr	.238
May	.234
Jun	.229
Jul	.225
Aug	.228
Sep	.237
Oct	.245
Nov	.247
Dec	.246

(8) *Value of milk used for butter and powder* means (i) the nonfat dry milk price for the month times seasonalized powder yield for the month, plus (ii) the butter price for the month times seasonalized butter yield for the month, less (iii) the butter/powder make allowance used under the Price Support Program ($1.22/cwt. milk if no Support Program make allowance is in effect).

(9) *Seasonalized powder yield* is intended to reflect variations in monthly yields of nonfat dry milk from milk of producers included in the competitive price survey, based on variable average solids-not-fat or protein content contained in milk of such producers. Except as otherwise determined by the Director, based upon changes in the average protein or solids-not-fat content of such milk, seasonalized powder yield shall be:

Jan	8.134
Feb	8.113
Mar	8.111
Apr	8.071
May	8.056
Jun	8.027
Jul	7.976
Aug	8.002
Sep	8.056
Oct	8.111
Nov	8.101
Dec	8.089

(10) *Seasonalized butter yield* is intended to reflect variations in monthly yield of butter from milk of producers included in the competitive price survey, based on variable average butterfat content of such milk. Except as otherwise determined by the Director, based upon changes in the average butterfat content of such milk, seasonalized butter yield shall be:

Jan	4.370
Feb	4.344
Mar	4.322
Apr	4.278
May	4.198
Jun	4.109
Jul	4.044
Aug	4.082
Sep	4.249
Oct	4.396
Nov	4.431
Dec	4.413

(11) The *product price* for the month means the weighted average of the value of milk used for cheddar cheese and the value of milk used for butter and powder, based upon the relative proportion of milk used to produce each product, as follows:

(i) For the weight assigned to the value of milk used for cheddar cheese combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the most recent 12-month period for which such reports are available, and divide by the simple average seasonalized cheese yield factors applicable during the same 12-month period, and

(ii) For the weight assigned to the value of milk used for butter and powder, combined the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the most recent 12-month period for which such reports are available, and divide by the simple average seasonalized powder yield factors applicable during the same 12-month period.

(b) *Calculation of the Basic Formula Price.* The basic formula price for the month shall be calculated as follows:

(1) Determine the product price for the month;

(2) Add 50 percent of the amount, for the second preceding month, derived from subtracting the product price from the competitive price for that month.

(c) *Basic Formula Adjustment.* On or before the 28th of the month, the Director shall announce a basic formula

adjustment for the preceding month, calculated as follows:

(1) Subtract the basic formula price for the preceding month from the competitive price for the preceding month.

(2) Multiply the difference (positive only) derived from the foregoing subsection (c)(1) by 75 percent. The product shall be the basic formula adjustment.

(d) *Adjustment of Seasonalized Yield Factors.* The Director may, by informal notice and comment rulemaking, adjust the seasonalized yield factors set forth in subsection (a) of this section to reflect changes in the average butterfat and protein and/or solids-not-fat component content of milk of producers included in the competitive price survey.

2. Revise § .73 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) as follows:

§ .73 Payments to producers and to cooperative associations.

* * * * *

(d) On or before the 16th day of each month, each handler shall pay to producers and cooperative associations, as the case may be, any positive difference between the basic formula adjustment for the second preceding month and average payments made by the handler to producers or cooperative associations in excess of the uniform price for the same second preceding month. Payments made by handlers pursuant to this subparagraph (d) shall not be included in calculating or reporting the competitive price, pursuant to § 51.(a)(1), for the month in which such payment is made.

Proposed by Avonmore West, Inc., Empire Cheese Inc., Iowa Farm Bureau Federation, Lamer's Dairy, Inc., Minnesota Farm Bureau Federation, and the New York State Cheese Manufacturer's Association, Inc.

Proposal No. 8:

Replace the M–W price with a basic formula price based on wholesale prices of manufactured products. No specific provisions were provided.

Proposed by the Minnesota Milk Producers Association and the Wisconsin Farm Bureau Federation

Proposal No. 9:

Replace the M–W price with the support price.

§ .51 Basic Formula Price.

The basic formula price shall be the support price.

Proposed by Central Minnesota COACT, Central New York Emergency Dairy Committee, Grassroots Empowerment, Kelley Farms, Minnesota COACT, National Family Farm Coalition, New York State Grange, Rural Vermont, the Wisconsin State Assembly Committee on Agriculture, Community Farm Alliance, Robert F. Pardoe, Kurt Johnston, Ag Price, Life Foods Corporation, Winegard and Long, the State of New York Legislative Commission on Rural Resources, Committee on Rural Affairs, Deer River Milk Cooperative, Farmers for Farmers, Franklin County Committee on Rural Affairs, New York Farmers Union and Oneida Lewis Milk Cooperative

Proposal No. 10:

Replace the M–W price with a formula price based on the cost of production. An example of a cost of production formula submitted by most of the proponents is set forth below.

§ .51 Basic formula price.

The basic formula price shall be the result of the following milk price formula.

(1) Cash costs (excluding interests and calculated by using the most efficient 75% of those represented in the NASS.) .....
(2) Labor costs (calculated by using the gross hourly earnings calculated by the Bureau of Labor Statistics/U.S. Dept. of Labor divided by cwt/milk produced per labor hour.) .....
(3) Return on Equity: (Average percentage return for non-farm businesses.) .....
(4) Interest (paid on debt adjusted for house) .....
(5) Depreciation—cattle; machinery; buildings (adjusted for house) .....
(6) Total Items (1–5)×5%=management fee .....
(7) Milk Hauling Cost .....
(8) All Government mandated assessments .....
(9) Total Lines (1–8) equal cost of production/cwt .....

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 11:

Make such changes as may be necessary to make all marketing agreements and the orders conform with the amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Dairy Division, Agricultural Marketing Service (Washington office only).
Offices of all the Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: May 12, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92–11468 Filed 5–14–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

10 CFR Part 820

[Docket No. NS–RM–91–820]

Procedural Rules for DOE Nuclear Activities

AGENCY: Department of Energy.

ACTION: Clarification of notice of proposed rulemaking and request for comments on clarification (Notice).

SUMMARY: Through this Notice, the Department of Energy (DOE) is (i) clarifying the intended scope of the proposed definition of "Nuclear Safety Requirements" in proposed 10 CFR part 820 with respect to what provisions of the CFR would provide a basis for the assessment of a civil penalty; (ii) clarifying the relationship between proposed 10 CFR 820 and 10 CFR 708 (the "Whistleblower Rule"); and (iii) reopening the docket for an additional comment period of 30 days solely for comments in response to this notice.

DATES: Written comments (20 copies) on the limited subject of the clarifications

in this notice may be submitted through June 15, 1992.

ADDRESSES: Richard Black, Office of Nuclear Safety, NS–DMR, room 5E–091, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Keith Christopher, U.S. Department of Energy, Office of Nuclear Safety, NS–30, Quince Orchard, Washington, DC 20585, (301) 427–1692

Ben McRae, U.S. Department of Energy, Office of General Counsel, GC–31, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6975 or FTS 896–6975.

SUPPLEMENTARY INFORMATION:

A. Definition of Nuclear Safety Requirement

On December 9, 1991, DOE published a notice of proposed rulemaking to adopt 10 CFR part 820 which would set forth procedural rules for DOE nuclear activities. 56 FR 64290. Certain of these proposed rules would provide for the enforcement of alleged violations of DOE Nuclear Safety Requirements for which civil and criminal penalties could be imposed under the Price Anderson Amendments Act of 1988 (Pub. L. 100–49, August 20, 1988). The December 9 notice makes clear "[t]he proposed definition of 'DOE Nuclear Safety Requirements' * * * encompass[es] all existing and future * * * regulations * * * which pertain to matters of nuclear safety in connection with DOE's nuclear activities". 56 FR 64293.

Despite the clear statement in the December 9 notice, several oral and written comments on proposed 10 CFR part 820 indicated uncertainty concerning what provisions in the CFR would be a basis for assessing civil penalties. DOE has decided to clarify which CFR provisions would constitute Nuclear Safety Requirements and thus provide a basis for civil penalties.[1]

DOE reiterates that the proposed definition of DOE Nuclear Safety Requirements includes, among other things, all existing and future regulations in the CFR that relate to nuclear safety in connection with DOE nuclear activities. This broad definition is consistent with the language of the Price-Anderson Amendments Act of 1988 that provides for civil penalties in the case of a violation of any "rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to [the Atomic Energy] Act" or expressly incorporated by reference by the Secretary for purposes of nuclear safety. 42 U.S.C. 2282a.

The coverage of the proposed definition is intended to be comprehensive rather than narrow. Thus, all regulations promulgated by DOE through public notice and comment rulemaking that relate to nuclear safety would be DOE Nuclear Safety Requirements and provide a basis for civil penalties. Accordingly, all provisions in proposed 10 CFR parts 830 (Nuclear Safety Management) and 835 (Radiation Protection for Occupational Workers) would be Nuclear Safety Requirements. Likewise, substantive requirements in proposed 10 CFR part 820, such as § 820.11 on information requirements, would be Nuclear Safety Requirements.

Nuclear Safety Requirements would not be limited to regulations that appear in CFR parts dealing primarily with DOE nuclear activities. Any DOE regulation, to the extent it is directly related to nuclear safety, would be a DOE Nuclear Safety Requirement. For example, the provisions of the recently adopted Whistleblower Rule concerning protection of workers against reprisals would constitute DOE Nuclear Safety Requirements if a reprisal were found to be in response to raising or disclosing nuclear safety related information or refusing to engage in an illegal or dangerous nuclear activity. Likewise, if a regulation on substance abuse were adopted, provisions of that regulation would constitute DOE Nuclear Safety Requirements to the extent a substance abuser might be employed in a nuclear activity.

B. Relationship Between 10 CFR Parts 708 and 820.

Part 708 deals with reprisals by DOE contractors against contractor employees resulting from (i) employee disclosure of information to DOE, to members of Congress, or to the contractor, (ii) employee participation in proceedings before Congress or (iii) employee refusal to engage in illegal or dangerous activities, when such disclosure, participation, or refusal pertains to employer practices which the employee believes to be unsafe, to violate laws, rules, or regulations, or to involve fraud, mismanagement, waste, or abuse. In general, part 708 prohibits such reprisals and provides for the investigation and adjudication of alleged reprisals. If DOE finds such a reprisal has occurred, it can direct the DOE contractor to provide relief to the injured employee.

To the extent a reprisal by a DOE contractor results from an employee's involvement in matters of nuclear safety in connection with a DOE nuclear activity, the reprisal would constitute a violation of a DOE Nuclear Safety Requirement if proposed part 820 is adopted as final rule. In such a situation, the reprisal could be subject to the investigative and adjudicatory procedures of both parts, and could result in relief to the employee under part 708 and the imposition of civil penalties on the DOE contractor under proposed part 820.

In considering how the procedures of parts 708 and proposed part 820 should interact, DOE has reviewed the purposes that underlie the provisions. Part 708 was developed to encourage employees of DOE contractors to come forward with information that they in good faith believe evidences unsafe, unlawful, fraudulent, or wasteful practices. Such information can assist DOE in carrying out its reponsibilities concerning its contractor-operated activities. Employees, however, may be reluctant to provide DOE such information if they fear reprisals by their employers. DOE has a proprietary interest in the operation of its facilities and a responsibility to the employees of DOE-contractors to ensure a workplace environment where reprisals will not occur. Accordingly, DOE adopted part 708 to prohibit reprisals by DOE contractors against employees who provide information, to establish fair and impartial procedures to investigate and adjudicate alleged reprisals, and to provide relief to employees where appropriate.

Proposed part 820 was developed as part of a broad effort to improve management of DOE nuclear activities. Proposed part 820 would establish various procedures through which DOE could exercise its responsibilities concerning its nuclear activities. In particular, proposed subpart B of part 820 would set forth the procedures for enforcement actions concerning violations by DOE contractors of DOE Nuclear Safety Requirements. Under proposed subpart B, the Director of the Office of Nuclear Safety ("Director") [2] would investigate alleged violations of all DOE nuclear safety requirements, decide whether to issue a Notice of Violation, determine initially the remedy for a violation (including the imposition of civil penalties), and perform a prosecutorial role if a DOE contractor

[1] This clarification deals with the relationship between the proposed definition of Nuclear Safety Requirements and proposed § 820.20(d)(1). It does not address any other provision of proposed part 820, such as §§ 820.20(d) (2) and (3) or subpart G.

[2] The proposed definition of Director makes clear that the Deputy Assistant Secretary for Naval Reactor takes the place of the Director of the Office of Nuclear Safety with respect to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion.

requested an adjudication of the Director's decision before an administrative law judge.

DOE believes that, in most instances, the investigation and adjudication of alleged reprisals should take place initially pursuant to part 708. The procedures therein set forth are designed specifically to deal with reprisals and, in particular, to protect contractor employees and provide relief where appropriate. In order to avoid duplication of efforts and the possibility of concurrent proceedings relating to the reprisal issue, until the part 708 proceeding is concluded, the Director would generally focus enforcement actions under proposed part 820 on the alleged violations of DOE Nuclear Safety Requirements, the report of which gave rise to the alleged reprisal. This allocation of resources is consistent with the purposes of both parts.

DOE's policy for coordination between part 708 and proposed part 820 would utilize the following general framework. Where a part 708 proceeding involved an alleged reprisal for raising concerns about matters of nuclear safety in connection with DOE's nuclear activities, the DOE Office of Contractor Employee Protection would promptly provide the Director with a copy of all complaints, reports of investigation, and decisions or orders associated with that proceeding. Without regard to the status of a related part 708 proceeding, the Director could conduct all necessary investigations and take any other appropriate enforcement action with respect to any matters of nuclear safety that might underlie an alleged reprisal, but not with respect to the alleged reprisal itself. The Director would await the completion of the part 708 proceeding before deciding whether to take any action, including an investigation, under proposed part 820 with respect to alleged reprisal in all but egregious cases. A part 708 proceeding would be considered completed when there was either a final decision or a settlement of the reprisal complaint, or no additional administrative action procedurally available.

In determining whether to initiate action under proposed part 820 with respect to an alleged reprisal, the Director would review the report of investigation, the adjudicatory record, and any other relevant material associated with the part 708 proceeding to determine if an adequate basis existed to issue a Notice of Violation under proposed part 820, or whether additional investigation by the Office of Nuclear Safety was required. Irrespective of the status of the part 708 proceeding, the Director would have the discretion to proceed with an enforcement action, including investigation, under proposed part 820 with respect to an alleged reprisal in an egregious case. Egregious cases would include (i) cases involving credible allegations of willful or intentional violations of DOE rules, regulations, orders or Federal statutes which, if proven, would warrant criminal referrals to the U.S. Department of Justice for prosecutorial review; and (ii) cases where the alleged reprisal suggests widespread or high-level managerial involvement and raises significant public health and safety concerns.

At any time the Director includes an alleged reprisal within an investigation under proposed part 820, the investigator(s) would expressly apprise all parties to the case and persons interviewed that the investigative activity was taken pursuant to the nuclear safety procedures of proposed part 820 and not pursuant to the procedures of part 708. The Director also would advise the DOE's Office of Contractor Employee Protection with respect to any associated uncompleted part 708 proceeding and thereafter keep that office fully and timely apprised of the status of the investigation and associated enforcement actions.

Issued in Washington, DC, on May 7, 1992.

Steven M. Blush,

Director, Office of Nuclear Safety.

[FR Doc. 92-11505 Filed 5-14-92; 8:45 a.m.]

BILLING CODE 6450-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing to amend § 701.21(h)(2)(ii)(A) to permit the regional director to waive the loan-to-value requirements for certain loans subject to the business loan regulation. The NCUA Board expects the change to benefit credit unions by permitting them to continue to grant quality loans that otherwise might be prohibited.

DATES: Comments must be postmarked on or before June 15, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael McKenna, Staff Attorney, Office of General Counsel, telephone (202) 682-9830, or Timothy Hornbrook, Director, Department of Supervision, Office of Examination and Insurance, telephone (202) 682-9640, at the above address.

SUPPLEMENTARY INFORMATION: NCUA published a new business loan rule on September 25, 1991 (See 56 FR 48421) which became effective on January 1, 1992. The new rule, among other things, established loan-to-value (LTV) ratios for business loans. This requirement is found in subparagraph 701.21(h)(2)(ii)(A) of NCUA's Regulations. The rule permits an LTV ratio of up to 70 percent for second liens and 80 percent for first liens. A first lien of up to 95 percent may be granted if the value in excess of 80 percent is covered either by acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union, or by insurance or guarantees by or subject to advance commitment to purchase by an agency of the federal government or of a state or any of its political subdivisions.

Although the NCUA Board believes the LTV ratios are generally appropriate, they may be overly restrictive for some types of successful business lending. NCUA is aware of at least two well-operated credit unions that currently exceed these LTV ratios but make quality business loans. As the Board has stated previously, it does not intend to preclude well-operated credit unions from offering safe and sound business loans to their members. Therefore, the NCUA Board is proposing to amend the regulation to allow the regional directors to waive the LTV requirements.

The NCUA Board believes an exemption to the LTV requirements is warranted when the following conditions are met. First, the credit union must have a proven, successful track record in its specific field of business lending programs. A credit union can meet this requirement by demonstrating the following: (a) A written business loan policy that is well thought out and complete; (b) thorough creditworthiness documentation; (c) minimal delinquency and loan losses as compared to the overall industry average and its specific peer group; and (d) appropriate underwriting criteria. Second, the credit union or its members depend upon this type of business lending. This means that if this type of business lending is prohibited it could

jeopardize the safety and soundness of the credit union or seriously impact on the ability of the credit union's members to obtain such credit. Finally, the credit union must limit its aggregate exposure to this type of lending.

Moreover, this exemption will only be available to credit unions that had an existing business loan program prior to January 1, 1992. If the exemption is granted, the regional director may require that the credit union submit special monitoring reports of this lending activity.

NCUA also proposes a purely technical amendment to paragraph 701.21(h)(3). Under subparagraph 701.21(h)(2)(iii)(B), credit unions can seek an exemption from the limits on construction and development lending. However, paragraph 701.21(h)(3), which sets the limit on such lending, does not reference the availability of an exemption from the limits. This proposed amendment simply makes clear within paragraph 701.21(h)(3) that a credit union may seek an exemption from the construction and lending limits.

On January 28, 1992, President Bush issued a memorandum requesting federal agencies to take certain steps to reduce unnecessary regulatory burden and foster economic growth. Although not covered by the memorandum, NCUA is complying with the spirit of the President's request. This amendment complies with the President's request since it fosters economic growth by allowing certain credit unions to make loans that they would otherwise be unable to make.

Paperwork Reduction Act

The proposed amendment does not impose new burdens under the Paperwork Reduction Act because it is the Board's belief that less than ten exemption requests will be submitted per year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed amendment is less restrictive than the current regulation. Overall, the NCUA Board expects the change to benefit credit unions by permitting them to continue to grant quality loans that otherwise might be prohibited. In addition, it is the Board's belief that small credit unions are not involved in these types of business loan programs. Accordingly, the Board determines and certifies that this proposed amendment does not hae a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The business loan rule (Section 701.21(h)) already applies to all federally insured credit unions (both federal and state-chartered). The proposed amendment, if adopted, will allow certain of these credit unions, including state-chartered credit unions, to grant loans that they would otherwise be prohibited from making. State authorities, however, remain free to adopt more restrictive regulations affecting state-chartered credit unions if they so choose. Therefore, the NCUA Board has determined that the proposed amendment, if adopted, will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 701

Civil Rights, Conflicts of Interests, Credit, Credit Unions, Fair Housing, Insurance, Mortgages, Reporting and Recordkeeping Requirements, Signs and Symbols, Surety Bonds.

By the National Credit Union Administration board on May 7, 1992.

Hatti Ulan,

Acting Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789 and Pub. L. 101–73,

Section 701.6 is also authorized by 31 U.S.C. 3717,

Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. In § 701.21 paragraphs (h)(2)(ii)(A), (h)(2)(iii)(B), and (h)(3) introductory text are revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(h) * * *

(2) * * *

(ii) * * *

(A) Unless an existing credit union loan program is granted an exemption by the regional director, loans shall be granted on a fully secured basis by collateral as follows:

(*1*) Second lien for LTV ratios of up to 70 percent;

(*2*) First lien for LTV ratios of up to 80 percent;

(*3*) First lien with an LTV ratio in excess of 80 percent shall be granted only where the value in excess of 80 percent is covered through acquisition of private mortgage, or equivalent type insurance provided by an insurer acceptable to the credit union, or insurance or guarantees by or subject to advance commitment to purchase by an agency of the federal government or of a state or any of its political subdivisions, and in no event shall the LTV ratio exceed 95 percent;

* * * * *

(iii) * * *

(B) Exemptions. Credit unions seeking an exemption from the limits of § 701.21(h)(2)(ii)(A), § 701.21(h)(2)(iii)(A) or § 701.21(h)(3) must present the regional director with, at a minimum: the higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. The analysis of credit union experience in making member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of reserves (less the Allowance for Loan Losses account), underwriting standards and practices, types of loans grouped by purpose and collateral, and qualifications of personnel responsible for underwriting and administering member business loans. Regional directors shall consider, in addition to the information submitted by the credit union, the historical CAMEL ratings. If the credit union does not receive notification of the action taken within 30 calendar days of the date the request was received by the regional office, the credit union may assume approval of the request to exceed the limit.

* * * * *

(3) Construction and development lending. Unless an exemption is approved by the regional director, loans granted under this section to finance the construction or development of commercial or residential property shall

be subject to the following additional provisions:

* * * * *

[FR Doc. 92-11500 Filed 5-14-92; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-50]

Airworthiness Directives; Allison Model 250-C20S Turbine Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Allison Model 250-C20S turbine engines which have been modified per Soloy Conversions, Ltd., Supplemental Type Certificate (STC) SE2352NM. This proposal would require a one-time inspection of the main engine driveshaft and replacement of main driveshaft disk coupling bolts, bushings, and nuts. This proposal is prompted by reports of difficulty in adequately torquing these bolts. This condition, if not corrected, could result in bolt fretting and fatigue failure, main engine driveshaft detachment, and engine failure.

DATES: Comments must be received by July 14, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-50, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments may be inspected at this location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service information in the proposed rule may be obtained from Soloy Corporation, 450 Pat Kennedy Way, SW., Olympia, Washington, 98501-7298. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Hania Younis, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington, 98055-4056, (206) 227-2764.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-50". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMS

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attn: 91-ANE-50, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

Discussion

Soloy Conversions, Ltd., holds STC SE2352NM, which modifies the Allison Model 250-C20S gas turbine engine by adding a propeller gearcase, prop governor, gearcase-engine support truss, and gearcase-engine coupling shaft to create a turboprop engine. In one modified engine, the main engine driveshaft disconnected from the engine inflight, causing a total loss of power and a forced off-field landing. Allison Model 250-C20S turbine engines, as modified per Soloy Conversions, Ltd., STC SE2352NM, originally incorporated internally wrenching bolts at the main driveshaft flex disc coupling. Torquing these bolts to the appropriate level was found to be difficult.

To alleviate this difficulty, Soloy Conversions, Ltd., changed the main driveshaft flex disc-coupling configuration to incorporate flat hex head coupling bolts. However, both internally wrenching and flat hex head coupling bolts, when improperly torqued, can lead to fretting between the coupling bushings and mating surfaces of the driveshaft flanges, and to fretting and fatigue failure of the bolts. Therefore, the FAA has determined that inspection of the main engine driveshaft and a one-time replacement of the coupling bolts is necessary, even after incorporating the flat hex head coupling bolts. This condition, if not corrected, could result in bolt fretting and fatigue failure, main engine driveshaft detachment, and engine failure.

The FAA has reviewed and approved the technical contents of Soloy Corporation Service Bulletin (SB) 04-780, dated December 11, 1991, which describes inspection of the main engine drive shaft and replacement of engine driveshaft flex disc coupling bolts, bushings, and nuts.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require a one-time inspection of the main engine driveshaft and replacement of the main driveshaft flex disc coupling bolts, bushings, and nuts in accordance with the service bulletin previously described.

There are approximately 65 modified engines of the affected design in the worldwide fleet. It is estimated that 24 engines in the domestic fleet would be affected by this AD, that it would take approximately 3 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. The manufacturer has advised the FAA that it will provide all needed replacement parts at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,960.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a

significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

Airworthiness Directives

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Allison—Docket No. 91–ANE–50

Applicability: Allison Model 250–C20S turbine engines, as modified by Soloy Conversion Ltd, Supplemental Type Certificate (STC) SE2352NM, installed on but not limited to Cessna 206 and 207 airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent bolt fretting and fatigue failure, main engine driveshaft detachment, and engine failure, accomplish the following:

(a) Within 90 days after the effective date of this AD, inspect the main engine driveshaft and replace the driveshaft flex coupling bolts, bushings, and nuts in accordance with Soloy Corporation Service Bulletin No. 04–780, dated December 11, 1991. Replace with a serviceable part those main engine driveshafts with elongated bolt holes.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington. The request should be forwarded through appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle Aircraft Certification Office.

Issued in Burlington, Massachusetts, on April 24, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–11478 Filed 05–14–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AEA–1]

Proposed Alteration of VOR Federal Airway V–312; NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airway V–312 by removing an unused segment at its northern end in the State of New Jersey. This action would reduce chart clutter.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA–500, Docket No. 92–AEA–1, Federal Aviation Administration, Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 am. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

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, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number 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. 92–AEA–1." 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 comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. 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. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V–312 by removing a segment at its northern end in the State of New Jersey. This segment is not being used for navigation. The current description of the VOR Federal airway is published in § 71.123 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

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, VOR Federal airways, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–312 [Revised]

From INT Andrews, MD, 060° and Baltimore, MD, 165° radials, via INT Andrews 060° and Woodstown, NJ, 230° radials; Woodstown; INT Woodstown 065° and Coyle, NJ, 264° radials; Coyle; INT Coyle 090°T(100°M) and Kennedy, NY, 154°T(166°M) radials. The airspace within R–5002D, the airspace below 2,000 feet MSL outside the United States, and the airspace above 8,000 feet MSL between Woodstown and Coyle is excluded.

* * * * *

Issued in Washington, DC, on May 7, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–11475 Filed 5–14–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 91N–0278]

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of April 15, 1992 (57 FR 13234), and proposed procedures under which the agency would accelerate approval of new drugs and biologicals for serious or life-threatening illnesses, with provisions for any necessary continued study of drugs' clinical effects after approval or with restrictions on use, if necessary. The document was published with some inadvertent typographical and technical errors and an omission to the authority citation for 21 CFR part 314. This document corrects those errors.

DATES: Written comments by June 15, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8038.

In FR Doc. 92–8622, appearing on page 13234, in the **Federal Register** of April 15, 1992, the following corrections are made:

1. On page 13239, in the third column, under the heading "E. *Additional Safeguards for Patient Safety,*" in the second paragraph, in the first line, "paractices" is corrected to read "practices".

2. On page 13240, in the first column, in the authority citation for Part 314, in the last line, "371," is added before "376".

§ 314.500 [Corrected]

3. On page 13240, in the second column, in § 314.500, in the first line, the word "section" is corrected to read "subpart".

§ 314.510 [Corrected]

4. On page 13240, in the second column, in § 314.510 in the eighth line from the bottom of the paragraph, "clincal" is corrected to read "clinical".

§ 601.40 [Corrected]

5. On page 13241, in the second column, in § 601.40, in the first line, the word "section" is corrected to read "subpart".

Dated: May 8, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–11425 Filed 5–14–92; 8:45 a.m.]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–01–89]

RIN 1545–AM88

Limitation on Passive Activity Losses and Credits—Definition of Activity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking; Withdrawal of cross-reference notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations defining the term activity for purposes of applying the limitations on passive activity losses and passive activity credits. The proposed regulations affect taxpayers subject to the limitations on passive activity losses and passive activity credits and provide them with the guidance necessary to comply with the law. This document also withdraws a prior notice of proposed rulemaking on the same subject.

DATES: written comments and requests to appear (with outlines of oral comments to be presented) at a public hearing scheduled for 1:30 p.m. on July 24, 1992, must be received by July 6, 1992. See the Notice of Hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments and requests to speak (with outlines of oral comments to be presented) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attention CC:CORP:T:R (PS–01–89), room 5228).

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage at (202) 377–9236 (not a toll-free number);

concerning the regulations, Ronald M. Gootzeit at (202) 566–3352 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes amendments to title 26 of the Code of Federal Regulations to provide additional rules under section 469. Section 469 limits the use of passive activity losses and passive activity credits. Section 469(l)(1) provides that the Treasury Department shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of section 469, including regulations that specify what constitutes an activity for purposes of that section.

Temporary regulations (T.D. 8253) under section 469 were published in the Federal Register for May 12, 1989 (54 FR 20527). Those regulations added § 1.469–4T, which provided rules defining the term activity for purposes of the passive activity limitations, to title 26 of the Code of Federal Regulations. Section 1.469–4T will sunset under section 7805(e) of the Code. This document proposes to replace § 1.469–4T with a new § 1.469–4, which will provide a modified definition of the term *activity*.

Explanation of Provisions

I. General Background

Section 469 disallows losses from passive activities to the extent they exceed income from passive activities and similarly disallows credits from passive activities to the extent they exceed tax liability allocable to passive activities. Passive activities are defined as rental activities and activities with respect to which the taxpayer does not materially participate, but the statute does not define the term activity.

Section 1.469–4T provided a series of mechanical rules for determining a taxpayer's activities. Those rules have been criticized as overly long and complex, burdensome for small taxpayers, and mechanically inflexible. In proposing this revised definition of activity, the Service has tried to address these concerns. The proposed regulations are shorter and more flexible than the temporary regulations. The Service intends that the regulations be easier to apply and ease the burden on small taxpayers.

II. Description of Rules

In recognition of the difficulty in providing simple, administrable rules for such an inherently factual determination, the proposed regulations adopt a facts-and-circumstances approach to identify a taxpayer's activities. The proposed regulations provide that the primary factors to be taken into account in this determination are type of business, common control, common ownership, geographical location, and business interdependencies. The proposed regulations provide special rules for certain rental activities. An anti-abuse rule is provided to prevent the inappropriate aggregation of traditional shelter activities with other activities.

The proposed regulations also impose a consistency requirement once a taxpayer has grouped activities under the rules of the proposed regulations. The Commissioner, however, may redetermine a taxpayer's activities if the taxpayer's grouping fails to reflect one or more appropriate economic units and one of the primary purposes of the taxpayer's grouping is to circumvent the underlying purposes of section 469.

Special rules are provided for activities conducted through partnerships or S corporations. A partnership or S corporation must determine its activities under the rules described above. Partners or shareholders then aggregate those activities with activities conducted directly or through other partnerships or S corporations to the extent provided in these rules.

Finally, the proposed regulations generally permit taxpayers to treat a disposition of a substantial part of an activity as a complete disposition on which suspended losses are allowed.

III. Effective Date

The proposed regulations are to be generally effective for taxable years ending after May 10, 1992. For taxable years ending on or before May 10, 1992, taxpayers must apply the rules of § 1.469–4T. In addition, taxpayers may, for the taxable year that includes May 10, 1992, apply the rules in § 1.469–4T rather than the rules in the proposed regulations. The effective date provisions that require or permit a taxpayer to apply the rules in § 1.469–4T are contained in § 1.469–11, which was adopted as a final regulation in T.D. 8417.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations. Therefore, an initial Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. written comments and requests to appear at a public hearing scheduled for 1:30 p.m. on July 24, 1992, must be received by July 6, 1992. See the notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Ronald M. Gootzeit, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the proposed regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.461–1 through 1.469–11

Accounting, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.469–4 also issued under 26 U.S.C. 469(l)(1).

Par. 2. Section 1.469–0 is amended by adding entries for § 1.469–4. The added provisions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–4 Definition of activity.

(a) Scope and purpose.
(b) Definitions.
  (1) Trade or business activities.
  (2) Rental activities.
(c) General rules for grouping activities.
  (1) Appropriate economic unit.
  (2) Facts and circumstances test.
  (3) Examples.
(d) Grouping rental activities with other trade or business activities.

Par. 3. The text of § 1.469–4 is added to read as follows:

§ 1.469–4 Definition of activity.

(a) *Scope and purpose.* This section sets forth the rules for grouping a taxpayer's trade or business activities and rental activities for purposes of applying the passive activity loss and credit limitation rules of section 469.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Trade or business activities—Trade or business activities* are activities, other than rental activities or activities that are treated under § 1.469–1T(e)(3)(vi)(B) as incidental to an activity of holding property for investment, that—

(i) Involve the conduct of a trade or business (within the meaning of section 162);

(ii) Are conducted in anticipation of the commencement of a trade or business; or

(iii) Involve research or experimental expenditures that are deductible under section 174 (or would be deductible if the taxpayer adopted the method described in section 174(a)).

(2) *Rental activities—Rental activities* are activities that constitute rental activities within the meaning of § 1.469–1T(e)(3).

(c) *General rules for grouping activities—*(1) *Appropriate economic unit.* One or more trade or business activities or rental activities are treated as a single activity if the activities constitute an appropriate economic unit for the measurement of gain or loss for purposes of section 469.

(2) *Facts and circumstances test.* Except as otherwise provided in this section, whether activities are treated as a single activity depends upon all the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the relevant facts and circumstances in grouping activities. The factors listed below, not all of which are necessary for a taxpayer to treat more than one activity as a single activity, are given the greatest weight in determining whether activities constitute an appropriate economic unit for the measurement of gain or loss for purposes of section 469:

(i) Similarities and differences in types of business;

(ii) The extent of common control;

(iii) The extent of common ownership;

(iv) Geographical location; and

(v) Interdependencies between the activities (for example, the extent to which the activities purchase or sell goods between themselves, involve products or services that are normally provided together, have the same customers, have the same employees, or are accounted for with a single set of books and records).

(3) *Examples.* The following examples illustrate the application of this paragraph (c).

Example 1. Taxpayer C has a significant ownership interest in a bakery and a movie theater at a shopping mall in Baltimore and in a bakery and a movie theater in Philadelphia. In this case, reasonable methods of applying the facts and circumstances test may, depending on other relevant facts and circumstances, result in grouping the movie theaters and bakeries into a single activity, into a movie theater activity and a bakery activity, into a Baltimore activity and a Philadelphia activity, or into four separate activities. Once C chooses one of these groupings, however, paragraph (g) of this section requires C to continue using that grouping in subsequent taxable years unless a material change in the facts and circumstances makes it clearly inappropriate.

Example 2. Taxpayer B, an individual, is a partner in a business that sells non-food items to grocery stores (partnership L). B also is a partner in a partnership that owns and operates a warehouse (partnership Q), which is in the same industrial park as L. The two partnerships are under common control. The predominant portion of Q's business is warehousing goods for L, and Q is the only warehousing business in which B is involved. Under this section, B treats L's wholesale trade activity and Q's warehousing activity as a single activity.

(d) *Grouping rental activities with other trade or business activities.* A rental activity may not be grouped with a trade or business activity unless either the rental activity is insubstantial in relation to the trade or business activity or the trade or business activity is insubstantial in relation to the rental activity.

(e) *Rental activities—grouping real property and personal property rentals prohibited.* An activity involving the rental of real property and an activity involving the rental of personal property (other than personal property provided in connection with the real property) may not be treated as a single activity.

(f) *Limitation on grouping certain activities.* Except as provided in this paragraph, a taxpayer who is a limited partner or a limited entrepreneur (as defined in section 464(e)(2)) in an activity described in section 465(c)(1) or in an activity designated in a revenue procedure published pursuant to this paragraph (f) may not group that activity with any other activity. A taxpayer who is a limited partner or limited entrepreneur in an activity described in the preceding sentence may group that activity—

(1) With another activity described in the preceding sentence that is in the same type of business if the taxpayer is a limited partner or limited entrepreneur in the other activity; or

(2) With another activity in the same type of business in which the taxpayer is not a limited partner or limited entrepreneur if the grouping is appropriate under the facts and circumstances test of paragraph (c) of this section.

(g) *Consistency requirement.* Once a taxpayer has grouped activities under paragraphs (c) through (f) of this section, the taxpayer may not regroup those activities in subsequent taxable years unless the original grouping was clearly inappropriate or there has been a material change in the facts and circumstances that makes the original grouping clearly inappropriate. If it is determined that the original grouping was clearly inappropriate or if a material change occurs that makes the original grouping clearly inappropriate, a taxpayer must regroup activities and must comply with the disclosure requirements as determined by the Commissioner.

(h) *Grouping by Commissioner to prevent tax avoidance.* The Commissioner may regroup a taxpayer's activities if the taxpayer's grouping fails to reflect one or more appropriate economic units and one of the primary purposes of the taxpayer's grouping is to circumvent the underlying purposes of section 469. The following example illustrates the application of this paragraph (h):

Example. (i) Taxpayers D, E, F, G, and H are doctors who operate separate medical practices. D invested in a tax shelter several years ago that generates passive losses and the other doctors intend to invest in real estate that will generate passive losses. The taxpayers form a partnership to acquire and operate x-ray equipment. In exchange for equipment contributed to the partnership, the taxpayers receive limited partnership interests. The partnership is managed by a general partner selected by the taxpayers; the taxpayers do not participate in its operations. Substantially all of the partnership's services are provided to the taxpayers or their patients, roughly in proportion to the doctors' interests in the partnership. Fees for the partnership's services are set at a level that assures the partnership a profit. The taxpayers treat the partnership's services as

a separate activity from their medical practices and offset the income generated by the partnership against their passive losses.

(ii) For each of the taxpayers, the taxpayer's own medical practice and the services provided by the partnership constitute an appropriate economic unit. Moreover, one of the primary purposes of treating the medical practices and the partnership's services as separate activities is to circumvent the underlying purposes of section 469. Accordingly, the Commissioner may require the taxpayers to treat their medical practices and their interests in the partnership as a single activity. The Commissioner may assert penalties under section 6662 against the taxpayers in appropriate circumstances.

(i) [Reserved]

(j) *Activities conducted through partnerships or S corporations.* A partnership or S corporation must group its activities under the rules of this section. Once a partnership or S corporation determines its activities, a partner or shareholder groups those activities with activities conducted directly by the partner or shareholder or with activities conducted through other partnerships or S corporations in accordance with the rules of this section.

(k) *Treatment of partial dispositions.* A taxpayer may, for the taxable year in which there is a disposition of a substantial part of an activity, treat that part of the activity as a separate activity, but only if the taxpayer can establish with reasonable certainty—

(1) The amount of deductions and credits allocable to that part of the activity for the taxable year under § 1.469–1(f)(4) (relating to carryover of disallowed deductions and credits); and

(2) The amount of gross income and of any other deductions and credits allocable to that part of the activity for the taxable year.

Par. 4. Section 1.469–11 is amended by revising paragraph (a)(1) to read as follows:

§ 1.469–11 Effective date and transition rules.

(a) *Generally applicable effective dates.* Except as otherwise provided in this section—

(1) The rules contained in §§ 1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–4, 1.469–5, and 1.469–5T apply for taxable years ending after May 10, 1992.

* * * * *

Par. 5. The cross-reference notice of proposed rulemaking, published in the **Federal Register** on May 12, 1989 (54 FR 20606) is withdrawn.

Joe Kump,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–11309 Filed 5–11–92; 4:45 pm]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 301

[PS–1–89]

RIN 1545–AM88

Limitation on Passive Activity Losses and Credits—Definition of Activity; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the definition of an activity for purposes of applying the limitations on passive activity losses and passive activity credits.

DATES: The public hearing will be held on Friday, July 24, 1992, beginning at 1:30 pm. Requests to speak and outlines of oral comments must be received by Monday, July 6, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS-1-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236 or (202) 566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 469 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, July 6, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 1:15 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–11320 Filed 5–11–92; 4:45 pm]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

(MM Docket No. 91–256; RM–7765)

Radio Broadcasting Services; Winchester Bay and Sutherlin, OR

AGENCY: Federal Communications Commission

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of Colleen E. Fafara, dismisses the proposal to reallot Channel 266A from Sutherlin to Winchester Bay, Oregon, as the community's first local FM service. See 56 FR 46114, September 10, 1991. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–256, adopted April 29 1992, and released May 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–11420 Filed 5–14–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–364; RM–7780]

Radio Broadcasting Services; Nassawadox, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission dismisses the proposal filed by Tobacco Country Radio, Inc. (RM–7780), requesting the allotment of Channel 222A to Nassawadox, Virginia, and respective channel substitutions at Kilmarnock and Deltaville, Virginia. See 57 FR 00867, January 9, 1992. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–364, adopted April 23, 1992, and released May 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–11418 Filed 5–14–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Endangered Status for Five Limestone Plants in the San Bernardino Mountains of California, Five Plants of Sandy and Sedimentary Soils From Santa Cruz and Monterey Counties, and the Giant Garter Snake, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that public hearings will be held on the proposed endangered status for 10 plants and the giant garter snake. Five of the plant taxa are found on sandy and sedimentary soils along the central coast of California, in Santa Cruz and Monterey Counties. They are: *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower), *Chorizanthe pungens* var. *pungens* (Monterey spineflower), *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower), *Chorizanthe robusta* var. *robusta* (robust spineflower), and *Erysimum teretifolium* (Santa Cruz wallflower).

The other five plant taxa occur on the north slope of the San Bernardino Mountains, San Bernardino County, California. They are: *Erigeron parishii* (Parish's daisy), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Astragalus albens* (Cushenbury milkvetch), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca).

The giant garter snake (*Thamnophis gigas*) occurs in the San Joaquin and Sacramento Valleys of California.

The hearings will allow all interested parties to submit oral or written comments on the proposals. The proposed rules were published October 24, 1991 (56 FR 55107) (Monterey and Santa Cruz County plants), November 19, 1991 (56 FR 58332) (San Bernardino County plants), and December 27, 1991 (56 FR 67046) (giant garter snake).

DATES: Comments will be received until further notice. The public hearing for the giant garter snake will be held on June 1, 1992, from 6 p.m. to 8 p.m. in Sacramento, California. The hearing for the five plants from San Bernardino County will be held on June 3, 1992, from 1 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. in San Bernardino, California. The hearing for the five plants from Santa Cruz and Monterey Counties will be held on June 4, 1992, from 6 p.m. to 8 p.m. in Santa Cruz, California.

ADDRESSES: The public hearing on the giant garter snake will be held at the Radisson Hotel, 500 Leisure Lane, Sacramento, California. The hearing for the five plants from San Bernardino County will be held at the San Bernardino County Government Center, Board Chambers, 385 N. Arrowhead Avenue, First Floor, San Bernardino, California. The hearing for the five plants from Santa Cruz and Monterey Counties will be held at Santa Cruz County Government Center, 701 Ocean Street, room 525, 5th Floor, Santa Cruz, Calfornia.

Written comments and materials concerning the giant garter snake should be sent to U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacremento, California 95825–1846. Comments and materials concerning the 10 plant taxa should be sent to the U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above addresses.

FOR FURTHER INFORMATION CONTACT: Dr. Steven M. Chambers, Office supervisor, Ventura Field Office (see **ADDRESSES** section) at 805/644–1766 (10 plant taxa); or Peter Sorensen, Sacramento Field Office (see **ADDRESSES** section) at 916/978–4866 (giant garter snake).

SUPPLEMENTARY INFORMATION:

Background

The five taxa from Santa Cruz and Monterey Counties are found on sandy and sedimentary soils along the central coast of California, and are threatened by habitat destruction due to residential development, agricultural development, sand mining, military activities, and encroachment by alien plant species. A proposed rule to list these five plants as endangered was published in the **Federal Register** on October 24, 1991 (56 FR 55107).

The five plants from San Bernardino County occur on the north slope of the San Bernardino Mountains. They occur primarily on calcium carbonate deposits (limestone and dolomite) within pinyon-juniper woodland and white fir forest communities. They are threatened with habitat alteration due to mining activities (limestone, gold, sand and

gravel), off-road and other recreational use, and urban development. On November 19, 1991 (56 FR 58332) the Service published a proposed rule in the **Federal Register** to list these five plants as endangered.

The giant garter snake is restricted to valley floor wetlands, including low gradient streams, ponds, irrigation and drainage canals, and certain rice field habitats in the San Joaquin and Sacramento Valleys of California. Eleven apparently isolated subpopulations are distributed locally from Burrell, Fresno County northward to the vicinity of Chico, Butte County. The giant garter snake is threatened by a variety of factors, including urbanization, flood control and water diversion projects, and agricultural practices. A proposal to list the giant garter snake was published in the **Federal Register** on December 27, 1991 at 56 FR 67046.

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On December 27, 1991, the Service received two requests for public hearings on the proposed rule to list five plants from San Bernadino County. The requests came from Eugene M. Kulesza, Riverside Cement; and James Reddy, Pluess-Staufer. The Service received six additional requests for a hearing on this proposed listing within the 45-day time period. The Service has therefore scheduled a public hearing for the San Bernardino County plant taxa for June 3, 1992, from 1 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. at the San Bernardino County Government Center, Board Chambers, 385 N. Arrowhead Avenue, First Floor, San Bernardino, California.

The Service received a request from Allan T. Butler, APC International, Incorporated, in a letter dated December 5, 1991, to hold a hearing on the Scotts Valley spineflower. A public hearing on the proposed rule to list the Santa Cruz and Monterey County plant taxa has therefore been scheduled for June 4, 1992, from 6 p.m. to 8 p.m. at Santa Cruz County Government Center, 701 Ocean Street, room 525, 5th Floor, Santa Cruz, California.

On January 31, 1992, two public hearing requests were received by the Service for the proposed rule to list the giant garter snake. These requests were from B.E. Martin, Manager, California Central Valley Flood Control Association; and Ralph A. Nissen, President, Sacramento River Water Contractors Association. Eighteen additional requests were received by the Service on this issue. The Service has scheduled a public hearing for the giant garter snake on June 1, 1992, from 6 p.m. to 8 p.m. at the Radisson Hotel, 500 Leisure Lane, Sacramento, California.

Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. Written comments should be submitted to the Service at the offices given above in the **ADDRESSES** section.

Author

The authors of this notice are Constance Rutherford, Ventura Field Office, Peter C. Sorensen, Sacramento Field Office (see **ADDRESSES** section), and Leslie J. Propp, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–6131).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: May 11, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–11463 Filed 5–14–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 95
Friday, May 15, 1992

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

Animal and Plant Health Inspection Service

[Docket No. 92-022-1]

Advisory Committee on Foreign Animal and Poultry Diseases; Selection of Members

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice that we anticipate renewing the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) for a two-year period. The Secretary is soliciting nominations for membership for this Committee.

DATES: Consideration will be given to nominations or comments received on or before July 14, 1992. They should be addressed to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. M.A. Mixson, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, USDA, room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8073.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary regarding program operations and measures to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry diseases, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

Terms will expire for the 19 current members of the Committee in July 1992. We are soliciting nominations from interested organizations and individuals to replace members on the Committee. An organization may nominate individuals from within or outside its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463) and USDA Departmental Regulation 1041-1. Equal opportunity practices, in line with the U.S. Department of Agriculture policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 11th day of May 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-11448 Filed 5-14-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-027-1]

National Animal Damage Control Advisory Committee; Selection of Members

AGENCY: U.S. Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: We are giving notice that we anticipate renewing the National Animal Damage Control Advisory Committee (Committee) for a two-year period. The Secretary is soliciting nominations for membership for this Committee.

DATES: Consideration will be given to nominations or comments received on or before June 29, 1992. They should be addressed to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Bill Clay, Director, Operational Support Staff, ADC, APHIS, USDA, room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary concerning policies, program issues, and research needed to conduct the Animal Damage Control program. The Committee also serves as a public forum enabling those affected by the Animal Damage Control program to have a voice in the program's policies.

The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

Terms will expire for the 20 current members of the Committee in July 1992. We are soliciting nominations from interested organizations and individuals to replace members on the Committee. An organization may nominate individuals from within or outside its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463) and USDA Departmental Regulation 1041-1. Equal opportunity practices, in line with the U.S. Department of Agriculture policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 11th day of May 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-11449 Filed 5-14-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Bighorn National Forest; Draft Supplemental Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act and title 40, part 1502 of the Code of Federal Regulations, notice is hereby given that a Draft Supplemental Environmental Impact Statement (DSEIS) for a proposal to amend the Bighorn National Forest's Land and Resource Management Plan, is available for review and comment.

ADDRESSES: Copies of the DSEIS (350 Pages) or a Summary of the DSEIS (15 Pages) may be obtained by writing to

Forest Supervisor, Bighorn National Forest, 1969 South Sheridan Avenue, Sheridan, Wyoming 82801.

FOR FURTHER INFORMATION CONTACT: Larry J. Thoney, Land Management Planning Staff Officer or Mary P. Randolph, Public Affairs Officer, Bighorn National Forest, Tel. 307–672–0751.

SUPPLEMENTARY INFORMATION: In December, 1990 the Bighorn National Forest issued a Notice of Intent in the **Federal Register** to prepare a Draft Supplement to the Final Environmental Impact Statement for the Forest's Land and Resource Management Plan (Forest Plan). The purpose of the supplement is to document the environmental analysis of a proposal to make a significant amendment to the Forest Plan. Following issuance of the Notice of Intent public comments were received to help determine the scope of the analysis. The DSEIS presents four alternative ways to amend the Forest Plan and shows the environmental effects of each. The alternatives propose changes to both the allowable sale quantity and discretionary standards and guidelines. The Forest Supervisor will accept comments on the DSEIS until August 15, 1992 at the address shown above.

Dated: April 30, 1992.

Larry D. Keown,

Acting Forest Supervisor.

[FR Doc. 92–10749 Filed 5–14–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814, A–403–803, C–122–815]

Postponement of Final Antidumping Duty Determinations on Pure and Alloy Magnesium From Canada and Norway, and Final Countervailing Duty Determination on Pure and Alloy Magnesium From Canada

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

EFFECTIVE DATE: May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Stephanie L. Hager, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–3530 or (202) 377–5055, respectively.

Postponement

On March 13, 1992, the Department of Commerce (the Department) extended the final determinations in these investigations until May 18, 1992 (57 FR 8860). These extensions were made at the request of Norsk Hydro Canada Inc. and Norsk Hydro a.s, respondents in these investigations. On May 7, 1992, these respondents amended their extension request, and requested that the Department grant the full extension for the final determinations in the antidumping duty investigations until not later than 135 days after publication of the preliminary determinations in the **Federal Register.**

We find no compelling reason to deny respondents' request. Therefore, pursuant to 19 CFR 353.20(b)(1), we are postponing the date of the final determinations in these investigations until not later than July 6, 1992. In accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)(1)), the final determination in the countervailing duty investigation is also being postponed until not later than July 6, 1992.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(a)(2) of the Act and 19 CFR 353.20(b)(2).

Dated: May 11, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–11510 Filed 5–14–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by the Weyerhauser Company From an Objection by the State of Washington

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of appeal.

On January 17, 1991, the Weyerhauser Company (Appellant) filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of Washington (State) to the Appellant's application for a U.S. Army Corps of Engineers permit for the proposed development of a hydroelectric generating facility in Black Creek, King County, Washington.

Since the filing of this appeal, the State and Appellant have reached an agreement on changes to the Appellant's proposal that would make the activity consistent with the State's Coastal Zone Management Program. Accordingly, the Appellant has requested that the appeal be withdrawn. The State concurs with that request.

Upon notification by the parties that this matter has been resolved amicably, the appeal has been dismissed, with prejudice. The Weyerhauser Company is barred from filing another appeal from the State's objection to its original application.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

[Federal Domestic Assistance Catalog No. 11.409 Coastal Zone Management Program Assistance]

Dated: May 1, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92–11479 Filed 5–14–92; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION ON INTERSTATE CHILD SUPPORT

Commission Meeting

The Commission on Interstate Child Support will meet in Washington, DC on Wednesday, May 20, 1992, from 9 a.m. until 6 p.m. and on Thursday, May 21, 1992, from 9 a.m. until 6 p.m. Meetings will be held at the American Bar Association, 1800 M Street, NW, Second Floor, South Building. The agenda of the meeting will focus on the Commission's final report.

For more information, contact Vernon Drew at 202–254–8093.

Margaret Campbell Haynes,

Chair.

[FR Doc. 92–11488 Filed 5–14–92; 8:45 am]

BILLING CODE 6820–64–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Czech and Slovak Federal Republic

May 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated September 17, 1991 between the Governments of the United States and the Czech and Slovak Federal Republic establishes limits for the period beginning on June 1, 1992 and extending through May 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 11, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Memorandum of Understanding (MOU) dated September 17, 1991 between the Governments of the United States and the Czech and Slovak Federal Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Czech and Slovak Federal Republic and exported during the twelve-month period beginning on June 1, 1992 and extending through May 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
410	1,616,000 square meters.
433	16,665 dozen.
435	20,200 dozen.
443	161,600 numbers.

Imports charged to these category limits for the period June 1, 1991 through May 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Czech and Slovak Federal Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–11483 Filed 5–14–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List cake mixes to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 15, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On January 24, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 2894) of the proposed addition of these cake mixes to the Procurement List. Comments were received from one of the current contractors for the cake mixes. The contractor noted that the Committee had recently added to the Procurement List a pancake mix that the contractor was selling to the Government. The pancake mix represented over ten percent of the contractor's total sales. The contractor also claimed that it had been selling dry food products, including the cake and pancake mixes, to the Government continuously for the past ten years, and that it is a small business located in a labor surplus area which relies on minority employees for its hourly labor. The contractor noted that the Committee is required to consider cumulative impact of its actions and a contractor's history as a continuing supplier of the item to the Government.

The three national stock numbers proposed for addition to the Procurement List represent one size can of two flavors of cake mix. The Government purchases several flavors of cake mix, in several different packages, as well as other varieties of dry food products which are produced in a similar manner to the cake mixes. With the exception of the pancake mix recently added to the Procurement List, none of these products is on the Procurement List. Consequently, the vast majority of the dry food products which the Government purchases remain available for competitive procurement.

The commenting contractor is but one of three current contractors for the cake mixes proposed for addition to the Procurement List. The contractor has indicated that its ten-year history as a continuous supplier of dry food products to the Government includes products other than the cake mixes at issue or the pancake mix recently added to the Procurement List. The Committee has taken into account the cumulative impact on this contractor of the addition

of pancake and cake mixes to the Procurement List and that firm's history as a supplier of dry food products to the Government. On the issue of cumulative impact, the Committee has also examined contract value and contractor sales figures which indicate that the percentage of impact on this contractor is slightly less than the contractor represents. As noted above, the contractor will continue to have the opportunity to supply the Government most of the dry food products it requires, as well as the commerical market for these items. Accordingly, the Committee has concluded that the proposed addition to the Procurement List will not have a severe adverse impact on this contractor.

The contractor has not made clear whether its reference to its location in a labor surplus area and its predominatly minority employees is intended to suggest that these employees could face difficulties obtaining other employment if displaced by the addition of the cake and pancake mixes to the Procurement List. However, the Committee believes that this possibility is outweighed by the fact that this addition to the Procurement List will create jobs for blind persons at a nonprofit agency facility which has had to lay off all its blind workers because of a lack of orders for other products.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Cake Mix

8920–00–823–7221
8920–00–823–7223
8920–01–250–6360

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–11511 Filed 5–14–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Additions

AGENCY: Committe for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List wet weather trousers to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 15, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On February 14, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 5420) of the proposed addition of these trousers to the Procurement List.

Comments were received from the current contractor for the wet weather trousers. Figures provided by the contractor indicated that the proposed addition to the Procurement List would have a substantial impact on the contractor. Accordingly, the Committee has decided to place only 50% of the Government requirement for the trousers on the Procurement List. The Committee has taken into account the impact on this contractor of another recent addition to the Procurement List in reaching its conclusion that the additions do not constitute severe adverse impact on the contractor.

The contractor also noted that the unemployment rate in its area of Puerto Rico normally exceeds 15%. The contractor also stated that the annual per capita income of Puerto Rico is less than 50% of the lowest per capital income of any State, and the portion of the population receiving food stamps is over four times greater than in the United States as a whole. However, the nationwide unemployment rate for persons with severe disabilities is more than four times the rate mentioned by the contractor, with comparably low incomes and high rates of dependence on food stamps and other assistance. Consequently, the Committee considers that the creation of employment for persons with severe disabilities by the addition of this item to the Procurement List outweights the possible loss of employment for persons with a lesser rate of unemployment, as the latter are more likely than the former to find other employment.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no know regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Trousers, Wet Weather

8405–01–053–9400
8405–00–001–8025
8405–00–001–8026
8405–00–001–8027
8405–00–001–8028
8405–00–001–8029
(50% of the Government's Requirement)

This action does not affect contracts awarded prior to the effective date of

this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-11512 Filed 5-14-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities, and deletes from the Procurement List commodities and services previously furnished by such agencies.

EFFECTIVE DATE: June 15, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 31, February 28, March 20, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 3750, 3751, 6814, 6815 and 9691) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following acton will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternaties which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Services

Grounds Maintenance, U.S. Department of Energy, Southwestern Power Administration, Battlefield & Golden, Sprinigfield, Missouri.

Food Service, White Sands Missile Range, Consolidated Dining Facility, White Sands, New Mexico.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodities and services are hereby deleted from the Procurement List:

Commodities

Gown, Hospital, General Purpose
6532-01-045-5380

Portfolio, Plastic
7510-00-558-1572
7510-00-558-1573

Paper, Teletypewriter Roll
750-00-019-7837
750-00-019-7837
750-00-019-7850
750-00-019-8810
750-00-019-7463
750-00-019-7849
750-00-019-8608
750-00-272-9611
750-00-285-3054
750-00-019-6931
750-00-286-7766

Pallet Assembly
8140-01-050-9789

Clothes, Stop
8465-00-377-5701

Services

Laundry Service, Acoma/Canoncito/Laguna PHS Indian Hospital, Acomita, New Mexico

Laundry Service, Zuni PHS Indian Hospital, Zuni, New Mexico

Microfilming and Related Services, Internal Revenue Service, Western Region, Seattle, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-11513 Filed 5-14-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 15, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509..

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List:

Services

Grounds Maintenance, U.S. Naval Home, Gulfport, Mississippi.
Nonprofit Agency: Goodwill Industries of South Mississippi, Inc., Gulfport, Mississippi.
Janitorial/Custodial, U.S. Army reserve Center, Corrine Drive, Orlando, Florida.
Nonprofit Agency: Lakeview Center, Inc., Pensacola, Florida.
Janitorial/Custodial, Paul B. Dunbar Building, 1141 W. Central Parkway, Cincinnati, Ohio.
Nonprofit Agency: Ohio Valley Goodwill Industries, Rehabilitation Center, Inc., Cincinnati, Ohio.

Deletion

It is proposed to delete the following commodity from the Procurement List:

Pallet, Wood
3990–00–366–6806

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–11514 Filed 5–14–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program

AGENCY: Department of Education.

ACTION: Amendment to notice of proposed priority for fiscal year 1992.

On May 7, 1992, the Secretary published in the **Federal Register** (57 FR 19788) a notice proposing an absolute priority for fiscal year 1992 under the Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program.

Inadvertently omitted from this notice of proposed priority was a deadline for the receipt of public comments. The public is advised that comments must be received on or before June 8, 1992.

ADDRESSES: All comments concerning the proposed priority should be addressed to Paul Gagnon, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524.

FOR FURTHER INFORMATION CONTACT: Allen Schmieder or Becky Wilt, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., eastern time.

Dated: May 12, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–11547 Filed 5–14–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.129V]

State Vocational Rehabilitation Unit In-Service Training; Closing Date Extensions

Notice extending the closing date for transmittal of applications for new awards for fiscal year (FY) 1992.

Deadline for Transmittal of Applications: On November 25, 1991, a notice was published that established the closing date for transmittal of applications for the fiscal year 1992 competition under the State Vocational Unit In-Service Training program (56 FR 59251). The purpose of this notice is to extend the closing date for transmittal of applications. This action is taken as a result of the insufficient number of applications submitted in response to the initial announcement. The closing date for applications is extended from March 9, 1992 to May 27, 1992.

Deadline for Intergovernmental Review: July 27, 1992.

For applications or Information Contact: U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2649. To request an application, call (202) 732–1347; to receive further information call Robert Werner on (202) 732–1291. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern Time.

Program Authority: 29 U.S.C. 774.

Dated: May 8, 1992.

Robert R. Davila,

Assistant Secretary Office of Special Education and Rehabilitative Services.

[FR Doc. 92–11455 Filed 5–14–92; 8:45 am]

BILLING CODE 4000–01–M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: May 29, 1992, 9 a.m. until 5 p.m. Place: Holiday Inn Capitol, 550 "C" Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hazel Mingo, Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., room 2682, ROB–3, Washington, DC 20202 Telephone # (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

This is the third meeting of the President's Board of Advisors on Historically Black Colleges and Universities for fiscal year 1992. The full Board will convene to review the final draft of the fiscal year 1991 annual report to the President, including the Annual Federal Performance Report on Executive Agency Actions to Assist Historically Black Colleges and Universities. The agenda will include

time for interested parties to comment on information to be included in the annual report to the President. As time permits, the advisory board will discuss other issues of importance to the historically black colleges and universities.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, ROB–3, room 2682, Washington, DC from the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: May 11, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc 92–11422 Filed 5–14–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award Grant to Plaur Corporation

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Plaur Corporation under Grant Number DE–FG01–92CE15503. The proposed grant will provide funding in the estimated amount of $96,818 for purposes of saving energy by using the Xu process in the manufacture of low, medium and high carbon steels which are surface coated with a high performance alloy.

The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the application submitted by Plaur Corporation, Mr. Norman Valz, Executive Vice President is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent current or planned solicitation. Mr. David Xu is to be the principal investigator. The invention pertains to increasing the corrosion resistance of mild steels by creating surface alloys with high performance metals.

Experimental quantities will be made and scientifically tested in the laboratory and will be field tested for corrosion resistance by sea water and the atmosphere. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation direct ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR–322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92–11508 Filed 5–14–92; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before June 15, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–822A–D.
3. 1905–0182.
4. Oxygenate Operations Identification Survey.
5. Reinstatement.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 1,796 respondents.
10. 1 response.
11. 1.019 hour per response.
12. 1,830 hours.
13. This collection will be used to maintain EIA's survey frame of oxygenate producers, blenders, storers, and importers and to collect data on oxygenates which can be used to produce finished motor gasoline that meets the Clean Air Act of 1990 requirements.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy

Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 7, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92-11428 Filed 5-14-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP92-184-000 and CP92-184-001; CP92-185-000 and CP92-185-001]

Texas Eastern Transmission Corp., and Algonquin Gas Transmission Co.; Intent to Prepare an Environmental Assessment for Phase I of the Integrated Transportation Project and Request for Comments on Its Scope

May 11, 1992.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed by Texas Eastern Transmission Corporation (Texas Eastern) and Algonquin Gas Transmission Company (Algonquin) in the above referenced dockets pertaining to Phase I of the Integrated Transportation Project.

As originally proposed, the project would have entailed more extensive facilities than those to be studied in this EA. However, Texas Eastern and Algonquin have proposed phasing of the project in Docket Nos. CP92-184-001 and CP92-185-001. Pursuant to section 7(c) of the Natural Gas Act, they have filed amended applications for certificates of public convenience and necessity to construct and operate a total of 65.5 miles of replacement pipeline, 32.6 miles of loop, and 5.3 miles of new lateral pipeline; add 49,840 horsepower (hp) at 12 existing compressor stations; and construct 2 new meter stations. Construction would occur in 1993 and 1994 in the states of Ohio, West Virginia, Pennsylvania, New Jersey, New York, and Connecticut.

The purpose of the proposed facilities would be to transport 201,000 Mcfd of natural gas from the Gulf Coast and Arkoma Basin producing areas through Texas Eastern's pipeline system and interconnections with Algonquin to provide service to customers in Pennsylvania, Delaware, New Jersey, and Connecticut.

By this notice, the FERC staff is requesting comments on the scope of issues to be addressed in the EA. All comments will be reviewed prior to the preparation of the EA. Comments should focus on potentially significant environmental effects and measures to mitigate resultant impacts. Written comments should be submitted by June 12, 1992, in accordance with the "Comment Procedures" discussed at the end of this notice.

Proposed Facilities

The general locations of the proposed pipeline, compression, and metering facilities for Phase I of the Integrated Transportation Project are shown on figures 1 and 2.[1] Table 1 identifies the proposed pipeline facilities by segment, year of construction, and location by county and state. Table 2 identifies similar information for the proposed compression and metering facilities.

Service for Boston Edison Company's proposed Edgar Energy Park would be transported by Phase II facilities which would be constructed at a later date. A separate Notice of Intent to Prepare an EA (NOI) for this Phase II facilities will be distributed to interested parties upon commencement of that analysis.

Construction Procedures

Texas Eastern and Algonquin would typically use a 75-foot-wide construction right-of-way. For loop pipelines, approximately 25 feet would overlap the existing right-of-way, 25 feet would be new permanent right-of-way, and 25 feet would be temporary construction right-of-way. The proposed alignments of the construction rights-of-way could vary somewhat to allow for site specific characteristics. However, the amount of overlap with existing rights-of-way is limited by construction constraints inherent in working adjacent to existing pipelines.

For the replacement pipelines, the existing permanent rights-of-way would not be expanded. However, the applicants have requested additional temporary construction rights-of-way up to 35 feet wide where replacement is proposed. New permanent right-of-way up to 25 feet wide may be required where the new pipeline is not placed in the same ditch as the original pipeline due to site-specific construction constraints.

Construction of the pipeline would follow standard pipeline construction methods: right-of-way clearing and grading; trenching; pipe stringing, bending, welding, joint coating, and lowering in; backfilling of the trench; and cleanup and restoration. The applicants propose to implement erosion control and revegetation measures and to use special construction techniques for wetland and water crossings and for construction in residential areas. These construction procedures and mitigation plans will be discussed further in the EA.

Pipeline segments would be hydrostatically tested before being placed in service according to the applicants' and U.S. Department of Transportation minimum safety standards and specifications (49 CFR part 192). No chemicals would be used during testing and the applicants would be required to obtain appropriate Federal and state discharge permits prior to testing.

Current Environmental Issues

The EA will address the environmental concerns that have been and will be identified by the FERC staff and intervenors, and also in comments from concerned resource agencies and individuals. The following issues have been identified for consideration in the EA:

Cultural Resources—Effect of the project on properties listed or eligible for listing on the National Register of Historic Places.

Biological Resources—Impact of the project on threatened or endangered species.

—Impact on wetlands and fisheries.

—Habitat alteration.

Land use—Impact of the project on residences and private land.

—Impact of the project on public lands including Pennsylvania State Game Lands and Laurel Ridge, Wolf Run, and Ryerson State Parks.

Water Resources—Effect of construction on potable water supplies.

Soils and Vegetation—Erosion control and revegetation.

—Effect on crop production and farmland.

Alternatives—Alternative routes in residential and public land areas.

Comments are also solicited on any other topics of environmental concern.

Comment Procedures

A copy of this notice and request for comments on environmental issues has been sent to Federal, state and local environmental agencies, parties in this proceeding, and the public. Comments on the scope of the EA should be filed as soon as possible but no later than June 12, 1992. All written comments or

[1] The figures referred to in this notice are not being printed in the **Federal Register**, but have been included in the mailing to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, telephone (202) 208-1371.

requests for detailed maps and information must reference Docket Nos. CP92-184-000, CP92-184-001, CP92-185-000, CP92-185-001 and be addressed to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the comments or request should also be sent to: Mr. Jeff Gerber, Environmental Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 7312, Washington, DC 20426.

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will constitute part of the record to be considered by the Commission in this proceeding. The EA may be offered as evidentiary material if an evidentiary hearing as held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Organizations and individuals receiving this "Notice of Intent to Prepare an Environmental Assessment" have been selected to ensure public awareness of the Integrated Transportation Project and public involvement in the review process under the National Environmental Policy Act. The EA will be sent automatically to addresses on the Federal Energy Regulatory Commission's official service lists for this project, and to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the EA will only be distributed to those other organizations, local agencies, and individuals who return the attached sheet, preferably within 45 days of this notice.

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Jeff Gerber, telephone (202) 208-0282.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11485 Filed 5-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 4715-003, et al.]

Hydroelectric Applications (Long Lake Energy Corporation, et al.), Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Change in Land Rights.

b. *Project No:* 2738-024.

c. *Date Filed:* August 23, 1991 and February 4, 1992.

d. *Applicant:* New York State Electric and Gas Corporation.

e. *Name of Project:* Saranac River.

f. *Location:* Saranac River in Clinton County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mrs. Carol Howland, New York State Electric and Gas Corporation, 4500 Vestal Parkway East, Binghamton, NY 13902-3607, (607) 762-4033.

i. *FERC Contact:* Jon Cofrancesco, (202) 219-2650.

j. *Comment Date:* June 15, 1992.

k. *Description of Project:* The New York State Electric and Gas Corporation, licensee for the Saranac River Project, requests Commission approval to transfer a parcel of land of approximately 36.5 acres within the project, to Clinton County for the purpose of expanding an existing County landfill. The County intends to construct a sanitary landfill cell on approximately 7.1 acres of the site in accordance with specifications of the New York State Department of Environmental Conservation. The remainder of the parcel will serve as a natural buffer between the landfill cell, other project lands and a County highway (Route 31—Sand Road). Given the specific conditions associated with the landfill expansion, the licensee states the proposed use is expected to have only minor impacts on the environmental values of the area. Further, the licensee states the proposed conveyance will provide landfill space important to the environmental health and well being of the County and that the intended use will not affect the aesthetic qualities of or access to the project's existing fishermen parking areas (a copy of the application may be obtained by interested parties directly from the licensee).

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2. a. *Type of Application:* Major License, as amended.

b. *Project No:* 4715-003.

c. *Date Filed:* July 2, 1990.

d. *Applicant:* Long Lake Energy Corporation.

e. *Name of Project:* Felts Mills.

f. *Location:* On the Black River in Jefferson County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* F. Joseph Feyder, 420 Lexington Ave., suite 540, New York, NY 10170, (212) 986-0440.

i. *FERC Contact:* Charles T. Raabe (202) 219-2811.

f. *Deadline Date:* May 29, 1992.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

k. *Description of Project:* The project, as currently proposed, would consist of a Lower Dam development and an Upper Dam development. The two developments are about 1.1 miles apart. The existing Middle Dam, except the submerged wood crib dam, would be demolished. The existing abandoned mill at the Lower Dam would also be demolished.

(A) The Lower Dam development would consist of: (1) An about 2,160-foot-long and 25.5-foot-high concrete gravity dam, consisting of a right bank section, a fuse plug dike section, and auxiliary grated spillway section, a powerhouse section, and a left bank retaining wall section; (2) a reservoir with water surface area of 142 acres, a gross storage capacity of 850 acre-feet, and a normal water surface elevation of 588.5 feet; (3) a forebay approximately 70 feet long, 70 feet wide, and 36 feet deep; (4) a powerhouse containing two generating units with a total installed capacity of 8,133 kW; (5) a tailrace approximately 600 feet long and 70 feet wide; (6) a powerhouse yard with security fence; (7) an about 260-foot-long access road to the powerhouse; (8) a rockfill embankment on the south shore; (9) a 13.8-kV transmission line, approximately 1,600 feet long; and (10) appurtenant facilities.

(B) The Upper Dam development would consist of: (1) An about 510-foot-long and 26.5-foot-high concrete gravity dam, consisting of an existing modified spillway section with canoe chute, a new gated spillway section, an approach channel spillway section, a gated ice sluice section, and a powerhouse section; (2) a reservoir with a water surface area of 220 acres, as gross storage capacity of 1,100 acre-feet, and a water surface elevation of 608.9 feet; (3) an about 390-foot-long, 70-foot-wide, and 50-foot-deep power canal with trash boom and security fence; (4) a power-house containing two generating units with a total installed capacity of 5,030 kW; (5) a tailrace, approximately 100 feet long and 70 feet wide; (6) an about 140-foot-long access road to the powerhouse; (7) an about 90-foot span bridge across the power canal; (8) a 13.8-kV transmission line approximately

10,560 feet long; and (9) appurtenant facilities.

The project would have a total installed capacity of 13,163 kW. The applicant estimates that the average annual generation would be 62,570,000 kWh.

l. *This notice also consists of the following standard paragraphs:* A4 and D9.

m. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Long Lake Energy Corporation, 420 Lexington Avenue, Suite 540, New York, NY 10170.

a. *Type of Application:* Minor License.

b. *Project No.:* 11264-000.

c. *Date filed:* March 6, 1992.

d. *Applicant:* Turbine Industries, Inc.

e. *Name of Project:* Coolemee Dam Hydro Project.

f. *Location:* On the South Fork of the Yadkin River, Davie County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825 (r).

h. *Applicant Contact:* George S. Cook, Turbine Industries, Inc., 5312 Groometown Road, Greensboro, North Carolina 27407, (919) 294-9995.

i. *FERC Contact:* Mary Golato (202) 219-2804.

j. *Comment Date:* May 29, 1992.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing dam 500 feet long and 12 feet high; (2) an existing reservoir with a surface area of 20 aces at a spillway crest elevation of 658 feet mean sea level and a gross storage capacity of 56 acre-feet; (3) two existing penstocks 8 feet in diameter and 84 and 150 feet long, respectively; (3) an existing powerhouse containing two turbine-generator units having a total capacity of 2,600 kilowatts; (5) a proposed 150-foot-long, 2.4-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the cost of the project is $250,000. The average annual generation will be approximately 6.2 gigawatthours. The dam is owned by Turbine Industries, Inc.

l. Pursuant § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days after the application is filed and serve a copy of the request on the applicant.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing developing application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this 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", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (May 29, 1992 for P-4715-003). All reply comments must be filed with the Commission within 105 days from the date of this notice. (July 13, 1992 for P-4715-003).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this

proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: May 12, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11487 Filed 5-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-7-006]

Questar Pipeline Co.; Tariff Filing

May 11, 1992.

Take notice that Questar Pipeline Company (Questar), on May 1, 1992, tendered for filing and acceptance to be effective May 31, 1992, First Revised Sheet No. 317, Original Sheet No. 317A (Rate Schedule X-25), Original Sheet No. 413A (Rate Schedule X-31), Original Sheet No. 447A (Rate Schedule X-32), and Third Revised Sheet Nos. 475, 478, 482, 491, First Revised Sheet Nos. 494 and 509 and Original Sheet Nos. 478A and 494A (Rate Schedule X-33) to Original Volume No. 3 of its FERC Gas Tariff.

Questar states that this filing adds new receipt points to Rate Schedules X-25, X-31, X-32, new receipt and delivery points to Rate Schedule X-33 and reports the volumes of gas exchanged between Questar and Northwest Pipeline Corporation under Rate Schedule X-24. Questar states further that this filing was served upon its affected jurisdictional customers and the Wyoming and Utah public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11445 Filed 5-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-11-000]

Texas Eastern Transmission Corp.;

May 8, 1992.

Take notice that on May 18, 1992 and May 19, 1992, a Pre-Compliance Filing Conference will be convened in the captioned restructuring docket in accordance with the provisions of Order No. 636. This Pre-Complaince Filing Conference is being held so that Texas Eastern Transmission Corporation (Texas Eastern) can present the Commission and the intervenors in this proceeding with a summary of Texas Eastern's proposals for full compliance with the rule, including *pro forma* rates. In a letter to the Secretary of the Commission dated April 24, 1992, Texas Eastern has stated that it expects to file its Order No. 636 compliance filing in time to permit Texas Eastern to implement Order No. 636 restructuring on its system on November 1, 1992, which is the end of the current contract year. Texas Eastern also has stated that upon implementation of such restructuring on November 1, 1992, Texas Eastern would also propose to eliminate the existing GSIRC and resolve other pending Texas Eastern issues. Additionally, Texas Eastern has stated that it will circulate advance copies of its proposed Order No. 636 compliance filing to all parties which file to intervene in the captioned restructuring docket, as well as to its customers, all shippers on its system, interested state commissions, and all parties which intervened in Docket No. RP88-67, *et al.* (Phase I).

The Pre-Compliance Filing Conference is being convened to discuss Texas Eastern's proposed Order No. 636 compliance filing and rates. Specifically, topics of discussion will include:

1. The details of the unbundled services to be provided by Texas Eastern, including unbundling, open access (a) "no-notice" firm transportation services, (b) instantaneous firm transportation services, and (c) interruptible transportation services, and (d) storage services;

2. Whether customers desire to retain, reduce, or terminate their firm transportation contracts in order that Texas Eastern may follow the procedures set out in Order No. 636;

3. Allocation of capacity on Texas Eastern's system;

4. The details of the operating terms and conditions pursuant to which Texas Eastern proposes to retain reasonable control of the system in order to provide "no notice" and instantaneous firm transportation service, to maintain pressures to provide all services, and to maintain operational integrity;

5. Capacity release reallocation;

6. Assignment of firm upstream transportation and storage capacity;

7. Nominations, scheduling, imbalance resolution, and curtailment;

8. Aggregating and balancing services;

9. Electronic bulletin board requirements;

10. Rates;

11. Supply contract assignment and transition costs;

12. All other issues designated by the Commission in Order No. 636 that are not specifically enumerated above.

The conference will be held at the Ramada Renaissance Hotel, 13869 Park Center Road, Herndon, Virginia 22071 (telephone number (703) 478-2900). The conference will begin at 10 a.m. on May 19, 1992. The starting time for the May 19, 1992 meeting will be announced during the first meeting day. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information, interested parties can call Richard J. Kruse at (713) 627-5368.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11486 Filed 5-14-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 92-06; Certification Notice—99]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to

operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Three owners and operators of proposed new electric base load powerplants have filed self-certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self-certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Thermo Carbonic, Inc., Greeley, CO	05-01-92	Combined cycle	150	Fort Lupton, CO.
Thermo Fort Lupton, Inc., Greeley, CO	05-01-92	Simple cycle	32	Greeley, CO.
Thermo Industries, Ltd., Greeley, CO	05-01-92	Combined cycle	122	Fort Lupton, CO.

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

These self-certifications may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on May 11, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-11504 Filed 5-14-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During Week of January 27, Through January 31, 1992

During the week of January 27, through January 31, 1992, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Aluminum Company of America, 01/29/92, RF272-64893, *RD272-64893*

The DOE issued a Decision and Order considering an Application for Refund filed by Aluminum Company of America (Alcoa) in the Subpart V crude oil overcharge refund proceeding. Alcoa sought a refund based on purchases of eight different petroleum-based products, including petroleum coke. In evaluating the refund request, the DOE reiterated its standard that it would presume that crude oil overcharges were included in the price of any product covered by the Emergency Petroleum Allocation Act of 1973 (EPAA), and primarily refined from crude oil at a crude oil refinery. The DOE found petroleum coke was not among the products covered by EPAA. However, based on purchases of seven other refined petroleum products that were explicitly covered under the EPAA, Alcoa was granted a refund of $628,962. The DOE rejected a Statement of objections filed by a consortium of States and territories and concurrently denied a Motion for Discovery filed by that group.

Atlantic Richfield/Bear Creek Mini Mart Davies and Quattlebaum, 01/31/92, RF304-12647, *RF304-12648*

The DOE issued a Decision and Order rescinding as duplicative refunds of $573 granted to Bear Creek Mini Mart and Davies and Quattlebaum in the Atlantic Richfield Company Subpart V special refund proceeding. In making this determination, the DOE considered the fact that Bear Creek had been granted a refund for Arco purchases during 11 months in 1974, prior to the time that the individuals refund recipients owned the outlet. The DOE also found that the second application was filed on behalf of an individual who sold the outlet prior to the refund period. Accordingly, the DOE revoked both refunds and required the filing services that filed the two applications, and failed to insure the truth of the statements contained therein, to return the funds to the DOE.

Dixie Lime and Stone Company Southern Materials Corporation, 01/31/92, RF272-58470, *RF272-58471*

The DOE issued a Decision and Order concerning Applications for Refund that Dixie Lime and Stone Company (Dixie) and Southern Materials Corporation (SMC) filed in the subpart V crude oil overcharge refund proceeding. The DOE determined that the refund claims were meritorious and granted refunds totaling $38,300. A consortium of States and Territories of the United States filed an objection to the Dixie Application. Because the firms were affiliated at the time of filing, the applications were considered together. Although SMC had been sold after its refund claim was filed, it was nevertheless determined that the proper recipient of the refund was the purchaser of SMC.

Hercules Incorporated, 01/31/92, RF272-23790, RD272-23790, *RF272-55354*

The DOE issued a Decision and Order granting two Applications for Refund filed by Hercules Incorporated, a chemical and aerospace firm, in the Subpart V crude oil overcharge refund proceeding. A group of States and Territories (States) objected to one of the applications on the grounds that the applicant was able to pass through increased petroleum costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. With respect to eleven products which had not previously been considered in the crude oil refund proceeding, Hercules was found to be ineligible for a refund for its purchases of C-9 Fraction, Heart-cut distillate, waxes, and Intermediate 300, but was granted a refund for its purchases of paraffin oil, witco oil, oil telura 407 & 619, white oil, and Gulf Oils 561 & 562. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $712,029.

Shell Oil Company/Hall's Shell Service, Dust Ramada Shell, Bailey's Shell Service, 01/30/92, RF315-7182, RF314-7398, RF315-8909

The DOE issued a Decision and Order concerning Applications for Refund filed in the Shell Oil Company special refund proceeding by three indirect purchasers

of covered Shell petroleum products during the consent order period: Hall's Shell Service, Dust Ramada Shell, and Bailey's Shell Service. The three firms purchased Shell product through jobbers, which did not absorb the alleged overcharges. Accordingly, the DOE presumed that the three applicants were themselves overcharged by the full volumetric amount. Hall's Shell Service was granted a refund of $478 ($337 principal and $141 interest). Dust Ramada Shell was granted a refund of $661 ($542 principal and $226 interest). Bailey's Shell Service was granted a refund of $768 ($542 principal and $226 interest). The total refund granted in this Decision is $1,907 (comprised of $1,345 in principal and $562 in interest).

State Escrow Distribution, 01/29/92, RF302-12

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $36,000,000 to the State Governments. Most of these funds had been set aside for distribution to the States in Salomon, Inc., Case No. LEF-0033. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Texaco Inc./American Airlines, Inc., 01/30/92, RF321-5449

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by American Airlines, Inc., a consumer of Texaco products. The applicant claimed that Texaco's records understated its actual purchases of jet fuel, and it submitted its own purchase schedule for that product. The DOE examined a sample of the firm's records and concluded that they more accurately reflected the level of the airline's purchases than did Texaco's records. The DOE "excluded" from the firm's eligible purchase volume purchases of "bonded" fuel, however, since bonded fuel was not subject to the DOE price regulations. Because the applicant was a consumer, it was not required to demonstrate injury and was granted a refund equal to its full allocable share. The total refund granted was $4,825,031 ($3,733,966 principal and $1,091,065 interest).

Texaco Inc./Bryan P. Cartall, Rytex Inc., 01/28/92, RF321-8209, RF321-17097

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning Applications for Refund filed by Bryan P. Cartall and Rytex, Inc. with respect to the same purchases. Cartall, a Texaco jobber, operated the business as a sole proprietorship until June 1980, when he incorporated the business. In April 1992, the assets of the business were sold to Rytex, Inc. Cartall retained the corporate stock and the corporation was subsequently dissolved. The DOE noted that, generally, the owner of the firm that purchased the Texaco products is entitled to the refund, and that this right is not normally transferred to a successor firm, unless either (a) the owner during the price control period was a corporation whose stock was purchased by the successor or (b) the business was transferred under a contract that specified potential refunds as one of the assets being transferred. The DOE found that neither of these circumstances were present in this case. Accordingly, Cartall was granted a refund of $12,922 including interest, and the refund application filed by Rytex was denied.

Texaco Inc./Greenwood Texaco et al., 01/28/92, RF321-8202 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning Applications for Refund filed by fourteen direct purchasers of Texaco products. One applicant, Rappaport Oil Corporation, did not have records of its purchases of residual fuel oil from Texaco during the period March 6, 1973 through December 31, 1974. The firm sought to estimate its purchases for that period based upon its actual purchases during calendar year 1975. The DOE found that it was reasonable to estimate the firm's purchase volume for 1974 as being equal to its 1975 purchases, but that it was not reasonable to estimate its 1973 purchase for the period beginning March 6 as being 10/12th of its 1975 purchases. The DOE noted that the residual fuel oil purchased by Rappaport was primarily used for heating purposes. Because heating is a seasonal use, a greater than proportionate amount of its purchases during 1973 would occur in January and February, months that are not in the refund period. Under these circumstances, the DOE found that it would be reasonable to estimate the firm's 1973 purchases for the period beginning March to be 73 percent of the firm's 1975 purchases. With this one modification, the applications for refund were granted. The total refunds approved amounted to $38,922, including interest.

Texaco Inc./Highland Springs Texaco, 01/28/92, RF321-18236

The DOE received an application filed by Wilson, Keller and Associates on behalf of Sego Corporation, Inc. (Sego) for the same purchases that were included in a previously-approved claim filed by the same firm on behalf of Doug Webster, owner of Highland Springs Texaco. After reviewing the documentation provided by Sego, the DOE found that the application on behalf of Highland Springs Texaco contained a false certification concerning the period in which Mr. Webster operated Highland Springs Texaco, and he was directed to repay the entire refund plus interest ($814). In addition, since Wilson, Keller and Associates was responsible for filing the claim containing the false certification, it was held jointly and severally liable for the repayment of the refund.

Texaco Inc./Ken's Texaco on Oklahoma, et al., 01/28/92, RF321-7693 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Texaco Inc. special refund proceeding. Each of the applicants purchased indirectly from Texaco and was supplied by a firm that either (i) had been granted a Texaco refund under a presumption of injury, or (ii) indicated in its refund application that it did not intend to seek a refund based upon a finding of injury. In accordance with prior Decisions, the claims of the applicants were therefore considered under the procedures used to evaluate direct purchase claims. However, the per gallon volumetric refund amount for applicants whose supplier did not purchase exclusively from Texaco during the consent order period was reduced by the percentage of their suppliers' petroleum products which did not originate from Texaco. In this Decision, the applicants were granted refunds totaling $14,024, representing $10,853 in principal and $3,171 in interest.

Texaco Inc./Larry's Texaco, 01/28/92, RF321-18242

A conflicting claim caused the DOE to review a refund granted to Larry LaBonte in the Texaco Inc. refund proceeding. The applicant was unable to substantiate his claim, and stated that he had mistakenly submitted incorrect dates. He was ordered to remit $1,209 ($1,121 wrongfully granted plus $88 in additional interest which would have accrued in escrow to the current date) to the DOE.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Anson Gas Corporation.	RF272-83378	01/29/92
Atlantic Richfield Company/Euclid Arco.	RF304-12780	01/31/92
Atlantic Richfield Company/Kestle's Arco #1 *et al.*	RF304-11257	01/29/92
Carolina Freight Carriers Corporation S.C.D..	RD272-14554	01/29/92
Carolina Freight Carriers Corporation S.C.D..	RF272-14554	.....
Citronelle-Mobile Gathering/New Bedford Gas and Edison Light Co.	RF330-36	01/31/92
Gulf Oil Corporation/ Gulf Pride Station #3 *et al.*	RF300-13029	01/30/92
Gulf Oil Corporation/ Maislin Transport, Ltd.	RF300-12898	01/28/92
LTV Steel Co., Inc	RF272-28350	01/31/92
M. Paul Payne Company.	RF272-84474	01/30/92
Ploof Truck Lines, Inc	RF272-69229	01/28/92
Ploof Truck Lines, Inc	RD272-69229	.....
Randolph County Commission *et al.*	RF272-77407	01/30/92
Tenby Chase Apartments.	RF272-56895	01/29/92
Texaco Inc./Chapman, Inc.	RF321-11694	01/28/92
Chapman, Inc	RF321-11695	.....
West Ark Oil Company.	RF321-11696	.....
Texaco Inc./ Greinwich Texaco *et al.*	RF321-313	01/30/92
Texaco Inc./Hebert's Texaco *et al.*	RF321-12704	01/30/92
Texaco Inc./Paul Clawson's Texaco *et al.*	RF321-9807	01/29/92
Texaco Inc./Roberts Texaco *et al.*	RF321-13044	01/28/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Al Mazon Texaco	RF321-2170
Barabin Texaco *et al*	RF321-12050
Bill Bright's Arco	RF304-7595
Brown County Cooperative Association.	RF272-75899
Columbia LNG Corp	RF340-24
Ed Cassell Texaco	RF321-10344
Edgewater Plaza Texaco	RF321-9780
Farrell Arco	RF304-3718
Frank Wood's Texaco	RF321-11962
Hancock Towing	RF321-18012
Harbor Supply Oil, Inc	RF321-12804
Hawkins & Campbell, Inc	RF272-78671
John Hector's Arco #1	RF304-7596
John Hector's Arco #2	RF304-7597
Jon Michael Elgin	RF321-13337
Jones, Walker, Waechter, Poitevent, Carrere & Denegre.	LFA-177
Lee's Texaco Service Station	RF321-12806
Lil Saints Foods, Inc	RF321-17960
Lonza, Inc	RF272-63909
M-K Ranches	RF321-18024
Marmora Texaco	RF321-18002
Republic UCONN Texaco Service Inc.	RF321-10367
Richard Gumz Farms	RF321-17467
Rockwell Texaco	RF321-12809
Scott's M P & G Tune-up Center.	RF304-3702
Southern Nevada Concrete	RF304-5460
Stuart Paint & Supply, Inc	RF321-17962
Talen's Landing, Inc	RF321-12802
Thomas Bradbury	RF321-17502
Trek, Inc. #2	RF321-11506

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 8, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-11507 Filed 5-14-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 13 Through April 17, 1992

During the week of April 13 through April 17, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Judith Weaver; 4/13/92; LFA-0196

Judith Weaver filed an Appeal from a determination issued to her by the Department of Energy Field Office, Oak Ridge (DOE/OR) on a request for information submitted pursuant to the Freedom of Information Act (FOIA). From 1959 to 1963, Mrs. Weaver's husband, Jacob M. Weaver III, was an employee of Brush Beryllium, a company which supplied beryllium to the predecessor agencies of the DOE. Mrs. Weaver's FOIA request concerned a pending Worker's Compensation Claim related to the death of her husband, and sought all documents related to Mr. Weaver's possible exposure to beryllium. In its February 24, 1992 determination, DOE/OR stated that a search of its files and personnel records had been conducted and that no responsive records were found. In considering the Appeal, the DOE determined that searches for responsive documents were conducted at DOE/OR as well as at the DOE Field Office, Fernald, and the Portsmouth Enrichment Office. The DOE found that any responsive material relating to Mrs. Weaver's FOIA request should have been uncovered by these searches. Consequently, the DOE found that DOE/AL's search was reasonably calculated to uncover all materials sought by the Appellant, and was clearly adequate under the FOIA. Accordingly, the Appeal filed by Mrs. Weaver was denied.

Mark S. Boggs; 4/17/92; LFA-0195

Mark S. Boggs filed an Appeal from a denial by the Department of Energy's (DOE) Oak Ridge Field Office (Oak Ridge) of a Request for Information which the Appellant had submitted under the Freedom of Information Act. In considering the Appeal, the DOE's Office of Hearings and Appeals (OHA) found that the scope of the search conducted by Oak Ridge was too narrow. Accordingly, the OHA remanded the matter to Oak Ridge with instructions to conduct a new search.

Remedial Order

LAJET, INC. ET AL.; 4/17/92; KRO-0510

LaJet, Inc. (LaJet), LaJet Petroleum Company (LPC) and Texas Napco, Inc. (Texas Napco) (collectively, the Respondents) objected to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued jointly to them on February 13, 1987. In the PRO, the ERA alleged generally that during the period February 1978 through September 1980, LaJet, Inc. engaged in a scheme with the aid of 13 other firms to evade its monetary obligations under the Crude Oil entitlements Program. According to the ERA, LaJet's activities during the 32 month period violated the anti-circumvention regulation codified at 10 CFR 205.202 and certain portions of the entitlements regulations set forth at 10 CFR 211.66(b) and (h). The ERA charged that as a result of LaJet's regulatory transgressions, the Entitlements Program suffered a loss of $91,172,025, exclusive of interest. The PRO found that LaJet, and two entities related to LaJet, LPC and Texas Napco, are jointly and severally liable for this alleged violation amount, plus interest. After considering the Respondents' Statement of Objections, the DOE concluded that the PRO should be issued as a final Remedial Order. In reaching its conclusion, the DOE found that: (i) The enforcement action was not barred by the termination of the Entitlements

Program; (ii) the anti-circumvention regulation codified at 10 CFR 205.202 is constitutionally and substantively valid; (iii) the allegations that LaJet violated 10 CFR 205.202 and 211.66(b) and (h) are factually and legally well grounded; (iv) LPC and Texas Napco can be held liable for the regulatory violations committed by LaJet during the operative period; (v) the equitable doctrines of laches and estoppel do not prevent the ERA from pursuing the enforcement action; (vi) requiring the Respondents to refund the full amount by which LaJet benefitted from its illegal conduct accords with well-settled measures of restitution; and (vii) interest can be properly imposed on the principal violation amount asserted in the PRO.

Supplemental Order

Robert J. Martin, Economic Regulatory Administration; 4/16/92; LRX–0009

Robert J. Martin (Martin) filed a Request for Cancellation of Evidentiary Hearing, relating to an evidentiary hearing that the Department of Energy (DOE) ordered be convened in a Proposed Remedial Order (PRO) proceeding involving Robert J. Martin, et al. See Robert J. Martin, et al., 21DOE ¶ 84,002 (1991). At the same time, the Economic Regulatory Administration (ERA) made a request that DOE rescind three subpoenas which had been issued by DOE, at ERA's request, to certain individuals to serve as witnesses at the evidentiary hearing. See Economic Regulatory Administration, 22 DOE ¶ 83,001 (1992). In considering these requests and information supplied by Martin and ERA, the DOE determined that Martin and ERA had reached a settlement of the PRO enforcement matter with regard to Martin, and the evidentiary hearing as well as the subpoena of witnesses were therefore unnecessary. Accordingly, the requests filed by Martin and ERA were approved.

Refund Applications

Empire Gas Corp./BTU Energy Corporation; 4/13/92; RF335–47

The DOE issued a Decision and Order granting a refund of $9,643 in principal plus $5,044 in accrued interest for a total of $14,687 to BTU Energy Corporation (BTU), representing a full volumetric refund based upon purchases of 7,196,000 gallons of Empire Gas Corp. propane. The firm submitted data which showed banks of unrecovered increased product costs substantially in excess of its full allocable share of the Empire consent order fund. In addition, a competitive disadvantage analysis revealed that the firm paid propane prices which were competitively high during the Empire consent order period. In performing this analysis, the DOE rejected the BTU's use of the price data collected by the Energy Information Agency and listed in its Monthly Petroleum Price Reports, on the basis that such data was nation-wide in scope and did not reflect competitive conditions for regional marketers such as BTU. Instead, the DOE relied on Platt's Oil Price Handbook and Oilmanac for regional propane prices.

Texaco Inc./Bean's Texaco Service, Michael's Texaco; 4/15/92; RF321–10202, RF321–11657

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. These applicants claimed overlapping dates of operation at the same retail outlet located in Donaldsonville, Louisiana. Both applicants were presented with an opportunity to document the time period in which they had operated a business at that outlet. Vincent Latino (Case No. RF321–10202) was able to provide substantial evidence that he had operated Bean's Texaco Service from September 1956 through December 1979, as he had claimed in his application. Michael Marcello (Case No. RF321–11657) could not document the conflicting dates of operation he had claimed in his application on behalf of Michael's Texaco. Therefore, Mr. Latino was awarded a refund of $2,684 ($2,053 principal and $631 interest), and Mr. Marcello's application was denied.

Texaco Inc./Fairhope Texaco et al.; 4/15/92, RF321–214 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning Applications for Refund filed by 17 direct purchasers of Texaco products. The applicant on behalf of one outlet, Archie's Texaco, was the divorced wife of the owner. The outlet was located in California, a community property state, and her name was on the lease. Under these circumstances, the DOE found that the applicant was entitled to a refund with respect to Texaco purchases made by the outlet prior to her divorce, but that the refund amount should be based upon fifty percent of the outlet's purchases. With this one modification, the applications for refund were granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Nassaney Service Stations	RF304–6211	04/17/92
Nassaney Service Stations	RF304–6212	
Rocket City Inc.	RF304–12116	
Atlantic Richfield Company/Parker's Auto Service *et al*	RF304–3585	04/15/92
Clark Oil & Refining Corp./Bill's Clark Station *et al*	RF342–23	04/16/92
Estate of Frank McCall	RC272–158	04/17/92
Gulf Oil Corporation/B.E. Chaney Gulf *et al*	RF300–12310	04/15/92
Gulf Oil Corporation/Frank's Grocery *et al*	RF300–14542	04/15/92
Gulf Oil Corporation/Harned Oil Co	RF300–12701	04/15/92
Harned Oil Co	RF300–12730	
Harned Oil Co	RF300–12731	
Jubo Trucking Co. *et al*	RF272–65665	04/15/92
King County (Washington), Department of Public Works	RF272–28400	04/17/92
M.A.S.D.#30	RA272–49	04/16/92
Market Forge *et al*	RF272–85476	04/17/92
Noble County, Oklahoma *et al*	RF272–85600	04/17/92
Shell Oil Company/Tucker Freight Lines, Inc	RF315–1911	04/13/92
Tesoro Petroleum Corporation/Amerada Hess Corporation	RF326–263	04/15/92
Olson's Gas Service	RF326–304	
Texaco Inc./Don's Truck Stop *et al*	RF321–1919	04/16/92
Texaco Inc./Greyhound Corporation *et al*	RF321–10060	04/17/92
Texaco Inc./Howard's Texaco Service	RF321–18567	04/17/92
Christie Texaco	RF321–18568	

Texaco Inc./Kimberly Oil Company *et al*	RF321-6724	04/16/92
Texaco Inc./Mattfeld Oil Company	RF321-8385	04/16/92
Mattfeld Oil Company	RF321-8386	
Robert Mattfeld	RF321-8387	
Robert Mattfeld	RF321-8388	
Robert Mattfeld	RF321-8389	
Texaco Inc./Mosley's Texaco *et al*	RF321-7052	04/17/92
Texaco Inc./Tri-County Gas & Oil, Inc.	RF321-9154	04/15/92
Tri-Cumberland, Inc	RF321-9155	
The Erco Corporation	RF272-59394	04/13/92
Town of Templeton *et al*	RF272-85400	04/16/92
United Refining Company/Martin Oil Co	RF333-29	04/13/92
Wamego, KS	RA272-48	04/16/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Archer's West End Texaco	RF321-12046
Belle Chasse Texaco	RF321-4883
Benson Fuel Oil Co	RF300-16038
Christy's Arco #2	RF304-8821
Clark's Texaco Service	RF321-5684
Consolidated Aluminum Co	RF300-19730
Estate of Robert E. Lowe	RF300-19729
Gabriel's Arco	RF304-12736
George's Texaco	RF321-5667
Hammond Arco	RF304-12740
Hubbard Construction	RF300-14721
J. Denneler, Inc	RF300-12940
Jefferson County, IL	RF272-86293
Joseph H. Denneler, Inc	RF300-12939
Metro Oil Products, Inc	RF330-36
Scott County, MN	RF272-85754
Shelby's Texaco	RF321-2909
Smoky's Gulf Service #2	RF300-13855
Strom Realty Co	RF272-48969
Timpson Texaco	RF321-14223
Tuttle's Texaco	RF321-4807
Vahlco Corporation	RF300-19622

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-11506 Filed 5-14-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Ambient Air Monitoring Reference and Equivalent Methods

[FRL 4134-4]

Equivalent Method Designations

Notice is hereby given that EPA, in accordance with 40 CFR part 53 has designated two additional equivalent methods for the determination of lead in suspended particulate matter collected from ambient air. The new designated methods are identified as follows:

(1) EQL-0592-085, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission Spectrometry [State of Kansas]."

(2) EQL-0592-086, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission Spectrometry (Commonwealth of Pennsylvania)."

Requests for equivalent method determinations for these two methods were received on January 21, 1992 and January 31, 1992, respectively. Each method has been tested by the respective applicant, the Kansas Department of Health and Environment or the Pennsylvania Department of Environmental Resources, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated as equivalent methods. The information submitted by the applicants will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

Both of these methods use the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (40 CFR part 50, appendix G). In the Kansas method (1), lead in the particulate matter is solubilized by extraction with nitirc acid facilitated by ultrasonication. The lead content of the sample extract is analyzed with a Thermo Jarrell Ash Poly Scan 61E inductively coupled argon plasma optical emission spectrometer using the 220.353 nm lead emission line. In the Pennsylvania method (2), lead in the particulate matter is extracted with a mixture of HNO_3 and HC1, facilitated by ultrasonication and heat. The sample extract is analyzed for lead content with a Leman PS-3000 Emission Spectra inductively coupled argon plasma optical emission spectrometer using the 220.353 nm lead emission line. In both methods, the instrumental operating conditions have been optimized by the user laboratory. Technical questions concerning these methods should be directed either to the State of Kansas, Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas 66620-0001, or to the Commonwealth of Pennsylvania, Department of Environmental Resources, P.O. Box 2357, Harrisburg, Pennsylvania 17105-2357, as appropriate.

As designated equivalent methods, these methods are acceptable for use by states and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes the methods must be used in strict accordance with the procedures and specifications provided in the method descriptions. A State or other agency that wishes to use an inductively coupled argon plasma optical emission spectrometric method which employs procedures and specifications significantly different from those described in either of these methods (or another designated method) must seek specific approval for its particular method. Such approval may be either as a modification under the provisions of

section 2.8 of appendix C to 40 CFR part 58 (Modification of Methods by Users) or as a designation of such a method as an equivalent method under the provisions of 40 CFR part 53.

Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone (919) 541-2622.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 92-11496 Filed 5-14-92; 8:45 am]

BILLING CODE 6560-50-M

Ambient Air Monitoring Reference and Equivalent Methods

[FRL-4134-3]

Receipt of Application for a Reference Method Determination

Notice is hereby given that on April 6, 1992, the Environmental Protection Agency received an application from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, Colorado 80112-5189, to determine if their Monitor Labs Model 9830 Carbon Monoxide Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 11495 Filed 5-14-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4133-4]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Complete Enforceable Commitments Received.

SUMMARY: This notice provides a list of companies that have made complete enforceable commitments to EPA under the Early Reductions Provisions (section 112(i)(5)) of the Clean Air Act (CAA) as amended in 1990. The list covers the period from the beginning of the program through March 31, 1992 and includes the name of each participating company, the associated emissions source location, and the EPA Regional Office which is the point of contact for further information. The EPA intends to publish a series of these lists on a monthly basis. Subsequent lists will include similar information on all submittals received since the last monthly notice.

FOR FURTHER INFORMATION CONTACT: David Beck (telephone: 919-541-5421), Rick Colyer (telephone: 919-541-5262), or Mark Morris (telephone: 919-541-5416), Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 for general information on the Early Reductions Program. For further information on specific submittals received under the Early Reductions Program contact the appropriate EPA Regional Office representative listed below.

Region I—Tom D'Avanzo (617) 565-4502
Region II—Umesh Dholakia or Harish Patel (212) 264-6676
Region III—Jim Baker (215) 597-3499
Region IV—Anthony Toney (404) 347-2864
Region V—John Pavitt (312) 886-6858
Region VI—Tom Driscoll or Tanya Murray (214) 655-7223
Region VII—Donna Dees (913) 551-7625
Region VIII—Laura Lonowski (303) 293-1761
Region IX—Ken Bigos (415) 744-1240
Region X—Chris Hall (206) 553-1949

SUPPLEMENTARY INFORMATION: Under section 112(i)(5) of the Clean Air Act (CAA) as amended in 1990, an existing source of hazardous air pollutant emissions may obtain a six-year extension of compliance with an emission standard promulgated under section 112(d) of the CAA, if the source achieves sufficient reductions of hazardous air pollutant emissions prior to certain dates. On June 13, 1991, EPA published a proposed rule to implement this "Early Reductions" provision (56 FR 27338). A final rule will be issued shortly.

Sources choosing to participate in the Early Reductions Program must document base year emissions and post-reduction emissions to show that sufficient emission reductions have been achieved to qualify for a compliance extension. As a first step toward this demonstration, some sources may be required to submit an enforceable commitment containing base year emission information, or if not required, may voluntarily submit such emission information to EPA for approval. As stated in the proposed Early Reductions rule, EPA will review these submittals to verify emission information, and also will provide the opportunity for public review and comment. Following the review and comment process and after sources have had the chance to revise submittals (if necessary), EPA will approve or disapprove the base year emissions.

To facilitate the public review process for program submittals, the proposed rule contains a commitment by EPA to give monthly public notice of submittals received which have been determined to be complete and which are about to undergo technical review within EPA. Members of the public wishing to obtain more information on a specific submittal then may contact the appropriate EPA Regional Office representative listed above. The purpose of today's notice is to begin fulfilling that commitment by listing those companies that have submitted complete enforceable commitments or other base year emission documentation to EPA through March 31, 1992 under the Early Reductions Program. Although approximately sixty submittals have been received to date, only two were determined to be complete as of March 31, 1992. As the remaining submittals are determined to be complete, they will appear in subsequent monthly notices.

At a later time (most likely within one to three months of today's date), the EPA Regional Offices will provide a formal opportunity for the public to comment on a submittal. To do this the Regional Office will publish a notice in the source's general area announcing that a copy of the source's submittal is available for public inspection and that comments will be received for a 30 day period.

The table below lists those companies that have made complete enforceable commitments or base year emission submittals under the Early Reductions Program through March 31, 1992. These submittals are undergoing technical review within EPA at this time.

Table 1—Complete Enforceable Commitments as of March 31, 1992

Company	Location	EPA region
1. Kalama Chemical, Inc.	Kalama, Washington.	X
2. Amoco Chemical Co.	Texas City, Texas.....	VI

Dated: May 7, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc 92-11387 Filed 5-14-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4134-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 27, 1992 Through May 01, 1992 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) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft Eiss

ERP No. D-COE-G11020-TX Rating LO, Fort Polk Louisiana Realignment of the 5th Infantry Division (Mechanized) to Fort Hood Texas, Implementation, Bell, Coryell, McClennan, West Bell and Lampasas Counties, TX.

Summary: EPA had a lack of objections to the proposed project.

ERP No. D-IBR-K38004-CA Rating EO2, San Luis Unit Drainage Program, Central Valley Project, Implementation, Funding and Possible Section 404 Permit, San Joaquin River, Fresno, Merced and Kings Counties, CA.

Summary: EPA expressed environmental objections with the proposed project because plans to construct and operate facilities that would discharge agricultural drainage water to the San Joaquin River would perpetuate discharge of high total loads of selenium and would undermine efforts to address this problem at its source. The proposed regulating reservoirs and evaporation ponds in Westlands would pose unacceptable hazards to wildlife. Water quality impacts and disposal options on the wildlife and aquatic resources are also a concern. EPA also believes there was insufficient information on many issues, including whether groundwater pumping in the Westlands Water District may accelerate the degradation of drinking water sources.

ERP No. D-UAF-B11014-00 Rating EC2, Aircraft Conversions at the Bradley Air National Guard (ANG) Base, 103rd Tactical Fighter Group, Bradley international Airport, CT and Barnes Air National Guard (ANG) Base, MA, Change in Utilization of Military Training Airspace in the Northeastern U.S.

Summary: EPA expressed concern that the draft EIS contains insufficient information about the aircraft operations at the bases and in the military training airspace to evaluate alternatives to the proposed action and attempts to minimize adverse noise and air quality impacts.

ERP No. DR-AFS-D65010-00 Rating EC2, George Washington National Forest, Oil and Gas Land/Resource Management Plan Revision, Alleghany Front Lease Area, Several Counties, WV and VA.

Summary: EPA expressed environmental concerns regarding potential impacts to wildlife habitat, biodiversity, and air and water quality. Changes in management prescriptions and Forest-wide standards and guidelines should be made to address these concerns.

Final Eiss

ERP No. F-COE-K35032-CA, Sunrise Douglas Residential Development Project, General Plan Amendment and Rezoning, Approval and Section 404 Permit, Sacramento County, CA.

Summary: EPA feels this project may not conform under the Clean Air Act nor comply with Section 404 of the Clean Water Act. The Final EIS indicates that the project would interfere with timely attainment of federal air quality standards. The final EIS did not provide enough information to determine the least environmentally damaging practicable alternative, whether significant degradation of aquatic resources would occur, or the adequacy of compensation to mitigate for project impacts. Based upon these deficiencies, EPA recommended that the Army Corps not issue a Section 404 permit for the project.

ERP No. F-COE-K36102-CA, Los Angeles County Drainage Area Flood Control System Improvements, Implementation, Los Angeles County, CA.

Summary: EPA expressed environmental concerns with the FEIS in several areas and thus did not provide a clear basis for choice among the agency decisionmakers and the public. The Corps' response to comments on the DEIS failed to address several of the concerns expressed by EPA.

ERP No. FB-NOA-L64015-AK, Goundfish Fishery of the Bering Sea, Aleutian Islands, Fishery Management Plan, Updated Information, Amendment 18/23 Inshore/Offshore Allocation, Alternative Approval and Implementation, AK.

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. FS-AFS-F65015-IL, Shawnee National Forest Land and Resource Management Plan, Amended Forest Plan and Updated Information, Implementation, Several Counties, IL.

Summary: EPA expressed environmental concerns regarding potential impacts associated with implementation to the amended and resource management plan. EPA recommended development of additional mitigation to address noise impacts and habitat fragmentation prior to implementation of the management plan.

Regulations

ERP No. R-NFA-A99191-00, 45 CFR Part 1155—National Foundation on the Arts and Humanities, National Endowment for the Arts, Compliance with the National Environmental Policy Act, (57 FR. 6206).

Summary: EPA recommended that the final rule clearly describe the environmental review requirements in terms of their relationship to the Endowment's decisionmaking and grant approval process.

Dated: May 12, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92-11575 Filed 5-14-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4133-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Availability of Environmental Impact Statements filed May 4, 1992 through May 8, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920153, DRAFT EIS, AFS, AK, North and East Kuiu Timber Harvest, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Kuiu Island, AK, Due: July 14, 1992, Contact: Michael Condon (907) 772-3841.

EIS No. 920154, FINAL EIS, COE, CA, Sacramento Metropolitan Area Flood Control Plan, Implementation, Yolo and Sacramento Counties, CA Due: June 15, 1992, Contact: Mike Welsh (916) 557-6718.

EIS No. 920155, FINAL EIS, AFS, CO, HD Mountains Coalbed Methane Gas Field Development Project, Construction and Operation, Approval, Federal Antiquities Permit, Drill Deepen or Plug Back Permit and Section 404 Permit, San Juan National Forest, Pine District, Archuleta and LaPlata Counties, CO, Due: June 15, 1992, Contact: Dick Bell (303) 884–2512. The U.S. Department of Agriculture, Forest Service and the U.S. Department of the Interior, Bureau of Land Management are Joint Lead Agencies for this project.

EIS No. 920156, DRAFT EIS, FHW, AL, William S. Keller Bridge Replacement on US–31 across the Tennessee River, City of Decatur, Funding, Coast Guard Bridge Permit, COE Section 404 Permit and TVA Section 26a Permit, Morgan and Limestone Counties, AL, Due: July 01, 1992, Contact: Joe D. Wilkerson (205) 223–7370.

EIS No. 920157, DRAFT EIS, BLM, WY, Mulligan Draw Gas Field Project, Natural Gas Field Drilling, Operation, Abandonment and Reclamation, Approval, Right-of-Way Grants, COE Section 404 Permits and EPA RCRA Permits, Sweetwater County, WY, Due: July 15, 1992, Contact: Bob Tigner (307) 324–7171.

EIS No. 920158, FINAL EIS, FHW, WI, Wisconsin Trunk Highway 29 Improvement, Shawano Bypass Construction, Section 404 Permit and Funding Shawano County, WI, Due: June 15, 1992, Contact: Robert W. Cooper (608) 264–5940.

EIS No. 920159, DRAFT SUPPLEMENT, NOA, AK, Halibut and Sablefish Fixed Gear Fisheries Individual Fishing Quota Management (IFQ) Alternative, Additional Information on the specific IFQ Program recommended by the Council in December 1991, Approval and Implementation, Gulf of Alaska and Bering Sea/Aleutian Islands, AK Due: June 29, 1992, Contact: William W. Fox, Jr. (301) 713–2239.

EIS No. 920160, FINAL EIS, SFW, CA, Stone Lakes National Wildlife Refuge Management Plan, Land Acquisition and Easement, Possible COE Section 10 and 404 Permits, Central Valley, Sacramento County, CA, Due: June 15, 1992, Contact: Peter J. Jerome (916) 978–4420.

EIS No. 920161, DRAFT EIS, FHW, WI, Wisconsin STH–64 Improvements, Houlton to New Richmond, Funding and COE Section 404 Permit, St. Croix County, WI, Due: July 20, 1992, Contact: James L. Wenning (608) 264–5966.

EIS No. 920162, FINAL EIS, AFS, CA, Sugar Bowl Ski Resort Master Plan, Development and Expansion, Tahoe National Forest, Special Use Permit and Section 404 Permit, Placer and Nevada Counties, CA, Due: June 15, 1992, Contact: Joanne B. Roubique (916) 587–3558.

EIS No. 920163, DRAFT EIS, BIA, WA, I–5/88th Street Northeast Interchange Construction Project, Traffic Circulation Improvements and Tulalip Tribes Reservation Direct Freeway Access, Approval, Coast Guard Bridge Permit and COE Section 404 Permit, Snohomish County, WA, Due: June 29, 1992, Contact: June Boynton (503) 231–6749.

EIS No. 920164, FINAL EIS, BPA, WA, Puget Sound Area Electric Reliability Plan, Power System Problems Resolution, Implementation, Section 10 and 404 Permits, Columbia River Basin, Several Counties, WA, Due: June 15, 1992, Contact: Kenneth Barnhart (503) 230–3478.

EIS No. 920165, DRAFT EIS, BPA, WA, OR, CA, NV, NM, ID, MT, WY, UT, AZ, Resource Programs to Acquire Sufficient New Resources to meet Potential Electric Power Requirements, Implementation, WA, ID, OR, MT, CA, WY, NV, UT, NM, AZ, and British Columbia, Due: June 29, 1992, Contact: Charles Alton (503) 230–5878.

EIS No. 920166, DRAFT EIS, NPS, VT, Appalachian National Scenic Trail Protection, from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico/Killington Section, Implementation, Rutland County, VT, Due: June 30, 1992, Contact: John F. Byrne (304) 535–6278.

EIS No. 920167, FINAL EIS, BOP, NC, Butner Federal Correctional Institution Complex, Construction and Operation, Durham-Granville County Line, NC, Due: June 15, 1992, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 920168, FINAL EIS, AFS, CA, Red Hill Planning Area Timber Sale, Implementation, Sequoia National Forest, Tule River Ranger District, Tulare County, CA, Due: June 15, 1992, Contact: Susan Marthallen (209) 784–1500.

Amended Notices

EIS No. 920063, DRAFT EIS, BIA, CA, Campo Bank of Mission Indians Reservation Solid Waste Management Project, Construction and Operation, Lease and Sublease Approval, Peninsular Ranges, San Diego County, CA, Due: June 08, 1992, Contact: Donald Knapp (916) 978–4703. Published FR–03–06–92–Review period extended.

EIS No. 920141, FINAL EIS, USA, UT, Dugway Proving Ground, Biological Aerosol Test Facility (BATF), Construction and Operation, Baker Laboratory, Tooele and Juab Counties, UT, Due: June 08, 1992, Contact: Ms. Melynda Petrie (801) 831–2116. Published FR 05–08–92–Status and Title Correction.

Dated: May 12, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–11574 Filed 5–14–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4133–8]

Science Advisory Board, Environmental Engineering Committee Underground Storage Tank Research Subcommittee; Open Meeting

June 29–30, 1992.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Underground Storage Tank Research Subcommittee (USTRS) of the Environmental Engineering Committee (EEC), will meet on Monday, June 29, and Tuesday, June 30, 1992. The meeting will be at the Howard Johnson National Airport Hotel, Dominion Rooms 1 and 2, 2650 Jefferson Davis Highway, Arlington, VA 22202. The hotel telephone number is (703) 684–7200. The meeting will begin at 9 am on Monday, June 29th and 8:30 am on Tuesday, June 30th and will adjourn no later than 4 pm on June 30th.

At this meeting, the USTRS will receive briefings from Agency staff, and comment on the May, 1992 draft report on the Agency's Underground Storage Tank Research Program, which was prepared by the Agency's Office of Research and Development staff. Copies of this draft report on the Agency's Underground Storage Tank Research Program may be obtained by contacting either of the following Office of Research and Development (ORD) Staff at the U.S Environmental Protection Agency: Mr. Anthony N. Tafuri, Chief of the Releases Technology Section of the Risk Reduction Engineering Laboratory, Edison, New Jersey at (908) 321–6604, or Ms. Iris A. Goodman, Program Manager, Underground Storage Tank Program, Environmental Monitoring Support Laboratory (EMSL), Las Vegas, Nevada at (702) 798–2623.

The proposed charge to the SAB's USTRS from the Agency's ORD is to review the Underground Storage Tank (UST) Research Program and answer the following questions: (1) Are the research projects and programs in support of the Office of the Underground Storage

Tank's (OUST's) regulatory needs being conducted in a sound manner? Is the ORD doing good science? (2) Is the selection of research projects appropriate, considering resource constraints? (3) Does the current and planned research adequately address scientific and technical gaps that currently exist? and (4) Are there scientific or technical areas not presently being addressed that should be included?

The meeting is open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260–6552 by June 22, 1992.

Written comments of any length (at least 35 copies) may be provided to the Subcommittee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: May 7, 1992.

Donald G. Barnes,

Staff Director, Science Advisory Board (A101F).

[FR Doc 92–11494 Filed 5–14–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4132–9]

Superfund Revitalization Team; Approaches for Speeding-Up the Superfund Process; Open Forum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given of a meeting to solicit input to assist the U.S. Environmental Protection Agency (EPA) and the interagency Superfund Revitalization Team in identifying innovative, non-traditional approaches that may be used to expedite the Superfund cleanup process. To encourage public participation in this process, the National Superfund Director and the Director of the Superfund Revitalization Team are holding a public meeting for representatives from the general public, industry, labor, environmental groups, and Government agencies. This meeting will provide an open forum for the exchange of information about initiatives, either currently being undertaken by EPA or suggested by participants, that will enhance the Superfund program. EPA hopes that information presented at this meeting will assist the Superfund Revitalization Team in fully understanding the nature and scope of impediments to the cleanup process, and in identifying innovative methods to improve program effectiveness, efficiency, and equity.

DATES: Written Registration by June 10, 1992; Meeting will be held June 24, 1992.

ADDRESSES: To Register—EPA Superfund Public Meeting c/o Clean Sites, Inc., 1199 North Fairfax Street, Suite 400, Alexandria, VA 22314, Fax: (703) 548–8773. Meeting Location—Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037, (202) 872–1500.

FOR FURTHER INFORMATION CONTACT: Alice Keyes or Steve Garon at Clean Sites at (703) 683–8522.

SUPPLEMENTARY INFORMATION: The meeting will begin at 8:30 a.m., and end at 5 p.m., e.s.t. Due to the space limitations of the meeting facility (200 people) and the Agency's desire to provide an opportunity for input from interested parties of varying sectors, it is hereby requested that anyone wanting to participate register in writing prior to June 10, 1992. Please fax or mail registrations to Clean Sites at the number or address shown below. All registrations must include name, title (if appropriate), address, facsimile number (if available), telephone number, and a ranking, in order of attendance preference, of the topics for the afternoon breakout sessions. A registrant may attend two of the three afternoon topic discussions. All registrations must be confirmed by Clean Sites in writing prior to attendance.

On October 2, 1991, EPA Administrator William K. Reilly announced a 5-point Plan to revitalize the Superfund Program. The revitalization was intended to increase the effectiveness, efficiency and equity of the Superfund Program. The elements of the Administrator's Plan included: (1) Naming Office of Solid Waste and Emergency Response (OSWER) Deputy Assistant Administrator Richard J. Guimond to the newly created post of National Superfund Director; (2) creating the Superfund Revitalization Team; (3) adopting the recommendations of the 30-Day Study Task Force Report on accelerating cleanup; (4) implementing the Alternative Remedial Contracting Strategy (ARCS) Task Force recommendations on changing Superfund contracting; and (5) committing to improving Superfund risk assessment and risk management processes.

In early February 1992, the National Superfund Director named Timothy Fields, Jr., to the post of Director of the Superfund Revitalization Team. The Director of the Superfund Revitalization Team was tasked with creating a team consisting of EPA Headquarters and Regional personnel, as well as representatives from other Federal (Department of Jutice, Department of Health and Human Services) and State agencies, whose purpose is to achieve the Administrator's goal for Superfund: Reduction of the greatest amount of risk to human health and the environment, in an expedited, cost-effective, and equitable manner. The Superfund Revitalization Team's plan includes measures to streamline and accelerate cleanups, ensure that Superfund dollars are managed effectively, and consolidate management accountability for the program.

Superfund streamlining initiatives are part of a larger EPA effort to improve program effectiveness without sacrificing environmental protection. Under the umbrella of regulatory reform, EPA is identifying opportunities for achieving its goals in more sensible and less costly ways. This process of identifying opportunities is open to public input and will be enhanced by full public participation.

The National Director has already solicited and received comments from those working within the Superfund program, and is now seeking input from the public on ways to expedite the Superfund cleanup process.

To encourage public participation in this process, EPA is holding a public meeting for representatives from the general public, industry, labor, environmental groups, and Government agencies. This meeting will provide an open forum for the exchange of information about initiatives, either currently being undertaken by EPA or suggested by participants, that will enhance the Superfund program. EPA hopes that information presented at this meeting will assist the Superfund Revitalization Team in fully understanding the nature and scope of impediments to the cleanup process, and in identifying some innovative ways in

which to improve program effectiveness, efficiency, and equity.

The information presented at this meeting will be carefully considered as EPA continues to implement its program of Superfund revitalization. Pursuant to CERCLA section 311, Clean Sites has been awarded a cooperative agreement to assist the U.S. EPA in facilitating this forum. Clean Sites' role is solely to arrange for the meeting, facilitate the meeting and prepare a written summary of the meeting. Clean Sites does not represent the Agency.

The meeting agenda follows:

8:30–9 Registration
9–9:15 Welcome, Introductions, Review of Meeting Procedure
9:15–10 EPA Presentation: Recent Initiatives to Speed the Superfund Cleanup Process
10–10:30 Public Reaction to EPA Initiatives
10:30–10:45 Break
10:45–12 Suggestions from the Public about Additional Ways to Speed Up the Superfund Cleanup Program
12–1 Lunch Break (lunch not provided)
1–2:30 First Concurrent Breakout Groups: Discussions between EPA Panels and the Public Regarding Topics A, B, and C
2:30–2:45 Break
2:45–4:15 Second Concurrent Breakout Groups: Discussions between EPA Panels and the Public regarding Topics A, B, and C
4:15–4:30 Break
4:30–5 EPA Presentation: Concluding Remarks and Follow Up Actions

The morning session will begin in the main meeting room with the introductory portion of the meeting and the EPA presentation about new Superfund program initiatives. After a break, the meeting will reconvene in three breakout groups headed by panels consisting of senior EPA Headquarters and Regional staff who will facilitate a dialogue with the session attendees to solicit their suggestions about additional ways to speed up the Superfund cleanup process.

After lunch, the meeting will reconvene in three breakout group sessions headed by panels consisting of senior EPA Headquarters and Regional staff who will facilitate a dialogue with the session attendees. Each breakout group will meet twice in consecutive sessions to focus on one of the following topics:

(A) Ways to encourage and manage voluntary cleanups by PRPs;

(B) Effective ways to involve the State, the community, and other interested parties in the entire Superfund cleanup process; and,

(C) Ways to realistically describe the expectations of the Superfund program, measure its success in achieving the program's goals, and communicating them to interested parties.

Participants will be able to attend sessions on two of the three topics.

Members of the public are encouraged to participate in the breakout sessions. In order to ensure that as many people as possible have an opportunity to present their views and that the EPA panelists have an opportunity to address ideas presented, participants will be asked to keep their remarks brief.

Senior EPA Headquarters and Regional personnel who will participate in the public meeting include: Admiral Richard J. Guimond, Deputy Assistant Administrator, OSWER; Timothy Fields, Director, Superfund Revitalization Team; Henry L. Longest, Director, Office of Emergency and Remedial Response (Superfund); Bruce Diamond, Director, Office of Waste Programs Enforcement; Stephen Luftig, Deputy Director, Office of Emergency and Remedial Response (Superfund); Elaine Stanley, Deputy Director, Office of Waste Programs Enforcement; Thomas Voltaggio, Director, Hazardous Waste Management Division, EPA Region III; Kathy Callahan, Director, Emergency and Remedial Response Division, EPA Region II; and Norm Niedergang, Director, Office of Superfund, EPA Region V. Additional members of the Superfund Revitalization Team will be present as well.

In order to attend the meeting, members of the public must register in writing with Clean Sites and rank by order of priority their topic preferences for the afternoon breakout sessions. Every effort will be made to enable registrants to attend their preferred selections, but because the meeting rooms will be smaller for the breakout sessions, the number of people in each room will be limited.

In addition, a limited number of rooms are being held at corporate rates until June 3, 1992, for the night of June 23rd, at the Washington Marriott in the name of "EPA Superfund Meeting." Reservations can be made by calling 800–344–4445. A limited number of rooms are also being held at corporate and government rate until May 29, 1992, for the night of June 23rd, at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW., Washington, DC in the name of "EPA Superfund Meeting." Reservations can be made by calling 800–526–7495.

Dated: May 7, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 92–11389 Filed 5–14–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPT–59299C; FRL–4065–6]

Certain Chemicals; Extension of Approval of Modifications to Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of extension of modifications to the test marketing period for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME–91–19 and TME–91–20. The test marketing conditions are described below.

EFFECTIVE DATES: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: David Giamporcaro, Section Chief, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–613, 401 M St. SW., Washington, DC 20460, (202) 260–6362.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the extension of modification of the test marketing period for TME–91–19 and TME–91–20. EPA has determined that test marketing of the pesticide intermediates described below, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-91-19 and T-91-20

Notice of Approval of Original Application: July 8, 1991 (56 FR 30923).

Further Extension of Modification of Test Marketing Period: July 21, 1992, representing a 90 day extension from the previous expiration date of April 22, 1992.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: May 8, 1992.

John W. Melone,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-11497 Filed 5-14-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 92-346]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this notice is to announce the names of the members selected for the second quarter review under the regulations. The notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Second Quarter Review:* June 29, 1992.

Due Date For Public Comments on Members Selected Second Quarter Review: June 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408-2825, or Kathleen S. Brueger, Associate Director, Housing Finance Directorate, (202) 408-2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations and members not subject to CRA will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members to be Reviewed in Second Quarter 1992, Grouped by FLHBank District

Federal Home Bank of Boston—District 1, Post Office Box 9106, Boston, Massachusetts 02205-9106.

Member	City	State
Branford Savings Bank	Branford	CT
Community Savings Bank.	Bristol	CT
Farmers and Mechanics Bank.	Middletown	CT
First City Bank	New Britain	CT
The Norwich Savings Society.	Norwich	CT
Centerbank	Waterbury	CT
North Middlesex Savings Bank.	Ayer	MA
Workingmens Co-op Bank.	Boston	MA
The Boston Bank of Commerce.	Boston	MA
People's Savings Bank of Brockton.	Brockton	MA
North Cambridge Co-op Bank.	Cambridge	MA
Easthampton Co-op Bank.	Easthampton	MA
Glendale Co-op Bank	Everett	MA
Everett Savings Bank	Everett	MA
Fidelity Co-op Bank	Fitchburg	MA
Ipswich Savings Bank	Ipswich	MA
Lawrence Savings Bank	Lawrence	MA
First Essex Savings Bank.	Lawrence	MA
Medford Co-op Bank	Medford	MA
Plymouth Savings Bank	Middleboro	MA
Warren Five Cents Savings Bank.	Peabody	MA
Saugus Co-op Bank	Saugus	MA
Spencer Savings Bank	Spencer	MA
Sterling Bank	Waltham	MA
Winchester Co-op Bank	Winchester	MA
Worcester Cty Inst. for Savings.	Worcester	MA
Franklin Savings Bank	Farmington	ME
Kennebunk Savings Bank.	Kennebunk	ME
Coastal Savings Bank	Portland	ME
Peoples Heritage Savings Bank.	Portland	ME
Seacoast Savings Bank	Dover	NH
Southeast Bank for Savings.	Dover	NH
Franklin Savings Bank	Franklin	NH
Cheshire County Savings Bank.	Keene	NH
Mascoma Savings Bank	Lebanon	NH
First NH Bank	Manchester	NH
Meredith Village Savings Bank.	Meredith	NH
Peterborough Savings Bank.	Peterborough	NH
Bank of Newport	Middletown	RI
Northfield Savings Bank	Northfield	VT
Marble Bank	Rutland	VT

Federal Home Loan Bank of New York—District 2, One World Trade Center, 103d Floor, New York, New York 10048.

Member	City	State
Pamrapo Savings Bank	Bayonne	NJ
Ocean FSB	Brick	NJ
Farmers & Mechanics SB, SLA.	Burlington Township.	NJ
Freehold S&LA	Freehold	NJ
Oritani S&LA	Hackensack	NJ
Haven Savings Bank, SLA.	Hoboken	NJ
Washington Savings Bank.	Hoboken	NJ
Schuyler Savings Bank, SLA.	Kearny	NJ
Investors S&LA	Millburn	NJ
Millington Savings Bank, SLA.	Millington	NJ
Gibraltar Savings Bank, SLA.	Newark	NJ
Ocean City Home S&LA	Ocean City	NJ
Lakeview S&LA	Paterson	NJ
Ridgewood S&LA	Ridgewood	NJ
Shadow Lawn Savings Bank, SLA.	W. Long Branch.	NJ
Provident Savings Bank, F.A.	Haverstraw	NY
Maple City S&LA	Hornell	NY
Sunnyside FS&LA of Irvington.	Irvington	NY
Maspeth Federal, SLA	Maspeth	NY
Massena S&LA	Massena	NY
Medina S&LA	Medina	NY
Carver FSB	New York	NY

Member	City	State
The Bowery Savings Bank.	New York	NY
The Lincoln Savings Bank.	New York	NY
Ogdensburg Federal, SLA.	Ogdensburg	NY
Schenectady Federal, SLA.	Schenectady	NY
Westbury FS&LA	Westbury	NY
Yonkers S&LA	Yonkers	NY

Federal Home Loan Bank of Pittsburgh—District 3, 625 West Ridge Pike, Suite B–107, Conshohocken, Pennsylvania 19428.

Member	City	State
Economy Savings Bank, PASA.	Aliquippa	PA
Reliance Savings Asso.	Altoona	PA
Investment A&L Asso. of Altoona.	Altoona	PA
Pennwood Savings Asso.	Bellevue	PA
Reliable Savings Bank	Bridgeville	PA
Charleroi FSB	Charleroi	PA
Greenville S&L Asso	Greenville	PA
Mauch Chunk Trust Company.	Jim Thorpe	PA
Grange NB of WY Cty	Laceyville	PA
Keyston Savings Asso	Lehigh Valley	PA
Lock Haven S&LA	Lock Haven	PA
The Muncy Bank & Trust Co.	Muncy	PA
Prudential Savings Bank	Philadelphia	PA
Meritor Savings Bank	Philadelphia	PA
Workingmens S&LA	Pittsburgh	PA
Eureka FS&LA	Pittsburgh	PA
Greater Pottsville FS&LA.	Pottsville	PA
Peoples Savings Bank, PASA.	Ridgeway	PA
Elk County S&L Asso	Ridgeway	PA
Sewickley S&LA	Sewickley	PA
Central PA Savings Asso.	Shamokin	PA
Keystone FS&LA of Sharpsburg.	Sharpsburg	PA
United Federal Bank	State College	PA
East Stroudsburg Savings Asso.	Stroudsburg	PA
Main Line FSB	Villanova	PA
Washington FSB	Washington	PA
National Bank of the Main Line.	Wayne	PA
Citizens & Northern Bank.	Wellsboro	PA
First Empire FS&LA	Charleston	WV
First FS&LA of Ravenswood.	Ravenswood	WV

Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348.

Member	City	State
First Federal Bank, FSB	Enterprise	AL
First FS&LA	Gadsden	AL
First Fed of AL, FSB	Jasper	AL
Home Federal Savings Bank.	Washington	DC
Independence FSB	Washington	DC
Amtrust Bank, A Savings Bank.	Boca Raton	FL
Firstsouth Savings Bank, FSB.	Holiday	FL
Suncoast S&LA	Hollywood	FL
Community First Bank	Jacksonville	FL
Key Biscayne Bank & Trust Co.	Key Biscayne	FL
Union Bank of Florida	Lauderhill	FL
First FS&LA of Lake Co	Leesburg	FL
The American Bank of the South.	Merritt Island	FL
First FS&LA	New Smyrna Beach.	FL
First FS&LA of Putnam Co.	Palatka	FL
Preferred Bank, A FSB	Palmetto	FL
First FSB of Charlotte County.	Punta Gorda	FL
Century Bank, A FSB	Sarasota	FL
Mercantile Bank	St. Petersburg	FL
First FS&LA of the Palm Beaches.	West Palm Beach.	FL
Fidelity FSB of FL	West Palm Beach.	FL
First Georgia Savings Bank, FSB.	Brunswick	GA
The Prudential Savings Bank, FSB.	Carterville	GA
First Federal Bank of Northwest GA.	Cedertown	GA
Newton FS&LA	Covington	GA
Griffin Federal Savings Bank.	Griffin	GA
Home Federal Savings Bank.	Rome	GA
Thomaston Federal Savings Bank.	Thomaston	GA
Thomas County FS&LA	Thomasville	GA
Stephens FS&LA	Toccoa	GA
Tucker FS&LA	Tucker	GA
First FS&LA	Valdosta	GA
American National SA, F.A.	Baltimore	MD
Bradford FSB	Baltimore	MD
First FSB of Western Maryland.	Cumberland	MD
OBA FS&LA	Gaithersburg	MD
Eastern Savings Bank, FSB.	Hunt Valley	MD
Maryland FS&LA	Hyattsville	MD
Custom Savings Bank, A FSB.	Pikesville	MD
Citizens Savings Bank, FSB.	Silver Spring	MD
First Southern Savings Bank.	Asheboro	NC
Brevard FS&LA	Brevard	NC
Security FSB	Durham	NC
East Coast FSB	Goldsboro	NC
First Financial SB, Inc	Kinston	NC
Citizens Savings Bank	Newton	NC
Raleigh FSB	Raleigh	NC
United FSB	Rocky Mount	NC
Citizens FS&LA	Salisbury	NC
Cleveland FSB, A Savings Bank.	Shelby	NC
Ashe FS&LA	West Jefferson	NC
Piedmont FS&LA	Winston-Salem	NC
Security FSB of SC	Aiken	SC
First Palmetto Savings Bank, FSB.	Camden	SC
First Trident S&LA Corp	Charleston	SC
First FS&LA of Georgetown.	Georgetown	SC
United Savings Bank, FSB.	Greenwood	SC
Cooper River FSB	N. Charleston	SC
Community FS&LA	Winnsboro	SC
Woodruff FS&LA	Woodruff	SC
Columbia First Bank, A FSB.	Arlington	VA
Pioneer FSB	Chester	VA
Continental FSB	Fairfax	VA
Fredericksburg S&LA, FA.	Fredericksburg	VA
Piedmont FSB	Manassas	VA
Eastern American Bank, FSB.	McLean	VA
Newport News Savings Bank.	Newport News	VA
Bay Savings Bank, FSB	Newport News	VA
Cenit Bank for Savings, FSB.	Norfolk	VA
Life Savings Bank, FSB	Norfolk	VA
Franklin FS&LA	Richmond	VA
Providence S&LA, F.A	Vienna	VA

Federal Home Loan Bank of Cincinnati—District 5, Post Office Box 598, Cincinnati, Ohio 45201.

Member	City	State
People Fed. S&LA of Bellevue.	Bellevue	KY
First Fed. S&LA of Bowling Green.	Bowling Green	KY
Citizens Bank & Trust Co.	Campbellsville	KY
Citizens Fed. S&LA of Covington.	Covington	KY
First Fed. S&LA of Covington.	Covington	KY
Central Kentucky Fed. S&LA.	Danville	KY
Columbia Fed. S&LA of Covington.	Fort Mitchell	KY
Harrodsburg First Fed. S&LA.	Harrodsburg	KY
First Fed. S&LA of Hazard.	Hazard	KY
First Fed. Savings Bank	Hopkinsville	KY
Republic Savings Bank, FSB.	Louisville	KY
Home Fed. S&LA of Ludow.	Ludlow	KY
First Fed. Savings Bank of KY.	Madisonville	KY
Home Fed. Bank, FSB	Middlesboro	KY
The Bank of Mt. Vernon	Mount Vernon	KY
Peoples Bank	Mt. Washington	KY
United Citizens Bank & Trust Co.	New Castle	KY
The First State Bank of Pineville.	Pineville	KY
Central Bank of N. Pleasureville.	Pleasureville	KY
Citizens National Bank of Bluffton.	Bluffton	OH
First City Bank	Christianburg	OH
Clifton Heights Loan & Bldg Co.	Cincinnati	OH
Columbia Savings & Loan Co.	Cincinnati	OH
North Cincinnati L&Bldg Co.	Cincinnati	OH
First Fed. Savings & Loan.	Defiance	OH
Fidelity Federal S&L	Delaware	OH
First Fed. Savings Bank of Dover.	Dover	OH
Home Bldg & Loan Co.	Greenfield	OH
Mayflower Savings & Loan Co.	Grosebeck	OH
Home Fed. Bank, A FSB.	Hamilton	OH
Liberty Fed. S&LA	Ironton	OH
The Citizens Bank of Logan, OH.	Logan	OH
Security Savings Asso.	Milford	OH
Market Bldg & Savings Co.	Mt. Healthy	OH

Member	City	State
The Nelsonville Home & Sav. Asso.	Nelsonville	OH
The First S&LA	Norwood	OH
The Valley Central S&LA Co..	Reading	OH
Mutual FSB, A Stock Corp.	Zanesville	OH
Dollar Bank FSB	Pittsburgh	PA
Tri-County Fed. Savings Bank.	Covington	TN
Farmers and Merchants Bank.	Dover	TN
Security Trust FS&LA	Knoxville	TN
Lexington First Fed. S&LA.	Lexington	TN
Volunteer FS&LA of Madisonville.	Madisonville	TN
First National Bank of McMinnville.	McMinnville	TN
Leader Fed. Bank for Savings.	Memphis	TN
Franklin Fed. Savings Bank.	Morristown	TN
Liberty Fed. Savings Bank.	Paris	TN

Federal Home Loan Bank of Indianapolis—District 6, P.O. Box 60, Indianapolis, IN 46205–0060.

Member	City	State
Frist Fed. Savings Bank of Angola.	Angola	IN
Peoples FSB of DeKalb County.	Auburn	IN
Fayette Fed. Savings Bank.	Connersville	IN
Home Loan Savings Bank.	Fort Wayne	IN
Newton County L&SA of IN.	Goodland	IN
Hobart Fed. S&LA	Hobart	IN
First Fed Savings Bank of Kokomo.	Kokomo	IN
First FSB of Lafayette	Lafayette	IN
Union FS&LA	Lebanon	IN
Security Fed. & LA	Logansport	IN
Mooresville Savings Bank, FSB.	Mooresville	IN
American Savings Bank	Munster	IN
First Fed. S&LA of Richmond.	Richmond	IN
Peoples Bldg & LA	Tell City	IN
Valley Bank A FSB	Terre Haute	IN
First Fed. Bank, A FSB	Vincennes	IN
First Fed. Sav. Bank of Wabash.	Wabash	IN
First Fed. S&LA of Alpena.	Alpena	MI
First Security Savings Bank, FSB.	Bloomfield Hills	MI
Eaton Fed. Savings Bank.	Charlotte	MI
Security Savings Bank, FSB.	Jackson	MI
Franklin Savings Bank, FSB.	Southfield	MI

Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Member	City	State
Aurora Federal Savings Bank.	Aurora	IL
First FS&LA of Belvidere.	Belvidere	IL
First FS&LA of Champaign-Urbana.	Champaign	IL
Bell FS&LA	Chicago	IL
Central FS&LA	Chicago	IL
Hoyne S&LA	Chicago	IL
Loomis FS&LA	Chicago	IL
Damen FSB for Savings Universal S&LA.	Chicago	IL
North FSB	Chicago	IL
First Security FSB	Chicago	IL
Fidelity FSB	Chicago	IL
Deerfield FS&LA	Deerfield	IL
Calumet FS&LA	Dolton	IL
South End Savings, A FSB.	Homewood	IL
Wabash Savings Bank	Mt. Carmel	IL
Nashville S&LA	Nashville	IL
Citizens Savings Bank, FSB.	Normal	IL
Peru FS&LA	Peru	IL
Home Guaranty Savings Asso.	Piper City	IL
First Robinson S&L, FA	Robinson	IL
First Fed. S&LA of Bureau County.	Spring Valley	IL
Northland Bank of WI	Ashland	WI
Fox Valley S&LA	Fond Du Lac	WI
First FSB LaCrosse-Madison.	LaCrosse	WI
Ladysmith Fed. S&LA	Ladysmith	WI
Merrill FS&LA	Merrill	WI
Continental SB, St. Asso.	Milwaukee	WI
Lincoln Savings Bank, SA.	Milwaukee	WI
Guaranty Bank, SSB	Milwaukee	WI
First Financial Bank, FSB.	Stevens Point	WI
American Equity Bank, SSB.	Stevens Point	WI
Superior S&LA	Superior	WI

Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309.

Member	City	State
Ames Savings Bank, FSB.	Ames	IL
Midwest Fed. S&LA	Burlington	IA
First Fed. S&LA	Creston	IA
Community Savings Bank.	Edgewood	IA
Grinnel Fed. S&LA	Grinnell	IA
Independence Fed. S&LA.	Independence	IA
Liberty Savings Bank, FSB.	Johnston	IA
Security Bank	Kellogg	IA
State Central Bank	Keokuk	IA
Interstate Fed. S&LA	McGregor	IA
Story County Bank & Trust Co.	Story City	IA
Viking Savings Asso, F.A.	Alexandria	MN
Investors Savings Bank, FSB.	Minnetonka	MN
Roosevelt Bank, A FSB	Chesterfield	MO
United S&LA	Lebanon	MO
First Fed. S&LA	Manchester	MO
First Home Savings Bank.	Mountain Grove.	MO
Southern Missouri S&LA	Poplar Bluff	MO
Conservative Bank, A FSB.	St. Louis	MO
Brookings S&LA	Brookings	SD
Live Stock State Bank	Mitchell	SD
First Fed. Savings Bank of SD.	Rapid City	SD
First Western Fed. Savings Bank.	Rapid City	SD

Federal Home Loan Bank of Dallas—District 9, 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038.

Member	City	State
First State Bank	Beebe	AR
Corning Savings and Loan Asso.	Corning	AR
Heritage Federal S&LA	Little Rock	AR
Federal Savings Bank	West Memphis	AR
WynBanc Savings, FSB	Wynne	AR
Citizens S&LA	Baton Rouge	LA
Home S&LA	Lafayette	LA
Grter New Orleans Homestead Asso.	Metairie	LA
Atchafalaya Federal Savings Bank.	Morgan City	LA
Algiers Homestead Asso.	New Orleans	LA
First Fed. S&LA of Allen Parish.	Oakdale	LA
Rayne Building and Loan Asso.	Rayne	LA
Eastover Bank For Savings.	Jackson	MS
North Central Bank For Savings.	Winona	MS
Alamogordo Fed. S&LA	Alamogordo	NM
Union Savings Bank	Albuquerque	NM
First Fed. Savings Bank of NM.	Roswell	NM
Charter Bank For Savings.	Sante Fe	NM
Tucumcari Fed. S&LA	Tucumcari	NM
First Savings Bank, FSB	Arlington	TX
American Federal Bank, FSB.	Dallas	TX
First Gibraltar Bank, FSB.	Dallas	TX
Colonial S&LA	Fort Worth	TX
Gilmer Savings Bank, FSB.	Gilmer	TX
Riverway Bank	Houston	TX
FirstBanc Saving Asso. of Texas.	Missouri City	TX
First FS&LA	Paris	TX
Balcones Banc Savings Asso.	San Marcos	TX

Federal Home Loan Bank of Topeka—District 10, Post Office Box 176, Topeka, Kansas 66601.

Member	City	State
Vectra Bank of Denver	Denver	CO
Century Bank & Trust	Denver	CO
Vectra Bank of Federal Heights.	Federal Heights	CO
The First National Bank of Ordway.	Ordway	CO
Vectra Bank of Thornton.	Thornton	CO
Century S&LA	Trinidad	CO
Vectra Bank of Wheat Ridge.	Wheat Ridge	CO
The Prairie State Bank	Augusta	KS
Mid-Continent Fed. S&LA.	El Dorado	KS

Member	City	State
The Savings Bank of Lawrence.	Lawrence	KS
Mutual Savings Asso	Leavenworth	KS
Manhattan Fed. S&L	Manhattan	KS
Capitol Fed. S&LA	Topeka	KS
Postal S&LA	Topeka	KS
Railroad Savings Bank, FSB.	Wichita	KS
Lancaster County Bank	Waverly	NE
Clinton S&LA	Clinton	OK
Guthrie S&LA	Guthrie	OK
Local Fed. S&LA of OK City.	Oklahoma City	OK

Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666.

Member	City	State
United California Savings Bank.	Anaheim	CA
Heart FS&LA	Auburn	CA
Fullerton Savings & Loan Asso..	Fullerton	CA
Hemet FS&LA	Hemet	CA
ITT Federal Bank, FSB	Irvine	CA
Western Financial Savings Bank.	Irvine	CA
First Public Savings	Los Angeles	CA
Home Savings of America, F.A..	Los Angeles	CA
Western FS&LA	Marina Del Rey	CA
Household Bank, F.S.B.	Newport Beach	CA
World S&LA a FS&LA	Oakland	CA
Northbay Savings Bank, FSB.	Petaluma	CA
Pomona First FS&LA	Pomona	CA
San Clemente Savings Bank.	San Clemente	CA
Homestead Savings, a FS&LA.	San Francisco	CA
San Francisco FS&LA	San Francisco	CA
Home FS&LA of San Francisco.	San Francisco	CA
Sincere FSB	San Francisco	CA
Stockton Savings Bank, F.S.B.	Stockton	CA
PriMerit Bank, FSB	Las Vegas	NV

Federal Home Loan Bank of Seattle—District 12, 1501 4th Avenue, Seattle, Washington 98101–1693.

Member	City	State
Mt. McKinley Mutual Savings Bank.	Fairbanks	AK
First FS&LA American	Honolulu	HI
First FSB of Montana	Kalispell	MT
West One Bank Oregon, SB.	Hillsboro	OR
Valley Community Bank	McMinnville	OR
Jackson County Federal Bank.	Medford	OR
The Prineville Bank	Prineville	OR
Summit Savings Bank	Bellevue	WA
West One Bank, Washington.	Bellevue	WA
InterWest Savings Bank	Oak Harbor	WA
Centennial Bank	Olympia	WA
Raymond Federal S&LA	Raymond	WA
Washington FS&LA	Seattle	WA
University Savings Bank	Seattle	WA
Sterling Savings Asso.	Spokane	WA
Big Horn FSB	Greybull	WY

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than June 29, 1992.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than June 29, 1992.

D. Notice to Members Selected

Within 15 days of the notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: May 12, 1992.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92–11517 Filed 5–14–92; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Trans-Atlantic Agreement, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011375.

Title: Trans-Atlantic Agreement.

Parties:

Atlantic Container Line AB
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen BV
Hapag Lloyd AG
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Polish Ocean Lines
Mediterranean Shipping Co.
DSR/Senator Joint Service
P&O Containers Limited
Orient Overseas Container Line (UK) Ltd.
Cho Yang Shipping Co.

Synopsis: The proposed Agreement replaces Agreement No. 202–011373, which was withdrawn on April 30, 1992. The Agreement will establish an association of ocean common carriers in the trade between Continental United States and Northern Europe. The parties will discuss and agree upon matters of mutual interest, including rates and a common tariff. The Agreement will also include a voluntary cooperative working arrangement with respect to space chartering, sharing container equipment, a capacity management program, allocation of cargo or revenue, and other activities within the scope of the Agreement described at section 4 of the Shipping Act of 1984.

Agreement No.: 224–200659.

Title: Port of Galveston/Universal Shipping Agencies, Inc Incentive Agreement.

Parties:

Port of Galveston
Universal Shipping Agencies, Inc.

Synopsis: The Agreement permits the Galveston Wharves to offer incentives to Universal Shipping Agencies, Inc., for dockage charges, regarding grain sales to the former U.S.S.R.

Dated: May 11, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc 92-11457 Filed 5-14-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

William H. Bosshard, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. William H. Bosshard, LaCrosse, Wisconsin; to acquire 54.05 percent of the voting shares of Bosshard Financial Group, Inc., LaCrosse, Wisconsin, and thereby indirectly acquire Bank of Alma, Alma, Wisconsin; Grand Marsh State Bank, Grand Marsh, Wisconsin; La Farge State Bank, La Farge, Wisconsin; and Farmers State Bank, Hillsboro, Wisconsin.

2. Hawkeye Bancorporation Employee Stock Ownership Plan, Des Moines, Iowa; to acquire up to 24.9 percent of the voting shares of Hawkeye Bancorporation, Des Moines, Iowa, and thereby indirectly acquire Hawkeye Ankeny Bank and Trust, Ankeny, Iowa; Hawkeye Bank of Mt. Ayr, Mt. Ayr, Iowa; Citizens National Bank of Boone-Stratford, Boone, Iowa; Hawkeye Bank of Mt. Pleasant, Mt. Pleasant, Iowa; Hawkeye Bank of Cedar Rapids, Cedar Rapids, Iowa; Hawkeye Bank of Jasper County, Newton, Iowa; Hawkeye Bank of Centerville, N.A., Centerville, Iowa; Onawa State Bank, Onawa, Iowa; Hawkeye Bank of Chariton, Chariton, Iowa; Pella National Bank, Pella, Iowa; First National Bank, Clinton, Iowa; Lyon County State Bank, Rock Rapids, Iowa; Hawkeye Bank of Council Bluffs, Council Bluffs, Iowa; First National Bank of Sibley, Sibley, Iowa; Hawkeye Bank of Des Moines, Des Moines, Iowa; Hawkeye Bank and Trust, Spencer, Iowa; Hawkeye Bank of Humboldt County, Humboldt, Iowa; Hawkeye Bank of Tipton, Tipton, Iowa; Hawkeye Bank of Maquoketa, Maquoketa, Iowa; Hawkeye Bank of Vinton, Vinton, Iowa; Hawkeye Bank of Marshalltown, Marshalltown, Iowa; and The National Bank of Washington, Washington, Iowa.

Board of Governors of the Federal Reserve System, May 11, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-11465 Filed 5-14-92; 8:45 am]

BILLING CODE 6210-01-F

Summit Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 8, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Summit Bancorp, Inc., Johnstown, Pennsylvania; to acquire 19.6 percent of the voting shares of The First National Bank of Lilly, Lilly, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Broadstreet, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 94 percent of the voting shares of Amtrade International Bank of Georgia, Atlanta, Georgia.

2. First Citizens Bancorp, Cleveland, Tennessee; to acquire 80 percent of the voting shares of Basin Bancorp, Inc., Ducktown, Tennessee, and thereby indirectly acquire The Home Bank of Tennessee, Ducktown, Tennessee.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Community Bancshares, Inc., Bargersville, Indiana; to acquire 100 percent of the voting shares of Bargersville Federal Savings Bank, Bargersville, Indiana, following its conversion to a state chartered nonmember bank to be achieved through the merger with First Community Bank & Trust, Bargersville, Indiana, an interim bank to be established for this purpose.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Security Bancshares, Inc., Des Arc, Arkansas; to acquire 100 percent of the voting shares of Southern Bancshares, Inc., West Helena, Arkansas, and thereby indirectly acquire Merchants and Farmers Bank, West Helena, Arkansas.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Porter Bancshares, Inc., Porter, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Porter, Porter, Oklahoma.

Board of Governors of the Federal Reserve System, May 11, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-11466 Filed 5-14-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Office of Family Assistance, Administration for Children and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an existing collection of information of "The At-Risk Child Care Plan Preprint" as an Amendment to Form ACF–107, the State Supportive Services Plan for the Office of Family Assistance of the Administration on Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: The At-Risk Child Care Plan Preprint as an Amendment to Form ACF–107, the State Supportive Services Plan.

OMB No.: 0970–xxxx.

Description: Section 402(i) of the Social Security Act gives States the option to provide child care services to low-income families who need child care services in order to work and who are not currently receiving Aid to Families with Dependent Children (AFDC), but would otherwise be at risk of needing AFDC.

The Administration for Children and Families (ACF) has developed an At-Risk Child Care Plan Preprint form which the States must use as an addendum to their existing Supportive Services Plans. The plans constitute an agreement between the State and Federal governments as to how the State will implement the At-Risk Child Care program. Authority to require a plan from States who elect to operate an At-Risk Child Care program is contained in sections 403 and 1102 of the Social Security Act and in CFR 257.20 of the final regulations now pending approval at the Office of Management and Budget. The use of this plan preprint form will promote consistency and facilitate collection of information needed to compare program data.

Annual Number of Respondents: 54.

Annual Frequency: 1.

Average Burden Hours Per Response: 8.

Total Burden Hours: 432.

Dated: May 5, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92–11518 Filed 5–14–92; 8:45 am]

BILLING CODE 4130–01–M

Agency for Health Care Policy and Research

Health Care Technology Study Section, et al.; Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (title 5, U.S.C. appendix 2) announcement is made of the following advisory committees scheduled to meet during the month of June 1992:

Name: Health Care Technology Study Section.

Date and Time: June 1–3, 1992, 8 a.m.

Place: Marriott Residence Inn, Montgomery II Room, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open June 1, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the utilization and effects of health care technologies and procedures as well as applications in the area of information and decision sciences relating to health care delivery.

Agenda: The open session of June 1 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, Agency for Health Care Policy Research (AHCPR). The closed sessions of the meeting will be devoted to a review of health services research grant applications emphasizing medical care technologies and procedures, and relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Alan E. Mayers, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: June 10–12, 1992, 8 a.m.

Place: Days Inn, Georgetown Room, 1775 Rockville Pike, Rockville, Maryland 20852.

Open June 10, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on June 10 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed session, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Research Review Subcommittee.

Date and Time: June 18–19, 1992, 8:30 a.m.

Place: Marriott Residence Inn, Calvert I Conference Room, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open June 18–19, 8:30 a.m. to 9:15 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on June 18 from 8:30 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Research Dissemination and User Liaison Advisory Committee.

Date and Time. June 18–19, 8 a.m.

Place: Marriott Residence Inn, Montgomery I, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open June 18, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open sessions of the meeting on June 18 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed portions of the meeting, the Committee will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Agenda items for all meetings are subject to change as priorities dictate.

Date: May 8, 1992.

Risa J. Lavizzo-Mourey,

Administrator.

[FR Doc. 92–11477 Filed 5–14–92; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 92D–0158]

Anticoccidial Drugs in Poultry; Draft Guidelines; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline entitled "Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry," prepared by the Center for Veterinary Medicine (CVM). The draft guideline addresses how to demonstrate the efficacy of anticoccidial drugs and anticoccidial drug combinations for poultry.

DATES: Written comments by July 14, 1992.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8602.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline entitled "Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry." This draft provides new animal drug application (NADA) sponsors and clinical investigators with guidance on how to design and conduct experiments and collect the effectiveness data necessary to obtain approval of an anticoccidial drug or an anticoccidial drug in combination with an antibiotic and/or arsenical for use in poultry feeds. The draft guideline delineates the types of studies, experimental designs, and procedures that can be used to gather data to demonstrate that an anticoccidial drug is effective in preventing coccidial infection. The draft guideline also describes the types of studies, experimental designs, and procedures that can be used to gather data to demonstrate the effectiveness of each active ingredient in an anticoccidial drug, antibiotic, and/or arsenical combination. This draft guideline supersedes the "Anticoccidial Guidelines" (1974).

The draft guideline addresses the conduct of studies required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360b(d), and 21 CFR 514.1 to demonstrate the effectiveness of new animal drugs. The draft guideline reflects principles commonly recognized by the scientific community as appropriate and necessary to collecting scientific data. A person may follow the draft guideline or may choose to follow alternate procedures. The person choosing to use alternate procedures may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA.

This draft guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. Where the guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Dated: May 8, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–11423 Filed 5–14–92; 8:45 a.m.]

BILLING CODE 4160–01–F

Request for Nominations for Members on Public Advisory Committees in the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 12 months. FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to

Isaac F. Roubein (address below). All nominations for consumer-nominated members should be sent to Phyllis Weller (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for consumer-nominated members: Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Regarding all nominations for consumer-nominated members: Phyllis Weller, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following 14 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Anesthetic and Life Support Drugs Advisory Committee:* Two vacancies occurring June 30, 1992.

2. *Anti-Infective Drugs Advisory Committee:* Four vacancies occurring November 30, 1992, including that of the consumer-nominated member.

3. *Antiviral Drugs Advisory Committee:* Four vacancies occurring October 31, 1992.

4. *Arthritis Advisory Committee:* One vacancy occurring September 30, 1992, including that of the consumer-nominated member.

5. *Cardiovascular and Renal Drugs Advisory Committee:* Two vacancies occurring immediately and two vacancies occurring June 30, 1992.

6. *Dermatologic Drugs Advisory Committee:* One vacancy occurring immediately and three vacancies occurring August 31, 1992.

7. *Endocrinologic and Metabolic Drugs Advisory Committee:* One vacancy occurring immediately and four vacancies occurring June 30, 1992, including that of the consumer-nominated member.

8. *Fertility and Maternal Health Drugs Advisory Committee:* Two vacancies occurring June 30, 1992.

9. *Gastrointestinal Drugs Advisory Committee:* Two vacancies occurring immediately and three vacancies occurring June 30, 1992, including that of the consumer-nominated member.

10. *Generic Drugs Advisory Committee:* Three vacancies occurring immediately and three vacancies occurring October 31, 1992.

11. *Peripheral and Central Nervous Systems Drugs Advisory Committee:* Two vacancies occurring immediately and one vacancy occurring January 1, 1993.

12. *Psychopharmacologic Drugs Advisory Committee:* Two vacancies occurring June 30, 1992.

13. *Pulmonary-Allergy Drugs Advisory Committee:* Six vacancies occurring immediately and three vacancies occurring June 30, 1992.

The functions of the 13 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational human drugs for use in the area of medical specialties, indicated by the title of the committee, and to make appropriate recommendations to the Commissioner of Food and Drugs.

14. *Drug Abuse Advisory Committee:* One vacancy occurring immediately and four vacancies occurring June 30, 1992.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner regarding the scientific and medical evaluation of all information gathered by both the Department of Health and Human Services (DHHS) and the Department of Justice regarding the safety, efficacy, and abuse potential for drugs or other substances; and (2) recommend actions to be taken by DHHS regarding the marketing, investigation, and control of such drugs or other substances.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as anesthesiology, surgery, internal medicine, infectious disease, microbiology, pediatrics, ophthalmology, clinical immunology, cardiology, hypertension, arrhythmia, angina, biostatistics, epidemiology, dermatopathology/immunodermatology, dermatology, psychopharmacology, neurochemistry, neuropharmacology, pediatric endocrinology, metabolism, endocrinology, obstetrics and gynecology, reproductive endocrinology, gastroenterology, pharmacology, clinical pharmacology, hepatology, virology, physiology, gerontology, pharmaceutical manufacturing, bioavailability and bioequivalence research, pharmacokinetics, neurology, psychiatry, neuropharmacology, neuropathology, pulmonary disease, allergy, immunology, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 8, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–11424 Filed 5–14–92; 8:45 a.m.]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Availability of Funds for National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the **Federal Register** on May 1, 1992 (57 FR 18891) under Part B—Grants for State Loan Repayment Program for applications to assist States in operating programs for the repayment of educational loans of health professionals in return for their practice in health professional shortage areas. The new due date is July 1, 1992.

All other information remains unchanged.

Dated: May 11, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–11476 Filed 5–14–92; 8:45 am]

BILLING CODE 4160–15–M

Indian Health Service

Tribal Management Grant Program for American Indians/Alaska Natives: Technical Assistance Workshop Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Technical Assistance Workshops for prospective IHS grantees.

SUMMARY: The Indian Health Service (IHS) announces that technical assistance workshops for the Tribal Management Grant Program to include grant proposal writing will be conducted for American Indian/Alaska Native Tribes and Tribal Organizations as defined by Public Law 93–638, as amended.

DATES: Technical assistance workshops are scheduled for November 3–5, 1992, in San Diego, California; November 17–19, 1992, in Seattle, Washington; December 1–3, 1992, in Nashville, Tennessee; and December 15–17, 1992 in Albuquerque, New Mexico.

FOR FURTHER REGISTRATION INFORMATION CONTACT: Ms. Bea Bowman, Director, Division of Community Services, Office of Tribal Activities, Indian Health Service, Parklawn Building, room 6A–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6840; Mrs. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grant Operations, Twinbrook Building, suite 605, 12300 Twinbrook Parkway, Rockville, Maryland 20852, (301) 443–5204. (THESE ARE NOT TOLL–FREE NUMBERS.)

SUPPLEMENTARY INFORMATION: The Office of Tribal Activities, Division of Community Services; and Division of Acquisition and Grants Operations, Grants, Management Branch will provide potential applicants an opportunity to receive technical assistance for Tribal Management including participation in grant writing workshops to assist applicants in developing and submitting competitive proposals. The purpose is to: (a) Establish communication between the IHS and the applicants, (b) determine the applicants eligibility, and (c) to provide technical assistance to increase the ability of an applicant to successfully compete. Applicants will prepare preapplications for constructive review and feedback during the workshop.

Dated: May 8, 1992.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 92–11415 Filed 5–14–92; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Cancer Institute; Meeting (President's Cancer Panel)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, May 28, 1992, at the Holiday Inn, Bethesda, Versailles Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

This meeting will be open to the public on May 28, 1992, 8:30 a.m. to 12:30 p.m. Attendance will be limited to space available. Agenda items will include remarks by Mrs. Marilyn Quayle, the Chairman, President's Cancer Panel Special Commission on Breast Cancer, the Director, NCI, and other participants.

Ms. Iris Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31, room 11A48, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5534) will provide a roster of the Commission members and substantive program information upon request.

Dated: May 11, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–11442 Filed 5–14–92; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the Biomedical Research Technology Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee, National Center for Research Resources, National Institutes of Health.

This meeting will be open to the public as listed below for a brief staff presentation on the current status of the Biomedical Research Technology Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(b)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Biomedical Research Technology Program. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James J. Doherty, Acting Information Officer, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: Biomedical Research Technology Review Committee.

Scientific Review Administrator: Dr. Mary Ann Sestili, Director, Office of Review, National Center for Research Resources, National Institutes of Health, Westwood Building, room 8A16, 5333 Westbard Avenue, Bethesda, Maryland, 20892. Telephone: (301) 402–0314.

Date of Meeting: June 22–23, 1992.

Place of Meeting: Embassy Suites Hotel, Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Open: June 22, 8:30 a.m.–10 a.m.
Agenda: Report and review of administrative details.
Closed: June 22, 10 a.m.–Recess., June 23, 8:30 a.m.-Adjournment.
Closure Reason: To review grant applications.
(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health)
Dated: April 30, 1992.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 92–11433 Filed 5–14–92; 8:45 am]
BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), National Institutes of Health.

The meeting will be open to the public as indicated below during which time there will be comments by the Director, NCRR; and an update on the GCRC Program by Dr. Judith L. Vaitukaitis, Acting Director, GCRC Program, NCRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public as indicated below for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James J. Doherty, Acting Information Officer, NCRR, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the Committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: General Clinical Research Centers Committee.
Scientific Review Administrator: Dr. Bela J. Gulyas, National Center for Research Resources, National Insitutes of Health, Westwood Building, room 10A16, 5333 Westbard Avenue, Bethesda, Maryland 20892. Telephone: (301) 402–0627
Date of Meeting: June 16–18, 1992.
Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
Open: June 16, 8 a.m.–9:30 a.m.
Agenda: Report and review of administrative details.
Closed: June 16, 9:30 a.m.–until recess. June 17, 8 a.m.–until recess. June 18, 8 a.m.–Adjournment.
Closure Reason: To review grant applications.
(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health)
Dated: April 30, 1992.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 92–11434 Filed 5–14–92; 8:45 am]
BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the Comparative Medicine Review Committee

Pursuant to Public 92–463, notice is hereby given of a meeting of the Comparative Medicine Review Committee, National Center for Research Resources, National Intitutes of Health.

The meeting will be open to the public as listed below for a brief staff presentation on the current status of the Comparative Medicine Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications submitted to the Comparative Medicine Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal informtion concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James J. Doherty, Acting Information Officer, Nationial Center for Research Resources, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: Comparative Medicine Review Committee.
Scientific Review Administrator: Dr. Arthur D. Schaerdel, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A16, 5333 Westbard Avenue, Bethesda, Maryland 20892, Telephone: (301) 496–4390.
Date of Meeting: June 14–15, 1992.
Place of Meeting: Holiday Inn, Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: June 14, 7 p.m. until Recess.
Agenda: Report and review of administrative details.
Closed: June 15, 8:30 a.m. until Adjournment.
Place of Meeting: National Institute of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892
Closure Reason: To review grant applications.
(Catalog of Federal Domestic Assistance Programs No. 93.306, Laboratory Animal Sciences, National Institutes of Health)
Dated: Apr 30, 1992.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 92–11437 Filed 5–14–92; 8:45 am]
BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date of Meeting: June 10–12, 1992.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: June 10, 6:45 p.m. until recess, Planning and Agenda Subcommittee, Building 12A, room 4007. June 11, 9 a.m. until recess, Conference Room 6, Building 31C.

Closed: June 12, 8 a.m. until 10:30 a.m., Conference Room 6, Building 31C.

Open: June 12, 10:30 a.m. until adjournment, Conference Room 6, Building 31C.

Mr. James J. Doherty, Information Office, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Deputy Director for Extramural Research Resources, NCRR, Building 12A, room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; National Institutes of Health.)

Dated: April 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–11440 Filed 5–14–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 15, 1992, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

The meeting will be open to public on June 15, from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available.

The meeting will be closed to the public on June 15 from 9:30 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Theresa Lo, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, room 5A07, Bethesda, Maryland 20892, (301) 496–0754.

Ms. Suzanne Sangalan, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C27, Bethesda, Maryland 20892, 301–496–0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: April 30, 1992.

Susan K. Feldman,

NIH Committee Management Officer

[FR Doc. 92–11438 Filed 5–14–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases Meeting; National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursunat to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 11, 1992, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public June 11 from 8:30 a.m. to 10 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on June 11 from 10:15 a.m. to adjournment at approximately 6 p.m. in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting may be obtained from Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496–0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, rm. 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: April 30, 1992.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 92–11439 Filed 5–14–92; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of a teleconference meeting of the National Advisory Council on Aging, National Institute on Aging, May 27, 1992, to be held at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Wednesday, May 27, from 1 p.m. until 2 p.m. for a status report by the Acting Director, NIA; for discussion of the NIA budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the teleconference meeting of the Council will be closed to the public on May 27 from 2 p.m. to adjournment for the review, discussion and evaluation of grant applications.

The applications and the discussions could reveal confidential trade secrets

or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee memebers upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–11441 Filed 5–14–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No N–92–1917; FR–2934–N–78]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., room. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Navy; John J. Kane, Deputy Division Director, Department of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Department of the Interior: Lola D. Knight, Property Management Specialist, Department of the Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Department of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. rm. 1566, 14th Independence Ave. SW., Washington, DC 20250; (202) 447–3338; Department of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: May 8, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program; Federal Register Report for 05/15/92

California—Fort Ord

Fort Ord is located 7 miles north of the City of Monterey and 120 miles southeast of San Francisco, California 93941–5000. The installation is scheduled for closure on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 28,720 acres and 14 million square feet of permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational.

maintenance and storage facilities; and other more specialized structures.

For specific information concerning Fort Ord, please contact Commander, 7th ID, ATTN: AFZW-RM (LTC Anderson), Fort Ord, California 93941-5000.

Suitable/Available Properties

Property Number: 329210039.
Type Facility: Housing—1431 family houses; majority are 2-story.

Property Number: 329210040.
Type Facility: Temporary Living Quarters—254 buildings; wood, concrete and concrete block structures including barracks.

Property Number: 329210041.
Type Facility: Office/Administration—311 buildings; wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs.

Property Number: 329210042.
Type Facility: Recreation—53 facilities including bowling center, guest houses, community and youth centers, library, gym and recreation bldgs.

Property Number: 329210043.
Type Facility: Aircraft/Airport Facilities—18 facilities including hangars, runway, taxiways, aprons, fire station, maintenance bldgs. and control tower.

Property Number: 329210044.
Type Facility: Maintenance/Engineering Facilities—24 buildings; wood, concrete block and steel structures.

Property Number: 329210045.
Type Facility: Mess/Dining Halls—95 buildings; wood, concrete and concrete block dining facilities.

Property Number: 329210046.
Type Facility: Child Care—7 buildings; wood and concrete child care centers.

Property Number: 329210047.
Type Facility: Stores and Services—23 buildings; wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange.

Property Number: 329210048.
Type Facility: Hospital Facilities—10 buildings; wood, concrete, and concrete block structures including a hospital, clinics and vet. facilities.

Property Number: 329210049.
Type Facility: Chapels—10 buildings; wood, concrete, concrete block chapels and chapel center facilities.

Property Number: 329210050.
Type Facility: Fire Facilities—2 fire stations.

Property Number: 329210051.
Type Facility: Audio Visual Facilities—8 buildings; wood, concrete and steel structures including photo labs and training centers.

Property Number: 329210052.
Type Facility: Communications/Electronics Facilities—6 buildings; concrete, concrete block and steel structures including a communication center and radio bldgs.

Property Number: 329210053.
Type Facility: Warehouses—224 buildings; wood, concrete, concrete block and steel structures including storage bldgs. and sheds.

Property Number: 329210054.
Type Facility: Vehicle Shops—84 buildings; wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs.

Property Number: 329210055.
Type Facility: Miscellaneous Facilities—440 facilities including hdqts. bldgs. reserve centers, classrooms, day rooms, roads, vehicle parks and training areas.

Property Number: 329210056.
Type Facility: Multi-Purpose Facilities—27 facilities.

Property Number: 329210057.
Type Facility: Fuel Facilities—31 buildings; concrete, concrete block and steel structures including gas station bldgs.

Property Number: 329210058.
Type Facility: Hazardous Storage Facilities—6 buildings; concrete, concrete block and steel structures.

Property Number: 329210059.
Type Facility: Explosives/Munitions Facilities—31 buildings; concrete and steel structures including igloo storages and magazine storages.

Suitable/Available Properties

Connecticut

15 Family Houses
Portland CT 36
Freedom Street
Portland Co: Middlesex CT 06484-
Landholding Agency: COE—BC
Property Number: 319011218-319011232
Status: Excess
Base Closure
Comment: Approx. 1000 sq. ft., 1 story wood frame residences.

Hawaii—Kapalama Military Reservation Phase III

Kapalama Military Reservation is located in the Harbor district in the City of Honolulu. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 30, 1994. Properties shown below as suitable will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base comprises 21.22 acres and contains nine buildings which are currently being used for storage.

Suitable/Available Properties

Property Numbers: 329210003-329210011.
Type Facility: Nine building currently used for storage; 116 to 39854 sq. ft.; one story wood frame; needs minor rehab.

Suitable/Available Properties

Illinois

12 Addison Family Houses
Fort Sheridan
Addison Co: DuPage IL 60101-
Landholding Agency: COE—BC
Property Number: 329210001
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, scheduled to be vacated 05/93.

12 Worth Family Houses
Fort Sheridan
Worth Co: Cook IL 60482-
Landholding Agency: COE—BC
Property Number: 329210002
Status: Excess
Base Closure
Comment: 1-story residences, possible asbestos, off-site use only, scheduled to be vacated 05/93.

Indiana—Fort Benjamin Harrison

Fort Benjamin Harrison is located northeast of Indianapolis in the City of Lawrence 46216-5000. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2501 acres and has 4.7 million square feet of facilities. The properties that HUD has determined suitable and which are available include family housing residences, temporary living quarters, office/administration buildings, various types of recreational facilities, child care centers and chapels, dining halls, a hospital, warehouses, miscellaneous and other specialized structures. More specific information concerning properties at the base can be obtained by contacting Commander, U.S. Army Soldier Support Center, Attn: ATZI-CG-BR (Colonel John A. Peck), Fort Benjamin Harrison, Indiana 46216-5000.

Suitable/Available Properties

Property Numbers: 329210068-329210069.
Type Facility: Housing—90 family residences, 1 and 2 story brick frame; 29 temporary living quarters (barracks), brick or concrete frame.

Property Number: 329210070.
Type Facility: Office/Administration—26 buildings; wood, brick, concrete or concrete block frame; includes personnel and general purpose buildings.

Property Number: 329210071.
Type Facility: Recreational Facilities—28; wood, brick, concrete or concrete block frame; includes gym, canteen, golf course, swimming pool, riding stable, tennis court, bowling center, recreation buildings, basketball and handball courts, baseball fields, track, and playgrounds.

Property Number: 329210072.
Type Facility: Child Care Centers—2 buildings; brick frame; 5,818 & 14,457 sq. ft.

Property Number: 329210073.
Type Facility: Dinning Halls—4; brick frame; 11,075 to 31,439 sq. ft.

Property Number: 329210074.
Type Facility: Stores/Services—12 buildings; 140 to 68,899 sq. ft.; brick, wood, concrete or concrete block frame; includes restaurant, commissary, sales stores, exchange branches, and service outlet.

Property Number: 329210075.
Type Facility: Hospital, brick frame.

Property Number: 329210076.
Type Facility: 2 Chapels; 3,747 & 16,587 sq. ft., brick and aluminum frame.

Property Number: 329210078.

Type Facility: 2 Fire Facilities; 2,243 & 3,835 sq. ft.; includes fire station and hose house.
Property Numbers: 329210079, 329210083.
Type Facility: 2 Vehicle Shops and Fuel Facility; concrete/asbestos frame; 1 gas station building, 327 sq. ft.
Property Number: 329210080.
Type Facility: Maintenance Engineering—6 buildings; 168 to 14,074 sq. ft.; wood, brick or concrete block frame.
Property Numbers: 329210081, 329210082.
Type Facility: Explosives/Munitions and Hazardous Storage—10 buildings; 103 to 1,138 sq. ft.; brick, steel, concrete or wood frame; includes ammo magazines and flammable materials storage.
Property Number: 329210084.
Type Facility: 23 Warehouses; 960 to 56,650 sq. ft.; brick, concrete or steel frame.
Property Number: 329210085.
Type Facility: 150 Miscellaneous Buildings; 31 to 211,364 sq. ft.; includes headquarters & general instruction buildings; training centers and detached garages.
Property Number: 329210086.
Type Facility: 5 Multipurpose Buildings.

Land

Property Number: 329210077.
Type of Facility: 2 Aircraft/Airport Facilities; 938 sq. yds.

Unsuitable Properties

Property Number: 329210087.
Type of Facility: 1 Recreational Facility; within a floodway.

Suitable/Available Properties

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized
Comment: 7,270 sq ft., 1 story bldg. most recent use-storage, structural deficiencies.

Massachusetts—Fort Devens

Fort Devens military base is located at Fort Devens, Massachusetts 01433–5000. It is approximately 45 miles west of Boston. All the properties will be excess to the needs of the Army Corps of Engineers on or about October 31, 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation covers 9,283 acres and has approximately 7.4 million square feet of facilities. The properties that HUD has determined suitable and which are available include over 550 single family and multifamily housing units; office and administration buildings, indoor and outdoor recreational facilities; warehouses and multi-use buildings; hospital facilities; stores and service facilities; dining facilities; a chapel; a child care facility; and other miscellaneous and specialized structures.

For specific information concerning Fort Devens, please contact Commander, Fort Devens, Attn: AFZD–T (Mr. Carter Hunt), Fort Devens, Massachusetts 01433–5000.

Suitable/Available Properties

Property Number: 329210012.
Type of Facility: 54 Office/Administration Buildings; 1,174 to 71,781 sq. ft.; wood, brick or concrete block frame including personnel bldgs., general purpose and support services bldgs.
Property Number: 329210029.
Type of Facility: 4040 Housing units; 1,200 to 4,380 sq. ft.; wood or brick frame; single and duplex residences, multifamily residences—up to 14 units per bldg.
Property Number: 329210015.
Type of Facility: 150 Temporary Living Quarters; 1,028 to 19,120 sq. ft.; wood, brick or concrete block structures including barracks.
Property Number: 329210013.
Type of Facility: 27 Recreational facilities; 155 to 30,000 sq. ft.; wood, brick, steel or concrete block construction including a gym, library, swimming pool, golf clubhouse, and bowling center.
Property Numbers: 329210016, 329210025.
Type Facility: Aircraft/Fuel Facilities—7; six gas stations bldgs. and pump stations; wood, steel or concrete block structures.
Property Numbers: 329210017, 329210021.
Type Facility: Maintenance Engineering/Vehicle Shops—34 buildings; 120 to 20,310 sq. ft.; wood, brick, steel or concrete block frame including maintenance shops, entomology facility, vehicle maintenance bldgs., oil storage bldgs.
Property Number: 329210018.
Type Facility: 11 Stores/Service Buildings; 271 to 107,208 sq. ft.; wood, concrete block or brick frame including commissary, sales store, exchange service station, exchange retail stores.
Property Number: 329210019.
Type Facility: 7 Hospital Facilities; 493 to 126,835 sq. ft.; wood, concrete, concrete block or brick frame including clinics, hospital, veterinarian facility, and dental clinic.
Property Number: 329210022.
Type Facility: 4 Audio Visual/Photo Labs; 480 to 10,612 sq. ft.; wood or concrete block construction.
Property Number: 32921027.
Type Facility: 24 Mess/Dining Halls; 2,403 to 2,717 sq. ft.; wood frame.
Property Number: 329210024.
Type Facility: 2 Communication Buildings; 1,322 to 1,749 sq. ft.; concrete block or brick frame; communication centers.
Property Number: 329210026.
Type Facility: 92 Warehouses; 49 to 85,790 sq. ft.; wood, concrete, concrete block or steel construction including sheds, storehouse, medical supply, vehicle storage, general purpose bldgs.
Property Number: 329210014.
Type Facility: Child Care Facility; 6,012 sq. ft.; wood frame.
Property Number: 329210020.
Type Facility: Chapel; 22,250 sq. ft.; brick frame.
Property Number: 32910023.
Type Facility: 8 Hazardous Storage Buildings; 64 to 6,000 sq. ft.; concrete, steel or concrete block structures including oxygen storage facilities and flammable materials storage.
Property Number: 329210028.
Type Facility: 172 Miscellaneous Facilities; 320 to 114,000 sq. ft.; wood, concrete block, brick or steel construction including general purpose bldgs., training facilities, RG houses, reserve centers, garages.
Property Number: 329210030.
Type Facility: 4 Multi-purpose buildings.

Unsuitable Properties

Property Number: 329210032.
Type Facility: 3 Recreation Facilities; within 2,000 feet from flammable or explosive material.
Property Numbers: 329210033, 329210038.
Type Facility: One Temporary Living Quarters and 2 housing residences; within 2,000 feet from flammable or explosive material.
Property Number: 329210031.
Type Facility: One Office/Administration Building; within 2,000 feet from flammable or explosive material.
Property Numbers: 32910034, 329210037.
Type Facility: 6 Miscellaneous Buildings—including stores, service facilities, etc.
Property Number: 32910035.
Type Facility: One Vehicle Shop; within 2,000 feet from flammable explosive material.
Property Number: 329210036.
Type Facility: One Warehouse; within 2,000 feet from flammable explosive material.

Suitable/Available Properties

New Jersey

24 Family Houses
Franklin Lakes
Patrick Brems Court
Mahwah Co: Bergen NJ 07430–
Landholding Agency: COE—BC
Property Number: 319010734–319010757
Status: Excess
Base closure
Comment: 1196 sq. ft., 1 story wood frame residences.
32 Family Houses
Livingston Family Housing
Hornung Court
East Hanover Co: Morris NJ 07936–
Landholding Agency: COE—BC
Property Number: 319010758–319010789
Status: Excess
Base closure
Comment: 1196 sq. ft., 1 story wood frame residences, possible asbestos in floor tiles.
Bldg. P05605, Fort Dix
8th Street and Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210064
Status: Excess
Base closure
Comment: 6137 sq. ft., 1 story, possible asbestos, most recent use-administration/classroom.
Bldg. P05602, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC

Property Number: 329210065
Status: Unutilized
Base closure
Comment: 40653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.
Bldg. P05603, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210066
Status: Excess
Base closure
Comment: 40653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.
Bldg. P05604, Fort Dix
8th Street and Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329210067
Status: Excess
Base closure
Comment: 12194 sq. ft., 1 story, presence of asbestos, most recent use-admin/supply building.

Texas—Naval Air Station, Chase Field

Chase field Naval Air Station is located in Beeville, Texas 78103. All the properties will be excess to the needs of the Department of Navy on or about October 1993. Properties shown below as suitable/available will be available at that time.

The base covers approximately 1,866 acres and has over 430 housing units and government-owned buildings. The properties that HUD has determined suitable and which are available include on- and off-base housing; administration buildings; recreational facilities; dining facilities; warehouses; a hospital; industrial and other specialized structures. All properties may need routine maintenance.

Suitable-Available Properties

Property Numbers: 779210001–779210003, 779210006.
Type Facility: Housing—208 off-base capehart residences; 2 bedrooms/1 bath; 54 off-base family residences, 1 & 2 bedrooms/1 & 2 story; 19 on-base capehart residences, 1 & 2 bedrooms; brick/wood frame; 5 bachelor quarters, 16,800 to 62,200 sq. ft., 3 story metal/brick frame.
Property Number: 779210004.
Type Facility: Recreational—3; 2,100 to 13,900 sq. ft.; 1 story concrete masonry frame; includes a theatre, bowling center, and racquetball.
Property Number: 779210005.
Type Facility: Dining Halls—4 buildings; 6,000 to 21,900 sq. ft.; 1 story concrete masonry frame.
Property Number: 779210007.
Type Facility: Administration—9 buildings; 1,300 to 29,500 sq. ft.; 1 and 2 story; concrete masonry frame.
Property Number: 77910008.
Type Facility: Hospital (clinic)—31,000 sq. ft.; 1 story brick/concrete masonry frame.
Property Numbers: 779210009, 779210012.
Type Facility: Miscellaneous—7 buildings; 900 to 55, 600 sq. ft.; 1 and 2 story; wood and concrete masonry frame; includes fire/security buildings.
Property Number: 779210011.
Type Facility: Industrial—16 buildings; 200 to 10,900 sq. ft., 1 story metal/concrete masonry frame.
Property Numbers: 779210013–779210014.
Type Facility: Aircraft/Air Traffic Control—8 buildings; 3,200 to 89,300 sq. ft.; 1 and 2 story; concrete masonry and metal frame; some bldgs. used for storage and aircraft maintenance.

Unsuitable Properties

Property Number: 779210015.
Type Facility: Building 2137, Aircraft Hangar; within 2,000 ft. of flammable or explosive material.
Property Number: 779210016.
Type Facility: Building 1032, Warehouse; structural deterioration.

Virginia—Harry Diamond Laboratories

Harry Diamond Laboratories, Woodbridge Facility is located in Prince William County, Virginia, 22191. The installation is scheduled for closure on or about September 1994. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 76,000 square feet of facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include a warehouse, communications facilities and miscellaneous facilities.

For specific information concerning Harry Diamond Laboratories, please contact Commander, U.S. Army Laboratory Command, ATTN: AMSLC–MC (Ms. Ann Barnett), 2800 Powder Mill Road, Adelphi, Maryland 20783–1145.

Suitable/Available Properties

Property Number: 329210060.
Type Facility: Communications/Electronic Facilities—3 brick structures.
Property Number: 329210061.
Type Facility: Warehouse—1 brick storehouse.
Property Number: 329210062.
Type Facility: Miscellaneous Facilities—3 facilities including roads and a vehicle park.
Property Number: 329210063.
Type Facility: Multi-Purpose Facilities—2 brick structures including an administrative building.

Suitable/Available Properties

Wyoming

Glendale Microwave Bldg.
Section 1
Cody Co: Park WY 82414-
Landholding Agency: Energy
Property Number: 419220001
Status: Excess
Comment: 223 sq. ft., metal frame, communication equipment bldg., limited utilities, off-site removal only.

Land (by State)

Georgia

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547-
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Indiana

Land—Plant II
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: COE–BC
Property Number: 329220004
Status: Excess
Base Closure
Comment: 858.63 acres; 34 acres subject to flooding; access over private property by easement of a roadway; manufacturing facility for black powder not operative for 20 years; environmentally protected; scheduled to be vacated 11/92.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010111
Status: Underutilized
Comment: 66.13 acres, most recent use-transmitter station.

Texas

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V

Suitable/Unavailable Properties

Buildings (by State)

New York

37 Nike Houses
New York 01
Tappan Co: Rockland NY
Landholding Agency: COE–BC
Property Number: 319011049, 319011070–319011105
Status: Excess
Base closure
Comment: 897 sq. ft., 1 story wood frame residences on concrete slab.

27 Dry Hill Family Housing
Route 3
Watertown Co: Jefferson NY 13601–
Landholding Agency: COE–BC
Property Number: 319030015–319030041
Status: Excess
Base closure
Comment: 816–1300 sq. ft., 1 story wood frame residences.

Naval Reserve Center
112 Hanse Avenue
Freeport Co: Nassau NY 11550–

Landholding Agency: Navy
Property Number: 779010041
Status: Excess
Base closure
Comment: 40000 sq. ft.; 1 floor; most recent use-offices; needs rehab.

Pennsylvania

12 Family Houses
C.E. Kelly Support Facility
Finleyville Area Site 52, S-101-Q
Private Road
Finleyville Co: Washington PA 15332-
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE-BC
Property Number: 319011407, 319011409-319011419
Status: Excess
Base closure
Comment: 1 story frame residences, possible asbestos.

12 Family Houses
Monroeville Area Site 25
C.E. Kelly Support Fac.; Londsey Lane R.D. #2
Monroeville Co: Allegheny PA 15239-
Landholding Agency: COE-BC
Property Number: 319030051-319030062
Status: Excess
Base closure
Comment: 1 story frame residences with playground area, possible asbestos.

Texas

66 Bldgs.
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419-
Landholding Agency: Navy
Property Number: 779010161-779010227
Status: Underutilized
Comment: 1 Story residences.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508-
Landholding Agency: Navy
Property Number: 779010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use-laundry.

Washington

Naval Station Puget Sound
7500 Sand Point Way, NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779120002
Status: Excess
Base closure
Comment: 144 Sq. ft. ammunition bunker, most recent use-storage, secured area with alternate access.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003-
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Land (by State)

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508-
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres.

Georgia

Naval Submarine Base
Grid AA-1 to AA-4 to EE-7 to FF-2
King Bay Co: Camden GA 31547-
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Pennsylvania

C.E. Kelly Support Facility
Finley Area Site 52, Land
Private Road
Finleyville Co: Washington PA 15332-
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE-BC
Property Number: 3109011408
Status: Excess
Base closure
Comment: 11.63 acres, potential utilities, most recent use—playground area.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508-
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—dinning hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100sq. ft.; 1 story permanent bldg; secured facilities with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestors; secure facility with alternate access; most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Luke IL 60048-
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Unsuitable Properties

Buildings (by State)

Alaska

Baler Bldg., Map Grid 55N14
Naval Air Station
Adak Co: Adak AK 98791-
Landholding Agency: Navy
Property Number: 779120003
Status: Unutilized
Reason: Secured Area.

Sand Shed, Map Grid 45024
Naval Air Station
Adak Co: Adak AK 98791-
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area.

Pier #9, Map Grid 55Y1
Naval Air Station
Adak Co: Adak AK 98791-
Landholding Agency: Navy
Property Number: 779120005
Status: Unutilized
Reason: Secured Area.

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791-
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area.

Bldg. 289, L Parrish Residence
1702-D West Grand
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220003
Status: Excess
Reason: Other
Comment: Extensive deterioration.

Bldg. 290, L Parrish Rent House
1702-C West Grand
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220004
Status: Excess
Reason: Other
Comment: Extensive deterioration.

Bldg. 291, L Parrish Rent House
1702-A & B West Grand
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220005
Status: Excess
Reason: Other
Comment: Extensive deterioration.

Bldg. 292 M. Mashburn Residence
26 Conway Terrace
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220006
Status: Excess
Reason: Other
Comment: Extensive deterioration.

Bldg. 293 B. Riley Residence
106 Akin
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619220007
Status: Excess
Reason: Other
Comment: Extensive deterioration.

California

Bldg. 105, 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 77901059–779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 146
Navy Facilities Point Sur
CVB Detachment
Montery Co: Monterey CA 93940
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: Sewer treatment facility.

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040-
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base-Kings Bay 1011 USS Daniel Boone Avenue Kings Bay
1101 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547-
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area.

Illinois

Bldg. 928, 28, 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088-
Landholding Agency: Navy
Property Number: 779010120, 779010123, 779010126
Status: Unutilized
Reason: Secured Area.

South Wing—Building No. 62
Great Lakes Co: Lake IL 60088-5000
Landholding Agency: Navy
Property Number: 779110001 Status: Underutilized
Reason: Secured Area.

Montana

Lolo Work Cntr. Messhall #1001
Highway 12—Approx. Mile Marker 15 Co: Missoula MT 59801-
Landholding Agency: Agriculture
Property Number: 159220004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other
Other Comment: Extensive deterioration

Fy

Lolo Work Cntr Bunkhouse #2001
Highway 12—Approx. Mile Marker 15 Co: Missoula MT 59801–
Landholding Agency: Agriculture
Property Number: 159220005
Status: Unutilized
Reason: Floodway Other
Comment: Extensive deterioration.

New Jersey

217 Housing Units, Fort Dix
Nelson Courts Family Housing
Fort Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329220001
Status: Unutilized
Base closure
Reason: Other
Comment: Extensive deterioration.

32 Sheds, Fort Dix
Nelson Courts Family Housing
Fort Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329220002
Status: Unutilized
Base clousure
Reason: Other
Comment: Extensive deterioration.

Heat Plant, Fort Dix
Nelson Courts Family Housing
Fort Dix Co: Burlington NJ 08640–
Landholding Agency: COE—BC
Property Number: 329220003
Status: Unutilized
Base closure
Reason: Other
Comment: Extensive deterioration.

New York

Bldgs. 204, 255, T–370
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island Co: Suffolk NY 06390–
Landholding Agency: Navy
Property Number: 779010270–779010272
Status: Excess
Reason: Secured Area.

Pennsylvania

Bldg. 62
Philadelphia Naval Shipyard
Philadelphia Co: Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 779010112
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Rhode Island

91 Bldgs.
Naval Construction Battalion Center
Davisville Co: Washington RI 20854–
Landholding Agency: Navy
Property Number: 779010001–779010023, 779010025, 779010027–779010040, 779010042–779010061, 779010063–779010065, 779010067,779010069–779010072, 779010074, 779010076, 779010078–779010079,779010232–779010240, 779010242–779010253
Status: Excess
Reason: Within 2000 fr. of flammable or explosive material Secured Area.

Bldg 32
Naval Underwater Systems Center

Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area.

Bldg. A–63
Naval Construction Battalion Center
Davisville Co: Washington RI 02854–
Landholding Agency: Navy
Property Number: 779010277
Status: Excess
Reason: Secured Area.

Texas

Alaniz House (Tract # 105–11)
Immed. adjacent to Mission San Juan
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 619220001
Status: Excess
Reason: Other
Comment: Extensive deterioration.

Garcia House (Tract # 105–03)
Immed. adjacent to Mission San Juan
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 619220002
Status: Excess
Reason: Other
Comment: Extensive deterioration.

20 Bldgs.
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279–779010298
Status: Underutilized
Reason: Floodway.

Washington

Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 47 [Report 1]
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Unutilized
Reason: Secured Area.

Land (by State)

California

Salton Sea Test Range
ElCentro Co: Imperial CA 93555–
Landholding Agency: Navy
Property Number: 779010068
Status: Excess
Reason: Secured Area.

Florida

Cape St. George Reservation
Fort Rucker, AL Installation #12050
Apalachicola Co: Franklin G C FL 32320–
Landholding Agency: COE–BC
Property Number: 329140001
Status: Unutilized
Base closure
Reason: Floodway; Other
Comment: Inaccessible.

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway.

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area.

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsay WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area.

[FR Doc. 92–11269 Filed 5–14–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Notice of Availability of a Draft Recovery Plan for the Northern Spotted Owl for Review and Comment

AGENCY: Department of the Interior.

ACTION: Notice of document availability.

SUMMARY: The Department of the Interior announces the availability for public review of a draft recovery plan for the northern spotted owl. This species occurs in forested habitats from southern British Columbia, Canada, through western Washington, western Oregon, and northwestern California. The Department solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 13, 1992, to be considered during preparation of a final plan. Public meetings will be held during the comment period for the draft plan. Dates, times, and locations will be announced in a subsequent notice in the Federal Register.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Northern Spotted Owl Recovery Team, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR, 97232–4181 (Telephone 503/231–6238). Written comments and materials regarding the plan should be directed to the same address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Knowles, Associate Deputy Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC, 20240 (Telephone 202/208–6254), or Mr. Marvin Plenert, Regional Director, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR, 97232 (Telephone 503/231–6118).

SUPPLEMENTARY INFORMATION:

Background

A primary goal of the Endangered Species Act of 1973 (Act) is the recovery of endangered and threatened species so that they are again secure, self-sustaining members of their ecosystems. The Act requires preparation of a recovery plan to help guide recovery efforts for any listed species likely to benefit from such a plan. A recovery plan describes actions considered necessary to conserve a species, establishes criteria for downlisting or delisting, and estimates time and cost for implementing recovery measures.

Section 4(f) of the Act, as amended in 1988, (16 U.S.C. 1531 *et seq.*), requires that public notice and an opportunity for public review and comment be provided during development of a recovery plan. All information presented during a public comment period must be considered prior to approval of a new or revised recovery plan. Federal agencies must also take these comments into account in the course of implementing an approved recovery plan.

The northern spotted owl (*Strix occidentalis caurina*) occurs in sourthern British Columbia, Canada; western Washington; western Oregon; and northwest California. Within its range, the owl demonstrates an affinity for older forested habitat. Evidence of significant reduction and fragmentation of suitable owl habitat and of concomitant decline in owl populations have led to concern for its continued survival. A final rule to list the owl as a threatened species was published on June 26, 1990 (55 FR 26114). Details regarding the evidence upon which the listing was based are available in that publication.

On February 15, 1991, a recovery team was appointed and given the charge of preparing a recovery plan for the owl. The team is multidisciplinary in composition, and includes biologists, foresters, economists, attorneys, individuals representing concerned

Federal agencies, and representatives of the Governors of the three States involved. A draft recovery plan prepared by the team is now available for public review.

Public Comments Solicited

The Department solicits written comments on the draft northern spotted owl recovery plan. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 13, 1992.

Manuel Lujan, Jr.,

Secretary.

[FR Doc. 92-11623 Filed 5-14-92; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[(AK-963-4230-15), F-14924-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Kuskokwim Corporation (Successor in Interest to Red Devil Incorporated) for 68.18 acres. The lands involved are in the vicinity of Red Devil, Alaska.

U.S. Survey No. 3771, Alaska, situated on the left bank of the Kuskokwin River at the village of Red Devil, Alaska.
Lots 3 and 4;
6 to 10, inclusive
12 to 15, inclusive
17, 18, 19, 21 and 22.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Bethel Village Voice. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 (907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until June 15, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Jane Miller,

Land Law Examiner, Branch of Calista Adjudication.

[FR Doc. 92-11484 Filed 5-14-92; 8:45 am]

BILLING CODE 4310-JA-M

[NV-010-92-4352-11-RPRN]

Elko District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Elko District Advisory Council Meeting.

SUMMARY: Notice is hereby given that the District Advisory Council for the Elko District, Nevada, will meet on June 10, 1992, in accordance with 43 CFR 1784.6-4. The meeting will be held from 8-9 a.m. in the District Conference Room at 3900 E. Idaho, in Elko. Following the meeting, a field trip to the Marys River to observe monitoring procedures will be conducted.

The agenda is as follows:

1. Introduction of New Council Members
2. Council Election of Chairperson and Vice Chairperson
3. Brief overview of Final Marys River Master Plan
4. Public Comment Period
5. Field trip to Marys River to observe monitoring procedures.

The meeting is open to the public, and members of the public may make statements before the Council from 8:30 a.m.-9 a.m. Persons wishing to make a statement to the Council should contact Lauren Mermejo in the Elko District Office at (702) 753-0200 no later than June 8. Those wishing to accompany the Advisory Council to the Marys River will be required to provide their own transportation.

Dated: May 6, 1992.

Rodney Harris,

District Manager.

[FR Doc. 92-11444 Filed 5-14-92; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-02-5440-10-B028; CA-29497]

Exchange of Public Lands, Yuba County, CA; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action: Exchange of Public Lands, CA-29497.

SUMMARY: The following described public lands (surface and mineral estate) located in Yuba County are being considered for exchange to Yuba WestGold, Inc., under the authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Some of the lands described below may be deleted from consideration to eliminate possible conflicts that could arise during processing, to achieve equal values between the offered and selected lands in the exchange, or for adjustment of lands following the completion of a cadastral survey. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

Selected Public Lands

All remaining public domain lands located in:

Mount Diablo Meridian, California

Township 16 North, Range 4 East, Section: 36.
Township 16 North, Range 5 East, Sections:
22, 26, 27, 28, and 32.
Containing 461.46 acres, more or less.

Note: The land description will be conformed to a Cadastral survey upon its approval which may change the total acreage figure.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire valuable wetlands and waterfowl habitat, wildlife, recreation, and other lands of public value. The exchange is consistent with the North American Waterfowl Management Plan and the Central Valley Habitat Venture as well as with Bureau of Land Management policies and planning. The public interest will be served if this exchange is completed because it will enable the Bureau to acquire lands with high public values, and will increase management efficiency of public lands.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 [43 U.S.C. 945).

2. All valid existing rights, including any authorized rights-of-way, easements, permits, or leases of record.

3. Rights required by the U.S. Army Corp of Engineers to the aggregate material, for flood and debris control purposes, and to maintain existing training walls.

The existing withdrawal status of Secretarial Orders dated 10/25/1899, 2/3/1905, and 7/9/1927 which cover certain parcels of land, will be lifted

prior to the conveyance of title of these lands as well as BLM Order Classification S 066805 for Recreation and Public Purposes.

All necessary clearances, including clearances for cultural and historical resources, Threatened and Endangered Plants and Animals, shall be completed prior to any conveyance of title by the United States.

This notice, as provided in 43 CFR 2201.1(b), segregates the above-described public lands being considered for this exchange from settlement, location and entry under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, Folsom Resource Area, 63 Natoma St., Folsom CA 95630.

FOR FURTHER INFORMATION CONTACT: Marianne Wetzel Lopez, Realty Specialist, BLM Folsom Resource Area, 63 Natoma St., Folsom, CA 95630, (916) 985–4474.

Dated: May 7, 1992.

D.K. Swickard,

Area Manager.

[FR Doc. 92–11427 Filed 5–14–92; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–92–4212–11; N–55760]

Realty Action; Lease of Public Land to the University and Community College System of Nevada, Board of Regents

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public land adjacent to Ely, Nevada, will be leased to the University and Community College System of Nevada for a new community college pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.).

Mount Diablo Meridian, Nevada

T. 16 N., R. 63 E.,
Sec. 22, S½N½SW¼, S½SW¼.
Containing 120 acres.

On July 18, 1981, the subject land was found suitable for educational purposes and classfied, under serial number N–31668, for lease pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.).

The lease when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States; Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All minerals in the S½NE¼SW¼ and the SW¼SW¼ shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. The minerals in the lands in the S½NW¼SW¼ and the SE¼SW¼ are in private ownership. And any lease issued will also be subject to: An 85 foot wide easement for streets, roads, and public utilities reserved for public use along the inside of the west boundary of the land.

The lands described in this notice will continue to be segregated from all other forms of appropriation under the public land laws. The S½NE¼SW¼ and the SW¼SW¼ will continue to be segregated from all forms of appropriation under the general mining laws and the mineral leasing laws.

The land is not required for any Federal purpose. Lease of the land for public purposes is consistent with the Bureau's planning for the area.

DATES: Comments must be submitted by June 1, 1992.

ADDRESSES: Comments should be sent to the District Manager, Ely District, HC33, Box 33500, Ely, Nevada 89301–9408.

FOR FURTHER INFORMATION CONTACT: Ronald E. Sjogren at (702) 289–4865.

SUPPLEMENTARY INFORMATION: The lands will not be offered for lease until after June 1, 1992.

Dated: May 5, 1992.

Timothy B. Reuwsaat,

Acting District Manager.

[FR Doc. 92–11426 Filed 5–14–92; 8:45 am]

BILLING CODE 4310–HC–M

[CA–940–92–4730–12]

Filing of Plats of Survey; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, room E–2845, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Mount Diablo Meridian, California

T. 32 N., R. 11 E.,—Dependent resurvey and subdivision of sections 23, 24 and 25, (Group 1063) accepted January 31, 1992, to meet certain administrative needs of the BLM, Susanville District, Eagle Lake Resource Area.

San Bernardino Meridian, California,

T. 6 S., R. 18 E.,—Dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 29, (Group 1081) accepted January 24, 1992, to meet certain administrative needs of the BLM, California Desert District, Palm Springs Resource Area.

T. 1 S., R. 18 W.,—Dependent resurvey, subdivision of sections 17 and 18, and metes-and-bounds survey, (Group 1030) accepted February 4, 1992, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 9 N., R. 22 E.,—Metes-and-bounds survey of Lot 11, in section 13, (Group 985) accepted February 18, 1992, to meet certain administrative needs of the BLM, Yuma District, Havasu Resource Area.

All of the above listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM, California State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Dated: May 5, 1992.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc 92–11459 Filed 5–14–92; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-765010

Applicant: Luv Them Birds, Goulds, FL.

The applicant requests a permit to import three pairs of captive hatched blue-throated conures (*Pyrrhura cruentata*) from Cornhill Conservation Center, Northallerton, England, for propagation.

PRT 767677

Applicant: Riverbanks Zoological Gardens, Columbia, SC.

The applicant requests a permit to import tissue & blood samples taken from Bali mynahs (*Leucopsar rothschildi*) for scientific research aimed at the conservation of the species. The samples will be taken from both captive-hatched specimens and those removed from the wild.

PRT 767913

Applicant: Martin L. Matta, Greensburg, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Lew Tonks, P.O. Box 427, Graff Reinet 6280, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 760709

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE.

The applicant requests a permit to export one male captive-born tiger (*panthera tigris*) to Taronga and Western Plains Zoo, Australia, for the purpose of enchancement of survival of the species through exhibition and education.

PRT 767591

Applicant: Elvin G. Pabon, Hato Rey, PR.

The applicant requests a permit to purchase in interstate commerce two male and three female captive-born tigers (*Panthera tigris*) from Carol Marcan-Venson, Live Oak, Florida, for the purpose of enhancement of survival of the species through breeding and education.

PRT 766837

Applicant: Emanuel Gerstein, Palm Beach, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. H.V.Z. Kock, "Verborgenfontein", Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 766833

Applicant: James H. Harrison, Orlando, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. F.W.M. Bowker, "Thornkoof", Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 768103

Applicant: Conway Thomas, Alpharetta, GA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by A.G. Spaeth, Doornboom, Republic of South Africa for the purpose of enhancement of survival of the species.

PRT 768109

Applicant: Philippe Vergne, Pine Valley, CA.

The applicant requests a permit to take (trap and handle) Stephens' kangaroo rat (*Dipodomys stephensi*) during population survey work in San Diego and Riverside counties, California.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: May 11, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-11456 Filed 5-14-92; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Final Environmental Impact Statement for the Proposed Stone Lakes National Wildlife Refuge in South Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (EIS) on the feasibility of establishing a National Wildlife Refuge on or near Stone Lakes in South Sacramento County, California is available for public review. In response to the major issues raised in public and agency comments, the Stone Lakes project planning team recommended changes in the proposed project to reduce social and economic impacts. These recommendations resulted in the development of an additional alternative, the Mitigated Preferred Alternative. The Mitigated Preferred Alternative is presented and analyzed in detail in the Final EIS.

The most notable changes contained in the Mitigated Preferred Alternative are the reduction in size of the proposed Stone Lakes National Wildlife Refuge to approximately 9,000 acres of land and the establishment of a 9,000 acre "cooperative wildlife management area". These proposed revisions to the project boundary and acquisition programs significantly reduce potential impacts to agricultural practices in South Sacramento County, including the amount of prime farmland that would be taken out of production.

The Mitigated Preferred Alternative also includes measures to endure cooperation with the local vector (mosquito) control district. Major recreational boating use areas in the Delta Meadows area have been excluded from the proposal. Other major issues that have been addressed include limitations on the use of condemnation, a commitment to avoid the reintroduction of endangered species, and the use of buffers on Service lands to avoid impacting adjacent agricultural operations. A number of other related concerns have also been included in the Final EIS.

A final decision regarding the establishment of the Stone Lakes refuge will not be made on this proposal prior to June 19, 1992. A Record of Decision will be prepared thereafter. Agencies and individuals on the EIS mailing list will receive notice of the Record of Decision.

Copies of the Executive Summer or Final EIS have been sent to all agencies and individuals who participated in the review of the Draft EIS. Copies of the full Final EIS are available for review at several locations within the Sacramento Metropolitan area including most local public libraries.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Jerome, U.S. Fish and Wildlife Service, Sacramento Realty Field Office, 2233 Watt Avenue, Suite 375, Sacramento, CA 95825-0509; (916)978-4420.

SUPPLEMENTARY INFORMATION: The Stone Lakes project area is a remnant of what was once a vast complex of permanently and seasonally flooded

wetlands flanked by riparian forest and prairie. The native plant communities have been greatly changed by the effects of flood control and agricultural operations. Remnants of a variety of native plant communities still exist, particularly in the riparian scrubshrub zones. The needlegrass grasslands that were native to many dryer sites may now be locally extinct.

Perennial lakes, sloughs and streams cover approximately 1,500 acres. Additionally, there are thousands of acres of seasonally flooded wetlands and vernal pools. Emergent vegetation, primarily cattails and hardstem bulrush, is present around the edges of the larger lakes and widespread in the sloughs and seasonally flooded wetlands.

The area provides an important link in the Pacific Flyway. The proposed refuge provides nesting, migration, and wintering habitat for 23 species of waterfowl. Suitable habitat for more than 39 State and Federal candidate or listed species occurs within the project area, including Valley elderberry longhorn beetles, giant garter snakes, Swainson's hawks and Aleutian Canada geese.

In little more than a century, wetlands in California have diminished to approximately four percent of their historic acreage. Wetland losses have occurred as a direct result of the agricultural, residential, commercial, and industrial development of California lands. The specific threats to the project area come from various quarters. Agricultural conversions to vineyards as well as commercial and residential development of large portions of the project area is imminent. The Sacramento metropolitan area is one of the fastest growing areas within California.

Six alternatives and a mitigated preferred action are presented in the Final EIS. Each alternative description includes refuge acquisition boundaries, acquisition programs and habitat restoration objectives. Each alternative is evaluated for its ability to achieve wildlife and resource goals for the proposed Stones Lakes National Wildlife Refuge. Those goals include the protection of a diverse assemblage of Central Valley habitats and species, protecting and enhancing habitats for threatened and endangered species protecting and enhancing wetland habitats and adjacent agricultural lands for waterfowl, creating linkages to reduce habitat fragmentation, coordinating land acquisition and management activities with other agency and private refuge managers, providing for public environmental education and wildlife oriented public use, and managing riverain wetlands and adjacent floodplains consistent with flood control objectives.

The U.S. Fish and Wildlife Service's Mitigated Preferred Alternative recommends the establishment of a 9,000 acre national wildlife refuge and the establishment of a 9,000 acres "cooperative wildlife management area". Within the refuge, approximately 3,000 acres would be acquired in fee title, an additional 6,000 acres would be managed through cooperative agreements with existing public land managers. Within the "cooperative wildlife management area", lands would be protected through conservation easements with private landowners.

The Mitigated Preferred Alternative would seek to preserve approximately 4,100 acres of existing natural habitats, restore 5,700 acres to natural habitat, and enhance 5,300 acres of agricultural lands to benefit wildlife by modifying current management practices. A diversity of existing natural and restored habitats will include permanent wetlands, seasonal wetlands, riparian and oak woodlands, perennial grasslands, and vernal pools.

The remaining alternatives represent various boundary configurations and programs ranging from approximately 7,500 acres to 74,000 acres. The No-Action Alternative (Alternative A) represents the areas that would remain in public ownership without a national wildlife refuge. Alternative B reflects the minimum land acquisition alternative. The original proposed action is defined by Alternative C and the preferred alternative contained in the Draft EIS by Alternative C1. Alternatives D and E represent refuge configurations that reflect expanded acquisition areas which include the Cosumnes River floodplain.

The Final EIS examines the environmental consequences associated with each alternative. Impacts related to the conversion of agricultural land to natural habitats include the loss of agricultural production, increased risk of drainage and seepage problems from, created wetlands to existing fields, crop depredation by wildlife, increased pest management problems, effects on flood control and water quality and potential for increased trespass. Fiscal impacts related to refuge establishment include changes in economic activity, changes in economic development opportunities, reductions in the property tax base, and increased riskiness of agricultural investments.

Dated: April 30, 1992.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-11037 Filed 5-14-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 2, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by June 1, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Benton County

Kansas City—Southern Depot—Decatur (Historic Railroad Depots of Arkansas MPS), AR 59, Decatur, 92000606.

Boone County

Missouri and North Arkansas Depot—Bellefonte (Historic Railroad Depots of Arkansas MPS), SE corner of Center St. and Keeter Dr., Bellefonte, 92000601.

Clark County

Missouri—Pacific Railroad Depot—Arkadelphia (Historic Railroad Depots of Arkansas MPS), S. Fifth St., Arkadelphia, 92000599.

Missouri—Pacific Railroad Depot—Gurdon (Historic Railroad Depots of Arkansas MPS), NW of jct. of N. First and E. Walnut Sts., Gurdon, 92000609.

Columbia County

Louisiana and Northwest Railroad Depot—Magnolia (Historic Railroad Depots of Arkansas MPS), N side of Main St., between Clay and Walnut Sts., Magnolia, 92000614.

Cross County

Missouri—Pacific Depot—Wynne (Historic Railroad Depots of Arkansas MPS), SW of jct. of N. Front St. and E. Hamilton Ave., Wynne, 92000623.

Dallas County

Cotton Belt Railroad Depot—Fordyce (Historic Railroad Depots of Arkansas MPS), SW Corner of Main and First Sts., Fordyce, 92000608.

Desha County

Missouri—Pacific Railroad Depot—McGehee (Historic Railroad Depots of Arkansas MPS), Railroad St., McGehee, 92000616.

Franklin County

Missouri—Pacific Depot—Altus (Historic Railroad Depots of Arkansas MPS), AR 64, Altus, 92000597.

Missouri—Pacific Depot—Ozark (Historic Railroad Depots of Arkansas MPS), S of jct. of River and First Sts., Ozark, 92000598.

Fulton County

Kansas City, Fort Scott and Memphis Railroad Depot (Historic Railroad Depots of Arkansas MPS), SE of Burlington Northern RR tracks on Mammoth Spring State Park access road, Mammoth Spring, 92000617.

Garland County

Missouri—Pacific Railroad Depot—Hot Springs (Historic Railroad Depots of Arkansas MPS), Jct. of Broadway and Market St., Hot Springs, 92000611.

Hampstead County

Missouri—Pacific Railroad Depot—Hope (Historic Railroad Depots of Arkansas MPS), N of jct. of E. Division and Main Sts., Hope, 92000610.

Hot Spring County

Missouri—Pacific Railroad Depot—Malvern (Historic Railroad Depots of Arkansas MPS), First St., Malvern, 92000615.

Howard County

DeQueen and Eastern Railroad Depot—Dierks (Historic Railroad Depots of Arkansas MPS), E of Herman Ave., Dierks, 92000607.

Missouri—Pacific Railroad Depot—Nashville (Historic Railroad Depots of Arkansas MPS), S of E. Hempstead St., between S. Front and S. Ansley Sts., Nashville, 92000618.

Jackson County

Missouri—Pacific Depot—Newport (Historic Railroad Depots of Arkansas MPS), NW of jct. of Walnut and Front Sts., Newport, 92000619.

Rock Island Depot-Weldon (Historic Railroad Depots of Arkansas MPS), AR 17, Weldon, 920000621.

Johnson County

Missouri—Pacific Depot—Clarksville (Historic Railroad Depots of Arkansas MPS), W of College St. between Cherry and Main Sts., Clarksville, 92000604.

Lawrence County

Missouri—Pacific Depot—Walnut Ridge (Historic Railroad Depots of Arkansas MPS), SW. 1st St., Walnut Ridge, 92000622.

Logan County

Rock Island Railroad Depot—Booneville (Historic Railroad Depots of Arkansas MPS), S of First St. and W of Broadway, at the N end of Rhyne Ave., Booneville, 92000603.

Mississippi County

Blytheville, Leachville and Arkansas Southern Railroad Depot—Leachville (Historic Railroad Depots of Arkansas MPS), NE corner of 2nd and McNamee Sts., Leachville, 92000612.

Ouachita County

Missouri—Pacific Railroad Depot—Camden (Historic Railroad Depots of Arkansas MPS), SW corner of Main and First Sts., Camden, 92000605.

Pope County

Missouri—Pacific Depot—Atkins (Historic Railroad Depots of Arkansas MPS), US 64, Atkins, 92000600.

Missouri—Pacific Depot—Russellville (Historic Railroad Depots of Arkansas MPS), N of jct. of C St. and Denver Ave., Russellville, 92000620.

Saline County

Missouri—Pacific Railroad Depot—Benton (Historic Railroad Depots of Arkansas MPS), Adjacent to jct. of S. East and E. Hazel Sts., Benton, 92000602.

Searcy County

Missouri and North Arkansas Depot—Leslie (Historic Railroad Depots of Arkansas MPS), SW end of Walnut St., Leslie, 92000613.

NEW YORK

Warren County

Wiawaka Bateaux Site, Address Restricted, Lake George vicinity, 92000624.

[FR Doc. 92-11515 Filed 5-14-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: May 12, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Northwest Agricultural Cooperative Association, Inc. (N.A.C.A., Inc.) P.O. Box 1

(2) Ontario, OR 97914

(3) 920 SE 9th Avenue, Ontario, OR 97914

(4) Jerry Ready, P.O. Box 1, Ontario, OR 97914

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-11472 Filed 5-14-92; 8:45 am]

BILLING CODE 7035-01-M

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).

	Jurisdiction of incorporation
A. 1. Lance, Inc. P.O. Box 32368, Charlotte, NC 28232-2368..	North Carolina.
2. Wholly-owned subsidiaries which will participate:	
Midwest Biscuit Com	Iowa.
Vista Bakery, Inc	South Carolina.
Caronuts, Inc	Virginia.

B. 1. Parent corporation and address of principal office: Pocahontas Foods, USA, Inc., 7420 Ranco Road, Richmond, Virginia 23228

2. Wholly owned subsidiary which will participate in the operations and State of incorporation: T & S Transportation, Inc., a Virginia corporation

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-11471 Filed 5-14-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32062]

Exemption; Steven C. May—Continuance in Control Exemption—Owego & Harford Railway, Inc.

Steven C. May, a noncarrier, has filed a notice of exemption to continue to control Owego & Harford Railway, Inc. (OHRY), upon the latter's becoming a carrier. OHRY has concurrently filed a

notice for a modified certificate of public convenience and necessity in Finance Docket No. 32063, Owego & Harford Railway, Inc., Modified Rail Certificate, to operate as a railroad common carrier in New York.

Mr. May owns and controls the following Class III rail common carriers: Lackawanna Valley Railroad Corporation and Lackawanna Railway, Inc. Mr. May indicates that: (1) The properties operated by the affiliated railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

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. Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky; 1700 K Street, NW., suite 1107, Washington, DC 20006.

Decided: May 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-11469 Filed 5-14-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32063]

Owego & Harford Railway, Inc.; Modified Rail Certificate

On April 23, 1992, Owego & Harford Railway, Inc. (OHRY), filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C, to operate approximately 27.6 miles of line, between milepost 0.0 at Owego and milepost 27.6 at North Harford, NY.

The line is now owned by the Tioga County Industrial Development Agency (Agency), a public agency and political subdivision of the State of New York created in 1979. The line was formerly owned by the Trustees of the Lehigh Valley Railroad, one of the eastern railroads reorganized under the Regional Rail Reorganization Act, but was never designated in the United States Railway Association's Final System Plan for transfer to Consolidated Rail Corporation. The line was abandoned in 1976 under section 309 of the Regional Rail Reorganization Act of 1973 (3R Act), 45 U.S.C. 744(b), and sold in 1981 to Agency for continued rail service. Agency initially contracted with the former Delaware & Hudson Railway Company to operate this line. In 1984 Agency engaged Tioga Central Railway Company to operate the line. By letter dated April 23, 1992, Agency consents to OHRY's operation of the line. The notice here relates to a notice of exemption concurrently filed in Finance Docket No. 32062, Steven C. May—Continuance in Control Exemption—Owego & Harford Railway, Inc.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Decided: May 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-11470 Filed 5-14-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Manageement and Budget (OMB) since the last list was published. The list will haver all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523-5095).

Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New Collection

Employment and Training Administration.

Alien Labor Certification Activity Report.

ETA 9037.

Quarterly.

State or local governments.

54 respondents; 432 total hours; 2 hours per response.

1 form.

This form will be used to collect information from States on the activities they perform under the Alien Certification Reimbursable Grant. The information collected will be used for program management, budget formulation, State funding and monitoring for compliance with the Grant Statement of Work.

STANDARDIZED PARTICIPANT INFORMATION REPORTING FOR JTPA TITLES IIA AND III

Form No.	Affected public	Respondents	Frequency	Average time per response
Data collection	SDAs	111	Annually	146 hours.
Recordkeeping	SSAs	120	Annually	17 hours

Requires States to collect and report selected standardized information on participants of JTPA title IIA and III funded programs.

STUDY TO IDENTIFY EFFECTIVE ASSESSMENT AND CASE MANAGEMENT PRACTICES AND CONTRACTING PROCEDURES

Form No.	Affected public	Respondents	Frequency	Average time per response
Survey 1	SDAs	468	One-time	70 minutes.
Followup calls	SDAs	55	One-time	45 minutes.
Survey 2	Services providers	468	One-time	40 minutes.
Follow-up calls	Service providers	50	One-time	30 minutes.

921 total hours.

This study will identify procedures and mechanisms used by SDAs and service providers to serve high risk clients with focus on the areas of assessment practices, case management procedures and contracting terms.

Revision

Employment and Training Administration
Unemployment Compensation For Ex-servicepersons (UCX) Handbook.
1205–0176.
ETA 841, 842, 843.

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 841	State or local governments	263,000	One-time	1½ minutes.
ETA 843	State or local governments	13,150	One-time	1 minute.
ETA 842		None		

Federal Law (5 U.S.C. 8521 et seq.) provided unemployment insurance protection, to former members of the Armed Forces (ex-serviceperson) and is referred to in abbreviated form as "UCX". The forms in chapter V through VIII of the UCX Handbook are used in connection with the provisions of this benefit assistance.

Guidelines for the State Employment Security Agency Program and Budget Plan for the Unemployment Insurance Program.
1205–0132.
ETA 8623A, 2208, 8632, 8633A, 2208A.

Form No.	Affected public	Respondents	Frequency	Average time per response (hours)
ETA 8623A (UI–1)	State/local government	53	Annually	1
ETA 2208 (UI–2)	do	53	Annually	2
ETA 8632 (Narrative & CAP)	do	53	Annually	27
ETA 8632 (Narrative & Cap)	do	37	Annually	4
Narrative Description (EDWAA, ES, TAA)	do	53	Annually	6
Transmittal Memo Checklist, Signature Page	do	53	Annually	1
ETA 2208A (UI–3) 2,533 total hours	do	53	Quarterly	2

The Program and Budget Plan provides the basis for an application for funds for State Unemployment Insurance operations for the coming year. In the PBP, States certify intent to comply with assurances. The affected public are the 53 State Employment Security Agencies.

Occupational Safety and Health Administration.
Logging Operations.
State or local governments, Businesses or other for-profit;
Small businesses or organizations.
As a result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for those paperwork activities involving the employer and the third part (employee) disclosure contained in 29 CFR 1910.266(d)(1).

Extension

Mine Safety and Health Administration.
Certificate of Training.
MSHA Form 5000–23.
1219–0070.
On occasion.

Businesses and other for profit; small businesses or organizations.
15,776 respondents; 5 minutes per response.
58,056 total burden hours.
Requires MSHA Form 5000–23, Certificate of Training, to be used by mine operators to record mandatory training received by miners. The form provides the mine operator with a recordkeeping form, the miner with a certificate of training, and MSHA a monitoring tool for determining compliance.

Hazardous Conditions Complaints.
1219–0014.
On occasion.
Businesses or other for profit; small businesses or organizations.
631 respondents; 12 minutes per response.
126 total burden hours.
A representative of miners or, if there is no representative of miners, an individual miner acting voluntarily may submit or give a written notification to MSHA of an alleged violation of the Mine Act or a mandatory standard or of an imminent danger. Such notification requires MSHA to make an immediate inspection.

Employment and Training Administration.
Unemployment Insurance Quality Appraisal.
1205–0181.
ETA Handbook No. 365.
State or local governments.
53 respondents; 465 hours per response.
24,645 total hours.
UIS and State Employment Security Agencies (SESAs) utilize UI Quality Appraisal annually to assess accuracy and timeliness of UI operations. Results help determine what operating areas need corrective action plans to meet achievement standards in States' annual Program Budget Plan (PBP).

Employment Standards Administration
Notice of Law Enforcement Officer's Injury or Occupational Disease; Notice of Law Enforcement Officer's Death.
1215–0116.
CA–721; CA–722.
On Occasion.
Individuals or households; State or local governments.
Small businesses or organizations.
2 forms.
53 respondents; 1 to 1½ hours.
73 total hours.
The forms are used for filing claims for compensation for injury and death to non-Federal law enforcement officers under the provisions of 5 USC 8191 et seq. The forms provide the basic information needed to process the claim made for injury or death.

Employment Information Forms.
1215–0001.
On occasion.
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
Forms Wh-3 and Wh-45 (SP) are used to obtain information from individuals about alleged violations of various laws enforced by the Wage and Hour Division. It is used also as a screening device to determine whether the Division has jurisdiction in handling the alleged violations.

Extension

Occupational Safety and Health Administration.
Cotton Dust.
1218–0061.
On occasion.
Businesses or other for-profit; small businesses or organizations.
20 respondents; .10 hour per response; 2 burden hours.

The purpose of this standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to Cotton Dust. The standard allows the employers to use an alternative to the vertical elutriator cotton dust sampler as a monitoring device if they reference an OSHA opinion or document that the alternative sampling device meets established criteria. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Cotton Dust Standard.

Signed at Washington DC this 7th day of May, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–11492 Filed 5–14–92; 8:45 am]
BILLING CODE 4510–30–M

Bureau of Labor Statistics

Labor Research Advisory Council; Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on June 9, 10, and 11. All of the meetings will be held in the General Accounting Office Building, room 2736, 441 G Street, NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with Respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, June 9, 1992

9:30 a.m.—Committee on Employment and Unemployment Statistics—room 2736
1. 1990 census vs. CPS unemployment rates
2. The March 1991 CES benchmark
3. WARN and other uses of mass layoff data
4. Defense-related employment
5. Insured unemployment rate—total unemployment rate issues
6. Foreign direct investment project
7. Use of population figures for intercensal estimates
8. Impact of U.S.-Mexican Trade Agreement
9. CPS questionnaire demonstration

1:30 p.m.—Committee on Productivity, Technology and Growth—room 2736
1. Supply, demand and earnings of college graduates
2. Report on the industry multifactor productivity measurement program
3. Update on BLS programs for Eastern Europe and Mexico
4. Major sector productivity measures:
   a. Incorporation of the Bureau of Economic Analysis (BEA) benchmark revisions in January
   b. Productivity trends since the beginning of the recession

Wednesday, June 10, 1992

10 a.m.—Committee on Wages and Industrial Relations, room 2736
1. Review of activities in progress
2. Introduction of costs levels for health insurance
3. Reflecting births in the Employment Cost Index and the Employee Benefits Survey
4. Continuing the integration of Employment Cost Index and the Employee Benefits Survey
5. Discussion of the use of locality benefits data to assist in the Occupational Compensation Survey Design
6. Discussion of BRAC and LRAC subcommittee on training
7. Discussion of industry wage surveys
8. Other business

1:30 p.m.—Committee on Prices and Living Conditions, room 2736
1. Status Reports
   a. Consumer Price Index
   b. Producer Price Index
   c. International Price Index
2. Expenditures of second earners in two-earner consumer units
3. Other business

Thursday, June 11, 1992

10 a.m.–3 p.m.—Committee on Occupational Safety and Health Statistics—room 2736

1. Status report on the redesign of the Annual Survey of Occupational Injuries and Illnesses
2. Status report of the Census of Fatal Occupational Injuries
3. Other business.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 523–1327.

Signed at Washington, DC this 7th day of May, 1992.

William G. Barron, Jr.,

Deputy Commissioner.

[FR Doc. 92–11493 Filed 5–14–92; 8:45 am]

BILLING CODE 4510–24–M

Employment Standard 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 comment 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 caused 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 NW., room S–3014, Washington, DC 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

Kentucky:
KY91–1 (Feb. 22, 1991) ..... p.309, pp. 310–312a.
Maine:
ME91–3 (Feb. 22, 1991) ..... p. all.
Maryland:
MD91–33 (Feb. 22, 1991) ..... p. all.
New Jersey:
NJ91–2 (Feb. 22, 1991) ..... p. 701, pp. 706–708.
NJ91–3 (Feb. 22, 1991) ..... p. 721, p. 728.
New York:
NY91–2 (Feb. 22, 1991) ..... p. 777, pp. 779, 782–794.
Pennsylvania:
PA91–2 (Feb. 22, 1991) ..... p. 965, pp. 966, 968, 975.
PA91–16 (Feb. 22, 1991) ..... p. 1077, p. 1078.
PA91–17 (Feb. 22, 1991) ..... p. 1079, pp. 1080–1082.
Vermont:
VT91–1 (Feb. 22, 1991) ..... p. all.

Volume II

Illinois:
IL91–2 (Feb. 22, 1991) ..... p. 97, p 100.
IL91–16 (Feb. 22, 1991) ..... p. 215, p. 216.
IL91–18 (Feb. 22, 1991) ..... p. all.
Kansas:
KS91–12 (Feb. 22, 1991) ..... p. all.
Michigan:
MI91–1 (Feb. 22, 1991) ..... p. 441, p 444.
MI91–2 (Feb. 22, 1991) ..... p. 461, p. 463.
MI91–7 (Feb. 22, 1991) ..... p. 515, p. 516.

Volume III

Colorado:
CO91–5 (Feb. 22, 1991) ..... p. 175, p. 176.
Montana:
MT91–4 (Feb. 22, 1991) ..... p. all.
Nevada:
NV91–7 (Feb. 22, 1991) ..... p. all.

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 50 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, D.C. 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. 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 8th day of May 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-11248 Filed 5-14-92; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92-31)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATES: June 1, 1992, 9 a.m. to 5 p.m.; and June 2, 1992, 9 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, room 7002, Federal Office Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Caleb Hurtt and is composed of 27 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open

Agenda

Monday, June 1, 1992

9 a.m.—Opening Remarks.
9:15 a.m.—Annual Summaries of Issues by Committee and Task Force Chairs.
4 p.m.—Council Analysis of Principal Issues.
5 p.m.—Adjourn.

Tuesday, June 2, 1992

9 a.m.—Continued Discussion of Principal Issues.
11 a.m.—Conclusions and Recommendations.
Noon—Adjourn.

Dated: May 8, 1992.

John W. Gaff,

Advisory Committee Management Officer National Aeronautics and Space Administration.

[FR Doc. 92-11499 Filed 5-14-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-30]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: May 27, 1992, 8:30 a.m. to 5 p.m. and May 28, 1992, 8:30 a.m. to noon.

ADDRESSES: NASA, 10700 Parkridge Blvd., 5th Floor Conference Room, Reston, VA 22091.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code M-8, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. John E. Miller and is composed of 15 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room (which is approximately 50 persons including committee members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open.

AGENDA:

May 27, 1992

8:30 a.m.—Chairman's Remarks.
8:45 a.m.—Program Status.
10 a.m.—Level II Activities.
11:15 a.m.—Procurement View.
1 p.m.—Public Information Task Group.
1:45 p.m.—Intersite Operations Report.
2:45 p.m.—Utilization and Operations Report.
3:15 p.m.—Environments Report.
4:15 p.m.—Systems Integration and Verification Report.
5 p.m.—Adjourn.

May 28, 1992

8:30 a.m.—Data Management System Report.
9:15 a.m.—Extended Stay Orbiter Study.
10:15 a.m.—Primary Data Support Services Report.
11 a.m.—Summary and Action Items.
Noon—Adjourn.

Dated: May 8, 1992.

John W. Gaff,

Advisory Committee Management Officer.

[FR Doc. 92-11498 Filed 5-14-92; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Ohio

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Ohio. The MOU provides the basis for mutually agreeable procedures whereby the Ohio Emergency Management Agency may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in the State of Ohio.

EFFECTIVE DATE: This MOU is effective March 9, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L

Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7838.

SUPPLEMENTARY INFORMATION: Section 274i of the Atomic Energy Act of 1954, as amended allows the U.S. Nuclear Regulatory Commission (Commission or NRC) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." A section 274i agreement, typically in the form of a MOU, differs from an agreement between NRC and a State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b of the Atomic Energy Act. A State can enter into a section 274i MOU whether or not it has a section 274b agreement.

Background

As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the NRC and others recognized a need to improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. The Emergency Response Data System (ERDS) has been developed to respond to this need. ERDS is a direct computer link between licensee computers at commercial nuclear power plants and computers at the NRC Operations Center at Bethesda, Maryland. The system allows for direct electronic transmission of a limited set of data points from the licensee computers to ERDS. Data transmitted over ERDS provides information concerning (1) core and coolant system conditions, needed to assess the extent or likelihood of core damage, (2) conditions inside the containment building, needed to assess the likelihood and consequences of containment failure, (3) radioactivity release rates, needed to assess the immediacy and degree of public danger, and (4) data from the plant meteorological tower, needed to assess the likely patterns of potential or actual impact on the public.

The ERDS design provides for access to ERDS data by State governments which have jurisdiction over any area which falls within the 10-mile plume exposure Emergency Planning Zone (EPZ) around each nuclear power plant.

On May 7, 1991 (56 FR 21178), the NRC published a proposed MOU between the NRC and the State of Michigan. This MOU was designed to be generic in nature. It was to be used as the foundation on which all MOUs with other States on ERDS would be based. The MOU defines the manner in which the NRC and the State of Michigan will cooperate in planning and maintaining the capability to transfer data relating to plant conditions during emergencies at nuclear power plants located in Michigan through ERDS.

Public Comments

Interested parties were invited to submit comments on the proposed MOU. Comments were received from five State governments and the Federal Emergency Management Agency. Comments received on the proposed MOU were docketed and may be examined at the Commission's Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC. Upon consideration and disposition of comments received as set forth below, the NRC has entered into the MOU with the State of Michigan without modification. Although some comments received may provide the basis for discussion of potential modification in the standard MOU on a State by State basis, no cause was found in the comments to modify the MOU in question prior to issuance.

Analysis of Public Comments

1. *Comment.* In the case of nuclear power plants which lie within ten miles of a State border, will the NRC transmit ERDS data to bordering States which include a portion of the ten-mile EPZ.

Response. The ERDS can be configured to send data to all States which are included within the ten-mile plume exposure EPZ around a nuclear power plant.

2. *Comment.* Two States commented on Section III D, (5). One State while recognizing that the States do not have the regulatory authority to direct or recommend licensees to take or not take an action, noted that State governments are not precluded from making recommendations and suggestions to the licensee in the interest of consequence mitigation protection action recommendations, and other issues of great interest to the State. Another State commented that they believed that NRC intends that State authorities not make technical recommendations with regard to plant recovery from an accident, but did not intend to restrict the ability of a State to coordinate activities with utility responders during nuclear emergencies to effect the maximum use of limited resources.

Response. While the State does have an interest in the areas of consequence mitigation and protection action mitigation, entering into a MOU with the NRC to receive ERDS data does not confer upon the State the ability to direct the licensee to take any action. The NRC agrees with the second comment concerning this section of the MOU.

3. *Comment.* It is possible that a State may require more than one ERDS terminal, located at different facilities at different times during a response to a nuclear accident.

Response. There is no limit to the number of ERDS terminals that a State may install. The only limit is that only one terminal per State may access ERDS at any one time. This limitation is a hardware limitation based on the number communication ports available for State access on the ERDS computers.

4. *Comment.* One State commented that they looked at ERDS to correct widespread and long standing difficulties in acquiring information on plant parameters in the early stages of exercises and accidents. If through the MOU, the State were required to surrender a right to all voice communications with the licensee related to ERDS, and be required to converse with the utility only through NRC Liaison or the Region or Headquarters, they would be entertaining errors and delays.

Response. This provision was placed in the MOU to mitigate a potential adverse impact on licensee accident response due to ERDS data transfer. ERDS is an NRC system, therefore, it is appropriate that NRC bear the burden of responding to questions about ERDS data. Note that the restriction on the State is against questioning plant operators about ERDS data. This does not preclude the normal discussion of plant conditions with emergency response personnel when the licensee emergency response facilities are activated. Another State noted that one of the strengths of the MOU as written was that it does an excellent job of preventing State personnel from distracting the plant operator in his duties to recover from the emergency.

5. *Comment.* One State commented that the State already has access to plant data at the licensee's emergency response facilities and the access to data by personnel outside the emergency responce facilities would not contribute to the State's emergency response because the officials with the technical expertise to properly analyze the ERDS data will be at the licensee's emergency response facilities. This could potentially result in a conflict between the assessment of the plant

conditions between the on-site State officials and those with access to ERDS data.

Response. ERDS data transfer is intended to be used at States that request it to provide plant parameter data to State Incident Response Centers at which event assessment is conducted. This process takes place at various places depending on the State in question. It is not recommended that States subscribed to ERDS just for the purpose of having it. The ERDS may be of value at the location where the State government conducts its assessment of reactor conditions. If this occurs at the licensee's emergency response facilities, ERDS would be of little value because plant data is readily available.

6. *Comment.* One State commented that since ERDS includes radiological and meterologial data, the system would also be very beneficial to those States responsible for ingestion pathway protection actions and recommended the ERDS be made available to all States in the 50-mile ingestion pathway EPZ.

Response. While there is data available on ERDS which could possibly be of use to States within the 50-mile EPZ, as noted earlier, system constraints require that the numbers of users on the system be limited to preclude excessive demand for communication ports on the computer. Because access to the system is by dial up telephone line, access is necessarily first come first served. The decision to limit ERDS data to the States within the ten-mile EPZ was based on the immediacy of the need for data to those responsible for protective actions close in during an emergency.

It is recognized that there is a need for event consequence data in the ingestion pathway EPZ, however, there is sufficient time to allow the use of other methods of data transfer for this purpose.

7. *Comment.* One State noted that since emergencies require prompt significant interaction with the public, it is unclear what is intended by the section VI.C restrictions against premature public release of sensitive information.

Response. It is important to note that while ERDS represents a significant increase in the information available to Federal and State authorities during an accident, it does not augment the quality or quantity of information available to the licensee at the site. ERDS presents one of many information paths throughout the plant. The data presented is directly transmitted from the licensee computer to the NRC computer, and therefore, has not been analyzed or verified. It is important that ERDS data and assessments based on ERDS dated not be directly transmitted to the public or the media until it has been properly verified. Again, the responsibilities of the various parties involved in an emergency at a nuclear power plant are not intended to be changed based on the existence of ERDS. The licensee still bears the primary responsibility for accident and mitigation.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Ohio to provide data related to plant conditions during emergencies at commercial nuclear power plants in Ohio.

Dated at Rockville, Maryland, this 29th day of April, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Emergency Response Data System Agreement Between the State of Ohio and U.S. Nuclear Regulatory Commission

I. Authority

A. The U.S. Nuclear Regulatory Commission (NRC) and the State of Ohio enter into this Agreement under the authority of section 274i (Cooperation with States) of the Atomic Energy Act of 1954, as amended.

B. Ohio recognizes the federal government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that the NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This Agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Ohio fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Director of the Ohio Emergency Management Agency as described in the Ohio Revised Code 5915.02.

III. Scope

A. This Agreement defines the way in which NRC and Ohio will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System (ERDS) during emergencies at nuclear power plants which have any portion of their 10-mile Emergency Planning Zone within the State of Ohio.

B. It is understood by the NRC and the State of Ohio that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Ohio, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Ohio on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Ohio authority to perform the following:

1. Interpret or modify NRC regulations and NRC requirements imposed on the licensee.

2. Take enforcement actions.

3. Issue confirmatory letters.

4. Amend, modify or revoke a license issued by NRC.

5. Direct or recommend nuclear power plant employees to take or not to take any action.

Authority for all such actions is reserved exclusively to the NRC.

IV. NRC'S General Responsibilities

Under this Agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Ohio during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of Ohio. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. Ohio's General Responsibilities

A. Ohio will cooperate with the NRC to establish a capability to receive ERDS data. Ohio will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Ohio agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10-mile EPZ does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

Ohio will cooperate with the NRC to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Ohio and the NRC agree to make available to each other information within the intent and scope of this Agreement.

B. NRC and Ohio agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Ohio will protect sensistive information to the extent permitted by the Federal Freedom of Information Act, § 149.43 of the Ohio Revised Code, 10 CFR 2.790, and other applicable authority.

D.NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Ohio by the NRC Ohio may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Ohio will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed State Liasison Officer to the NRC. These individuals may designated appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Ohio staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Ohio will work together with the utilities involved, as appropriate, to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with sections VIII. A. and VIII. B. will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than one year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: March 3, 1992.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: March 9, 1992.

For the State of Ohio.

Richard C. Alexander,

Major General (OH), The Adjutant General, Director, Ohio Emergency Management Agency.

[FR Doc. 92–11390 Filed 5–14–92; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permit and licenses.

Regulatory Guide 1.84, Revision 28, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Regulatory Guide 1.85, Revision 28, "Materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 9 to Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with items for inclusion in guides currently being developed or

improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 522(a))

Dated at Rockville, Maryland, this 27th day of April 1992.

For the Nuclear Regulatory Commission.

Clemens J. Heltemes, Jr.,

Deputy Director for Generic Issues and Rulemaking, Office of Nuclear Regulatory Research.

[FR Doc. 92–11489 Filed 5–14–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, June 4, 1992, has been rescheduled for Friday, June 5, 1992.

The meeting will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management, 1900 E Street, NW., Washington, DC.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: May 8, 1992.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 92–11380 Filed 5–14–92; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–032]

South Florida Oil Spill Research Center

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent; request for letters of interest.

SUMMARY: The Coast Guard intends to establish a Federally Funded Research and Development Center to address prevention, tracking and cleanup of oil discharges in the unique tropical and subtropical environment around South Florida. The Coast Guard is seeking letters of interest with capabilities statements from interested parties.

DATES: Letters of interest with capabilities statements must be received not later than July 28, 1992.

ADDRESSES: Letters of interest with capabilities statements may be mailed to Superintendent, U.S. Coast Guard Academy, 15 Mohegan Avenue, New London, CT 06320–4195, Attention: Ms. B. Burke, Procurement Office (Code FP), or may be delivered at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. B. Burke, Procurement Office, U.S. Coast Guard Academy, (203) 444–8242.

SUPPLEMENTARY INFORMATION: Congress has recommended that the Coast Guard establish a research center to address prevention, tracking, and cleanup of oil discharges in the unique tropical and subtropical environment around South Florida. Research at the proposed Tropical/Subtropical Oil Spill Research Center will focus on improving the ability of the Federal government to monitor oil discharges around South Florida and other tropical and subtropical environments; predict and track their flow; predict oil spill behavior in warm waters; and make informed decisions concerning treatment and cleanup. Specific research areas may include, but not be limited to, satellite and airborne oil spill remote sensing; predicting and tracking their movement with trajectory models; predicting the physical properties and behavior of oil in warm waters; decision support systems for making informed decisions concerning treatment and cleanup; studying the impacts of oil discharges on public health, the socio-economic environment, and the natural environment; and developing advanced technologies for cleaning up or mitigating the impact of oil spills on shorelines and open water including mechanical recovery, dispersants, bioremediation, and in situ burning. The Coast Guard is seeking capability statements from universities, colleges, and other research and education institutions. The universities, colleges, or institutions should be able to demonstrate strong capabilities in remote sensing from satellites and other modalities, and strengths in research, education, and training in geophysics, oceanography, marine biology, chemistry, ocean engineering, and computer science.

The Coast Guard intends to establish the Center as a Federally Funded Research and Development Center (FFRDC) in accordance with Federal Acquisition Regulation 35.017, 48 CFR 35.017. The institution will be required to provide no less than 20 percent of the annual total cost of the Center from institutional, private sector, and philanthropic sources. The expectation is that the research center will be located at an existing marine sciences institution in the appropriate tropical/subtropical environment and in close proximity to the Gulf Stream and to other unique tropical flora and fauna, but may draw upon faculty, facilities, and other resources from other institutions to build a comprehensive capability to conduct research in the prevention, tracking and cleanup of oil discharges.

Interested parties should send letters of interest with a capabilities statement. Capabilities statements should include institution research interests, a description of past and present research related to oil spill prevention, tracking, and cleanup, description of educational programs and courses related to marine pollution control, resumes of research faculty, list of facilities (vessels, laboratories, test tanks, etc.) that will be available for oil spill related research, and cooperative agreements with other private and government research institutions which augment the institution's on site capabilities. Letters of interest with capabilities statement are limited to a total of 20 typewritten pages and are required not later than July 28, 1992.

Dated: May 11, 1992.

P.A. Bunch,

Rear Admiral, U.S. Coast Guard, Chief, Office of Engineering, Logistics and Development.

[FR Doc. 92-11490 Filed 5-14-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-92-15]

Petitions of Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 4, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No._____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulesmaking (ARM-1, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 8, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petions for Exemption

Docket No: 25844.
Petitioner: 4 W Air.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To extend Exemption No. 5242 which allows properly trained pilots employed by 4 W Air to convert the cabins of certain aircraft from passenger to cargo configurations.

Dispositions of Petitions

Docket No.: 20044.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.63 (b) and (c) and 121.437(c).
Description of Relief Sought/ Disposition: To extend Exemption No. 2965, as amended, which grants relief to all part 121 operators and their pilot employees from §§ 61.63 (b) and (c), and 121.437(c) of the Federal Aviation Regulations to the extent necessary to allow a pilot to be issued an additional category and class rating to that person's pilot certificate, subject to certain conditions and limitations. Grant, April 28, 1992, Exemption No. 2965G

Docket No.: 26111
Petitioner: American Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.133(c).
Description of Relief Sought/ Disposition: To extend Exemption No. 5184 which allows American Airlines, Inc., to use Compact Disc-Read Only Memory technology to maintain certain maintenance information and instructions for aircraft in lieu of printed page form or microfilm. Grant, April 22, 1992, Exemption No. 5184A

Docket No.: 26741.
Petitioner: Pacific Wing, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow properly trained pilots employed by Pacific Wing, Inc., to convert the cabins of its aircraft operated under FAR part 135 from passenger to cargo configurations, and the converse, by removing and replacing passenger seats in aircraft that are designed specifically for that purpose. Grant, April 22, 1992, Exemption No. 5445

Docket No.: 26477.
Petitioner: Alaska Mountain Air, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow the pilot employed by Alaska Mountain Air, Inc. to perform the preventive maintenance function of removing and reinstalling passenger seats in aircraft used in operations conducted under part 135 of the Federal Aviation Regulations. Grant, April 22, 1992, Exemption No. 5446

Docket No.: 26774.
Petitioner: United Parcel Service Company.
Sections of the FAR Affected: 14 CFR Portion of appendix H to part 121.
Description of Relief Sought/ Disposition: To permit the 1-year employment requirement of Appendix H, Advanced Simulator Training Program (ASTP) for "Air Transportation Pilot Flight Instructors-Simulator only" with either another part 121 certificate holder or the military, subject to certain conditions and limitations. Partial Grant, April 24, 1992, Exemption No. 5447

[FR Doc. 92-11474 Filed 5-14-92; 8:45 am]

BILLING CODE 4910-13-M

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-362; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held, Tuesday, June 2, at 10 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC, in the MacCracken Room on the tenth floor.

The agenda for this meeting will include a report on the findings of the Security R&D Subcommittee's Scientific Advisory Panel review of FAA's technology initiatives in aviation security. In addition, the committee will receive a status report on FAA's Airport Surface Management System Design, an update on activities related to the aviation research grant program and centers of excellence, and other research and development technology activities.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should

contact Ms. Jan Peters, Special Assistant to the Executive Director of the R, E&D Advisory Committee, ASD–6, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3096.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on May 11, 1992.

Martin T. Pozesky,

Executive Director, Research, Engineering, and Development Advisory Committee.

[FR Doc. 92–11484 Filed 5–14–92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 92–49]

Tuna Fish; Tariff-Rate Quota

The tariff-rate quota for the Calendar Year 1992, on tuna classifiable under item 1604.14.20, Harmonized Tariff Schedule of the United States (HTSUS).

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for Calendar Year 1992.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 1604.14.20, HTSUS, is based on the United States canned tuna production for the preceding calendar year.

EFFECTIVE DATES: The 1992 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Karen L. Cooper, Chief, Quota Branch, Trade Programs Division, Office of Trade Operations, Office of Commercial Operations, U.S. Customs Service, Washington, DC 20229, (202/566–8592).

It has not been determined that 33,441,010 kilograms of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1992, at the rate of 6 percent ad valorem under item 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 1604.14.30 HTSUS.

(QUO–1–CO:T:R:Q)

Dated: May 8, 1992.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc 92–11516 Filed 5–14–92; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 95
Friday, May 15, 1992

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).

COMMISSION ON CIVIL RIGHTS

May 13, 1992

DATE AND TIME: Friday May 22, 1992, 8:00 A.M.

PLACE: Office of Personal Management, Auditorium, 1900 E Street, NW., Washington, DC 20415.

STATUS: Open to the Public.

May 22, 1992

I. Approval of Agenda
II. Approval of Minutes of April 24 Telephonic Meeting
III. Announcements
IV. Report to the Commission on Los Angeles Visit
V. Appointments for the Arkansas, Colorado, and Louisiana Advisory Committees
VI. Discussion of H.R. 4451 and proposed resolution by Congressman Mineta
VII. Staff Director's Report
VIII. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8105, (TDD 202-376-8116), at least five (5) working days before the scheduled date of the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Carol McCabe Booker,

General Counsel.

[FR Doc. 92-11633 Filed 5-13-92 3:59 pm]

BILLING CODE 6335-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, May 19, 1992, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Closed to the Public

MATTERS TO BE CONSIDERED:

Regulated Products Enforcement

The staff will brief the Commission on compliance activities relating to regulated products enforcement.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504-0800.

Dated: May 13, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-11580 Filed 5-13-92; 1:31 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, May 20, 1992, 9:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Closed to the Public

MATTERS TO BE CONSIDERED:

Regulated Products Enforcement

The staff will brief the Commission on compliance activities relating to regulated products enforcement.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504-0800.

Dated: May 13, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-11581 Filed 5-13-92; 1:31 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, May 21, 1992, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Open to the Public

MATTERS TO BE CONSIDERED:

Amendments to Rules Interpreting Section 15

The staff will brief the Commission on a **Federal Register** document amending the Commission's rules interpreting section 15 of the CPSA to reflect amendments to that section in the Consumer Product Safety Improvement Act of 1990.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA, CALL: (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: May 13, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-11582 Filed 5-13-92; 1:31 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" [5 U.S.C. 552b(e)(2)], notice is hereby given that at its open meeting held at 10:05 a.m. on Tuesday, May 12, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), Chairman William Taylor, and Vice Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting on less than seven days' notice to the public, of a memorandum and resolution regarding final amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which are designed to implement changes made by the Federal Deposit Insurance Corporation Improvement Act in the regulatory scheme for brokered deposits.

By the same majority vote, the Board further determined that no notice earlier than May 11, 1992, of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: May 12, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-11600 Filed 5-13-92; 2:30 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:54 a.m. on Tuesday, May 12, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan (Office of Thrift Supervision), concurred in by Vice Chairman Andrew C. Hove, Jr., Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Chairman William Taylor, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and resolution regarding selection of servicer to manage, liquidate, and collect the asset pools from three failed Connecticut banks and Dollar Dry Dock Bank, White Plains, New York.

Matters relating to a certain financial institution.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter 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 by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 12, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-11601 Filed 5-13-92; 2:30 pm]

BILLING CODE 6714-0-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, May 20, 1992.

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: May 13, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-11561 Filed 5-13-92; 10:25 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 18, 1992.

Closed meetings will be held on Tuesday, May 19, 1992, at 2:00 p.m. and on Friday, May 22, 1992, following the 2:00 p.m. open meeting. Open meetings will be held on Thursday, May 21, 1992, at 2:30 p.m. and on Friday, May 22, 1992 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 19, 1992, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

The subject matter of the open meeting scheduled for Thursday, May 21, 1992, at 2:30 p.m., will be:

1. Consideration of whether to adopt amendments to rule 52, and whether to issue for comment further proposed amendments to the same rule and to rule 45(b)(4), under the companies, provided that eight conditions are met. The amendment to rule 52 would eliminate the six nonstatutory conditions and would extend the exemption to all mortgage bonds rather than first mortgage bonds alone. The proposed amendment to rule 52 would exempt additional public-utility financings, as well as certain nonutility financings, subject to certain conditions. The proposed amendment to rule 45(b)(4) would remove a current dollar limitation on capital contributions and open account advances, without interest, by a holding company to its subsidiary company. For further information, please contact Brian Spires at (202) 272-7688.

2. Consideration of whether to issue a release soliciting public comment on the appropriateness of certain amendments to Rules 3b-3 and 10a-1 under the Securities Exchange Act of 1934 ("Exchange Act"). Rule 10a-1 generally requires a person selling an exchange-listed security to determine whether that person has a net long position in the security. The determination of a person's net position under Rule 3b-3, which defines the term "short sale" for purposes of the Exchange Act, requires the person to aggregate all of his positions in the security. If the person does not have a net long position, then the "uptick" provisions of Rule 10a-1 apply to the person's sale transactions.

The release proposes amendments to Rule 10a-1 under the Exchange Act that would: (1) provide for a new equalizing exception to the Rule to accommodate certain international transactions; (2) exclude from the Rule's application transactions in non-convertible corporate bonds listed and effected on an exchange; (3) codify (with modifications) an existing interpretive position relating to the liquidation of certain index arbitrage positions; and (4) make several clarifying and technical amendments to the Rule. The proposed amendment to Rule 3b-3 under the Exchange Act would modify the definition of ownership of a security. For further information, please contact George E. Scargle at (202) 504-2503.

The subject matter of the open meeting scheduled for Friday, May 22, 1992, at 2:00 p.m., will be:

The Commission will hear oral argument in proceedings under Rule 2(e) of the Commission's Rules of Practice on the petition of respondents David J. Checkosky and Norman A. Aldrich for review of an initial decision of an administrative law judge. For further information, please contact Jonathan Katz at (202) 272-2600.

The subject matter of the closed meeting scheduled for Friday, May 22, 1992, following the 2:00 p.m. open meeting, will be: Post oral argument discussion.

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: Chris Sakach at (202) 272-2300.

Public Utility Holding Company Act of 1935. Rule 52 exempts certain financings by public-utility subsidiaries of registered holding

Dated: May 13, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–11636 Filed 5–13–92; 4:02 pm]

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Friday
May 15, 1992

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 70 and 75

Safety Standards for Underground Coal Mine Ventilation; Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70 and 75

RIN 1219-AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA) existing safety standards for ventilation of underground coal mines. The revisions update existing provisions consistent with advances in mining technology, eliminate duplicative and unnecessary standards, and reduce paperwork requirements, where possible.

EFFECTIVE DATE: August 16, 1992. Paragraph (g) of § 75.370 expires August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule revises MSHA's existing safety standards for ventilation of underground coal mines in accordance with section 101 of the Federal Mine Safety and Health Act of 1977, (Mine Act) (30 U.S.C. 811).

On November 19, 1985, MSHA published a notice in the Federal Register announcing the availability of a preproposal draft of revisions to the existing ventilation standards. In response, MSHA received written comments regarding its preproposal draft from all segments of the coal mining community. After reviewing the comments on the preproposal draft, MSHA published a proposed rule in the Federal Register (53 FR 2382) on January 27, 1988. On May 12, 1988, MSHA published a notice outlining major issues raised by commenters and scheduling public hearings (53 FR 16872). The Agency held public hearings on June 6, 1988, in Pittsburgh, Pennsylvania; June 7, 1988, in Lexington, Kentucky; June 9, 1988, in Birmingham, Alabama; June 16, 1988, in Evansville, Indiana; June 20, 1988, in Grand Junction, Colorado; and June 22, 1988, in Charleston, West Virginia. All six public hearings were well attended. Transcripts of the proceedings were made available for public inspection. Following the public hearings, interested persons were allowed to submit supplementary statements and data until the record closed on September 2, 1988.

In March 1989, the Assistant Secretary of Labor for Mine Safety and Health directed that a special study be conducted to review safety questions surrounding the ventilation of belt conveyor entries in underground coal mines. In particular, the Assistant Secretary requested a thorough review of safety factors in the use of belt entry air at the working face, a practice followed at over 80 underground coal mines in the United States. On August 25, 1989, MSHA announced in the Federal Register (54 FR 35356) the availability of the Belt Entry Ventilation Report and reopened the rulemaking record for comment on relevant issues. In comments on the report, the Agency received a request for a public hearing on the issues raised as they related to the ventilation rulemaking. MSHA granted the request and held the hearing on April 18, 1990, in Reston, Virginia. The rulemaking record subsequently closed on May 18, 1990.

During this rulemaking process, MSHA received written and oral statements from all segments of the mining community. The Agency's final rule addresses the comments received and is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act and the Mine Act.

II. Discussion of Final Rule

A. General Discussion

Underground coal mine ventilation affects various aspects of the safety and health of miners. Proper underground coal mine ventilation is necessary to protect against mine fires and explosions due in part to the presence of explosive gases in underground coal mines; oxygen-deficient atmospheres; and accumulations of other harmful gases. Ventilation is also a primary method of controlling miners' exposure to respirable dust and preventing the development of pneumoconiosis (black lung).

The final rule revises the existing standards for coal mine ventilation in 30 CFR part 75 which were promulgated over 20 years ago. In developing the rule, the Agency reviewed each revision and deletion to provisions contained in existing standards as well as each new provision in the final rule to ensure that the level of protection provided miners by existing standards is not reduced. In accordance with section 101(a)(9) of the Mine Act, the standards in the final rule do not reduce the level of protection afforded miners by the existing rules. In many cases, protection of miners' safety and health is enhanced by these revisions. For example, new standards that encourage the use of advances in ventilation technology and revised standards that upgrade the quality of examinations for hazardous conditions that are conducted in all mines improve protection for miners. In addition, the final rule eliminates unnecessary standards and, where appropriate, reduces paperwork requirements and reporting burdens.

The final rule establishes revised standards for ventilation that apply to all underground coal mines, while retaining requirements for each underground mine to have a ventilation system and methane and dust control plan (ventilation plan). The ventilation plan specifies precautions and practices applicable to the particular conditions at the mine. Some revisions in the final rule replace existing criteria used for the approval of ventilation plans with mandatory standards. As a result, approved ventilation plans will contain only ventilation control measures needed to address specific conditions at a mine.

The final rule does not include proposed provisions that would have allowed mine operators to use air coursed through belt conveyor haulageways to provide additional ventilation to working places. MSHA's existing standards do not allow this practice except as approved on a mine specific basis through the petition for modification process or when approved by the MSHA district manager for mines opened prior to March 30, 1970. The Agency has reviewed the record on this matter, including the results of the 1989 Belt Entry Ventilation Report and the comments received during and following the public hearing on the report, and has decided to refer this issue to an advisory committee under the provisions of the Mine Act. The final rule therefore retains the requirements of the existing 30 CFR 75.326.

The final rule provides for the voluntary use of atmospheric monitoring systems (AMS). An AMS may be used to monitor the mine atmosphere at specified locations for concentrations of methane, carbon monoxide, smoke, oxygen, and for air velocity. To encourage the use of this emerging technology, the final rule permits an AMS to be used as an alternative to certain air measurements and tests otherwise required to be made by persons during on-shift and weekly examinations of the mine. When so used, the AMS must meet the design and performance requirements in the final rule.

The final rule clarifies the scope of examinations for hazardous conditions, particularly the preshift examination conducted before the start of each shift. The final rule specifies that all areas of the mine where miners are scheduled to work or travel during the shift must be preshift-examined. If miners are sent to perform duties in areas where no preshift examination has been made for that shift, the rule requires a supplemental examination by a certified person within three hours before miners enter such areas.

In response to a commenter, the final rule does not retain the proposed provision, § 75.365, that would have permitted the use of an AMS to evaluate return air courses under specific conditions. The commenter disagreed with the use of an AMS to replace the physical examination of these air courses by a certified person indicating that the AMS could not examine for all hazardous conditions which might be discovered during a physical examination. Another commenter suggested that the use of an AMS should be permitted for all return air courses without restriction. MSHA has considered all comments relative to this issue and has deleted proposed § 75.365 from the final rule. The Agency agrees that although an AMS would be capable of providing information relative to the status of the ventilation in a return air course, current technology does not permit the AMS to warn the operator of all potential problems that a physical examination may discover.

The final rule incorporates recommendations contained in the Agency's June 12, 1985, report, "Two-Entry Longwall Mining—A Technical Evaluation." This report presented the results of studies of commonly employed practices and equipment used in longwall mining and the effects of these practices and equipment on miner safety in a two-entry longwall system. The report contained 35 recommendations directed at safe operation of two-entry systems. Following release of the report, on July 18, 1985, MSHA held a meeting in Denver, Colorado, to brief the public. At that meeting and in subsequent responses to the report, members of the mining community suggested that MSHA include the recommendations in the appropriate coal mine safety standards under review to provide an opportunity for public comment in the rulemaking process. Consistent with these suggestions, the proposed rule included recommendations from the report related to ventilation that the Agency considers to be applicable to all mines. These provisions are retained in the final rule. Among them are requirements for the construction and use of stoppings and other ventilation controls in all mines, and requirements for a travelway to be provided on the tailgate side of all longwall and shortwall panels. Under the final rule, if this travelway becomes blocked by a roof fall or other disturbance, mining must cease and miners must be withdrawn from face areas, MSHA must be notified, and work may resume on the longwall or shortwall face after implementation of the requirements contained in the roof control plan. Also related to longwall mining, the final rule includes a new provision that specifies a minimum air quantity at the intake end of each longwall face and requires a minimum air quantity to be provided during the installation and removal of longwall mining equipment to be specified in the approved ventilation plan.

The requirements for escapeways for underground coal mines in existing subpart R of 30 CFR part 75 are revised and transferred to subpart D. The proposed rule would have required new mines and new development areas of existing mines to have two escapeways ventilated with intake air from each working section. However, this provision has also been referred to and will be considered by the advisory committee. The final rule requires the operator to designate one of the two required escapeways as the primary escapeway and requires that this escapeway be ventilated with intake air and be generally free of fire sources.

Related to this issue, the final rule establishes new specific requirements for compressors in underground coal mines. MSHA determined that a compressor caused the 1984 Wilberg Mine fire in which 27 miners were killed. The final rule requires compressors to be located in noncombustible structures or areas and equipped with a heat-activated fire suppression system. Compressors must also be attended while operated, or be ventilated by intake air coursed directly into a return air course, and the noncombustible structures or areas in which the compressors are installed must be equipped with automatic closing doors activated by heat and carbon monoxide or smoke. Like most diesel equipment and electrical installations, compressors are not permitted in the primary escapeway in areas developed after the effective date of the rule.

The final rule also revises requirements for drilling boreholes in advance of mining and establishes procedures for mining into areas that have been penetrated by a borehole. Accidental mining into an inaccessible area can cause disruption of ventilation and expose miners to hazards such as methane accumulations, oxygen-deficient atmospheres, or inundation by water or gas.

Several provisions in the final rule require specific hazard records or examination results to be maintained for one year after the last entry in the record. These provisions are: paragraph (g) of § 75.312 main mine fan examinations and records; paragraph (h) of § 75.351 atmospheric monitoring system (AMS); paragraph (h) of § 75.360 preshift examination; paragraph (g) of § 75.362 on-shift examination; and paragraph (h) of § 75.364 weekly examination. The records are necessary as a control to enable the mine operator and MSHA to determine that the examinations are taking place and that hazards are addressed. They are also essential to the Agency as a tool for investigating the cause of mine accidents and fatalities, enabling the investigators to reconstruct the cause of the accident or fatality.

Each of these record keeping provisions require that records be entered "in a book maintained for that purpose." The existing rule requires the records to be kept in specified books that follow a certain format, including having a specific title. The final rule deletes §§ 75.1801 through 75.1805 of Subpart S of Title 30 of the Code of Federal Regulations, the sections that require records to be kept in specified books. Since the Agency is concerned with maintaining the appropriate safety information in a written record and not with the specific form or title of the record, a single format is not necessary. It is the Agency's judgment that keeping records "in books maintained for that purpose" allows mine operators greater flexibility to tailor the format of the books to State laws and also to meet their own specific needs without reducing safety.

Finally, the final rule revises § 75.2 by alphabetizing the definitions and putting the section into a format consistent with recent changes to other definition sections in the Code of Federal Regulations. The definitions for anthracite and volatile ratio are combined as are the two definitions for permissible.

B. Section-by-Section Discussion

Section 75.300 Scope

This subpart D sets forth requirements for underground coal mine ventilation.

Section 75.301 Definitions

The final rule defines "worked-out area" as an area where mining has been completed, whether pillared or nonpillared. This term excludes developing entries, return air courses, and intake air courses.

Commenters suggested that the final rule should clarify that worked-out areas do not include any active workings in the mine. The final rule, however, retains the existing definition of active workings in § 75.2(g)(4), which states that any place in a coal mine where miners are normally required to work or travel is considered to be active workings. Thus, under the final rule, worked-out areas that are traveled each week for purposes of the weekly examination required by § 75.364 are "active workings."

The final rule does not retain the proposed definition for "permanent electrical equipment." Under the proposal, all electrical equipment would have been included within the definition, except for communication and monitoring systems, self-propelled electrical equipment, and electrical equipment that is energized and operated only while attended. Under the final rule, this definition is unnecessary since §§ 75.340 and 75.380 do not retain the term "permanent electrical equipment." Instead, the final rule adopts the approach of existing § 75.1105 and specifically lists the types of equipment to which the rule applies.

Other new definitions in the final rule are for "air course," "intake air," and "return air." An "air course" is defined as a set of entries separated from other entries by ventilation control devices, such as stoppings, so that the mixture of air currents between each entry or set of entries is limited to the minimal leakage that occurs through the ventilation controls. For purposes of the examination required by § 75.364 of this subpart, the proposal would have expanded the definition of air course to include two adjacent entries or sets of entries with an open crosscut or crosscuts between them if the distance between open crosscuts is greater than 600 feet. Commenters objected to the proposed definition of air course, indicating that the definition requires air courses in the mine that are common at both ends to be examined separately. Also, a commenter noted that since they must be examined separately, each air course must be maintained safe for travel. The Agency has reconsidered this issue and the final rule does not include that part of the definition addressing entries which are common at both ends.

MSHA believes that air courses that are not common should be examined separately and has defined air course to achieve this purpose. The Agency does not consider air courses that are common only at each end to be the same air course if the separation between the common openings is more than 600 feet. Weekly examination of all such separate air courses is necessary to ensure that the ventilation system of the mine is functioning properly. Therefore, as suggested by a commenter, the final rule requires at least one entry of each intake air course to be traveled in its entirety. Similarly, at least one entry of each return air course must be traveled in its entirety.

The final rule adds definitions for "intake air" and "return air" to characterize the air current by whether the air has ventilated a working place or a mined-out area. Thus, intake air is defined as air coursed through a mine which has not yet ventilated the last working place on any split of any working section, or any worked-out area, whether pillared or non-pillared. If the air has ventilated these areas, it is considered to be return air. These definitions conform to established distinctions made throughout the mining industry. A commenter objected to the definitions of intake and return air, indicating that the definitions would prohibit air ventilating worked-out areas to be used to ventilate active workings elsewhere. The rule does not prevent active workings from being ventilated with return air. The rule specifies which areas must be ventilated with intake air. For example, § 75.332 prohibits air to be used to ventilate working places if it has passed through any area that is not examined according to §§ 75.360, 75.361 or 75.364 of subpart D, or if second mining has been done. Further, under § 75.332, air that has passed by an opening of any unsealed area that is not examined according to subpart D may not be used to ventilate a working place. The definition of return air also makes clear that if intake air mixes with air that has ventilated working places or worked-out areas, it is considered return air.

Consistent with current industry practice and Agency interpretation, for the purposes of existing § 75.507–1, MSHA considers air that has been used to ventilate any working place in a coal producing section or pillared area or air that has been used to ventilate any working face if this air is directed away from the immediate return to be return air whether or not it has ventilated the last working place on any split of any working section. Section 75.507–1, which addresses power connection points has not changed by this rule.

The final rule adds definitions for "incombustible," "noncombustible structure or area" and, "noncombustible material" to clarify provisions contained in the proposal and adopts the definition of "intrinsically safe" found in existing § 18.2. Incombustible is defined as incapable of being burned and is used in relation to main mine fan housings, air ducts used to connect fans to the mine, housings for internal combustion engines used to power main mine fans, and automatic closing doors on main mine fans. Because failure of these components affects the ventilation of the entire mine, it is important that they not be susceptible to fire. The term noncombustible structure or area is used to define a structure or area that will continue to provide protection against flame spread for at least one hour when subject to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent. These structures or areas contain equipment that increase the likelihood of fire in the structure or area. Requiring that a fire be contained in the structure or area for one hour, gives the opportunity for persons to escape or use direct fire fighting techniques.

Similarly, noncombustible material is used to describe a material that when used to construct a ventilation control results in a control that will continue to serve its intended function when subject to a fire test incorporating an ASTM E119–88 time/temperature input, or equivalent. The one-hour requirement for a ventilation control provides a time during which miners can escape before fire travels from one entry or air course to another.

The definition of intrinsically safe that is widely accepted throughout the industry has been adopted for use in this subpart. This definition is the same as that found in existing 30 CFR 18.2 and is used in relation to AMS that remain energized when power must be removed from electrically operated equipment or that is used in areas where permissible equipment is required.

Section 75.302 Main Mine Fans

The final rule revises and clarifies existing § 75.300 and requires underground coal mines to be ventilated by one or more main mine fans. The existing standard requires mines to be ventilated by mechanical ventilation equipment. In all cases, main mine fans provide the means by which mechanically produced pressure is supplied to the underground ventilating current.

The final rule does not permit the use of underground booster fans to assist main mine fans in bituminous and lignite mines. This is consistent with MSHA's application of existing fan installation approval criteria and recognizes established industry practice.

Commenters objected to prohibiting the use of booster fans underground. These commenters recommended that MSHA district managers be given authority to approve the installation of booster fans and that specific criteria be developed to address the use of this equipment. Some commenters stated that with advances in monitoring system technology, booster fans can now be safely operated in underground bituminous mines. Other commenters, however, agreed with the proposal and indicated that booster fans should not be used.

MSHA continues to believe that underground booster fans should not be generally permitted in bituminous and lignite mines. Among the safety concerns raised by the use of booster fans is a reduced ability to control recirculation of air underground. Also, if a mine fire or explosion occurs, the underground fan could be damaged, limiting the ability to restore ventilation to an area. Similarly, if it is necessary to remove electricity from an area, ventilation could also be interrupted. In addition, a fire or explosion could create a situation in which it is not possible to travel underground to control the booster fan to adjust ventilation in an area of the mine. A commenter stated that other potential hazards that may result from the use of such equipment are increases in levels of noise, as well as respirable and float coal dust. The commenter also stated that a mine could develop such a reliance on the use of the booster fan that the operator would not be aware of the impact on overall mine ventilation when the fan is not operating.

Unlike in bituminous mines, booster fans are currently used in anthracite mines to provide necessary ventilation to working areas. Due to the unique mining conditions found, and practices used in anthracite mines, ventilation of many anthracite mines would not be possible without the use of underground fans. Most anthracite mines are steeply pitching, with many cracks in the overlying strata that increase the difficulty of ventilating the mine. Also, most anthracite mines can develop only a limited number of entries. The final rule therefore continues to allow fans to be installed in anthracite mines in the main air current or a split of the main air current to increase air flow as specified in the approved ventilation plan.

The final rule eliminates the requirement that mechanical ventilation equipment be installed and operated in a manner approved by the Secretary. A commenter objected to this approach, stating that to ensure safe installation and use of the fans, MSHA's district managers should approve all installations. The commenter suggested retaining the existing approach that requires the operator to submit a plan for fan installation and operation. However, the plan approval criteria in the existing standards for installation and operation of main mine fans are included in §§ 75.310 and 75.311 of the final rule and apply to all mines.

Section 75.310 Installation of Main Mine Fans

This section addresses the installation of main mine fans and is derived primarily from the existing criteria in § 75.300–2 for the approval of main fan installation. Generally, the requirements of the final rule are aimed at the protection of main fans from fires and damage in the event of an underground explosion so that necessary ventilation can be maintained.

Paragraph (a) sets out the basic requirements derived from the plan approval criteria in existing § 75.300 that MSHA considers to be necessary for the safe installation of all main mine fans. Since the final rule applies to all mines, specified requirements do not need to be addressed in the approved ventilation plan for the mine, except in two situations: (1) The use of a pressure measuring device instead of a pressure recording instrument when main mine fans are permitted to be shut down according to § 75.311 and (2) alternatives to the required 15-foot offset of the fan.

The final rule requires each fan to be equipped with a device for recording fan pressure. These devices, which are also required under existing criteria, enable development of a profile of the mine's ventilation system, and facilitate detection of day-to-day changes in ventilating pressure such as might be caused by a roof fall or other occurrence in the mine that affects ventilation. Also, variations in fan pressure may lead to early detection of possible fan failure.

The final rule permits the use of main fan monitoring systems instead of pressure recording devices, if the systems can record mine ventilating pressure. This provision encourages the use of improved technology for monitoring main mine fans and does not reduce the protection afforded miners by the existing rule.

As discussed more fully below regarding § 75.312, mine operators using a main fan monitoring system may examine main mine fans weekly, rather than daily. If used in conjunction with a weekly fan examination, fan monitoring systems must perform certain functions listed in paragraph (c) in addition to recording mine ventilating pressure. Although one commenter objected to the use of main mine fan monitoring systems in lieu of the daily examination, the Agency feels that the use of these monitoring systems enhances the protection to miners provided by the daily fan examination because the monitor operates continuously. Paragraph (c) also specifies that monitoring systems must be capable of giving a signal to a surface location at the mine when a deficiency exists in the monitoring system or when the fan experiences a sudden increase or loss of mine ventilating pressure. Minor fluctuations in fan operating pressure are normal; however, sudden changes in main mine fan ventilating pressure can be indications of changes in fan operation or changes underground, such as roof falls or loss of ventilation controls. When these changes are greater than the normal fluctuations associated with the operation of an individual main mine fan, the fan monitoring system should give the signal required by paragraph (c).

This requirement also provides an effective alternative to daily fan examinations without reducing the protection provided miners by the existing rule. Paragraph (c) requires monitoring systems to be capable of monitoring main mine fans and their associated components for proper operation. MSHA requested comments in the proposal on whether this function should include monitoring the fan's bearing temperature, revolutions per minute, and vibration, as well as voltage and current. The Agency agrees with the commenters who indicated that the final rule should more specifically set out the requirements for fan monitoring. Accordingly, the final rule requires monitoring systems to be capable of performing these functions.

In addition to permitting fan monitoring systems to be used as a means of recording fan pressure, the final rule permits the use of other devices for measuring fan pressure, under certain circumstances. This exception is for mines permitted to shut down main mine fans as approved in the ventilation plan. As explained more fully in the discussion of that section, this provision provides a compliance alternative for small mines that

normally operate only one shift a day and do not have large sealed or unsealed worked-out areas. For these mines, the final rule allows the use of a pressure measuring device if the use of the device is approved in the mine's ventilation plan.

The use of pressure measuring devices, often called "U-tubes," has been permitted under the existing criteria. The final rule allows U-tubes and similar devices to be used only at mines where continuous recording of fan pressure does not achieve substantial safety benefits. At these mines, pressure recorders would register a fan pressure of zero during the portion of each day that the fans are permitted to shut down. To achieve the same level of protection at these mines when the fans operate and a fan pressure measuring device is used, § 75.312 requires a record to be made of the fan pressure immediately before the fan is stopped and after the fan is restarted and the fan pressure stabilizes. This aspect of the final rule is discussed more fully in the explanation of § 75.312.

Section 75.310 retains existing provisions designed to protect fans from fires and requires each main mine fan to be installed on the surface in an incombustible housing and be connected to the mine opening with an incombustible air duct. Like the existing rule, the final rule also requires each fan to be equipped with an automatic device that gives a signal that can be seen or heard when the fan either slows or stops. In response to a commenter, the final rule clarifies that this signal must be given so that it can be seen or heard at all times by a responsible person who is always on duty when persons are underground. Section 75.313 addresses procedures to be followed during unintentional fan stoppages. Also, § 75.311(d) requires any unusual variance in the mine ventilating pressure, such as when the main fan slows, to be investigated immediately.

To minimize the potential for fans to be damaged or destroyed by the forces of an explosion underground, paragraph (a)(5) also requires fans to be protected by one or more weak walls or explosion doors, or a combination of weak walls and explosion doors. Retained from the existing criteria, this provision is designed to prevent the forces of an explosion from reaching a main mine fan. Specific requirements for weak walls and explosion doors are included in paragraph (d) discussed below.

Paragraph (a)(6) also requires fans to be offset at least 15 feet from the nearest side of the mine opening to protect them if an explosion occurs underground. Retained from the existing fan installation criteria, this provision ensures that the main fan is not in direct line with possible explosive forces escaping the mine. Under the existing criteria, however, MSHA has approved fan installations providing an offset of less than 15 feet. Generally, these installations have been at mines where the location of the fan opening does not allow an offset of 15 feet. To provide the same compliance flexibility as the existing criteria, and without reducing the protection provided miners, the final rule does not require an offset of 15 feet to be provided if the fan is installed in a diversion entry as described in paragraph (e) or if alternative methods of protecting the fan and its associated components are specified in the mine's approved ventilation plan.

Paragraph (b) retains the existing plan approval criteria for fans driven by electric motors and by internal combustion engines. It requires that electric motors operate from a power circuit independent of all other mine power circuits. This enables main fans to continue operating and maintain ventilation should underground electric power be interrupted.

For fans driven by internal combustion engines, paragraph (b)(2) requires the engine's fuel supply to be protected against fires and explosions. This protection may include the use of fire suppression systems or locating the fuel supply away from ignition sources and combustible material. Paragraph (b)(2) also requires the engine to be installed in an incombustible housing, and the engine and engine exhaust system to be located out of direct line of the air current exhausting from the mine. The engine exhaust also must be vented to the atmosphere so that the exhaust gases do not contaminate the mine intake air current or any enclosure. These provisions are retained from the existing approval criteria and minimize the potential for fires in and around the fan installation and reduce the potential for contamination of the intake air for the mine.

A new provision applicable to fans driven by internal combustion engines requires that the engines be equipped with remote shut-down switches. Unlike an electric motor, which can be stopped by cutting electric power, an internal combustion engine will continue driving a fan as long as the fuel supply to the engine lasts. Thus, if the engine is inaccessible and cannot be remotely shut down in the event of a mine fire or a similar emergency, the fan will continue to supply air to the fire as happened during the Wilberg Mine fire in 1984.

The final rule includes requirements for weak walls and explosion doors. Paragraph (a)(5) requires weak walls or explosion doors for the protection of main mine fans from explosive forces originating from underground areas. Paragraph (d) requires weak walls and explosion doors to have a cross-sectional area at least equal to that of the entry through which the pressure from an explosion underground would be relieved. MSHA intends that this provision prevent explosive forces from being routed to and possibly damaging main mine fans. The final rule allows the use of combinations of explosion doors and weak walls designed to protect main mine fans, thus providing compliance flexibility and encouraging the use of the safest and most efficient methods of main mine fan protection at each mine.

Paragraphs (e) and (f) establish requirements derived from existing plan approval criteria for specific main fan installation situations. Paragraph (e) addresses fans installed in line with a mine entry, a slope or a shaft, and requires that the cross-sectional area of the pressure relief entry be at least equal to that of the fan entry. In addition the fan entry must be developed out of direct line of possible explosive forces. At least 2,500 square feet of coal or other solid material must be between the pressure relief entry and the fan entry. Also, to increase the likelihood of explosive forces being diverted out of the mine away from fan openings, the final rule requires the surface opening of the pressure relief entry to be no less than 15 feet nor more than 100 feet from both the surface opening of the fan entry and from the underground intersection of the fan entry and the pressure relief entry. Together these precautions in paragraph (e) protect fans from the forces of an explosion underground and maximize the effectiveness of systems to divert explosive forces away from main mine fans.

For mines ventilated by multiple main mine fans, paragraph (f) requires that incombustible doors be installed so that if any main fan stops, the doors automatically will close to prevent air reversal through the fan. Pressure differentials created when a main fan stops and other fans keep running can cause air to be diverted away from working areas in the mine and may result in air reversals. However, MSHA recognizes that in mines ventilated by blowing fans, and in some mines ventilated with combination exhaust and blowing fan systems, air reversals may not be possible. In such circumstances, automatic closing doors

may not be needed. Accordingly, paragraph (f), like the existing criterion, does not apply to multiple fan systems where air reversal cannot occur. Where air reversals can occur, however, the final rule requires automatic closing doors to be installed.

Section 75.311 Main Mine Fan Operation

This provision is derived from existing plan approval criteria in §§ 75.300–2 and 75.300–3 and establishes requirements for main mine fan operation. It requires fans to be continuously operated to provide constant ventilation to underground areas and specifies precautions for planned fan stoppages. This provision also addresses the repair of main mine fans, monitoring of fan signal devices on the surface, and protection against fires around fans and intake air openings.

Paragraph (a) of § 75.311 permits main mine fans to be stopped as specified in the approved ventilation plan for the mine or when intentionally stopped for testing of automatic closing doors and automatic fan signal devices or for maintenance or adjustment of the fan. In response to comments, which indicated that some necessary maintenance and repair work underground can be done only while the fan is stopped, the final rule also allows the fan to be stopped when necessary to perform maintenance or repair work underground that cannot otherwise be done while the fan is operating.

To minimize hazards to miners during planned main fan stoppages, the final rule sets several requirements that must be followed when the fan is stopped. Under proposed § 75.311, these requirements would have applied when the fan is stopped and the required ventilation is not maintained. Testimony at public hearings showed confusion about this provision as proposed, and at the hearings MSHA clarified its intent that if a main fan is stopped, all of the ventilation provided by that fan must be provided by a back-up fan system. Otherwise the provisions of § 75.311 would apply. Accordingly, the final rule states that the specified precautions must be taken when a fan is stopped and the ventilating quantity provided by the fan is not maintained by a back-up fan system. Paragraph (c) provides compliance flexibility when a back-up fan system does not provide the total ventilating quantity provided by the main mine fan. This provision, which is intended to allow necessary mine maintenance activities such as pumping when the fan is stopped, allows persons to enter the mine and electric power circuits to be energized as specified in the approved ventilation plan. This aspect of the final rule does not reduce the protection provided miners by the existing rule, since it applies only if sufficient ventilation is provided by a back-up fan system to permit specific activities to be safely conducted in the mine.

Except in the limited circumstances described in paragraph (c), if the ventilating quantity of the fan is not maintained during a planned fan stoppage, only certain persons are permitted in the mine. These include persons necessary to evaluate the effect of the fan stoppage or restart, or to do maintenance or repair work that cannot otherwise be done while the fan is operating.

The proposed rule would have required electric power circuits entering underground areas to be deenergized only when the planned stoppage lasted for longer than 30 minutes. A commenter expressed concern that this approach could increase the likelihood of explosions. After consideration of the comments, MSHA has not included the proposed provision in the final rule. Instead, for any fan stoppage other than those addressed in the approved ventilation plan under paragraph (c), paragraph (b) requires mechanized equipment to be shut off before the fan is stopped and underground electric power circuits to be deenergized during the fan stoppage. This minimizes the risk of an explosion underground during any planned period when the mine will not be ventilated.

When a back-up fan system is used that does not provide the ventilating quantity provided by the main mine fan, paragraph (c) permits persons to be in the mine and power circuits to remain energized. The persons who will be in the mine, the work these persons will be doing, and the power circuits that will remain energized must be specified and approved in the mine's ventilation plan.

Paragraph (d) requires prompt repair of any electrical or mechanical deficiency in a main mine fan. A deficiency in a main mine fan can result in inadequate ventilation of underground areas, endangering miners. A commenter indicated that unless the final rule requires such deficiencies to be reported to the person in charge of the mine's operation, the rule would eliminate the accountability of the operator for fan deficiencies. The final rule retains the proposed language. The mine operator is ultimately responsible for all safety and health matters involving the mine, and under the final rule, the operator is accountable for the failure to correct any fan deficiency.

Paragraph (d) also requires any unusual change in the mine ventilating pressure to be investigated immediately. Changes in ventilating pressure may be discovered during the fan examination required by § 75.312, when a fan signal device is activated by a fan slowdown, or on other occasions when the mine operator checks the mine ventilating pressure when the fan is examined. This aspect of the final rule also achieves the same level of protection as the existing rule, which requires "appropriate action" to be "instituted promptly" when an unusual change in ventilating pressure occurs. Minor fluctuations in fan operating pressure are normal; however, unusual changes can be indications of changes in fan operation or changes underground, such as roof falls or loss of ventilation controls. When these changes are greater than the normal fluctuations associated with the operation of an individual main mine fan, they should be investigated immediately.

Paragraph (e) requires that while persons are underground a responsible person designated by the operator must be at a surface location where the mine fan signal can be seen or heard. This provision allows immediate warning to be given to miners underground if a fan malfunctions or any other hazard exists that may require miners to be withdrawn to the surface or other precautions to be taken.

Paragraph (f) prohibits accumulation of combustible and flammable material in the area surrounding each main mine fan and intake air opening. Liquid fuels and other flammable substances stored on the surface, as well as debris that can burn in the area of mine fans, present the hazard of mine ventilation systems becoming contaminated by smoke from a fire on the surface. Therefore, the final rule retains the proposed requirement that this provision apply to the area within 100 feet of all surface fans and mine openings. Paragraph (f), however, like the existing criterion, allows alternative protective measures to be included in the mine's approved ventilation plan. This provision is intended to provide compliance flexibility without reducing the protection provided miners by the existing rule by recognizing that other effective precautions may be taken to provide protection from fire and products of combustion where a clear area of 100 feet is not available.

Paragraph (g) retains, with clarifying changes, the existing provision in § 75.300–3 addressing multiple main fans. The final rule requires the mine ventilation system to be designed and

maintained to eliminate areas without air movement. Unless the ventilation system of the mine is carefully planned and maintained in a multiple fan situation, unventilated areas can be created underground by pressure equalization between main fans.

The final rule does not retain the existing language specifying that airflow should be maintained in all intake and return air courses. Since the final rule specifies minimum air quantity requirements in § 75.325, as well as requires air velocity measurements to be made at specified locations during the preshift, on-shift, and weekly examinations, airflow must be maintained at all times.

In response to comments, the final rule allows AMS that are intrinsically safe to be operated during fan stoppages.

Section 75.312 Main Mine Fan Examinations and Records

This standard is derived from the existing § 75.300–4, which requires main fans to be inspected daily. Proper operation of main mine fans is critical to mine ventilation. Therefore, the final rule, like the existing standard, requires main mine fans and associated components, including devices used to measure and record pressure, to be examined at least once each day that the fan operates.

As an alternative to a daily examination of the main mine fan, paragraph (b) permits a weekly fan examination if a main mine fan monitoring system is used and is fully functioning. MSHA believes that main fan monitoring systems represent improved technology with the potential to provide greater safety. The final rule requires the main fan monitoring system to supply at least as much information regarding fan performance as the daily examination. As discussed above, the monitoring system must be capable of recording mine ventilating pressure and of monitoring bearing temperature, revolutions per minute, vibration, voltage, and amperage. Unlike the information resulting from the daily examination, the monitoring system provides a continuous profile of fan performance.

If a monitoring system is used, the weekly examination required by the final rule provides additional verification of proper fan performance. Also, this examination must include a test of the monitoring system to ensure that it is operating properly. If the monitoring system malfunctions at any time, paragraph (b) requires the monitoring system to be repaired or requires the affected fan to be examined at least once each day during which the fan operates until the problem has been corrected.

Paragraph (c) is a new requirement that addresses testing automatic fan signal devices. The rule requires that at least every 31 days, the automatic fan signal device for each mine fan be tested by stopping the fan. Commenters on the preproposal draft indicated that stopping the fan to test the automatic signal device would put undue stress on the fan. The proposal therefore did not specify fan stoppage to test the signal device. The proposal did state, however, that requiring fan stoppage during signal testing was still being considered by the Agency because MSHA believed that the best test for a signal device is to stop the fan. Since then, MSHA has received assurance from fan manufacturers that stopping fans monthly to test the signal device will not cause undue stress to mine fans. The final rule therefore requires fan stoppage during signal testing. Also, paragraph (d) requires that at least once every 31 days, automatic closing doors in multiple main fan systems be tested by stopping the fan. In the event of a mine fan failure or stoppage, these doors must automatically close to prevent an air reversal through the fan. The Agency believes that, like fan signal devices the best way to ensure proper operation of an automatic closing door is to stop the fan. The Agency intends that the testing of the fan signal and the automatic closing doors can be done at the same time if the operator so chooses.

Paragraph (e) retains the proposed provision that requires that circular mine fan pressure recording charts be changed before the beginning of a second revolution.

Paragraph (f) requires the person performing the examination to certify by initials and date that an examination was made and note the main mine fan examined. Paragraph (g) retains the existing requirement to keep a record of fan examinations. However, unlike the existing standard, which requires a record of the results of every inspection, the final rule requires a record of all defects that may affect the operation of the fan that are not corrected by the end of the shift on which the fan examination is made. Deficiencies corrected by the end of the shift are not required to be recorded. Under § 75.311, all electrical or mechanical deficiencies in a main mine fan must be repaired promptly. Also, since the main purpose of this recordkeeping requirement is to alert miners on oncoming shifts of defects found during the fan examination that may affect their shifts, it serves no additional safety benefit to require a record to be made of deficiencies which are corrected by the end of the shift on which the examination is made. Paragraph (g) also retains the existing requirement to keep the record of fan examinations in a book maintained for that purpose.

A new recordkeeping requirement in the final rule addresses mines where fans are permitted to be shut down if approved in the ventilation plan and a pressure recording device is not used. As discussed above, mines permitted to shut down main mine fans under existing criteria often operate during only one working shift a day. At these mines, a pressure measuring device, such as a U-tube, may be used. No record of fan pressure, which would be zero while the fan is not operating, is provided by the U-tube. Therefore, the final rule requires a record of fan pressure to be made immediately before the fan is stopped, as well as after the fan is restarted and the fan pressure stabilizes. This record also must include the time of the pressure reading. If a mine chooses to operate the fan continuously, no record is required.

Paragraph (h) requires the records, including mine fan pressure recording charts, to be retained for at least one year and made available for inspection by authorized representatives of the Secretary and the representative of miners.

The final rule does not retain the existing provision specifying that the person conducting the examination must be trained by the operator. Training is now separately addressed by 30 CFR part 48, which did not exist when the current rule was issued.

Section 75.313 Main Mine Fan Stoppage With Persons Underground

This final rule is derived from existing § 75.321 and sets safety precautions for any unplanned main mine fan stoppage that interrupts ventilation while persons are underground. Unlike the existing standard which requires mine operators to develop a fan stoppage plan for withdrawal of persons and deenergization of equipment, the final rule establishes standard procedures to be followed during a main fan stoppage. It also requires certain precautions to be taken when stoppages last longer than 15 minutes. Since the provisions apply uniformly to all mines, MSHA has not retained the existing requirement for a fan stoppage plan approved by the district manager.

Paragraph (a) requires all electrically powered equipment in each working section to be deenergized if a main fan stops and the ventilating quantity

provided by the fan is not maintained by a back-up fan system. Deenergizing electrical equipment on working sections minimizes the possibility of an ignition source for accumulations of methane that can develop quickly when ventilation is interrupted. For the same reason, the final rule requires all other mechanized equipment in each working section to be shut off, including diesel-powered and battery-operated equipment. This precaution also minimizes potential ignition sources and prevents the accumulation of diesel exhaust contaminants while mine airflow is interrupted.

Paragraph (a)(3) also requires all persons to be withdrawn from working sections and areas where mechanized mining equipment is being installed or removed when ventilation is interrupted by a main mine fan stoppage. Areas where coal is being extracted or mechanized mining equipment is being installed or removed are typically the places in an underground mine where methane accumulation and other hazards to health or safety can develop quickly when ventilation is interrupted. To avoid exposure of miners to these hazards, timely withdrawal of persons is an important safety practice. Requiring withdrawal from the working section means that miners must be withdrawn out by the section loading point. In areas where equipment is being installed or removed and the loading point has not been established or has been removed, withdrawal is to be to the anticipated location of the loading point or to the last location of the loading point.

Paragraph (b) allows work to resume if ventilation is restored within 15 minutes after a main fan stops provided that certified persons first examine for the presence of methane in all working places and in areas where methane is likely to accumulate. A thorough examination is necessary so that methane ignitions do not occur when mining activity resumes. Diesel and electrically-powered equipment may be restarted in such areas only after certified persons have made examinations for methane in those areas.

Paragraph (c), derived from existing § 75.321, requires miners to be withdrawn from the mine when normal mine ventilation is not restored within 15 minutes after a main mine fan stops. It also requires all electric power circuits to be deenergized, except intrinsically safe AMS and circuits necessary to withdraw persons from the mine. Those circuits that remain energized for withdrawal of persons must be deenergized in an orderly manner as persons are withdrawn. Paragraph (c)(3) also requires that mechanized equipment not on the working section be shut off unless the equipment is necessary to withdraw persons from the mine.

A commenter indicated that the final rule should require withdrawal of miners after the fan has stopped for 5 minutes, instead of 15 minutes. The final rule does not include this recommendation. The final rule also does not include a recommendation by other commenters that time periods greater than 15 minutes should be permitted before withdrawal is begun. The Agency has found that 15 minutes is an appropriate time period to protect miners from the hazards that may develop following a fan stoppage. The 15-minute period is derived from existing § 75.321–1 which, with existing § 75.321, requires miners to be withdrawn from the mine after a fan stoppage in a "reasonable period" of not more than 15 minutes, unless the district manager approves a different period.

When ventilation is restored and before electric power circuits may be energized in any area, paragraph (d)(1) requires certified persons to examine underground areas and determine them to be safe before miners are permitted to return. This examination must include tests for methane and oxygen deficiency and verification that ventilation has been restored to required levels. These precautions protect miners from hazards that can develop in working places while ventilation is interrupted.

Paragraph (d)(2) is a new provision that reflects current industry practice. It permits miners to return to underground areas if ventilation is restored to the mine before they reach the surface if the underground areas where the miners work or travel are examined by certified persons and determined to be safe. MSHA does not intend that miners follow the certified persons during the examination. While the examination is being completed, miners may continue withdrawing to the surface or may wait underground. The miners must wait until the entire examination is completed before returning to their work areas. This provision preserves the level of protection provided miners by the existing rule, which does not specifically address situations in which the fan is restarted while persons are withdrawing. Existing § 75.321 states only that fan stoppage plans must "provide for withdrawal of all persons from the mine if ventilation cannot be restored" within a reasonable time.

Since the final rule allows the fan to be restarted to restore proper ventilation, it is not necessary for miners to continue withdrawal from the mine. The final rule adopts the approach of existing fan stoppage plans that permit miners to return to underground areas if ventilation is restored before they reach the surface provided an examination of the areas is made by certified persons and the areas are determined to be safe. In adopting this approach, MSHA has carefully considered written comments and testimony given at the public hearings that objected to the proposal. A major premise of the comments and testimony was that methane accumulations can be moved to an ignition source after ventilation is restored. One commenter indicated that miners should be withdrawn to the surface after all fan stoppages longer than the specified time period to minimize the possibility of miners being trapped underground or harmed by the forces of an explosion while they are waiting to return to working areas. One commenter argued that the fan should not be restarted while miners are enroute to the surface because methane may be pulled across potential ignition sources. Another commenter argued that the fan should be restarted as soon as possible to reestablish proper ventilation and remove the potential for methane accumulations. MSHA agrees that the fan should be restarted. The final rule addresses the other concerns by requiring that after a fan has been down for 15 minutes, underground electrical power circuits be deenergized and other mechanized equipment be shut off except personnel transportation equipment necessary to withdraw miners.

If a back-up fan system is used that does not provide the ventilating quantity provided by the main mine fan, § 75.311(c) permits persons to be in the mine and electric power circuits to be energized as specified in the approved ventilation plan. MSHA intends that when a back-up system is used and a fan stoppage occurs, these same persons may reenter the mine and the same power circuits may be energized as specified and approved in the ventilation plan. This permits necessary maintenance activities, such as pumping water, to be conducted until normal mine ventilation is restored. This does not mean that when a back-up fan is used that does not provide the same air quantity that the operator is exempted from the requirement to withdraw persons and deenergize or shut down equipment. Persons must be withdrawn and power must be deenergized, as required, and then the persons specified

in the approved ventilation plan may reenter the mine and electric circuits specified in the approved ventilation plan may be energized. The reason for requiring persons to be withdrawn and power circuits to be deenergized is that in most cases when a fan cannot be restarted within 15 minutes, the cause of the stoppage may not be known.

Also like § 75.311, paragraph (e) permits AMS that are intrinsically safe to remain energized during fan stoppages. Intrinsically safe systems will not cause ignitions during fan stoppages and, as indicated by commenters, could provide valuable information about the mine while ventilation is interrupted.

Section 75.320 Air Quality Detectors and Measurement Devices

The final rule revises and consolidates existing §§ 75.303, 75.303–2, 75.305–2, 75.306–1, 75.307–1, 75.308–2, 75.309–1, 75.310–2, 75.311–1, 75.312–2, 75.314–1, 75.315–1, and 75.317. It establishes requirements for devices used to make required tests or measurements, including tests for methane, oxygen deficiency, and air velocity.

Electric components of methane detectors and other devices can be an ignition source for methane and other explosive gases. Therefore, the final rule retains the requirement found in existing §§ 75.303, 75.305–2, 75.307–1, 75.308–2, 75.309–1, 75.310–2, 75.311–1, and 75.312–2, that methane detectors must be approved by MSHA. Additionally, paragraph (a) requires these devices to be maintained in permissible and proper operating condition, a provision derived from existing § 75.317. The final rule does not retain the requirement in existing § 75.317 that maintenance of methane detectors and other devices be done by a trained person. Under the final rule, methane detectors and other devices must be properly maintained at all times regardless of whether the person doing the maintenance has been trained by the operator. This does not preclude the operator from sending instruments out to the manufacturer or other repair facilities for regular servicing.

The final rule also does not require care to be taken before each shift to ensure that devices for detecting methane and oxygen are in permissible condition. As stated above, these devices always must be maintained. Also, existing § 75.150, which is unchanged by the final rule, requires persons who carry detecting devices underground to be qualified in their use. Consistent with the existing requirement, the final rule requires that tests for methane and oxygen deficiency be made by qualified persons.

MSHA indicated in the proposal that maintaining methane detectors and other devices in permissible and proper operating condition requires routine calibration with known methane-air mixtures. The Agency requested comments on whether a specific calibration interval should be included in the final rule. In response, commenters suggested retention of a specific calibration requirement, emphasizing the importance of a regular calibration schedule. The final rule specifies that methane detectors must be calibrated with a known methane-air mixture at least every 31 days. The final rule does not require weekly calibration, as recommended by a commenter. Manufacturers of methane detection instruments generally specify monthly calibration for their instruments. The Agency emphasizes, however, that the interval specified in the rule is a minimum calibration requirement. MSHA continues to believe that proper calibration is an essential part of maintaining the equipment in proper operating condition, and operators must calibrate instruments with sufficient frequency to maintain proper calibration at all times that the instruments are available for use underground.

Paragraph (b) contains a new provision that requires tests for oxygen deficiency to be made with MSHA-approved oxygen detectors. Such devices must be maintained in permissible and proper operating condition and must be capable of detecting 19.5 percent of oxygen. Also, the calibration of oxygen detectors must be checked at the start of each shift that the detectors will be used. Since normal air contains approximately 20.9 percent oxygen, the calibration of an oxygen detector can be confirmed by turning it on and verifying that its read-out shows 20.9 percent oxygen in air. Due to the ease with which this check can be made and because it is already an accepted safety practice in the industry, MSHA does not believe this requirement is burdensome. Paragraph (b) specifies that the check be made at the start of the shift on which it will be used to enable the check to be made underground. Because oxygen detectors can be affected by barometric pressure, the calibration of the detector should be checked at the approximate elevation at which it will be used.

Paragraph (c) applies to handheld devices that contain electrical components, such as those used to measure air velocity. Paragraph (c) also sets new requirements for devices with electrical components that detect carbon monoxide, oxides of nitrogen, and other gases. Like methane detectors and other electrically operated devices, this equipment must be approved for permissibility and maintained in permissible and proper operating condition. Also, as with methane detectors, MSHA believes that maintaining these detectors in permissible and proper operating condition includes routine calibration with known concentrations of the applicable gas. However, because calibration requirements may vary based on the type of instrument used, a specific calibration interval is not included in the final rule for these devices.

Several commenters objected to the proposal to prohibit flame safety lamps in underground mines. The commenters indicated that the devices are reliable, easy for miners to use and maintain, and are an accepted and traditional component of safe underground mining. Commenters also indicated that flame safety lamps can be a supplemental light source if the cap lamp fails and that many States require the use of such devices in performing tests for methane and oxygen deficiency. Most commenters recommended that the final rule permit flame safety lamps to be used as supplementary testing devices. MSHA believes that flame safety lamps cannot be used to accurately measure oxygen and methane at levels of 19.5 percent and 1.0 percent, respectively, as required by the final rule. Recognizing the problems associated with the large number of oxygen detectors that would be required, the final rule permits flame safety lamps to be used to test for oxygen deficiency for 3 years after which they may continue to be used as a supplementary testing device. As with other types of detectors, flame safety lamps must be approved and must be maintained in permissible operating condition at all times.

A commenter also noted that the proposal did not address the use of anemometers, devices used in mines to measure air velocity. The commenter requested MSHA to clarify whether the final rule prohibits the use of these devices. Under the final rule, like existing §§ 75.303–2 and 75.306–1, the operator may use any device capable of measuring air velocity, including a rotating vane anemometer. Where devices used to measure air velocity contain electrical components, the final rule, like the existing provisions, requires these devices to be approved for permissibility to ensure that they can be safely used underground.

Section 75.321 Air Quality

This standard is derived from existing §§ 75.301 and 75.301–5 and deletes existing §§ 75.301–6, 75.301–7 and 75.301–8. The rule establishes a basic air quality requirement that all areas where persons work or travel in an underground mine must be ventilated by air that contains at least 19.5 percent oxygen and not more than 0.5 percent carbon dioxide. In most workplaces, normal air contains about 20.9 percent oxygen and .03 percent carbon dioxide. Levels below 19.5 percent oxygen and above 0.5 percent carbon dioxide indicate that an air quality problem exists that needs attention. The final rule retains the levels in existing § 75.301 as appropriate for underground coal mines.

Paragraph (a) retains the requirement in existing § 75.301 that the volume and velocity of the air current in areas where persons work or travel be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases, dust, smoke and fumes. MSHA had proposed to delete this provision but now agrees with commenters to retain it. Achieving and maintaining proper airflow in all active areas of the mine is an important step in providing miners with a safe and healthy working environment. Also, this requirement is necessary to supplement the air volume and velocity requirements, set out elsewhere in the final rule, that address working sections and working places.

Paragraph (b), derived from existing § 75.301–5, establishes a maximum permissible level for explosive gases in air, other than methane. Like existing § 75.301–5, the maximum permissible concentrations specified for the gases addressed in the final rule are based upon the lower explosive limit of each gas. The lower explosive limit is the lowest concentration at which a gas will propagate and maintain an explosion. The maximum permissible levels are 20 percent of the lower explosive limits of the listed gases.

The proposal would have deleted the maximum permissible level for acetylene, propane and MAPP (methyl-acetylene-propylene-propodiene). A commenter objected to this deletion stating that all of these gases can occur underground and could accumulate to form explosive mixtures. The Agency agrees with the commenter and retains the existing standard relative to explosive gases, including carbon monoxide, which would have also been deleted by the proposal. The proposal would have also established a level for ethane. This gas can be found in underground coal mines, particularly near oil and gas wells. Section 75.323 requires precautions to reduce methane concentrations in underground coal mines, and the action levels set by that rule will ensure that ethane does not exceed a level that could endanger miners. When ethane is present, methane will be present in far greater concentrations. For example, because ethane is normally found at levels that are approximately 10 percent of the methane level present, an accumulation of ethane exceeding the proposed limit of 0.6 percent may mean a methane accumulation approaching 60 percent. Given the maximum permissible levels of methane specified in the final rule, the Agency finds that it is no longer necessary to include a maximum permissible level of ethane in coal mines.

As proposed, the final rule removes existing §§ 75.301–6 and 75.301–7. These standards specify actions to be taken by MSHA regarding sampling for explosive gases other than methane and the enforcement and abatement procedures to be applied in the event gas accumulations exceed the standards. The Act clearly delineates enforcement and abatement procedures for violations of standards and provides for a variety of inspection and investigation activities, including determining whether an imminent danger exists. MSHA believes that standards specifying MSHA-conducted sampling programs unnecessarily inhibit refinement and improvement in the administration of the Agency's responsibility. The final rule thus in no way limits MSHA when the Agency determines that sampling is necessary at a particular mine to check the levels of explosive gases and does not reduce the protection provided miners by the existing rule.

Also as proposed, the final rule does not retain existing § 75.301–8. The existing requirements specify measures an operator must take to control concentrations of explosive gases known by the operator to exist in the mine. Like the existing rule, the final rule contains maximum permissible limits of explosive gases other than methane, but allows operators to develop the method of maintaining compliance with these limits. Accordingly, the final rule does not reduce the level of protection provided miners by the existing standard.

Section 75.322 Harmful Quantities of Noxious Gases

The existing standard for harmful quantities of noxious gases at § 75.301–2 has been redesignated as § 75.322 but is otherwise unchanged. This standard includes an incorporation by reference of the threshold limit values (TLV's) adopted by the American Conference of Governmental Industrial Hygienists for harmful, noxious and poisonous gases which are more appropriately addressed in the Agency's health standards. On August 29, 1989, MSHA proposed comprehensive changes to this standard in a separate rulemaking (54 FR 35760). Appropriate exposure limits will be established by that rulemaking to address hazards at underground coal mines.

Section 75.323 Actions for Excessive Methane

The final rule revises and consolidates existing §§ 75.307, 75.308, 75.309, 75.310, and portions of § 75.316. It establishes action levels for methane concentrations detected in the areas of the mine that are most likely to immediately endanger miners. The existing rule had an action level of 1.0 percent methane in the face areas and section returns. The final rule has extended this 1.0 percent action level for methane to areas where mechanized mining equipment is being installed or removed and to intake air courses, including belt haulage entries. In addition, the final rule permits higher concentrations of methane in the section returns from a point opposite the location of the section loading point to where that split of air meets another split of air or is used to ventilate seals or worked-out areas provided certain safety precautions are taken. The maximum allowable methane concentration in the working faces and in the immediate return from the last working place on the section to a point in the return opposite the section loading point remains at less than 1.0 percent. Thus, the final rule does not reduce the level of protection provided by the existing rule.

When 1.0 percent or more methane is present in a working place, an intake air course, or an area where mechanized mining equipment is being installed or removed, paragraph (b)(1) requires all electrical, diesel, and battery-powered equipment in the affected working place, intake air course or other area, except for intrinsically safe AMS, to be deenergized or shut off. Deenergizing or shutting off this equipment prevents it from providing ignition sources. A commenter suggested that the final rule require that when 1.0 percent methane is present in a working place, the power be cut off at the source as in the existing rule. The existing rule requires at 1.0 percent methane power be cut off but

does not require that it be cut off at the source. Consistent with current interpretation and industry practice, the final rule requires that equipment be deenergized at 1.0 percent methane and that power be cut off at the source when the methane in the place reaches 1.5 percent.

Before any equipment is put back into operation, paragraph (b)(1) requires changes or adjustments to be made to the ventilation system to reduce the methane concentration below 1.0 percent. Like the existing rule, the final rule does not permit other work to be done in the affected area until the methane concentration is less than 1.0 percent.

A commenter objected to the removal of the existing term "changes or adjustments" in ventilation and permitting methane levels to be reduced by changes to the mining cycle. During public hearings, it became clear that the use of the term changes to the mining cycle was a cause of confusion. For this reason, the final rule retains from the existing standard the term changes or adjustments to the ventilation system and eliminates the reference to changes to the mining cycle that was proposed. As was indicated by the Agency during the public hearings, limiting the rate of production of coal to permit the existing ventilation system to maintain the level of methane below 1.0 percent constitutes a reasonable action to control the rate of methane liberation and is acceptable. In all cases, however, increasing the quantity or distribution of air continues to be an accepted means of reducing methane levels.

Paragraph (b) includes a new provision that specifies actions to be taken to protect miners when 1.0 percent or more methane is present in an intake air course. These actions are the same as those described under paragraph (b) for working places. A commenter objected to this provision, stating that the effect of the proposal would be to allow methane accumulations of up to 1.0 percent in intake air, while under existing standards methane is required to be below 0.25 percent in the intake. Other commenters indicated that 0.25 percent methane is not a significant concentration in a coal mine. One commenter stated that in some cases this concentration could be found where coal is being transported on a conveyor. Commenters generally indicated that it would be difficult or even impossible for most mines to maintain methane in intakes below 0.25 percent. Under the existing rule methane can accumulate in intake air courses without any action required of the operator to correct the condition unless the accumulation constitutes an imminent danger. The only exception to this is when intake air passes by abandoned areas. In this case the methane concentration is limited to 0.25 percent. Under the final rule § 75.323, when air passes by any opening of any unsealed area that is not examined under §§ 75.360, 75.361 or 75.364 of this subpart, it may not be used to ventilate any working place. The new provision limiting methane in intake air courses to 1.0 percent combined with the requirements of § 75.323 provides an increased level of safety to miners and the final rule includes the requirement as proposed.

Under § 75.352 (return air courses), entries used as return air courses must be separated from belt haulage entries. Therefore belt haulage entries must be ventilated with intake air, making them intake air courses. Thus paragraph (b) applies to belt haulage entries the same as it does to any other intake air course.

If 1.5 percent methane or more is present in a working place, an intake air course, or an area where mechanized mining equipment is being installed or removed, paragraph (b)(2) requires persons to be withdrawn from the affected area. This requirement is retained from the existing standard and the proposal and has been expanded to include areas where mechanized mining equipment is being installed or removed. In response to comments, the final rule clarifies the proposal and retains the existing provision which specifically states that persons referred to in § 104(c) of the Act may be permitted to remain in the area.

Paragraph (b)(2) also requires that all electric power to equipment in affected areas be disconnected at the power source. This prevents accidental energization of equipment and removes power from cables and circuits which may also be ignition sources. No other work is permitted in the affected area until the concentration of methane is less than 1.0 percent.

Paragraph (c)(1) requires changes or adjustment to the ventilation system when 1.0 percent or more methane is present in a return split of air between the last working place on a working section and where that split of air meets another split of air or the location at which such split is used to ventilate seals or worked-out areas. When 1.5 percent methane is present in this return split, paragraph (c)(2), like paragraph (b)(2), requires miners to be withdrawn, electric equipment to be deenergized and electric power to be disconnected at the power source, mechanical equipment to be shut off, and does not permit other work in the affected working section or the affected area until the methane concentration in the return air is less than 1.0 percent. For the purpose of this section, the air coursed through the belt entry or used to ventilate installations covered by §§ 75.340, 75.343, and 75.344 which is then directed into a return is not considered to be another split of air.

The specified action levels for return air courses in paragraphs (c)(1) and (c)(2) conform to the action levels in existing § 75.309 and are responsive to comments that these levels should be retained. However, unlike the proposal, and as discussed below, the final rule includes a special provision for return air courses derived from the existing distinction between section return air courses in general and those located in "virgin territory."

Commenters indicated that when the final rule requires electrical equipment to be deenergized at specified methane action levels, intrinsically safe electrical equipment should be permitted to remain in operation. Intrinsically safe equipment is designed to be incapable of releasing enough electrical or thermal energy under normal or abnormal conditions to ignite a flammable methane-air mixture. In particular, the commenters requested that MSHA allow intrinsically safe components of an AMS to remain in operation. MSHA agrees, and the rule permits intrinsically safe AMS to remain energized when all other mine electrical equipment must be deenergized. Section 75.351 requires that components of monitoring systems used in areas where permissible equipment is required be intrinsically safe.

Paragraph (d) establishes alternative methane action level requirements for section return air courses provided that additional safety precautions are followed. This alternative is derived from existing § 75.310, which recognizes that methane liberation can be higher in areas that are newly mined than in areas where previous mining has allowed methane to "bleed off." The existing rule allows mining to be conducted in "virgin" areas until the methane concentration in the return air course reaches 2.0 percent, provided certain safety precautions are followed. The final rule retains and augments these safety precautions and allows mining to continue in all areas of the mine until the methane concentration at any point in the return from a point opposite the section loading point to the location where the return split meets another split of air or the location where the split is used to ventilate seals or worked-out areas reaches 1.5 percent.

provided all of the safety precautions specified in paragraph (d) are followed. MSHA believes that in all cases where these measures are properly implemented, miners are provided with a level of safety at least equal to the level of safety otherwise provided by the methane levels specified in paragraph (c).

Among the additional safety measures the final rule sets for mining up to a level of 1.5 percent methane in the section return is a requirement that the minimum quantity of air in the split ventilating the active workings as determined in the last open crosscut must be 27,000 cubic feet per minute (cfm) or the quantity of air approved in the ventilation plan, whichever is greater. The final rule clarifies existing § 75.310 by setting a minimum quantity of 27,000 cfm in the last open crosscut. Under existing § 75.310, mining is permitted to continue provided twice the minimum quantity required for the last open crosscut in existing § 75.301 is maintained. One interpretation of existing § 75.310 is that since existing § 75.301 generally requires 9,000 cfm of air in the last open crosscut, the air quantity required under § 75.310 is 18,000 cfm. However, another interpretation is that since § 75.301 permits a greater quantity for the last open crosscut to be required by the district manager, the appropriate air quantity for compliance with § 75.310 is twice the minimum specified in the approved ventilation plan. Paragraph (d) establishes 27,000 cfm as a minimum air quantity but requires the level specified in the approved ventilation plan, when this quantity is greater than 27,000 cfm due to the conditions at a particular mine. The approved ventilation plan would set air quantity levels necessary to reduce methane accumulation in areas addressed by these alternative requirements.

The final rule retains the existing provision requiring the methane content in the return air split to be continuously monitored during mining operations. Paragraph (d) requires monitoring by an AMS. The AMS must give a visual and audible signal on both the working section and the surface when the methane content in the return air reaches 1.5 percent.

Section 75.351(b)(2) (atmospheric monitoring system (AMS)) clarifies the locations for monitoring the return air. When this alternative is chosen, the AMS must monitor methane at a point in the return air course opposite the section loading point. However, if auxiliary fans and tubing are used for face ventilation, the sampling location must be maintained at a point immediately outby the auxiliary fan discharge or at a point in the return opposite the section loading point whichever is the most outby. The AMS must also monitor the methane in the return immediately inby the point where the split of air meets another split of air, or the split of air is used to ventilate seals or worked-out areas.

The maximum allowable methane concentration in that part of the immediate return from the last working place on the section to a point in the return opposite the section loading point remains at less than 1.0 percent. Thus, the final rule does not reduce the level of protection provided by the existing rule.

A new precaution in paragraph (d) requires rock dust to be continuously applied with a mechanical rock duster during coal production. Rock dusting must start at a point in the return air course immediately outby the methane monitor located at a point opposite the section loading point. When auxiliary fans are used, rock dust must be applied immediately outby the fan discharge. Under paragraph (d), if 1.5 percent methane is present in the return air course, persons must be withdrawn from the affected areas and equipment, other than intrinsically safe AMS, in the affected area, must be deenergized and other mechanized equipment must be shut off. Also, under paragraph (d), changes or adjustments to the ventilation system must be made to reduce the concentration of methane to less than 1.5 percent. No other work is permitted in the affected area until the methane concentration in the return air is less than 1.5 percent.

The action levels for section return air courses in paragraphs (d) modify the Agency's interpretation of existing §§ 75.309 and 75.310. MSHA has interpreted these 2 sections, when read together, to allow mining in an environment containing up to 2.0 percent methane. This has not exempted the mine operator from the application of existing § 75.309 which requires the operator to make changes or adjustments in ventilation as soon as the level of methane rises above 1.0 percent. Also, under this interpretation, MSHA has not allowed mining to continue after the 2.0 percent level is exceeded until the methane concentration has been reduced below 1.0 percent. Commenters argued that this interpretation is unduly restrictive and renders existing § 75.310 meaningless. The final rule does not adopt this interpretation of existing §§ 75.309 and 75.310 but provides an alternative to the methane action level of 1.0 percent by specifying in paragraph (d) that changes or adjustments to the ventilation system must be made to reduce methane in the return air to less than 1.5 percent. When the safety precautions outlined in the rule are followed, the final rule provides protection to miners equivalent to the existing rule.

The provisions in paragraph (d) provide optional methane action levels. If the operator chooses not to follow the additional precautions, the provisions of paragraphs (c) apply. In all cases, the mine operator is required to comply with the methane levels specified in paragraphs (a) and (b), regardless of whether the operator chooses to follow the provisions of paragraph (d).

Paragraph (e) permits no more than 2.0 percent methane to be present in a bleeder split of air at a point just before the air in that split enters another split of air. Also, for return air courses, other than those addressed in paragraphs (c) and (d), paragraph (e) permits no more than 2.0 percent methane to be present. Thus the final rule retains the maximum permissible methane limits established in existing § 75.329 and makes mandatory the existing § 75.316–2 criteria concerning the methane limit in return air courses.

Section 75.324 Intentional Changes in the Ventilation System

This section revises existing § 75.322. It requires certain precautions when a change is made to increase or decrease ventilation on a working section in excess of the specified amount or when a ventilation change alters the main air current of the mine or any split of the main air current in a manner that could materially affect the health or safety of miners underground. Under these circumstances, the ventilation change must be supervised by a person designated by the mine operator. In addition, before the change is made, electric power must be removed from areas that may be affected by the change and mechanized equipment in those areas must be shut off. Also, only persons making the ventilation change are permitted in the mine while the change is being made. Afterward, certified persons must examine the areas affected by the change to determine whether methane accumulations or oxygen deficiencies have resulted. The final rule does not allow electric power to be restored to affected areas nor mechanized equipment to be restarted until these tests have been made and the areas are determined to be safe. Commenters suggested that persons other than those

making the ventilation change be permitted to remain in those areas of the mine not affected by the change. Because of the complexity of most mine ventilation systems and the difficulty in predicting the effect of a change on the entire system, MSHA has not included this suggestion in the final rule. As proposed, the final rule requires that persons other than those making the change be withdrawn from the mine.

Section 75.324 sets an action level of 9,000 cfm for ventilation changes on working sections in bituminous or lignite mines. The precautions required when this level is met or exceeded incorporate requirements found in many existing ventilation plans and are practices widely accepted by the mining industry. A ventilation change of 9,000 cfm is significant for any working section and necessitates deenergization of equipment, withdrawal of persons from the mine, and subsequent examination for hazards.

For anthracite mines, the final rule requires the specified precautions be taken when the ventilation change involves 5,000 cfm of air or more. This is consistent with § 75.325, which requires a minimum of 5,000 cfm of air to be maintained in the last open crosscut of anthracite mines.

MSHA recognizes that in some large mines a ventilation change of 9,000 cfm (5,000 cfm in anthracite mines) in the main air current of the mine or an individual split of the main air current may not necessarily be significant. Alternatively, in other mines changes of 9,000 cfm or less in the main air current or an individual split of the main air current could substantially affect total mine ventilation. Accordingly, these limits in the final rule do not apply to main air currents or to splits of the main air currents. Instead, the final rule specifies that the prescribed precautions must be taken when the ventilation change is one that "alters the main air current in a manner that could materially affect the safety or health of persons in the mine."

A commenter suggested that a record be maintained of all ventilation changes. Section 75.370(c) requires that any intentional change to the ventilation system that alters the main air current or any split of the main air current in a manner that could materially affect the safety and health of the miners, or any change to the information required in § 75.371 shall be submitted to and approved by the district manager before implementation. This requirement provides a greater degree of protection for the miner than does the maintaining of a record of these changes.

Section 75.325 Air Quantity

This final rule is derived from existing §§ 75.301, 75.301–1, and 75.301–3 and establishes minimum air quantity requirements for all underground coal mines.

The quantity of air in cubic feet per minute (cfm) is an important measure of underground coal mine ventilation. It is essential for miners' health and safety that each working face be ventilated by sufficient quantities of air to dilute, render harmless, and carry away flammable and harmful dusts and gases produced during mining. An insufficient quantity of air at a working face could permit methane to accumulate and lead to the development of other hazards.

The final rule retains the existing requirement that a minimum air quantity of at least 3,000 cfm reach each working face in bituminous and lignite mines where coal is being cut, mined, or loaded. Maintaining this minimum quantity of air at the face is a longstanding industry practice and is considered to be the minimum amount necessary for all mines to ensure that effective, reliable face ventilation is provided. Lesser quantities of air at the face have been shown to be inadequate to sweep face areas, thereby allowing methane to accumulate to dangerous levels. Therefore, since methane can be liberated at any time, even in a mine with little prior experience with methane liberation, the 3,000 cfm standard is retained as a minimum air quantity. Paragraph (a)(1) also requires that this minimum quantity be provided at working faces that are being drilled for blasting and that the locations of other working places or faces where a minimum air quantity is required and the quantity required be specified in the approved ventilation plan. If mining conditions dictate that a greater quantity of air is necessary at the face, the approved ventilation plan will set minimums greater than 3,000 cfm.

MSHA and Bureau of Mines studies of face ventilation systems show that the effectiveness of the face ventilation system depends on factors that include the volume of methane released and the volume of air delivered to the face by the ventilation system. See, for example, "Face Ventilation in Underground Bituminous Coal Mines: Airflow and Methane Distribution Patterns in Immediate Face Area-Line Brattice" (James V. Luxner; 1969) and "Evaluation of Face Ventilation Systems in Underground Coal Mines" (Haney, Banfield, and Gigliotti; 1984). Thus, in mines where methane liberation is high, a quantity of air greater than 3,000 cfm may be necessary to reduce the potential for methane ignitions at the face and to achieve compliance with other standards.

Paragraph (a)(2) specifies that the air quantity reaching the face must be determined at or near the face end of the line curtain, ventilation tubing, or other ventilation control device. MSHA also recognizes, however, the danger to miners of working beyond the last row of permanent supports and therefore requires that if the line curtain or tubing extends beyond the last permanent support, the quantity of air reaching the working face must be determined behind the line curtain or in the ventilation tubing just outby the last row of permanent supports.

MSHA had proposed that the quantity of air reaching the working face be greater than the operating volume of machine-mounted dust collectors and diffuser fans. A commenter stated that air in excess of the capacity of the dust collecting unit is counter productive to respirable dust control because excess amounts of air overrun the dust collector and suspend the dust in the air passing over the miners. The final rule does not retain this proposed language. To provide the necessary information to establish appropriate air quantities when dust collectors or diffuser fans are used, paragraph (a)(3) requires that the operating volume of these devices be specified in the approved ventilation plan.

Paragraph (b) requires the approved ventilation plan to specify the quantity of air reaching the last open crosscut in any pair or set of developing entries or rooms in bituminous and lignite coal mines. This approach, which is discussed in the explanation of § 75.371, accounts for varying mining conditions and types of face ventilation systems when establishing the air quantities necessary for effective methane and dust control at each mine. In no case, however, may the quantity of air reaching the last open crosscut be less than 9,000 cfm. Commenters stated that a minimum quantity is needed to be maintained in the last open crosscut in all mines and 9,000 cfm minimum is based on existing § 75.301. MSHA believes providing at least 9,000 cfm will ensure adequate ventilation of the section up to and including the last open crosscut. As in the existing rule, the final rule requires the necessary air quantity reaching the intake end of a pillar line to be specified in the approved ventilation plan and sets a 9,000 cfm minimum. The Agency intends that this minimum apply to sections which are not operating but are capable of producing coal by simply energizing the equipment on the section.

Recognizing that crews may be moved from section to section for various reasons, including equipment breakdown during the shift, the final rule includes the provision that this minimum quantity apply to sections which are not operating but are capable of producing coal by simply energizing the equipment on the section. Other sections requiring more than just energizing equipment to become producing sections may not need to be provided with the 9,000 cfm. However, ventilation changes to provide this minimum quantity must be made in accordance with § 75.324 of the final rule prior to production.

Paragraph (c) is a new provision addressing longwall mining systems. It requires that at least 30,000 cfm of air reach each working longwall face. The proposed rule required at least 20,000 cfm of air to reach each working longwall face. However, based on a report by MSHA's Office of Technical Support entitled "Evaluation of Respirable Dust Control on Longwall Mining Operations" (Ondrey, *et al.*, paper presented at SME Annual Meeting, Salt Lake City, Utah, February 28, 1990) the final rule now requires a minimum quantity of 30,000 cfm. These tests have shown that this was the minimum amount of air required to achieve adequate ventilation of the longwall face during the study. Like the provision for mean entry air velocity, paragraph (c) provides that a lesser air quantity can be approved in the ventilation plan if the operator demonstrates that the lesser quantity will maintain continual compliance with applicable methane and respirable dust standards. If conditions warrant, the final rule allows a greater quantity to be required in the approved ventilation plan. To ensure that the necessary air quantity is reaching the working face, § 75.360(c)(2) requires the quantity to be determined in the intake entry or entries at the intake end of the longwall face immediately outby the face.

In addition, for the installation and removal of mechanized mining equipment, paragraph (d) requires that the area be ventilated and that the quantity of air and the ventilation controls required be specified in the approved ventilation plan. This is a new provision that greatly enhances the protection provided miners.

MSHA believes that the minimum air quantity requirements in existing § 75.301 were not established to address the particular conditions of anthracite mines. Unlike in bituminous and lignite mines, electric face equipment is rarely used in anthracite mines, reducing the amount of air necessary to control hazards from dust, methane, and other gases. Additionally, the quantities specified in the final rule for anthracite mines help to minimize the effects of the severely cold and wet conditions of many anthracite mines. Paragraph (e) separately addresses anthracite mines and requires a minimum 1,500 cfm quantity of air to reach each working face where anthracite coal is being mined unless a greater quantity is specified in the approved ventilation plan. Existing § 75.301 requires 3,000 cfm of air in these areas. The final rule also reduces from 9,000 to 5,000 cfm the air quantity required to pass through the last open crosscut in each set of entries or rooms and the air quantity required at the intake end of any pillar line. The approved ventilation plan may specify a greater quantity if conditions warrant. These changes reflect Agency experience with respect to petitions for modification. The air quantities in the final rule do not reduce the level of protection provided miners in anthracite mines. The final rule retains the existing requirement for anthracite mines that when robbing areas where air measurements cannot be obtained, the air must have perceptible movement.

Section 75.326 Mean Entry Air Velocity

This section is derived from existing § 75.301–4, and retains the existing requirement that a minimum mean entry air velocity of 60 feet per minute (fpm) be maintained in all working places using exhausting face ventilation systems. The mean entry air velocity is the average velocity across the cross section on the intake side of the working place and is an important factor in controlling respirable dust in exhausting face systems. Like the existing rule, the final rule permits lower mean entry air velocities to be specified in the approved ventilation plan, provided the lower air velocities will maintain concentrations of methane and respirable dust within the limits of the applicable standard. This provision in the final rule clarifies the existing standard. The existing standard states that a mean entry air velocity lower than 60 fpm may be approved if it "reduces the level of respirable dust to lowest attainable level." Arguably, the "lowest attainable level" could be a level of respirable dust exceeding the 2.0 mg/m^3 limit set in existing § 70.100(a). By referencing the applicable dust standard, the final rule removes this ambiguity.

Like the existing standard, the final rule establishes a minimum mean entry air velocity of 60 fpm for working faces where coal is being cut, mined, or loaded unless otherwise specified in the approved ventilation plan. Also, to achieve the same level of protection as the existing rule, the final rule requires a minimum mean entry air velocity of 60 fpm for working faces where coal is being drilled for blasting unless otherwise specified in the approved ventilation plan and for other working places as specified in the approved ventilation plan.

Under the final rule, the mean entry air velocity must be measured at or near the inby end of the line curtain or other face ventilation control device. Unlike the existing provision, however, the final rule does not include instructions for calculating the mean entry air velocity. This aspect of the final rule does not reduce the level of protection provided miners by the existing rule. By eliminating the existing provision, the final rule permits direct measurement, using a traverse method, to determine the mean entry air velocity on the intake side of the working place whenever such measurement is possible. The final rule also permits the method prescribed in the existing rule. This method finds the mean entry air velocity by determining the quantity of air at the inby end of the line curtain and dividing this quantity by the cross-sectional area of the intake side of the working place.

Section 75.327 Air Courses and Trolley Haulage Systems

Paragraph (a) retains the requirement of existing § 75.327. It applies to intake air courses where trolley wires or trolley feeder wires are installed and allows an authorized representative of the Secretary to require a sufficient number of entries or rooms as intake air courses to limit the velocity of air in the haulageways to minimize hazards with fires and dust.

Paragraph (b) retains the requirement of § 75.327–1 that sets a maximum of 250 fpm air velocity in haulage entries where trolley wires and trolley feeder wires are located at a maximum of 250 fpm, unless a higher velocity is approved by the district manager.

The proposed rule specified a minimum air velocity of 50 fpm to ensure adequate ventilation in these entries. As with the proposed requirement for two escapeways ventilated with intake air and the alternative that would have permitted air in the belt haulage entry to be used to ventilate working places under certain conditions, the requirement for a 50 fpm minimum velocity in belt haulage entries has been referred to an advisory committee.

Section 75.330 Face Ventilation Control Devices

This section consolidates and modifies §§ 75.302 through 75.302–3. It requires brattice cloth, ventilation tubing, and other face ventilation control devices to be made of flame-resistant material approved by MSHA. Also, the rule requires these devices to be installed at each working face from which coal is being cut, mined, drilled for blasting, or loaded, and at other working faces as specified in the approved ventilation plan.

Existing § 75.302–3 requires brattice cloth or ventilation tubing to have a flame spread index of 25 or less as determined by ASTM methods of test E–84 or E–162. Paragraph (a) replaces this provision with a new requirement that brattice cloth, ventilation tubing and other face ventilation control devices be made of flame-resistant material approved by MSHA. To be approved by MSHA for use underground, any brattice cloth and ventilation tubing purchased after August 15, 1992 must pass tests for flame resistance in accordance with 30 CFR part 7, which were established after the existing standard. Brattice cloth and ventilation tubing purchased before August 16, 1992 which passed the requirements of § 75.302–3 may continue to be used. Paragraph (b)(1) requires face ventilation control devices to be used to provide ventilation to each working face where coal is being cut, mined, drilled for blasting, or loaded, and to other working places specified in the approved ventilation plan. Effective ventilation necessitates the use of line curtain or other devices for all areas where coal is being produced, as well as other areas to be specified in the approved ventilation plan such as where roof bolting is being done.

Paragraph (b)(2) is derived from existing § 75.302–1. It requires ventilation control devices to be maintained at a distance of 10 feet from the point of deepest penetration of the face unless an alternative distance that will maintain concentrations of respirable dust, methane, and other harmful gases below applicable standards is specified in the approved ventilation plan. Under this provision, line brattice, for example, may be located more than 10 feet from the face if the operator can maintain compliance with the applicable standards for respirable dust and methane and if the alternative distance is approved in the ventilation plan. MSHA's experience with the existing standard shows that ventilation controls used more than 10 feet back from the face can often effectively control methane and dust when used in conjunction with supplementary ventilation devices such as machine-mounted dust collectors, spray fan systems, or diffuser fans. This practice also helps to prevent damage to or displacement of the control devices during the mining process and eliminates the potential exposure of miners to unsupported roof.

Commenters expressed concern that the proposed rule did not specify 10 feet as a maximum distance from the face for line brattice. The Agency has considered these comments and has modified the final rule accordingly.

A commenter suggested that the final rule should specify that face ventilation control devices must be repaired immediately when damaged. The commenter indicated that if ventilation controls are damaged or become inadequate to ventilate a face, a potentially dangerous situation can develop if mining continues. MSHA agrees that immediate repair of ventilation control devices is an important practice. Under the final rule, effective repairs to ventilation control devices will be necessary to maintain compliance with §§ 75.323 and 75.325. Section 75.323 prohibits mining in face areas if the methane concentration at the face exceeds 1.0 percent. Section 75.325 requires that 3,000 cfm of air, or a greater quantity if required in the approved ventilation plan, must be provided at all times to each working face where coal is being cut, mined, drilled for blasting, and other places if specified in the approved ventilation plan. When a damaged or displaced ventilation control does not provide enough ventilation to face areas to meet these requirements, the operator must immediately take action to repair the affected ventilation controls.

Similarly, the final rule does not retain the provision in the existing rule requiring that adequate space be provided between the coal rib and the line brattice or other devices. Removal of this provision does not reduce the level of protection provided miners. To comply with the methane requirements of § 75.323 and the air quantity requirements of § 75.325, ventilation control devices must be located to provide space between the device and the rib that is sufficient to allow ventilation to reach the working face. Thus, in all cases under the final rule, line brattice must be properly installed to achieve adequate face ventilation.

The final rule also does not retain the existing requirement that check curtains required with line brattice be installed to minimize air leakage and to permit traffic to pass without adversely affecting face ventilation. Like the existing requirement to provide adequate space between the line brattice and the nearest rib, MSHA believes that this aspect of the existing rule is unnecessary and its removal thus does not reduce the level of protection provided by existing § 75.302–1. If check curtains are improperly installed, ventilation to the working face will be interrupted or significantly reduced. Thus, to comply with the relevant air quantity requirements in the final rule, check curtains will have to be installed in a manner that minimizes air leakage and permits traffic to pass without adversely affecting face ventilation.

Section 75.331 Auxiliary Fans and Tubing

This section is derived from and clarifies existing § 75.302–4 and sets requirements for the operation of auxiliary fans used to provide ventilation to face areas instead of or together with line brattice systems.

Paragraph (a) retains the existing requirement that auxiliary fans, when electrically operated, must be permissible. Also, the rule requires all fans to be maintained in proper operating condition. As suggested by a commenter, the existing provision that requires fans to be inspected frequently by a certified person when in use is retained as part of the on-shift examination (§ 75.362(e)). Regular fan inspection by the operator is an element of maintaining fans in proper operating condition and the frequency of the inspection is dependent on mine specific conditions. Under the final rule, MSHA expects operators to inspect auxiliary fans at whatever intervals are necessary to ensure the fans remain in proper operating condition at all times and that the methane content in the air discharging from the fan does not exceed applicable levels.

As proposed, the final rule requires auxiliary fans to be deenergized when no one is present on the working section. This prevents electrically operated fans from developing malfunctions or creating ignition or explosion hazards that might not be detected until someone returns to the section. The final rule retains the requirement in the proposal that requires auxiliary fans to be located and operated to avoid recirculation of air.

Paragraph (b) requires deficiencies in auxiliary fans to be corrected immediately or the fan must be deenergized. Also, like the existing rule, when the air passing through the auxiliary fan or tubing contains 1.0 percent methane, paragraph (c) requires

electrical equipment in the working place and the auxiliary fan to be deenergized and other mechanized equipment in the working place to be shut off. Like the existing requirement, the final rule does not permit this equipment to be restarted until the methane concentration is reduced to less than 1.0 percent.

Paragraph (d) also retains existing requirements that address situations in which an auxiliary fan is stopped, either intentionally as during idle periods, or due to failure of the fan. The final rule requires line brattice or other face ventilation control devices to be used to maintain ventilation to affected faces when the auxiliary fan is not in operation. This provision is aimed at avoiding "dead" air spaces that can result when auxiliary fans cease providing ventilation to the face. As an additional precaution to reduce the possibility of methane ignitions during the interruption in ventilation, paragraph (d)(2) requires electrical equipment in the affected working places to be disconnected at the power source and other mechanized equipment to be shut off. When ventilation to the working place is restored, either through the use of line brattice or other face ventilation control devices under paragraph (d)(1) or by restarting the auxiliary fan, mining activities in the working place may resume.

The final rule does not retain the existing provision prohibiting operation of auxiliary fans during stoppage of mine ventilation and until methane has been removed. The existing provision also states that removal of methane must be accomplished by conducting the air current into the working place by line brattice or an equivalent device. Although these provisions are not retained, the final rule does not reduce the level of protection provided by the existing rule. Under § 75.313, auxiliary fans must be deenergized during unscheduled main fan stoppages. Similarly, § 75.311 prohibits operation of auxiliary fans during planned main fan stoppages. Also, the final rule does not permit auxiliary fans to operate if 1.0 percent or greater methane is passing through the auxiliary fan.

The final rule does not retain the existing provision specifying that face ventilation systems using auxiliary fans and tubing or machine mounted diffusers must be approved in the ventilation plan. Under § 75.371 of the final rule, the approved ventilation plan must include information regarding all face ventilation systems used in the mine, as well as drawings illustrating how such systems are used on each working section.

Section 75.332 Working Sections and Working Places

Paragraph (a) of this section is derived from existing §§ 75.319 and 75.319–1, while paragraph (b) revises existing §§ 75.311 and 75.312. The final rule requires that each working section be ventilated with a separate split of intake air directed by overcasts, undercasts, or other permanent ventilation controls. This provides miners on each section with at least one fresh air intake not contaminated with gases or dust from another set of mining equipment. Keeping with existing practice, the final rule allows more than one set of mining equipment on a split, with the condition that only one set at a time may be used for cutting, mining, or loading coal or rock. Thus, one set may be repositioned or serviced while the other set is mining. The rule defines a set of mining equipment to include a single loading machine, a single continuous mining machine, or a single longwall or shortwall machine. Thus MSHA considers a double drum longwall shearer to be one longwall machine. Also, consistent with existing Agency interpretations, MSHA does not consider a scoop a loading machine for purposes of requiring separate splits of air.

When two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each set of equipment must be ventilated by a separate split of intake air. Thus, methane or dust produced during production activities by one set of equipment does not harm miners working with another set of equipment. This requirement also applies to longwall or shortwall sections if more than one longwall or shortwall mining machine is used.

A commenter expressed concern that paragraph (a) allows the use of a "super section"; that is, two sets of mining equipment operating simultaneously and sharing a common dumping point on the same section, with each set being ventilated by a separate split of intake air. MSHA has long permitted super sections under existing § 75.319. This experience has shown that super section mining can be done safely provided mining equipment is not being used to cut, mine, or load coal or rock material simultaneously in the same air current. To accommodate this type of mining, the current of air directed into the section must be split ("fishtailed") near the working places so that two splits of intake air ventilate the faces. This provides a separate split of air for each set of mining equipment. The final rule continues to allow super sections with separate splits of intake air.

Paragraph (b) is derived from existing §§ 75.311 and 75.312 and clarifies these provisions by eliminating the use of the term "abandoned area." The term "abandoned area" is not used in the final rule. Existing § 75.2 (h) defines "abandoned area" as a portion of the mine that is not ventilated and examined in the manner required for working places under subpart D. The term "abandoned area" has been a source of confusion, particularly with respect to the term "idle area," and with the existing definition of "active workings" in § 75.2.

To eliminate this confusion, paragraph (b)(1) prohibits air from being used to ventilate a working place if the air has passed through any area that is not examined under §§ 75.360(d), 75.361, or 75.364. The final rule also does not permit air that has passed through any area where second mining has been done to be used to ventilate a working place. Second mining is defined as intentional retreat mining where pillars have been wholly or partially removed, regardless of the amount of recovery obtained. Thus, air that has passed through any of these areas may not be used to ventilate any working place, regardless of the methane content in the air. MSHA believes that by making this change, the final rule reduces the possibility of advancing working places being ventilated by air containing methane or other gases.

A commenter questioned the proposed provision, indicating that it would permit air that has passed by openings of areas where mining has been completed to be used to ventilate working places if the intake air contained less than 1.0 percent methane, an action level for intake air courses specified in § 75.323. The commenter said that this aspect of the proposal would reduce the level of protection provided miners by existing § 75.311.

Considering this comment, the Agency has included a provision in paragraph (b)(2) prohibiting air that has passed by an opening of any unsealed area that is not examined under subpart D to be used to ventilate any working place, whatever the methane content in the air. Like the provision contained in paragraph (b)(1), the provision in paragraph (b)(2) helps ensure that adjacent working places are not endangered by methane or other gases in other areas of the mine.

Neither paragraph (b)(1) nor (b)(2) is intended to prevent retreat mining. The existing rule allows ventilation of pillars along the pillar line, though the air has ventilated adjacent pillars, to maintain an orderly sequence of pillar extraction.

Section 75.333 Ventilation Controls

This section is derived from existing §§ 75.326 and 75.1707 and from criteria in § 75.316–2 used for the approval of mine ventilation plans. It applies to all workings, including extensions of existing air courses, haulageways, escapeways, and areas where trolley wires or trolley feeder wires are located. The final rule consolidates into one standard the locations where permanent stoppings and other permanent ventilation controls must be erected and maintained.

For purposes of this section of the final rule, paragraph (a) defines "durable" as material that, when used to construct a ventilation control, results in a control that is structurally equivalent to an 8-inch hollow-core concrete block stopping with mortared joints, as tested under section 12 of the American Society for Testing and Materials (ASTM), "Standard Methods of Tests of Panels for Building Construction," E72–80. In response to comments, the final rule clarifies that the material must pass the test specified in section 12, Transverse Load-Specimen Vertical.

Permanent stoppings maintain the integrity of intake and return air courses. Therefore, paragraph (b)(1) requires new permanent stoppings or other permanent ventilation controls between intake and return air courses, beginning at the third connecting crosscut outby each working face. This provision is based on the existing criterion in § 75.316–2(b). The proposal would have required permanent stoppings to be installed from the fourth connecting crosscut outby the face. MSHA had intended this provision to allow check curtains to be arranged in a way that reduces the necessity of driving equipment through a check curtain. A commenter objected to this proposal, stating that permitting an additional stopping with temporary ventilation controls would result in excessive leakage between entries, thus causing some short circuiting of air away from the working places. MSHA agrees and the final rule retains the existing provision but allows alternatives to maintaining stoppings or other permanent controls to the third crosscut, if specified in the approved ventilation plan.

The final rule includes the proposed provision permitting temporary ventilation controls to be installed between intake and return air courses instead of permanent stoppings or other permanent ventilation controls in rooms advanced less than 600 feet from the center line of the entry from which the room was developed. A commenter objected, stating that permanent stoppings and other permanent controls should be required in all rooms, regardless of the distance the room is advanced. The commenter stated that temporary ventilation controls do not adequately maintain the integrity of the ventilation system if the temporary controls alone direct the air current to the working place. Commenters particularly stressed the need for permanent stoppings to be used to separate conveyor belts in rooms from intake and return air courses because the hazards associated with conveyor belts are the same for all belts, regardless of length. The Agency has considered all comments, and consistent with longstanding policy, the final rule permits the use of temporary controls in rooms less than 600 foot in depth because these rooms are used for a short duration and the minimum air quantity must be maintained regardless of the controls used.

Paragraph (b)(2) requires that belt conveyor haulageways be separated by permanent stoppings or other permanent ventilation control devices from return air courses and paragraph (b)(3) requires that they be separated by permanent stoppings or other permanent ventilation control devices from intake air courses when the air in the intake air course provides air to active working faces. Paragraph (b)(4) requires stoppings or other permanent ventilation controls to be used to separate primary escapeways, as required by § 75.380(g). A commenter stated that the proposed rule would not require belt entries to be separated by permanent stoppings from intake air courses. However, like the proposal, the final rule specifies, with clarifying changes, that belt entries must be separated from the primary escapeway and paragraph (b)(3) clarifies the separation between belt haulage entries and other intake air courses. Under §§ 75.380 and 75.381, the primary escapeway must always be an intake air course. Conversely, under § 75.352, the belt entry must be ventilated with intake air. This aspect of the final rule is consistent with existing standards and allows the belt entry to be used as the alternate escapeway.

Paragraph (c) adds the requirement that personnel doors and door frames in stoppings must also be made of noncombustible material. These doors are also required to be of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between air courses or entries. The Agency does not consider conveyor belt or other similar material to be suitable for the construction of personnel doors. Paragraph (c)(1) is a new requirement for personnel doors installed after August 15, 1992, to be installed in permanent stoppings separating air courses and haulageways at 300-foot intervals in coal heights below 48 inches and at 600-foot intervals in coal heights 48 inches or higher. In a mine emergency, the ability to travel between such entries can be life saving. Without doors, miners might have to travel for hundreds or even thousands of feet in entries filled with smoke or other hazards before a means to exit that air course can be found. The final rule also takes into account that miners are unable to travel as quickly in lower coal seams. Also, the final rule requires the location of doors in all escapeways to be clearly marked so that persons can easily identify the doors when traveling in the escapeway or in the entries on either side of the doors.

Paragraph (d) requires doors, other than personnel doors, installed after August 15, 1992, to be constructed of noncombustible material or coated on all accessible surfaces with flame-retardant material having a flame-spread index of 25 or less, as tested under ASTM E162–87. This would permit the continued use of wood for the construction of doors, such as track doors, provided they are coated in the proper manner with an appropriate flame-retardant material. Doors, other than personnel doors, must also be of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between or within air courses or entries.

Paragraph (d)(3) requires that doors, other than personnel doors, when used, be installed in pairs to form an airlock. Airlocks are often used underground to permit machinery to travel from one air course to another air course or within air courses or entries without disrupting ventilation. This maintains the integrity of intake and return air courses when doors, other than personnel doors, are installed. When in use, one door in the airlock must remain closed. When the doors are not being used, both sides must be closed.

Paragraph (e) is derived from existing criteria and requires all overcasts, undercasts, shaft partitions, permanent stoppings, and regulators to be made of durable and noncombustible material such as concrete, concrete block, brick, cinder block, tile, or steel. As a matter of clarification and consistent with current

understanding, regulators have been specifically added to the list of permanent ventilation controls in paragraph (e)(1). The Agency has always considered regulators, which are normally built in permanent stoppings, to be permanent ventilation controls and § 75.1202–1, temporary notations, revisions and supplements, of the Chapter specifically identifies regulators as a permanent ventilation control. Ventilation controls constructed of such materials provide protection against the spread of fires at these locations. When fire burns through a stopping or other ventilation control, the harmful products of combustion contaminate a greater area, increasing the danger to miners' lives. Thus, the final rule does not permit the use of materials that can fail quickly during fires, such as aluminum.

During an underground coal mine fire, temperatures can reach 1500 to 2000 °F. MSHA believes that aluminum is not an appropriate construction material for ventilation controls because most aluminum alloys fail at temperatures below 1500 °F. Most aluminum alloys melt at a temperature of approximately 1100–1200 °F and show a reduction of strength at temperatures well below this. For these reasons, the Agency does not consider aluminum a "noncombustible" material.

The Agency, however, also recognizes that coatings may be available that, when applied to aluminum, could provide protection against fire for extended periods of time. Consistent with this, the Agency has permitted appropriately coated aluminum ventilation controls to be used in some mines. While the final rule does not require these aluminum ventilation controls already in use in underground mines to be removed, no new aluminum controls may be installed after August 15, 1992. Furthermore, MSHA will not permit aluminum controls to be removed and reinstalled elsewhere in the mine.

Some commenters questioned whether the final rule would permit the use of steel ventilation controls. They stated that these controls can be superior to traditional masonry structures used underground because fire will not cross through steel controls as easily, entry convergence does not damage them, and the structures have superior air-holding capacities. Another commenter objected to the use of steel as a construction material, stating that steel is inferior to other materials that can be used to build ventilation controls. After considering all the comments, MSHA finds that, as with any material used to build permanent ventilation controls, steel can be used if the steel structure is durable and noncombustible. No construction material is permitted unless it meets these definitions, including steel. Thus, listing steel among the specified materials in the rule does not reduce the protection provided miners by the existing rule.

In response to other comments, paragraph (e)(2) separately addresses anthracite mines and permits permanent stoppings to be constructed of overlapping layers of hardwood boards. To provide sufficient strength and fire-resistance characteristics, the rule requires the stoppings to be a minimum of 2 inches thick. Due to the pitch and configuration of anthracite mines, stoppings are constructed nearly or entirely horizontal to the entries they separate, rather than vertically. Under these circumstances, and due to the extremely wet conditions in most anthracite mines, hardwood provides entry separation that is superior to other construction materials. The use of wood to build permanent stoppings in anthracite mines does not reduce the protection provided miners by the existing rule in these mines.

The requirement that ventilation controls be constructed of durable and noncombustible material is derived from recommendation No. 7 of MSHA's report, "Two-entry Longwall Mining Systems—A Technical Evaluation." As the report indicates, 8-inch hollow-core concrete block is typical of construction material used for ventilation controls in underground coal mines. Therefore, to establish minimum fire resistance and structural requirements for ventilation controls, the 8-inch block with mortared joints is used.

The amount of static pressure a material will withstand is demonstrated by ASTM test E72–80, "Standard Methods of Tests of Panels for Building Construction," Transverse Load-Specimen Vertical. Structurally sound material will withstand the same or greater static pressure as concrete block (approximately 39 pounds per square foot) when this pressure is applied according to ASTM E72–80.

To be considered noncombustible under the final rule, a material must be capable of maintaining its function as a ventilation control for a period of time in the event of a fire. To be considered a "noncombustible material" the permanent control that is constructed of the material must not rupture or otherwise fail while being subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent, for 1 hour. MSHA considers a rating of 1 hour to be a reasonable time for miners to reach safety during an emergency.

Paragraph (e)(3) permits timbers, to create a stopping in heaving or caving areas of mines. As with all material used to construct permanent ventilation controls, when timbers are used they must be capable of passing the tests for a noncombustible and durable material. This means that when timber is used to construct a ventilation control the control must be capable of serving its intended function when subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent. Also, when timber is used to construct a ventilation control the control must be structurally equivalent to an 8-inch hollow-core concrete block stopping with mortared joints according to ASTM E72–80 Section 12—Transverse Load-Section Vertical, load only. However, the Agency recognizes that timber may provide additional fuel to a fire, and therefore paragraph (e)(3) requires that when timbers are used to create stoppings in heaving or caving areas, the stoppings must be coated on accessible surfaces with a flame-retardant material having a flame-spread index of 25 or less when tested according to ASTM E162–87 (Surface Flammability of Material Using a Radiant Heat Source). Similarly, a new requirement is that when sealants are applied to any ventilation controls, the sealant must have a flame-spread index of 25 or less, ASTM E162–87. Based on recommendation 19 in MSHA's Two-Entry Report, this requirement applies to all mines because ventilation controls coated with flame-retardant materials are less susceptible to failing quickly in the event of a fire and therefore contributing to the fire's intensity. Certain ventilation controls may require application of a sealant to prevent or reduce air leakage. If so, it is important that the sealants themselves do not contribute to the propagation of a flame or flame penetration.

Derived from existing criteria, paragraph (g) requires a crosscut to be made before mining is discontinued in an entry or room that has been advanced more than 20 feet. Alternatively, the final rule permits line brattice to be installed to maintain adequate ventilation. Either of these alternatives should prevent the creation of "dead-air" spaces where methane could accumulate and create an ignition or explosion hazard. It is not the Agency's intent that this provision be used to permit places to be advanced for extended distances using only line curtain to provide ventilation. In response to comments, the final rule

specifies 20 feet instead of 30 but emphasizes that this distance must be measured from the inby rib. The rule also permits distances less than 20 feet to be specified in the approved ventilation plan when conditions such as methane liberation warrant.

Section 75.334 Worked-out Areas and Areas Where Pillars Are Being Recovered

The final rule is derived from existing §§ 75.328 and 75.329 and from ventilation plan approval criteria in existing § 75.316–2. These existing provisions specify use of bleeder entries, bleeder systems or an equivalent means in pillared areas to control the accumulation of methane and other gases. During and after pillar recovery, methane gas is liberated from the coal and strata. When this occurs, bleeder systems route gases away from worked-out areas and areas where pillars are being mined. The final rule revises the requirements for bleeder systems and establishes ventilation standards for control of methane and other harmful gases, dusts, and fumes in worked-out areas and for areas where pillars are being mined.

Paragraph (a)(1) requires worked-out areas where no pillars have been recovered to be ventilated so that methane-air mixtures and other gases, dusts, and fumes are continuously diluted and routed into a return air course or to the surface of the mine. If these areas are not ventilated, the final rule requires them to be sealed.

Where pillars are being fully or partially recovered, paragraph (b)(1) requires a bleeder system to be used to control the air passing through the area and to continuously dilute and move methane-air mixtures and other gases, dusts, and fumes from the worked-out area away from active workings and into a return air course or to the surface of the mine. When pillar extraction is completed in an area, paragraph (b)(2) requires a bleeder system to be maintained to ventilate the worked-out area, or the area must be sealed.

The final rule eliminates the description of a bleeder system that was proposed. Instead, the final rule requires that the bleeder system used be specified in the approved ventilation plan. Requiring the bleeder system to be specified and approved does not reduce the protection provided miners by the existing provisions addressing bleeders. Under the existing rules, MSHA generally considers bleeders to be a system of entries that form special air courses designed, developed, and maintained to continuously move gases from retreat mining areas. This type of bleeder system would continue to be acceptable under the final rule. However, instead of stating that systems "equivalent" to this type of bleeder may be used, as under the existing standards, MSHA has required that the design and use of bleeder systems that will continuously dilute and move methane-air mixtures and other gases, dusts, and fumes away from worked-out areas and into a return air course or to the surface be specified and approved in the ventilation plan. This permits the operator to tailor the bleeder system to the conditions in the particular mine where it will be used. MSHA recognizes that the methods that will effectively remove harmful gases from a worked-out area depend on particular mining conditions. Different mines have different conditions and methane liberation rates, such as small hilltop mines with minimum overburden, short-term operation and minimum methane liberation versus large, deep, long-term operation mines that liberate large volumes of methane. For this reason, the type of bleeder system used and its design is best handled through the approved ventilation plan.

The final rule does not retain the requirement in existing § 75.316–2(e) that bleeders must extend from active pillar lines to the intersection of the bleeder split and must not include active workings. This does not reduce the protection provided by the existing rule, because the final rule includes the requirement that any bleeder system used must continuously move gases from the mined-out area and away from active workings into a return air course or to the surface.

For the same reasons, the final rule does not specifically retain the existing plan approval criterion that the ventilation pressure differential between the active pillar line and the junction of any bleeder connection to the bleeder entries should always be adequate to drain gas from the worked-out area. Also, the final rule does not specify that this pressure differential will be considered adequate where perceptible air flow exists in all open or regulated bleeder connections, as determined with chemical smoke or other approved means. As discussed below, bleeder systems must be examined at least every 7 days under § 75.364. As part of this weekly examination, MSHA requires tests at specified locations to determine whether the air is moving in its designated direction. The use of chemical smoke tubes to make this determination is a safe and accepted practice in the mining industry.

Paragraphs (c)(3) and (c)(4) retain the existing provisions in § 75.316–1(b)(5)(i) that the operator specify in the approved ventilation plan the method that will be used to maintain bleeder entries free of obstructions such as roof falls and accumulations of water and the location of ventilating devices such as regulators, stoppings, and bleeder connectors used to control air movement through the worked-out area. The proper functioning of a bleeder system is dependent upon bleeder entries remaining open and necessary controls being maintained. For this reason, the existing provision has been retained.

Like the existing provisions, the final rule also addresses evaluation of bleeder systems and worked-out areas. Section 75.364 requires evaluation of worked-out areas where no pillars have been recovered, and of bleeder systems, during the weekly examination of the mine. For worked-out areas where no pillars have been recovered, § 75.364 requires weekly travel to the area of deepest penetration and measurements and tests at locations where the effectiveness of the bleeder ventilation system can be determined. Similar examination requirements are specified for bleeder systems used during and after pillar recovery.

Accumulation of methane and oxygen-deficient atmospheres pose serious hazards in worked-out areas. The potential for ignitions and explosions is always present unless steps are taken to prevent these accumulations. Adequate ventilation of worked-out areas and proper examination, either by weekly travel of the entire bleeder or to locations where measurements and tests can be made to determine the effectiveness of the system.

Under paragraph (d), if the bleeder system for a worked-out area does not continuously move methane-air mixtures and other gases, dusts, and fumes away from the worked-out area into a return air course or to the surface of the mine, or if the effectiveness of the bleeder system cannot be shown by examinations or evaluations done under § 75.364, the worked-out area must be sealed. Paragraph (e) retains the requirement from existing § 75.330 that each mining system be designed so that worked-out areas can be sealed. The location of proposed seals for worked-out areas must be included on the ventilation map for the mine under § 75.372.

The final rule does not retain the ventilation plan approval criterion in existing § 75.316–2(e) that "Bleeder entries should be connected to those areas from which pillars have been wholly or partially extracted at strategic

locations in such a way as to control airflow through such gob, to induce drainage of gob gas from all portions of such gob areas, and to minimize the hazard from expansion of gob gases due to atmospheric pressure change." Worked-out areas with poorly designed bleeder systems that are determined through weekly examination to be inadequate to remove gases from the areas must be sealed under paragraph (d), as noted. Consequently, the Agency finds it unnecessary to set specific instructions for bleeder design.

Instead of a weekly examination by a person, the use of an AMS would have been permitted under the proposal for evaluation of worked-out areas from which no pillars have been removed and for bleeder systems. Because of the inability of AMS to inform the operator of roof conditions and water buildup, as indicated by a commenter, the Agency has reconsidered this proposal and the final rule does not permit the use of AMS for evaluating worked-out areas instead of weekly examinations.

Several commenters suggested that bleeder systems should not be required for all mines, stating that in some mines the practice of ventilating worked-out areas increases the risk of spontaneous combustion by supplying oxygen to combustion-prone materials in these areas. These commenters requested that the final rule include provisions to address spontaneous combustion. MSHA recognizes the need to reduce the flow of oxygen to areas where there is a likelihood of spontaneous combustion. The final rule requires the approved ventilation plan to address spontaneous combustion in mines with a demonstrated history of this hazard, or that are located in coal seams determined to be susceptible to spontaneous combustion. Although MSHA anticipates that this provision will apply to only a few mines, a demonstrated history of spontaneous combustion may be a single event that was determined to be the result of spontaneous heating or smoldering of coal. Additionally, studies by the Bureau of Mines and MSHA have identified the volatile properties of coal seams and have determined that certain seams are susceptible to spontaneous combustion. The final rule is directed to mines in these seams. Under paragraph (f), the approved ventilation plan for mines that are susceptible to spontaneous combustion must specify measures to detect methane, carbon monoxide, and oxygen concentrations in worked-out areas. These measures must be taken during and after pillar recovery and in worked-out areas where no pillars have been recovered. The purpose of these measurements is to determine if worked-out areas must be ventilated or sealed. If the methane concentration or other hazards in the worked-out area cannot be controlled while the mine is limiting airflow to avoid spontaneous combustion, ventilating or sealing the worked-out area may be necessary. Measurements also help to determine the extent to which the worked-out areas can be ventilated without increasing the spontaneous combustion hazard. Under paragraph (f)(2) the operator is required to specify the action that will be taken to protect miners from the hazards of spontaneous combustion. If, after making this evaluation, the mine operator determines that a bleeder system should not be used, the approved ventilation plan must specify the methods that the operator will use to control spontaneous combustion, as well as accumulations of methane-air mixtures and other gases, dusts, and fumes in the worked-out area. By providing this alternative for the few mines where ventilating worked-out areas with a bleeder system is a hazard to miners, the final rule does not reduce the protection provided by the existing rules.

The final rule does not include the criterion in existing § 75.316–2(f)(3) for precautions to be taken to protect miners when a change is made in the normal air flow through the bleeder system. Any intentional change made in the direction of airflow through a bleeder system is a major ventilation change in the mine. Accordingly, the provisions of § 75.324 apply to such ventilation changes. Section 75.324 specifies precautions to be taken when a ventilation change is made that materially affects the main air current of the mine or any split of the main air current. These precautions include removing electric power from the area, shutting off mechanized equipment, and withdrawing miners from the mine. Additionally, an examination is required after the change has been made.

The final rule also removes existing §§ 75.318 and 75.329–1. These provisions address mining situations that existed on the effective dates of these sections. They are obsolete and no longer applied by MSHA, considering the general requirements for worked-out areas in existing §§ 75.316–2, 75.328, and 75.329. Consequently, it is not necessary to include these sections in the final rule.

Section 75.335 Construction of Seals

The final rule is derived in part from existing § 75.329–2 and establishes construction requirements for seals. Seals isolate the environment within the sealed area from the active workings of the mine.

Existing § 75.329–2 states "that pending the development of specifications for explosion-proof seals or bulkheads, seals or bulkheads may be constructed of solid, substantial and incombustible materials sufficient to prevent an explosion that may occur on one side of the seal from propagating to the other side." Seals must be designed to withstand elevated pressures. The final rule adopts 20 pounds per square inch gauge (psig) as the threshold for determining whether a seal is explosion proof. This threshold is based on the U.S. Bureau of Mines Report of Investigations No. 7581. According to that report, a seal or bulkhead may be considered explosion proof when its construction is adequate to withstand a static load of 20 psig if there is sufficient incombustible material on both sides of the seal to abate the explosion hazard. According to the Bureau's report, with adequate incombustible material and minimum coal dust accumulations, it is doubtful that pressures exceeding 20 psig could occur very far from the origin of the explosion.

The construction requirements in the final rule provide seals that will withstand a static load of 20 psig. Paragraph (a) requires seals to be at least 16 inches thick. When the thickness of the seal is less than 24 inches and the width is greater than 16 feet or the height is greater than 10 feet, a pilaster must be interlocked near the center of the seal. The pilaster must be at least 16 inches by 32 inches. If the seal is at least 24 inches thick, a pilaster is not required regardless of the height or width. New seals must be constructed of solid concrete blocks laid in a transverse pattern with mortar between all joints and must be hitched into solid ribs to a depth of at least 4 inches and hitched at least 4 inches into the floor. Seals not hitched in this manner are unlikely to withstand the pressures of even a relatively small explosion. To further prevent damage to seals in the event of a mine fire or other emergency, seals must be coated on all accessible surfaces with a flame-retardant material that also minimizes leakage.

In developing the final rule, MSHA conducted a series of tests with the U.S. Bureau of Mines to learn whether seals constructed according to the specifications would withstand a 20 psig explosion. In all cases where the seals were built in the manner required by the final rule, the seals withstood the pressure of a 20 psig explosion. Seals not correctly constructed sustained substantial damage or were destroyed.

MSHA concludes that the requirements for seal construction in paragraph (a) are appropriate for providing a significant level of protection for miners in underground coal mines.

As proposed, paragraph (a)(2) permits alternative methods to be used to create seals, as well as alternative materials. This provision allows the development of improved technology for seal construction. The final rule clarifies, however, that the alternative methods or materials may be used only if they can withstand a static horizontal pressure of 20 psig when installed. If the alterative seals can withstand this pressure, they will provide the same protection to miners as seals constructed as specified in the final rule. If alternatives are used, these methods or materials must be specified in the approved ventilation plan.

Also clarifying the proposal, paragraph (a)(2) provides that if alternative construction methods or materials include the use of timbers to create seals, the timbers must be coated on all accessible surfaces with flame-retardant material. As with stoppings, timbers may be less susceptible to damage from geologic stresses in areas where the mine floor is heaving or the roof is caving. Under these circumstances, the timbers must be appropriately coated on all accessible surfaces with a flame-retardant material having a flame-spread index of 25 or less, as tested by ASTM E162–87. This requirement helps to ensure that seals constructed of timbers will not fail quickly in a fire or other mine emergency and will not provide additional fuel to the fire.

An example of an alternative method of seal construction that would be accepted under paragraph (a)(2) is the use of an angle-iron to hitch a seal into the mine floor. Tests conducted by the U.S. Bureau of Mines and MSHA show that proper use of this method of seal construction will result in seals that will withstand a 20 psig explosion. Thus, the use of angle-irons could be approved by the district manager under paragraph (a)(2) instead of the requirement in paragraph (a)(1) that seals be hitched at least 4 inches into the mine floor.

As proposed, paragraph (b) requires a sampling pipe or pipes to be installed in seals so that the atmosphere in sealed areas can be sampled. Excessive levels of methane or other gases behind seals could indicate that the operator needs to take corrective measures. The final rule therefore requires that sampling pipes be installed in each set of seals for a worked-out area.

Paragraph (b)(1) requires sampling pipes to extend into sealed areas for a sufficient distance to obtain a representative sample of the sealed area. This provision is based upon sampling procedures recommended in the 1979 MSHA study, "Interpreting the State of a Mine Fire." The study shows that in sampling situations involving fires behind sealed areas, sampling pipes should extend at least 15 feet toward the fire. This minimum distance also allows representative sampling in non-fire situations. To prevent leakage of methane or other gases through sampling pipes, paragraph (b)(2) requires each pipe to be equipped with a cap or shut-off valve. Also, as proposed, paragraph (b)(3) requires the sampling end of the pipe to be within 12 inches of the mine roof. Because methane is lighter than air, samples must be taken near the mine roof to obtain a representative sample from behind the sealed area. However, the final rule allows the other end of the pipe to be more accessible for sampling.

Water accumulation behind seals is another hazard in sealed areas that could endanger miners. Paragraph (c)(1) requires a corrosion-resistant water pipe or pipes to be installed in seals at the low points of the area being sealed and at all other locations necessary when water accumulation within the sealed area is possible. To provide protection against air leakage into or out of a sealed area, paragraph (c)(2) requires each water pipe to have a water trap installed on the outby side of the seal. The proposal would have required a water pipe or pipes to be installed in all seals. Commenters suggested and MSHA agrees that a water pipe or pipes be installed in seals when water accumulation within the sealed area is possible. Water traps connected to pipes into sealed areas which do not contain water are difficult to maintain full and therefore provide a path for leakage into or out of the sealed area. The final rule reflects the Agency's position on this matter.

Section 75.340 Underground Electrical Installations

The final rule revises existing § 75.1105. The rule establishes requirements to protect miners if a fire originates at underground transformer stations, battery charging stations, substations, rectifiers and water pumps. The final rule does not address shops or compressor stations, which are addressed by §§ 75.343 and 75.344, respectively. Both of these other new rules are also derived from existing § 75.1105.

The final rule, like § 75.1105, requires the specified electrical installations to be located in a noncombustible structure or area. As under the existing rule, this precaution is intended to prevent the spread of a fire originating at the installation to surrounding mine surfaces. In response to the recommendation of a commenter, the final rule defines the term "noncombustible structure or area." This definition is discussed below.

Consistent with the current policy concerning the existing rule on battery charging stations, the Agency does not intend that this rule apply to all track-mounted equipment with integral battery charging units that are powered by storage batteries, or by combination of storage batteries and trolley wire. In these instances, when the storage batteries are charged while the equipment is in motion, the battery-charging units are not considered a station and thus the requirements of paragraph (a) do not apply. An example would be a combination battery/trolley wire powered locomotive. However, if batteries are removed from the machine for charging, the batteries, charging units, and associated equipment must comply with paragraph (a).

The final rule provides an alternative to locating the electrical installation in a noncombustible structure or area. Under this alternative, installations must be equipped with a fire suppression system that meets the applicable requirements of § 75.1107–3 through § 75.1107–16. Fire suppression systems extinguish fires before they spread to the mine roof, floor, or ribs and thus provide the same protection to miners as a noncombustible structure or area for the installation.

The final rule also requires one of three other measures to be used to protect miners from fire hazards that may result from electrical installations. As under existing § 75.1105, paragraph (a)(1) allows ventilating these electrical installations with intake air that is coursed into a return air course or to the surface and does not permit this air to be used to ventilate working places. This measure prevents the delivery of smoke or other products of combustion to the working place by the intake air current. Unlike the existing rule, however, the final rule does not require that the intake air be coursed "directly" to the return. This existing requirement has caused much confusion under the existing rule. The final rule clarifies that the intake air ventilating the electrical installation may not also be used to ventilate active working places. Thus, the air may be coursed into other entries before being coursed into a return if the air is never used to ventilate a working place. Since this air will not be used to

ventilate face areas, the final rule provides the same level of protection as the existing rule.

Instead of ventilating electrical installations with intake air and coursing the air into a return air course as in the previous alternative, paragraph (a)(2) permits the installation to be ventilated with intake air that is monitored for carbon monoxide or smoke with an AMS. If this alternative is used, the AMS must be installed and operated under § 75.351. Monitoring such installations by an AMS has been successfully used in mines where petitions for modification of § 75.1105 have been granted by MSHA. Monitoring the vicinity of installations for smoke or carbon monoxide provides early warning of fire and is a safe alternative to venting the installation to the return. However, because hydrogen, which interferes with currently available CO monitors, is produced during battery charging, monitoring of intake air ventilating the battery charging stations shall be done with sensors not affected by hydrogen. Therefore, battery chargers must be monitored for smoke or one of the other two alternatives specified must be used.

A third alternative, in paragraph (a)(3) requires installations to be ventilated with intake air and to be provided with doors to prevent smoke or fire from leaving the area immediately surrounding the electrical installation. Such doors must have automatic safety features that trigger if the temperature in the fireproof structure reaches 165 °F. These features must also be triggered if a rise in carbon monoxide concentration of 10 parts per million (ppm) above the established ambient level is detected or if the smoke reaches 0.05 per meter optical density. If heat and smoke or CO are detected in the amounts specified, fireproof doors must close, and power to the installation must be deenergized. These measures are necessary, since a rise in temperature could provide a source for methane ignitions or could indicate that a fire has occurred inside the structure. A rise in carbon monoxide concentration of 10 ppm above the ambient level for the area could also indicate a fire. The level for smoke sensors corresponds to the fire alarm level for smoke included in § 75.351.

A fourth alternative that was proposed is not contained in the final rule. This alternative would have permitted the electrical installation to be located in a crosscut between an intake regulator and a return entry if the quantity of intake air passing over the equipment was at least 5,000 cfm, the air passed directly into the return air course, and no part of the equipment extended into the return. As indicated during the public hearings, this alternative was the source of much confusion. Many commenters considered the location proposed for the installation under this alternative to be in the return air course because it would be on the return side of the stopping line. MSHA has reconsidered this proposal in light of the comments and has removed it from the final rule.

Paragraph (b) sets out certain types of electrical equipment that are not required to be addressed by the measures specified in paragraph (a). As proposed, paragraph (b) exempts rectifiers or power centers that move as the working section advances or retreats. These power sources, which are generally used to deliver electricity to face equipment, are routinely moved as mining advances or retreats. Fires originating on section equipment should be detected and extinguished quickly. In addition, exemption of this equipment is also consistent with the Agency's interpretation of existing § 75.1105. To minimize the potential for fires originating from section power centers and rectifiers, paragraph (b) exempts only power centers and rectifiers that are dry-type or that contain nonflammable liquid from the requirements of paragraph (a).

Several commenters questioned application of the proposal to all water pumps. The commenters indicated that it would be impractical if not impossible to protect all pumps as proposed. For certain types of pumps, the commenters stated that since the risk of fire is quite low, it is unnecessary to protect the equipment as specified in the proposal. These pumps include submersible pumps, low horsepower pumps, and those located at or near the working section.

In response to these comments, paragraph (b) also exempts certain types of pumps from the requirements of paragraph (a). These pumps include submersible pumps, permissible pumps and associated permissible switchgear, pumps located at or near the working section that are moved as the section advances or retreats, small portable pumps, and pumps installed in anthracite mines. MSHA believes that these types of pumps do not represent a significant fire hazard and that it is therefore unnecessary to provide a fireproof area, ventilate the equipment to the return, or use the other measures listed in paragraph (a). This exemption is consistent with existing practice and current Agency policy interpretations of the term "permanent pump" in § 75.1105, a term that is not retained in the final rule. The term "permanent pump" has caused confusion about the application of existing § 75.1105. Also, commenters on the proposal correctly indicated that any permissible equipment may be used in a return air course, including pumps, and that it would thus be unnecessary to require pumps to be ventilated by intake air coursed to the return.

Commenters on the proposal also noted that to ventilate pumps to return air courses in anthracite mines, additional crosscuts would need to be made to accommodate all of the locations where pumping of water is necessary. These crosscuts, the commenters indicated, would so weaken slope pillars that the main gangways, which serve as primary escapeways, would be threatened. These commenters also noted that other protective measures, such as automatic closing doors, are not feasible for most anthracite mines, and they requested that the final rule not apply to water pumps used in anthracite mines. MSHA agrees, and paragraph (b)(5) exempts pumps installed in anthracite mines. Because many anthracite mines are extremely wet, pumps must be used to maintain the mines in safe condition. However, MSHA believes that the risk of fire from the pumps in these mines is low since a fire at a pump will be small, is normally extinguished quickly, and is not likely to spread to surrounding mine surfaces.

Consistent with current Agency policy small portable pumps are also excluded from the provisions of paragraph (a). Small portable pumps are easily relocated without the aid of mechanized equipment; capable of being moved frequently; and installed in such a manner to facilitate such movement. Small portable pumps are usually positioned about the mine to dewater local swags or depressions where water accumulates, or, for example, to provide high-pressure spray water for dust suppression on mining equipment.

Section 75.341 Direct-fired Intake Air Heaters

This standard is new and establishes requirements for the use of direct-fired intake air heaters. It provides safeguards against fire hazards and adverse effects on mine ventilation that include precautions designed to prevent contact between persons or combustible materials with intake air heaters.

Intake air heaters are used during periods of cold weather so that the water on surfaces in shafts, slopes, and other mine entries does not freeze. The use of these devices, however, can

increase the level of carbon monoxide introduced into the mine. Improperly installed and maintained heaters can be a fire hazard and also, fuel supplies for heaters can increase the risk of fire or explosion near mine openings.

Under the final rule, if any heater system malfunctions, the heaters affected must switch off automatically. Thermal overload devices must protect the blower motor from overheating, and if a flameout occurs, the fuel supply to the heater must turn off automatically. These safeguards protect against fires occurring in heaters and heater systems that can result in the products of combustion being delivered by the main mine fans into the main ventilating current of the mine.

The proposal would have required a pressure switch or other device to switch off the heaters when the volume of air entering the shaft, slope, or drift where air is being heated is reduced by 10 percent or more when persons are underground. This provision was intended to reduce the potential for air reversal in shafts and other ventilation openings in the mine when the volume of air is reduced. Commenters objected to the proposal stating that the 10 percent threshold may not be appropriate because this change may not significantly affect the ventilation in the mine. Another commenter suggested lowering the threshold to 5 percent because a 10 percent threshold may be too large. Upon reconsideration, the Agency has eliminated the requirement for a pressure switch choosing instead to focus on the requirements of § 75.324 (intentional changes in ventilation systems). When the operation of an intake air heater affects the ventilation in the mine to a degree that could materially affect the safety or health of persons in the mine, the heater should be shut off. The operator may determine whether the shut off should be automatic or manual. In some instances, the operation of an intake air heater without an automatic shut off may result in the heater only being permitted to operate when no one is in the mine.

A commenter on the proposal indicated that several precautions related to the use of intake air heaters that are currently addressed in some mine ventilation plans were not included in the proposed rule. In response, the Agency reviewed ventilation plans addressing intake air heaters and has incorporated certain additional precautions into the final rule.

One precaution in paragraph (d) requires heaters to be equipped with a screen at the inlet to prevent combustible materials from passing over the burner units. Although the final rule retains the proposed requirement for guarding heaters to prevent contact by persons, leaves and other materials can still come in contact with burner units and catch fire, introducing carbon monoxide or fire into the mine.

So that liquified fuel does not leak into the mine, paragraph (e)(1) establishes precautions for intake air heaters that use liquified fuel. Hydrostatic relief valves installed on vaporizers and on storage tanks must be vented. Paragraph (e)(2) also requires liquified fuel storage tanks to be located and protected to prevent this occurrence.

As suggested by a commenter, paragraph (f) requires each heater and its associated components to be examined for proper operation within the first hour of operation following periods of 8 hours or more during which the heater has not operated. Additionally, the heater and its associated components must be examined at least once each shift that the heater operates. To verify that carbon monoxide is not entering the mine and that the heater is burning properly, these examinations must include measurement of the carbon monoxide concentration at the bottom of each shaft, slope, or in drift openings where air is being heated. Instead of having a person taking these measurements, paragraph (f) permits a carbon monoxide sensor to be used. In either case, the heater must be shut down if the carbon monoxide concentration reaches 50 ppm. This level is the current permissible exposure limit for CO for an 8-hour time-weighted average exposure.

Section 75.342 Methane Monitors

This section retains the requirement in existing § 75.313 for approved methane monitors to be installed on all face cutting machines, continuous miners, longwall face equipment, and loading machines. Paragraph (a) includes all other mechanized equipment used to extract or load coal from the face. Consistent with current Agency policy and industry practice, scoops that are used to load coal from inby the last open crosscut must comply with the provision of this section. Scoops which are not used to load coal from inby the last open crosscut are not required to comply with this section. To be approved by MSHA, a methane monitor must meet the minimum requirements specified in 30 CFR part 18.

Constant monitoring of methane during mining activities is an important safeguard against methane ignitions and explosions that could endanger miners. To maximize the effectiveness of monitoring sensors, paragraph (a)(3) retains the existing provision requiring the sensing devices of the monitors to be installed as close to the working face as practicable. A commenter suggested that the final rule should clarify this requirement for longwalls and require the sensing device of the monitor to be installed at the return air end of the longwall face. Monitoring for methane at this location on a longwall face can provide additional protection to miners against the risk of methane accumulations along the face during the mining operation. Another commenter indicated that the sensors should be installed at the tailgate motor area (this would be the location suggested by the other commenter), on the longwall shearing machine, and in the area of the crusher MSHA agrees with these commenters that the return air end of the longwall face is an appropriate location for a methane sensor on a longwall face. MSHA also agrees that there is a definite safety benefit to requiring an additional sensor on the longwall shearers. In view of these comments, paragraph (a)(2) requires methane to be monitored on longwall mining systems using shearers by a methane monitor with a sensing device installed on the return air end of the longwall face and by an additional sensing device installed on the longwall shearing machine on the downwind side. The sensing device on the longwall shearing machine is required to be on the downwind side as close to the shearing machine as practicable. To provide flexibility in determining the best places on a particular longwall unit to locate the additional sensing device to provide maximum protection to miners, paragraph (a)(2) also allows an alternative location or locations for the sensing device on the shearing machine to be approved in the ventilation plan.

Paragraph (a)(4) retains the existing requirement that monitors be maintained in permissible and proper operating condition to ensure that monitors provide accurate monitoring of methane. In the proposed rule, MSHA requested comments on whether a specific calibration interval should be included in the final rule. Commenters emphasized the need to properly calibrate monitors at regular intervals to maximize the protection that can be provided by these devices. Paragraph (a)(4) includes a provision that requires methane monitors to be calibrated with a known methane-air mixture at least every 31 days, which clarifies the existing requirement in § 75.313–1 for monthly calibration.

In addition to specifying installation and maintenance requirements for methane monitors, paragraph (b)(1) requires a warning signal to be given when the methane concentration in air at any monitor reaches 1.0 percent. In response to comments, paragraph (b)(2) requires the warning signal device of the methane monitor to be visible to a person capable of deenergizing the equipment on which the monitor is mounted. This allows the operator of the face equipment, or other person, to deenergize the equipment at 1.0 percent, if necessary. Paragraph (c) retains the existing requirement for the monitor to deenergize the machine on which it is mounted when the methane concentration in air at the monitor reaches 2.0 percent or when the monitor is not operating properly.

A commenter noted that under existing § 75.313, an authorized representative of the Secretary may require methane monitors to give a warning signal or to deenergize equipment at levels of methane less than 1.0 or 2.0 percent, respectively. The commenter stated that this authority should be retained in the final rule. MSHA's experience with the existing requirements show that the 1.0 and 2.0 percent levels reduce the risk of face accumulations and ignitions of methane and that the lower levels are unnecessary.

Section 75.343 Underground Shops

This section retains the provision in existing § 75.1105 pertaining to underground shops. Unlike the proposal, this section does not address stationary diesel equipment, such as diesel-powered compressors and generators. The final rule addresses diesel compressors in § 75.344. Other types of diesel equipment are addressed in a separate rulemaking establishing requirements applicable to diesels in coal mines (October 4, 1989; 54 FR 40950).

Underground shops must be equipped with automatic fire suppression systems or be enclosed in noncombustible structures or areas and be ventilated with intake air that is coursed directly into a return air course. These precautions are necessary due in part to the nature of the activities which take place in shops, such as cutting and welding, and to the materials that are used in these areas, such as solvents, oils, and greases. In the event of a fire, the products of combustion need to be moved away from areas where persons are working, and the fire must be controlled. Also, during normal operations in shops, vapors, mists, and fumes are produced that must be vented directly into a return air course so that they are kept out of the air used to ventilate areas where persons work.

Section 75.344 Compressors

This new section establishes requirements for compressors in underground coal mines. Improperly used or maintained compressors can present a significant risk of fire. To minimize this hazard to miners, the final rule addresses safety requirements designed to provide detection and suppression of compressor fires.

In the proposal, MSHA indicated its intent to establish requirements for compressors in the final rule and solicited comments on appropriate measures for protecting miners from the fire hazards associated with this equipment. The Agency indicated in the proposed rule preamble that protective measures for compressors specified in the final rule could include precautions similar to those in existing electrical and fire protection standards.

The 1984 Wilberg Mine fire, which was caused by an overheated compressor, shows that compressor fires can have disastrous consequences. The final rule addresses all compressors except those that are component parts of other equipment, such as locomotives and rock dusting machines. Also, the rule does not apply to compressors of less than 5 horsepower. This type of compressor is normally operated while attended and should not have the potential to produce a large fire. Compressor fires on such equipment can be detected and extinguished before they become a hazard to miners.

As with electrical installations addressed in § 75.340, paragraph (a)(1) requires compressors to be located in noncombustible structures or areas. Paragraph (a)(2) requires compressors to be equipped with a heat activated fire suppression system meeting the requirements of §§ 75.1107–3 through 75.1107–16. Paragraph (b) requires compressors to be operated only while the equipment can be seen by a person designated by the operator. This requirement enables action to be taken quickly to minimize hazards to miners if a compressor fire occurs. An alternative to this requirement allows compressors to be operated while unattended, provided that two additional measures are taken to protect miners. One measure requires compressors, like electrical installations, to be ventilated by intake air that is coursed directly into a return air course or to the surface of the mine. Also, the compressor installation, if operated unattended, is required to be equipped with doors that will automatically close to contain the fire and prevent harmful products of combustion from reaching miners. These doors must close when the temperature in the noncombustible structure reaches 165 °F, as well as when the carbon monoxide concentration reaches 10 ppm above the established ambient level for the area, or smoke reaches 0.05 per meter optical density. These revisions respond to the commenter who recommended that compressors should be operated only while attended or while monitored for the products of a fire.

Other measures applicable to all compressor installations include providing portable fire extinguishers for each compressor according to § 75.1100–1(e). Another requirement in § 75.380 prohibits compressors from being installed in the primary escapeway in new development areas. This provision is aimed at providing miners with an escapeway generally free of fire sources. MSHA believes that this precaution, along with the other measures in the final rule, allows safe operation of compressors and provides significant protection to miners from possible compressor fires.

Paragraph (d) specifies that this section of the final rule applies to diesel compressors as well as electrical compressors. The Agency anticipates that this requirement will be removed when the final rule for diesel equipment in coal mines, currently in a separate rulemaking (October 4, 1989; 54 FR 40950), is promulgated.

Section 75.350 Aircourses and Belt Haulage Entries

This section retains existing § 75.326 without substantive change. Unlike the proposal, the final rule does not permit intake air that is coursed through belt haulage entries to ventilate working places. The merits of using "belt air" to ventilate working places in underground coal mines has been debated in the mining community since § 75.326 became effective. The Agency has reviewed the record on this matter, including its Belt Entry Ventilation Report and the comments received during and following the public hearing on the report, and has decided to refer this issue, as well as related issues, to an advisory committee under the provisions of the Act. The Secretary of Labor published a notice of establishment for the advisory committee on June 12, 1991 (56 FR 27034).

Another provision not included in the final rule is the proposed requirement that the air in all belt entries have a velocity of at least 50 fpm. As with the

other issues related to belt air, MSHA is referring this issue to an advisory committee.

Section 75.351 Atmospheric Monitoring Systems

This new section establishes requirements for atmospheric monitoring systems (AMS). The final rule addresses specific situations involving the use of monitoring sensors. Under paragraph (a), an AMS consists of sensors to monitor the mine atmosphere and instruments at a surface location designated by the operator to receive information from the monitoring sensors.

Monitoring systems used under §§ 75.323(d)(1)(ii), 75.340(a)(2), and 75.362(f) of the final rule must perform the functions included in paragraph (a). They must monitor circuit continuity and sensor function and identify at a designated surface location any activated or malfunctioning sensor. To ensure reliability, the AMS must signal the designated surface location when an interruption in circuit continuity occurs or when a sensor malfunctions. The system must also signal when specified levels of gases are detected, depending on the types of monitors used. These signals must be given to the surface and to affected working sections. For example, if carbon monoxide sensors are installed, the system must signal when a sensing device installed under § 75.340(a)(2) detects a carbon monoxide concentration in air at 5 ppm above the established ambient level for that area. Signals must also be given when a device detects a methane concentration exceeding the maximum allowable concentration under § 75.323. The final rule further requires that alarms be activated when the carbon monoxide level at any carbon monoxide monitoring sensor installed under § 75.340(a)(2) reaches 10 ppm above the established ambient level for that area, or when the optical density of smoke at any smoke sensor reaches 0.05 per meter.

The rule does not specify the method which the operator must use to determine the ambient level of carbon monoxide which will be used to set signal and alarm levels under § 75.340(a)(2). Operators may choose to determine this ambient by using a continuous CO monitor or by collecting and analyzing a sufficient number of grab samples to verify an ambient level. The Agency expects that the method used will be sufficient to assure that the ambient level established is neither artificially high nor low. Section 75.371(hh) requires that the ambient level and the method used to determine the ambient level be specified in the approved ventilation plan.

One commenter objected to monitoring systems replacing physical examinations by certified persons. The final rule does not permit an AMS to substitute for any physical examination except as provided in § 75.362(f).

Section 75.362(f) permits an AMS to substitute for the physical check for methane, required at 4-hour intervals in each return split of air between the last working place, or longwall or shortwall face, ventilated by that air split and the junction of that return air split with another air split, seal, or worked-out area. Paragraph (b) requires an AMS sensor, if installed in this return air split, to monitor methane between the last working place, or longwall or shortwall face, ventilated by that air split and the junction of that return split with another air split, seal, or worked-out area. When auxiliary fans and tubing are used, the sensor must be installed outby the auxiliary fan discharge. Use of an AMS in this instance permits the methane liberated at the face during the mining process to be monitored continuously as opposed to once each 4 hours.

Paragraph (c) addresses AMS monitoring of underground electrical installations for the products of combustion. Under § 75.340(a)(2), transformer stations, battery charging stations, substations, rectifiers, and water pumps may be monitored for CO or smoke instead of coursing the intake air ventilating the structure or area housing these installations into a return air course. If this alternative is used, at least one CO or smoke sensor must be installed to monitor the intake air ventilating the installation. The sensor must be located at least 50 feet and no more than 100 feet downstream from the installation in the direction of airflow.

Paragraph (d)(1) requires that while persons are underground, a person designated by the operator must be present at the surface of the mine to see or hear the signals of the detection system. This person must have access to two-way communication with persons on working sections and with other persons having identifiable duty stations. Also, a map showing underground monitoring system components and their locations must be posted at the surface location so that information can be relayed quickly to and from the working places during an emergency.

Paragraph (d)(2) specifies that if a signal from any AMS sensor is activated, the monitor producing the signal must be identified, an examination must be made to determine the cause of the activation, and appropriate action must be taken.

So that sensing devices can detect gases at the specified levels, paragraph (e) requires each carbon monoxide sensor to be capable of detecting carbon monoxide in air at a level of ±1 ppm throughout the operating range, and each smoke sensor must be capable of detecting the optical density of smoke within specified accuracies. Methane sensors must be able to detect 1.0 percent methane, with an accuracy of ±0.2 percent.

To verify the accuracy of CO sensors, paragraph (f) requires each carbon monoxide sensor to be calibrated with a known concentration of CO and air sufficient to activate an alarm. Similar calibration requirements are specified for methane and, to verify the performance of smoke sensors, paragraph (f)(2) requires each smoke sensor to be functionally tested. Calibration of CO and methane sensors, and tests of smoke sensors are required at least every 31 days.

Paragraph (g) requires that components of monitoring systems used in areas where permissible equipment is required to be used must be intrinsically safe. Areas where permissible equipment must be used include return air courses.

To verify the performance of the detection system and provide data regarding trends in the mine, paragraph (h) requires that a record be made when a signal device or alarm of an AMS is activated. This record must include the date and time and methane, smoke, or carbon monoxide concentration at the sensor producing the signal, and the reason for its activation. Records must be retained for 1 year and must be made available to MSHA inspectors and the miners' representative.

Section 75.352 Return Air Courses

This section prohibits placing belts in return air courses. It clarifies existing § 75.326 which requires separation of return air courses from belt haulage entries. Under the final rule, mine operators wishing to use the belt entry as a return air course will be required to petition the Agency for modification of the standard. Through the petition for modification process, MSHA can make a mine-by-mine assessment of the safety and health impact of locating the belt in the return air course.

Commenters questioned the need to prohibit use of the belt entry as a return air course and suggested that the final rule permit this practice with appropriate requirements for continuous monitoring of the belt entry. The Agency

does not agree that the use of the belt entry as a return air course should be permitted for all mines. Allowing return air to pass over a moving belt conveyor, particularly in mines where methane liberation is high, can increase the likelihood of an explosion caused by a spark along the conveyor.

The Agency has granted a small number of petitions for modification of existing § 75.326 to allow the belt entry to be used as a return air course in some mines when the mine has demonstrated using the belt entry as a return is necessary due to a diminution of safety caused by compliance with the existing standard. In granting these petitions, MSHA specifies uses of continuous methane and carbon monoxide monitoring and other precautions to protect against the risk of ignition or explosion caused by conveyor belts operated in return air courses.

Based on the Agency's experience with these petitions, the petition for modification process under section 101(c) of the Act is the appropriate procedure for making this determination on a mine-specific basis. This conclusion is consistent with the findings of MSHA's Belt Entry Ventilation Report. That report cited "valid reasons" for separating return air courses from belt haulage entries. Because return air leaving a working face usually contains float dust, respirable dust, and methane, the report states that these contaminants are properly directed to return entries where activity is limited and ignition sources are not present. Thus, the report concludes, there is "no reason" to allow the return to be used as a belt haulageway without other compelling safety considerations.

Section 75.360 Preshift Examination

The final rule is derived from existing §§ 75.301–3, 75.303, and 75.303–1 and requires a preshift examination to be made by a certified person before any working shift begins. Like the current standard, the final rule requires that a certified person who has been designated by the operator conduct the preshift examination within 3 hours before the beginning of any shift and before any person on the oncoming shift, except certified persons conducting required examinations, enters any underground area of the mine.

A commenter suggested deleting the reference in the proposal to "3 hours before the beginning of any shift" because some mines have adopted "innovative and overlapping shift schedules" and that as written the proposal would require continuous examination. The Agency has not deleted the reference because it is a current requirement that is well understood throughout the industry. However, it is not the Agency's intent that the preshift be a continuous examination without a beginning or an end. Rather if the mine uses regular shifts that are longer than 8 hours in length, the preshift examination is good for the entire length of the shift. Those persons who start their work shift later than the normal shift start time do not need an additional preshift examination during the remainder of that shift but a preshift will be required if they are to stay in the area past the end of the shift during which they entered the mine or area. Also, in those instances where staggered work shifts are used, the Agency expects that areas of the mine where persons are scheduled to work or travel be examined within 3 hours of persons entering the area. Another examination is not required until 8 hours or the normal length of the shift (for example a 9 or 10 hour shift) has elapsed.

The preshift examination is an accepted safety practice in the industry and is a primary means of determining the effectiveness of the mine's ventilation system and of detecting developing hazards, such as methane accumulations. Therefore, as under the existing standard, paragraph (b) requires the examination to include an examination of underground areas for hazardous conditions and tests for methane accumulations and oxygen deficiency. The person conducting the preshift examination must also determine whether the air is moving in its proper direction. Devices used to make measurements and tests during the preshift and other examinations are those meeting the applicable requirements of § 75.320.

The final rule clarifies the areas where the preshift examination is required. Generally, areas where a preshift examination is necessary are those areas in which persons will work or travel during the oncoming shift and other locations where potential hazards can develop that are likely to threaten the safety of miners in active working areas. An examination of these areas before a shift begins allows miners on the oncoming shift to be notified if hazards exist and allows corrective actions to be taken. In addition to methane accumulations and oxygen deficiency, other hazards that can be detected during the preshift examination are loose roof or ribs, water accumulation that affects air courses or escapeways, electrical hazards from trolley wires, and fire hazards from damaged or improperly operating belt conveyors.

Although the final rule does not retain the provisions in the existing rule that specifically instruct the preshift examiner to examine and test the roof, face, and rib conditions in the working section, including accessible falls, the final rule is designed to ensure that all such hazards will be detected and corrected as a result of the preshift examination.

A commenter suggested that all idle areas of the mine should be examined during the preshift examination. The commenter stated that explosions have occurred when miners were sent into idle areas of coal mines that had not been preshifted. MSHA disagrees that all idle areas need to be preshifted. There is no need to require areas of the mine where persons are not scheduled to work or travel to be examined. As discussed more fully below, the supplemental examination required by § 75.361 permits the certified person to perform examinations of his or her own working areas and requires a supplemental examination to be made by a certified person within 3 hours prior to any person's entering any underground area in which a preshift examination for that shift has not been made.

Paragraph (b) indicates the specific locations where a preshift examination is required. As with the existing rule, the preshift examination must show that areas where persons work or travel in the mine are free of hazards before miners enter these areas. To provide safe travel in and out of the mine, both to working sections and other designated working areas, paragraph (b)(1) requires all roadways and track haulageways to be examined, as well as all other areas where persons are scheduled to work or travel during the oncoming shift. As under the existing rule, belt conveyors that are used to transport persons on the oncoming shift must be examined. The final rule clarifies the existing provision and specifies that the examination includes the entries where belt conveyors are located as well as the belt conveyors. A commenter suggested that all conveyor belts be preshifted. The final rule does not include this suggestion. Rather, it requires an on-shift examination, by a certified person, of belt conveyor haulageways in which belts are operated.

The preshift examination must also include all working sections where persons are scheduled to work during the oncoming shift and all areas where mechanized mining equipment is being

installed or removed if persons are scheduled to work in the area during the oncoming shift. Included in this examination of working sections and areas where equipment is being installed or removed are working places and ventilation controls and approaches to worked-out areas on those working sections or in these areas.

The specific reference in the final rule requiring preshift examination of areas where equipment is being installed or removed has been added to clarify the existing rule. The Agency has always considered these areas to be subject to the requirements of the preshift examination; however, an investigation following an explosion at the William Station Mine indicated that some confusion existed on this issue.

Other areas that require a preshift examination are approaches to worked-out areas in active workings and seals along intake entries where intake air passes through or along these entries on its way to a working section. In response to comments, the final rule clarifies the proposed requirement of a preshift examination of seals along intake air courses. Such seals must be examined where intake air passes by such seals to ventilate an active working place. Seals located along return air courses or seals along intake air course where the air passing by these seals is not used to ventilate a working section must be examined during the weekly examination required by § 75.364. Additionally, in response to comments, the final rule requires that entries or rooms driven more than 20 feet off an intake air course without a crosscut or more than 2 crosscuts off an intake air course without permanent ventilation controls to be preshifted if intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift. The proposal would have required a preshift examination of all entries and rooms driven off intake air courses regardless of depth or ventilation controls used. MSHA has reconsidered this proposal and the final rule clarifies the requirement.

A new requirement specifies that a preshift examination must be made in underground areas where unattended diesel equipment is turned on during a shift or where trolley wire or trolley feeder wires are energized during the oncoming shift. Examination of these areas as part of the preshift can protect against fire and other hazards. In response to comments, the final rule does not require preshifting of all electrical installations as the proposal did. Commenters pointed out that such a requirement would result in preshifting of permissible equipment and pumps where the hazard is small. The Agency agrees, and has narrowed the final rule to include only those installations which pose a significant hazard. Under paragraph (a), if persons are scheduled to work in the area of an electrical installation, the area would require a preshift examination.

Paragraph (c) requires the preshift examination to include a determination of the air volume at certain locations where determinations can be made whether air is reaching working places at required levels. Determinations of the volume of air must be made in the last open crosscut of each set of entries or rooms in each working section and in each area where mechanized mining equipment is being installed or removed in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses. If pillars are being extracted or in areas where pillar extraction has been completed and the mining equipment is being removed, the specific location for the measurements made at the intake end of the pillar line depends on whether a single split of air is used to ventilate the pillar line or a split system is used. If a single split of air is used, the measurement must be taken in the intake entry or entries immediately outby the first open crosscut outby the line of pillars being mined. Also, like the existing rule, the final rule requires this measurement to be made in the intake entry furthest from the return air course. Measuring the air at this location helps to ensure an accurate reading of all of the air ventilating the pillar line. In sections where a split system is used, the measurement must be taken in the intake entry of each split immediately inby the split point.

On a longwall or shortwall section, the volume must be determined in the intake entry or entries immediately outby the face. To determine that a sufficient velocity of air is moving across the entire face, two additional velocity measurements also must be made along the longwall face. The locations for these additional measurements must be at least 50 feet and no more than 100 feet from each end of the face; that is, one velocity reading at the headgate end and one at the tailgate end. The specific locations where these velocity measurements will be made is required to be specified in the approved ventilation plan.

During the installation or removal of longwall or shortwall mining equipment, the volume must be determined in the intake entry or entries immediately outby the area where the equipment is being installed or removed.

Paragraph (d) incorporates existing provisions that authorize MSHA to expand the normal scope of the preshift examination based upon the conditions at particular mines. Under paragraph (d), the preshift examination may include other areas of the mine designated by the district manager. Also, as in the existing rule, the district manager can require the preshift examination to include an examination for other hazards. However, as proposed, the final rule does not include a provision authorizing expansion of the preshift examination to include examination for violations of mandatory standards. Most "hazards" are violations of mandatory standards. MSHA believes that authorizing the district manager to require the preshift examination to include examination for other hazards ensures that preshift examinations are tailored to provide the necessary protection for miners. Also requiring the preshift examiner to look for all violations regardless of whether they involve a hazard could distract the examiner from the more important aspects of the examination. The preshift examination is designed to concentrate the examiners efforts in those areas where they are most suitably applied.

Paragraph (e) incorporates a comment suggesting that preshift examiners should post a "danger" sign in areas of the mine that are hazardous for work or travel. The proposed rule would have required that a "warning" sign be posted conspicuously where a hazard exists so that persons entering that area could see it. A commenter suggested that the word "danger" should be used, as it has an accepted meaning in the industry, especially among miners. As proposed, the final rule does not permit any person to enter any area while a danger sign is posted unless the person is designated by the operator to correct the hazardous condition.

Unlike existing § 75.303, the final rule does not specify the posting of danger signs where violations of mandatory standards exist. MSHA recognizes that "technical" violations of mandatory standards may not immediately endanger miners but where such violations constitute hazards, danger signs must be posted.

The final rule revises existing recordkeeping requirements for preshift examinations to lessen paperwork burdens without lessening the protection provided miners. For each area examined on a preshift examination, paragraph (f) requires the examiner to certify by initials, date, and time that the

proper examination was made. Paragraph (g) requires a record to be made in a book provided for that purpose of hazardous conditions and their locations, even if these conditions have been corrected during the preshift examination. Commenters stated that a record of all hazards found during the examination is necessary to enable the examiner to double-check, during subsequent examinations, areas where problems have occurred. The final rule requires these records to be retained at a surface location at the mine for at least 1 year.

Records may be made by persons other than the person making the preshift examination, so that certified persons conducting the examinations can remain underground to do other tasks. However, the results of the examination must be recorded before any person, other than certified persons conducting required examinations, enters any underground area of the mine. Also, the certified person who conducted the examination must verify the results of the examination by initials and date upon returning to the surface of the mine. Additionally, consistent with current practice, miners may enter the mine prior to the foreman countersigning the record, provided the required examination has been completed.

Paragraph (g) retains the existing requirement that mine foremen countersign records of preshift examinations. Commenters indicated that this requirement is necessary to verify the accountability of the operator for hazardous conditions in the mine and to ensure that such conditions are corrected promptly. Because the operator is ultimately responsible for all hazardous conditions underground, the existing requirement to countersign the daily reports of preshift examiners is not unduly burdensome. A commenter suggested that the requirement that the superintendent or the assistant superintendent of the mine also countersign the daily reports be retained. This suggestion has not been adopted. The Agency has chosen instead to require countersigning by the person most knowledgeable of the day to day operation of the mine and the person who is required to be certified, the mine foreman. In many instances, the mine superintendent is not a certified person and the mine foreman is held ultimately responsible for the operation of the mine by many state laws. The Agency does not believe that not requiring this additional countersigning diminishes the level of protection afforded the miner.

Section 75.361 Supplemental Examination

This section is derived from existing §§ 75.303 and 75.314 and requires a certified person to examine for hazardous conditions before any person enters an area of the mine that has not been preshift examined. This supplemental examination is not required before certified persons conducting preshift or other examinations required by the final rule enter these areas.

Existing § 75.303(b) prohibits persons from entering any underground area, except during any shift, unless a preshift examination has been made within the previous 8 hours. Thus, if a shift lasts longer than 8 hours persons on that shift are permitted to enter areas after 8 hours if an examination of the area has been made for that shift. No person on a subsequent shift, however, may enter the area after 8 hours, until a preshift examination of the mine has been made for that shift. Existing § 75.314 addresses areas where no preshift examination has been made and prohibits anyone from entering an idle or abandoned area unless an examination for methane, oxygen deficiency, and other hazards has been made in the area within the previous 3 hours.

The final rule combines existing §§ 75.303(b) and 75.314 and requires a certified person to examine for hazardous conditions, determine whether the air is traveling in its proper direction and at its normal volume, and test for methane and oxygen deficiency. As under existing § 75.303(b), these precautions must be taken before persons enter areas where a preshift examination under § 75.360 has not been made for that shift. Thus, if an area has been preshift examined for that shift, no supplemental examination is required for persons on the shift who are assigned to work or travel to that area during the shift. The final rule requires a supplemental examination to be made within 3 hours before any person on any shift enters an area that has not been preshift examined, or within 3 hours before any person on a subsequent shift enters an area that has been preshift examined only for a previous shift. The final rule ensures that all remote areas of the mine are examined before persons are sent to work or travel in these areas.

The proposal would have expanded the existing exemption to not only include qualified pumpmen but to also include qualified belt mechanics. This would have permitted pumpmen and belt mechanics to make supplemental examinations for themselves in areas that have not been preshift examined during the previous 8 hours. Commenters questioned this exemption, stating that only certified persons are capable of determining that remote areas are safe for work. MSHA agrees that certified persons are best able to examine work areas for hazards. Also, the Agency does not believe that elimination of the existing exemption for pumpmen is burdensome because it is currently a common practice in the industry for pumpmen to be certified. Therefore, the final rule requires all persons conducting supplemental examinations to be certified.

Paragraph (b) requires persons performing the supplemental examination to certify by initials and date that the examination was made at each working place examined. This certification is like that required under § 75.360 for the preshift examination. In areas outby working sections, the certified person is required to certify by initials, date, and time at a sufficient number of locations to show that the entire area has been examined. Commenters suggested that the results of the supplemental examination, like the preshift, should be recorded. However, MSHA anticipates that under this rule, supplemental examinations will be conducted during working shifts just before persons are sent to perform unscheduled tasks in remote areas that have not been preshifted and often when accompanied by the certified persons who will examine such areas. Therefore, requiring a record to be made serves no additional safety benefit. However, under § 75.360, a record must be made if the certified person conducts a preshift examination of the area for persons on the oncoming shift at the same time as the supplemental examination.

Section 75.362 On-shift Examination

The final rule is derived from existing §§ 75.301–3, 75.303, 75.303–1, 75.304, 75.307, 75.307–1, 75.309 and 75.309–2 that establish requirements for on-shift examinations. Like the preshift examination, the on-shift examination includes an examination for hazardous conditions, tests for methane and oxygen deficiency, measurement of air velocity and determination of air volume at specified locations, and a determination that the air is moving in its proper direction. However, paragraph (a) of this section requires on-shift examinations only on sections where coal is produced or where mechanized mining equipment is being installed or removed during the shift.

Like the existing rule, the final rule requires a certified person to examine

each working section where work is done during each shift that coal is produced. Because the mining environment changes constantly during coal production, this examination verifies that hazards have not developed on the section or in the area since the area was preshift examined and includes tests for methane and oxygen deficiency. The final rule does not retain the existing provision requiring the on-shift examination to be conducted more often if necessary for safety; but the final rule does not restrict operators from conducting more frequent examinations to ensure the safety of miners.

A commenter suggested that the final rule specify that hazardous conditions found during the on-shift examination be corrected immediately. Also, the commenter recommended retention of the specific language of existing § 75.304 that requires the operator to withdraw miners if an imminent danger is found during the onshift examination, except for persons referred to in § 104(c) of the Act. MSHA agrees, because the intent of the rule is to require an on-shift examination to be made so that developing hazards can be detected and corrected without exposing miners to safety risks. In all cases, where such hazards constitute an imminent danger, MSHA believes that miners should be withdrawn. Accordingly, paragraph (a)(2) requires all hazardous conditions to be corrected immediately, and if such conditions constitute an imminent danger, persons are to be withdrawn from the area affected to a safe area until the hazard is corrected, except those persons referred to in § 104(c) of the Act.

Paragraph (b) is a new provision derived from existing § 75.303. It requires an on-shift examination, by a certified person, of belt conveyor haulageways in which belts are operated. Examination of belt conveyors reduces the potential hazards associated with operating belts. Paragraph (b) requires the entire belt conveyor to be examined during production shifts. Like the preshift examination required for conveyor belts used to transport persons, the Agency intends that this examination include an examination of both the conveyor belt and the entry in which it is located. Because this examination is required to be made by a certified person, the final rule allows the on-shift examination to satisfy the requirements of the preshift examination of the belt conveyors that are used to transport persons during the oncoming shift, provided that the examination is made within 3 hours preceding the start of that shift. A commenter objected to this provision. However, allowing these examinations to be conducted at the same time is consistent with accepted procedures for existing preshift and on-shift examinations and eliminates a potentially duplicative examination requirement without reducing the safety protection provided to miners.

Under existing §§ 75.303 and 75.304, examinations are required during each "coal-producing shift." The term "coal-producing shift" was defined in existing § 75.304–1 as "* * * any shift during which one or more of the following operations are performed: Cutting, blasting, or loading of coal, or the hauling of coal from the face areas, regardless of whether the coal is dumped at a tipple." MSHA has interpreted this definition to include activities performed in a working place that are related to the extraction and transportation of coal from the face, generally using mechanized mining equipment expressly for the purpose of removing coal from the face during the mining cycle. Although the final rule does not use the term "coal-producing shift," MSHA intends to interpret the words "where coal is produced" in the final rule consistent with the Agency's interpretation of "coal-producing shift." Thus, the final rule continues to require an on-shift examination on a section during any shift where mechanized mining equipment is used to remove coal from face areas during the mining cycle or for the purpose of completing a mining cycle. This includes the belt examination required by paragraph (b). A new provision in the final rule requires an on-shift examination in areas where mining equipment is being installed or removed during the shift, regardless of whether coal is produced on the shift. Like the requirement under § 75.360, the specific reference in the final rule requiring on-shift examination of areas where equipment is being installed or removed has been added because the Agency has always considered frequent examinations of these areas to be important to ensuring the safety and health of miners.

Paragraph (c) requires certified persons conducting on-shift examinations to take the air measurements at the same locations where air measurements are required during the preshift examination. This provides an additional check of the mine's ventilation system and verifies that ventilation changes in the mine during the production process have not occurred. Reduced volume or velocity of air during the shift can contribute to increased levels of respirable dust and the occurrence of methane accumulations or oxygen-deficient atmospheres.

Consistent with the existing rule and in response to a commenter, immediately before equipment is taken into, operated or energized in working places, paragraph (d) requires a qualified person to test for methane. These tests must be taken at the last permanent roof supports or, when longwall or shortwall mining is used, at the headgate and tailgate. Tests closer to the working face using extendable probes or other acceptable means may be required to be specified in the approved ventilation plan. Methane tests verify that equipment can be safely energized in the working place so that miners are protected from methane ignitions or explosions. In response to comments, paragraph (d)(2) retains the existing requirement that additional tests for methane be made at 20-minute intervals during the operation of equipment. Commenters from all segments of the mining community indicated that the existing requirement which specifies that qualified persons test for methane at intervals of not more than 20-minutes if electrically operated equipment is energized is not burdensome and provides adequate assurance during the operation of equipment that methane is not accumulating in face areas during production. In response to another comment, the final rule specifies that the locations for methane checks are in working places at the last row of permanent supports, unless tests are made closer to the working face using extendable probes or other acceptable means. As the commenter indicated, such probes are readily available and enable readings to be taken close to the face without exposing miners to unsupported roof. The final rule also clarifies where methane checks must be made on longwall or shortwall mining sections.

As discussed under § 75.331, paragraph (e) retains the existing requirement that when auxiliary fans and tubing are used, the fan is to be inspected frequently.

As proposed, paragraph (f) retains the existing provision requiring a test for methane every 4 hours in each return air split on each working section. This provision allows the operator to determine whether methane levels in air returning from the face are within required levels. The tests must be made by a certified person between the last working place, or longwall or shortwall face, ventilated by that air split and the junction of that return air split with

another air split, seal, or worked-out area. Monitoring by an AMS may be substituted for the 4-hour test by a certified person. Additionally, the final rule clarifies that if auxiliary fans and tubing are used to provide face ventilation, the test must be made at a location outby the auxiliary fan discharge.

Paragraph (g) reduces and simplifies existing recordkeeping requirements. Certified persons making on-shift examinations must certify by initials, date, and time that the examinations were conducted and each working place examined. Also, a record of hazardous conditions and their locations must be made in a book kept for this purpose. The final rule retains the existing requirement that mine foremen countersign on-shift examination records. A commenter suggested that the requirement that the superintendent or the assistant superintendent of the mine also countersign the on-shift reports be retained. This suggestion has not been adopted. The Agency has chosen instead to require countersigning by the person most knowledgeable of the day-to-day operation of the mine and the person who is required to be certified, the mine foreman. In many instances, the mine superintendent is not a certified person and the mine foreman is held ultimately responsible for the operation of the mine by many state laws. The Agency does not believe that not requiring this additional countersigning diminishes the level of protection afforded the miner.

Paragraph (h) requires these records to be retained at a surface location at the mine for at least 1 year and made available for inspection by authorized representatives of the Secretary and representatives of the miners.

The final rule does not retain the proposed requirement that a qualified person test for methane along each belt conveyor haulageway where a belt is operated during the shift. The proposal would have required these tests to be conducted during the shift at intervals not exceeding 4 hours and would have been in addition to the on-shift examination of belt conveyors required by paragraph (b). Several commenters objected to the proposal, indicating that such a new requirement would be unduly burdensome, particularly in larger mines with several miles of belt conveyors, and especially in light of the preshift and on-shift belt examination requirements. After considering these comments, MSHA agrees that a test for methane along the belt conveyor is not necessary in addition to the preshift and on-shift exams. Under § 75.360, belt conveyors that are used to transport persons, and the entries in which the belts are located, are required to be preshift examined, as well as all belts where persons are scheduled to work during the oncoming shift. Also, during each production shift, an on-shift examination of the belt haulageway is required by § 75.362. A commenter suggested that existing § 75.320 requiring methane tests prior to blasting be retained. As noted in the proposal, this section is addressed under subpart N, explosives and blasting. It appears as § 75.1324, methane concentration and tests in 30 CFR. Therefore, the final rule does not adopt the suggestion of the commenter that the language be retained in subpart D.

Section 75.364 Weekly Examinations

This section is derived from existing §§ 75.305, 75.306, and 75.316 and requires a weekly examination for worked-out areas and for locations where hazardous conditions could inhibit the mine's ventilation system or otherwise endanger miners.

Paragraph (a)(1) requires a weekly examination for all unsealed worked-out areas where no pillars have been recovered. This examination includes travel by a certified person to the point of deepest penetration in the worked-out area, as well as measurements of methane and oxygen concentration and tests to determine if the air is moving in its proper direction. Alternatives to weekly travel may be specified in the approved ventilation plan, allowing worked-out areas to be effectively evaluated without subjecting the examiner to travel in areas where travel is difficult or where bad roof or other unsafe conditions in worked-out areas exist.

Paragraph (a)(2) similarly requires weekly examination of bleeder systems used to ventilate areas where pillars have been fully or partially extracted. Paragraph (a)(2) also requires measurements of methane and oxygen concentration and tests to determine if air is moving in its proper direction, at locations where air enters the worked-out area and immediately before it enters a return split of air. Also, like existing ventilation plan approval criteria that require bleeder entries to be maintained safe for weekly travel and examination, the final rule requires weekly travel of bleeder entries in their entirety. Travel in the bleeder entries can sometimes be hazardous to the examiner. As in the existing criteria, the final rule specifies the alternative of weekly travel or to locations approved in the ventilation plan where measurements can be made to determine the effectiveness of the bleeder system. Measuring methane and oxygen concentrations and determining the direction of air flow at these locations allow the performance of the ventilation system in worked-out areas to be assessed while minimizing the exposure of persons to hazards while traveling bleeders.

The proposal would have permitted the alternative of continuous monitoring by an AMS instead of weekly examination by a certified person for both worked-out areas where no pillars have been removed and for bleeder entries. A commenter objected to this alternative because it was felt that AMS will not alert the operator of deteriorating conditions in the area. Upon reconsideration, the alternative permitting this examination by an AMS has not been included in the final rule because the Agency agrees that although AMS would be capable of providing information relative to the status of the ventilation in the area, current technology does not permit the AMS to warn the operator of all potential problems that a physical examination may discover.

Paragraph (b), like existing § 75.305, requires an examination for hazardous conditions at certain locations in the mine. The final rule does not specifically indicate that this examination must verify compliance with mandatory health or safety standards as under the existing rule, but the weekly examination for hazardous conditions conducted under the final rule inherently includes a determination of compliance with mandatory standards since ordinarily most hazardous conditions in a mine would result from a violation of a safety or health standard. Requiring the examiner to look for all violations regardless of whether they involve a hazard could distract the examiner from the more important aspects of the examination. This examination, like other examination required by the final rule, is designed to concentrate the examiners efforts in those areas where they are most suitably applied.

The weekly examination for hazardous conditions includes an examination of intake and return air courses. Consistent with existing § 75.305 and in response to a commenter, the weekly examination of return air courses must include at least one entry of each return air course so that the entire air course is travelled. Travelling return air courses in their entirety during the weekly examination allows the examiner to determine if hazardous conditions are developing in

the returns that may potentially impede travel or mine ventilation.

Paragraph (b)(1) requires at least one entry of each intake air course to be examined weekly. Additionally as proposed, escapeways must be travelled in their entirety during the weekly examination under paragraph (b)(5). Weekly examination of escapeways in their entirety enables verification that the escapeways are free of obstructions that could impede escape from the mine during an emergency.

A weekly examination must also be conducted at each seal along return and bleeder air courses and each seal along intake air courses not examined as part of the preshift examination. An examination at these locations helps verify that the seals have not been damaged or displaced during the previous 7 days. Damaged and displaced seals can greatly lessen the effectiveness of the mine's ventilation system, posing a serious threat to the safety of miners.

Paragraph (b)(3) is a new provision requiring a weekly examination and travel of at least one air course, in its entirety, on the tailgate side of each longwall mining section. Derived from MSHA's two-entry task force recommendation No. 1, this requirement enables the weekly examiner to verify that no conditions on the tailgate side of the longwall exist that impede ventilation or egress by persons. Ground failure or any other blockages in tailgate entries could require additional ventilating pressures to overcome the increased resistance caused by the obstruction in order to restore longwall ventilation to within specified levels. As the two-entry task force report indicates, any restriction in tailgate entries severe enough to prohibit travel may present a serious impairment to proper longwall ventilation.

Paragraph (b)(6) requires that a weekly examination be made on each working section that has not been preshift examined during the previous 7 days. A commenter suggested that all idle areas of a mine should be examined during the preshift examination. MSHA disagrees. There is no need to require areas of the mine where persons are not scheduled to work or travel to be preshift examined. As previously discussed, the supplemental examination required by § 75.361 permits a certified person to perform examinations of his or her own working areas and requires a supplemental examination to be made by a certified person before anyone enters an underground area in which a preshift examination for that shift has not been made. However, MSHA does agree that working sections that are set up to mine coal should be examined at least every 7 days and paragraph (b)(6) has been included to require this examination.

Paragraph (c) is derived in part from existing § 75.305 and from the requirements in existing § 75.306 for a weekly ventilation examination. The final rule, like these provisions, specifies measurements and tests at certain locations in the mine to allow weekly verification of the performance of the mine's ventilation system. Weekly measurements and tests at the locations specified in the final rule allow ventilation deficiencies to be identified and corrected.

Like existing § 75.306, paragraph (c) requires a determination of the volume of air entering the main intakes and in each intake split. The Agency intends that these determinations be made at locations where the effectiveness of the ventilation system in providing air to working areas can be determined. These locations would include: (1) At the bottom of each intake shaft or slope and in each drift opening so that the total volume of air entering the shaft, slope or drift can be determined, (2) in each split of the main intake, including splits into submains, and (3) in each split of the main intake or major split of the main intake which is used to supply air to working sections and areas where equipment is being installed or removed. Not included in this requirement are minor splits of air used to ventilate electrical installations, pumps, shops, or compressors.

Paragraph (c) also requires measurements of air volume and testing for methane in the last open crosscut in any pair or set of developing entries or rooms, in the return of each split of air immediately before it enters the main returns, and where the air leaves the main returns. A test for methane also must be made in each return air course immediately outby each set of seals. The locations for these measurements and tests are retained from existing §§ 75.305 and 75.306 and together provide an effective weekly check of the mine's ventilation system.

As required for on-shift examinations, paragraph (d) requires immediate correction of hazardous conditions found during the weekly examination. Also, if the hazardous condition presents an imminent danger to miners, all persons must be withdrawn to a safe area, with the exception, as under existing § 75.305, that withdrawal does not include persons referred to in § 104(c) of the Act.

Consistent with existing practice and as proposed, paragraph (e) allows any portion of the weekly examination to be conducted by a certified person during the preshift or on-shift examinations.

Paragraph (f) retains, with clarifying changes, the existing provision that the weekly examination is not required for any 7 day period that no one enters the mine. The final rule also retains the existing prohibition from anyone other than certified persons from entering any underground area of the mine if, within the previous 7 days, a weekly examination has not been made. Consistent with existing Agency policy, the entrance of examiners or other certified persons, into the mine for the purposes of examination or patrol does not require a weekly examination.

Paragraph (g) requires that persons making the examinations certify that they have examined an area by placing their initials, date, and time at enough locations to verify they have examined the entire area. Paragraph (h) retains existing recordkeeping requirements for weekly examinations and requires a record of hazardous conditions, their locations, and the action taken to correct the condition to be made. Also the results and locations of air and methane measurements made during the weekly examination must be made. This record must be retained for 1 year at a surface location. Also, like the records of the preshift and on-shift examinations, this record is required to be countersigned by the mine foreman. MSHA expects that the mine foreman will review this record as well as the records of the preshift and on-shift examinations before countersigning.

A commenter suggested that the requirement that the superintendent or the assistant superintendent of the mine also countersign the weekly reports be retained. This suggestion has not been adopted. The Agency has chosen instead to require countersigning by the person most knowledgeable of the day to day operation of the mine and the person who is required to be certified, the mine foreman. In many instances, the mine superintendent is not a certified person and the mine foreman is held ultimately responsible for the operation of the mine by many state laws. The Agency does not believe that not requiring this additional countersigning diminishes the level of protection afforded the miner.

Section 75.370 Mine Ventilation Plan Submission and Approval

This section revises and consolidates ventilation plan approval and review procedures in existing §§ 75.316 through 75.316–2. It retains the existing requirement that each mine be ventilated according to a ventilation

plan developed by the mine operator and approved by MSHA's district manager. Ventilation plans approved by MSHA have been used effectively not only to address routine planning needs for the mining industry but address unique mining conditions on a mine-by-mine basis.

Paragraph (a)(1) states that the approved ventilation plan must consist of two parts. The first part, the ventilation plan contents detailed under § 75.371, is to contain information that will be subject to approval by the district manager. The second part, detailed under § 75.372 mine ventilation map, contains information which is critical to the plan approval process but is not subject to approval by the district manager. This information would include physical characteristics of the mine such as coal contours, the extent of the mine workings, other mine workings on the mine property that are located in the same coalbed, and other information that will assist the district manager in the approval process. MSHA recognizes that some of the information required to be submitted under § 75.371 is best shown on a map. Rather than require additional maps, this information may be shown on the § 75.372 map. When shown on the § 75.372 map, only that portion of the map that contains information required under § 75.371 is subject to approval by the district manager.

The final rule continues to require the mine operator to submit a proposed ventilation plan in writing to the district manager for approval. The plan must be designed to control methane and respirable dust and must be suitable to conditions at the mine. However, under the final rule, once a ventilation plan is approved, the operator needs to submit only the revised pages, maps or sketches of the plan when proposing revisions. For example, the entire plan does not need to be submitted when the operator proposes a small addition or the replacement of a few pages. However, when required in writing by the district manager, the operator must submit a fully revised plan by consolidating the plan and all revisions in an orderly manner and by deleting all outdated material. It has been the Agency's experience under the existing rule that over a period of time, ventilation plans can become so large that it is confusing or nearly impossible to understand all aspects of the plan or what system of ventilation is being used. In most instances, this is caused by outdated additions and revisions of revisions, or by provisions that are no longer in use at the mine. In these cases, the district manager needs an updated plan.

Paragraph (a)(3) requires that a copy of any proposed ventilation plan and any plan revisions which are submitted for approval must be made available for inspection by the representatives of miners and be posted on the mine bulletin board.

MSHA agrees with commenters that miners have a stake in the implementation of the ventilation plan at each mine. Recognizing this role and the importance of mine plans to an effective safety and health program, commenters noted that many operators provide miners with a copy of the proposed plan before it is submitted to MSHA for approval. The commenters also noted that some existing wage and hour agreements in the industry address this issue, and under these contracts miners have the right to review plan provisions before they are submitted to MSHA. Also, MSHA district managers meet with miners' representatives to discuss plan provisions upon request and have accepted written material the miners would like MSHA to consider while the plan is being reviewed. Related to this issue, miners have the right under section 103(g) of the Act to request an inspection by MSHA of any alleged hazardous condition in the mine. Under the final rule, these practices and procedures will continue to involve miners' representatives in the development of meaningful and effective plans.

The proposed rule would have formally allowed the representative of miners to submit additional information concerning the plan and meet with the district manager to discuss this plan. Several commenters objected to these proposed provisions. The commenters stated that it would be inappropriate for miners' representatives to be involved in the ventilation plan review process because the operator is legally responsible for the contents of the approved ventilation plan. These commenters stated that the operator should not be responsible for plan provisions proposed by miners' representatives. Commenters also suggested that the proposal conflicts with provisions of other Federal statutes governing collective bargaining and labor-management relations. MSHA finds these arguments compelling, and the final rule does not include a formal role for miners' representatives in the plan approval process.

Paragraph (b) sets out the procedure for notification of approval or denial of approval of ventilation plans, retaining the existing practice that the operator be given written notice of approval actions. Under the final rule, MSHA will advise the operator of the deficiencies of the proposed plan or revision for which approval is denied. The operator is then given an opportunity to discuss with the district manager the problems identified and potential solutions.

The proposal provided that when disagreements regarding plan provisions cannot be resolved between the operator and district manager, the operator would be permitted to appeal plan approval decisions by district managers to MSHA's Administrator for Coal Mine Safety and Health. After reviewing the appeal, the Administrator would have issued a final decision on the disputed plan provisions. Several commenters recommended that a new set of regulations be developed in a separate rulemaking to establish comprehensive procedures for approving all mine plans. The Agency has not adopted this recommendation. Under the existing rule, MSHA has allowed appeal to the Administrator through policy to ensure a uniform approach to plan approval. This will continue under the final rule. The proper avenue for formal appeal is for the operator to present his or her case to the Federal Mine Safety and Health Review Commission and under the existing rule MSHA has adopted a policy to assist the operator in obtaining a speedy review by the Commission. MSHA anticipates that most plan approval issues will be resolved at the district manager level but in those instances where an issue cannot be resolved and MSHA cannot approve a proposed change to a ventilation plan, the Agency plans to continue this policy.

Consistent with existing practices, paragraph (c) clarifies that ventilation plans or revisions may not be implemented until approved. In addition, paragraph (c) sets forth provisions by which the operator may be guided in submitting revisions to a ventilation plan when a change alters the main air current in a manner that materially affects the safety and health of miners, or any change to the information required in § 75.371. These revisions and changes must be approved by the district manager before implementation at the mine. This provision of paragraph (c) is based on the requirement of § 75.324 concerning intentional changes in the ventilation system.

Paragraph (d) requires that before implementation of a revision to an approved ventilation plan, all persons in the mine who are affected by the revision must be instructed in its provisions. Complete understanding of

the requirements of the approved plan is essential for it to be effective.

Paragraph (e) requires that approved plans and any revisions be available at the mine for inspection by an authorized representative of the Secretary and representatives of the miners and be posted on the mine bulletin board. The proposal would have simply required that the approved plan be available to the miners and the representatives of the miners. The final rule clarifies the method that will be used to make the approved plan available to the miners.

Paragraph (f) specifies that approved ventilation plans must be reviewed by MSHA at least every 6 months. Unlike the existing rule, the final rule does not specify that the operator must review plans every 6 months. However, since paragraph (a)(1) requires the operator's plan to be suitable to conditions in the mine, the operator must update the ventilation plan as often as is necessary to ensure that the plan is suitable to current conditions in the mine. Therefore, the final rule does not reduce the level of protection provided miners by the existing rule.

Paragraph (g) requires existing ventilation plans to be revised to meet the requirements of the new subpart D within 6 months from the effective date of the final rule. This provision affects only ventilation plans that contain provisions conflicting with the final rule. As previously discussed, many of the provisions that are currently required to be addressed on a mine-by-mine basis through ventilation plans have been included in the final rule as provisions applicable to all mines. Such provisions no longer need to be addressed in the plan. Revising conflicting provisions in plans ensures that miners are aware of the approved plan's requirements and eliminates any ambiguities that may arise.

Section 75.371 Mine Ventilation Plan: Contents

This section is derived from existing §§ 75.316–1 and 75.316–2. It sets out the information the operator must include in the mine's ventilation plan. As structured, the requirements of the plan are grouped into like areas to facilitate use by both the operator and MSHA.

Under the existing rules, the criteria listed in § 75.316–2 establishes the basic content of ventilation plans. The district manager may approve plan provisions that do not conform to these criteria if the district manager agrees with the operator that the results of the alternative provisions will not lessen the protection provided to miners. The existing criteria also includes requirements for construction of stoppings and bleeder systems.

The final rule does not include criteria to be addressed on a mine-by-mine basis through the ventilation plan. Rather, the final rule provides the level of safety provided by existing criteria by separate rulemaking standards that apply to all mines. Some examples are the requirements for construction of stoppings in § 75.333 (ventilation controls), for bleeder systems in § 75.334 (worked-out areas and areas where pillars are being recovered), and for weekly examination of bleeder systems in § 75.364 (weekly examination).

The final rule requires the approved ventilation plan for each mine to contain only the particular air flow and methane and dust control measures necessary to address the unique conditions of the mine. For example, under paragraph (cc), mines with a demonstrated history of spontaneous combustion must specify for MSHA's approval the measures that will be used to detect methane, carbon monoxide, and oxygen concentration during and after pillar recovery and in worked-out areas where no pillars have been recovered and the actions that will be taken to protect miners from the hazards of spontaneous combustion. If a bleeder system will not be used in a spontaneous combustion mine, the ventilation plan must include a description of the methods used to control spontaneous combustion, accumulations of methane-air mixtures, and other gases, dust, and fumes in the worked-out area.

In the above example, paragraph (cc) provides an alternative for the small number of mines where the use of a bleeder system can increase the danger to miners. However, the alternative provided by paragraph (cc) does not reduce the level of protection provided miners by the existing rule or by the general requirements for bleeder systems in § 75.334. A number of commenters suggested that the proposal was not responsive to the needs and concerns of those mines with a spontaneous combustion problem. MSHA has reconsidered and the final rule through the approved ventilation plan permits the district manager and the mine operator to address this special problem on a mine-by-mine basis.

Because the ventilation plan provisions may include equally effective alternatives to some of the general requirements in the final rule, as well as other relevant information about the mine and the ventilation system, mine ventilation plans will be more relevant, practical, and useful. Making existing plan approval criteria into separate mandatory standards, if the criteria generally applies to all mines, also makes ventilation plans less complex.

Despite concerns expressed by some commenters, the final rule retains the existing provision that authorizes the district manager to require the ventilation plan to include provisions beyond those listed. This provision is a necessary safety measure that allows MSHA to address unique hazards at individual mines that the final rule cannot anticipate.

Paragraph (a) requires each ventilation plan to specify the mine name, the name of the company owning or controlling the mine, the mine identification number, and the name of the individual submitting the plan. This requirement enables MSHA to develop a complete information base so that decisions affecting ventilation at the mine can be made on the basis of all relevant facts, including the mine's previous enforcement history. The name of the individual submitting the plan is required to enable MSHA to contact directly the individual responsible for the information contained in the plan.

Paragraph (b) addresses planned main mine fan stoppages. Section 75.311 requires main mine fans to be continuously operated except when stopped for scheduled testing, maintenance, or adjustments. As under existing § 75.300–3, § 75.311 permits other fan stoppages if the reasons for the stoppages, together with the procedures to be followed during the stoppage and restart, are specified in the plan. This rule recognizes that some mines that do not have large nonpillared worked-out areas or have not done any second mining do not need to operate the main mine fan or fans when the mine is idle. Also, because these are generally smaller mines that often operate for only one shift per day, the final rule, in § 75.310, allows devices other than pressure recording devices to be used to monitor main mine fan pressure at these mines. The alternative device must be specified in the ventilation plan.

Under paragraph (c), the ventilation plan must specify the methods used to protect main mine fans and associated components from an underground explosion, if the 15-foot offset from the nearest side of the mine opening required by § 75.310 (installation of main mine fans) cannot be provided. This continues the practice of requiring approval of fan installations with an offset of less than 15 feet under existing criteria. Section 75.311 (main mine fan operation) prohibits combustible and flammable material accumulations in the area surrounding main mine fans

and intake air openings for at least 100 feet. Under paragraph (c), the approved ventilation plan may specify other safe methods of protecting main mine fans and intake air openings from combustible and flammable material if a clear area of 100 feet cannot be provided.

Paragraph (d) allows procedures to be established in the plan for situations involving main fan stoppages. Under § 75.311, persons must be withdrawn from the mine and electric power circuits entering underground areas of the mine must be deenergized if ventilation is interrupted. In certain situations when a fan is stopped, back-up fan systems may be used to restore ventilation, although such fans may not provide all of the ventilating quantity provided by the stopped fan. Under these circumstances, a sufficient quantity of air may be provided to allow certain necessary underground activities to be conducted, such as pumping water. Therefore, if such systems are used, the ventilation plan must include information regarding the persons permitted in the mine, the work that these individuals will be doing, and the electric power circuits that will remain energized. As discussed under § 75.313, this plan provision may specify persons who will be permitted to reenter the mine and power circuits that may be energized following an unplanned fan stoppage provided the requirement of § 75.313 relative to withdrawal of persons and deenergization of electrical circuits and equipment are complied with.

Paragraph (e) requires that when booster fans are used in anthracite mines the locations and operating conditions of these fans must be specified and approved in the ventilation plan. As discussed previously, booster fans are currently used in anthracite mines to provide necessary ventilation to working areas. Due to the unique mining conditions found, and practices used in anthracite mines, ventilation of many anthracite mines would not be possible without the use of underground fans.

Because control of methane accumulation and respirable dust are the primary purposes of a mine's ventilation system, each plan must include information regarding means to be used to minimize these hazards. For control of both methane and dust, paragraph (f) requires ventilation plans to specify the face ventilation systems used, and to provide drawings illustrating how such systems are used on each working section. In addition, the plan must include a description of each different dust suppression system used on equipment on working sections. The Agency intends that this description will be of sufficient detail to illustrate how it is used on the equipment. This would include the type of sprays used, the locations of these sprays, the angles at which these sprays are directed, the number of sprays to be used, the water pressure at which sprays will be operated, and the gallons per minute of water that each spray will deliver at the operating pressure specified.

If air quantities need to be greater than 3,000 cfm in bituminous and lignite mines or 1,500 cfm in anthracite mines, these quantities must be specified in the ventilation plan under paragraphs (g) and (h), respectively. Particular mining conditions such as methane levels may require greater quantities than the minimums set in § 75.325. Under paragraph (i), the approved ventilation plan must include the locations and specific air quantities for working places and working faces other than where coal is being cut, mined, drilled for blasting, or loaded when a minimum air quantity is required.

Under paragraph (j), if machine mounted dust collectors or diffuser fans are used, the ventilation plan must specify the operating volume of these devices. This information is needed to establish appropriate air quantities when dust collectors or diffuser fans are used because quantities which are either too much greater or much less than these operating volumes may adversely impact methane and dust control in the immediate face area.

Paragraph (k) addresses alternative mean entry air velocities in exhausting face ventilation systems. Section 75.326 (mean entry air velocity) requires at least a 60 fpm mean air velocity in such systems. A lower mean entry air velocity may be specified in the ventilation plan if compliance with the applicable respirable dust standards can be maintained. Under the appropriate circumstances compliance with the dust standards can be maintained with lower air velocities. This practice has been successful under the existing standards. As in the existing rule the district manager may designate other working places where the 60 fpm or some other mean entry air velocity must be maintained.

As required by § 75.330 (face ventilation controls), paragraph (l) specifies that the approved ventilation plan must include the maximum distance if other than 10 feet from each working face where control devices will be located. Additionally, other working places where face ventilation controls are used and the maximum distance these controls will be maintained from the face must be specified under paragraph (l).

Paragraph (m) requires the approved ventilation plan to specify the quantity of air reaching the last open crosscut in any pair or set of developing entries or rooms in bituminous and lignite coal mines if this quantity is required to be greater than 9,000 cfm. This permits varying mining conditions and types of face ventilation systems to be considered when establishing the air quantities necessary for effective methane and dust control at each mine. The last open crosscut quantity requirement is necessary to ensure that adequate air is available on the section for face ventilation. Similarly, in anthracite mines if the minimum air quantity in the last open crosscut is required to be greater than 5,000 cfm, paragraph (n) requires that the air quantity be specified in the approved ventilation plan.

Under § 75.333 (ventilation controls), separation of intake and return air courses by permanent stoppings must be maintained to and including the third connecting crosscut outby each working face. In some circumstances, however, the integrity of intake and return air courses can be ensured if separation is maintained to and including the fourth connecting crosscut. In addition, the possibility of accidents occurring when equipment is driven through brattice curtain can be reduced. In other cases, it may be necessary to maintain separation by permanent controls to distances closer to the working face than the third crosscut to minimize leakage through temporary controls and thus increase air flow to the face. To address these situations, § 75.333 provides for approval of alternatives concerning the separation of intake and return air courses to crosscut locations other than the third connecting crosscut. Paragraph (o) requires that when separations of intake and return air courses will be built to other than the third crosscut outby the face, the location must be specified in the approved ventilation plan.

Paragraph (p) addresses the requirement in § 75.325(c) and requires longwalls and shortwalls to be ventilated with at least 30,000 cfm unless the operator demonstrates that a lesser quantity will maintain continual compliance with applicable methane and respirable dust standards or a greater quantity is required. Paragraph (p) requires that when the quantity is different than 30,000 cfm, the quantity will be specified in the ventilation plan.

Also for longwall and shortwall ventilation, paragraph (q) specifies that the velocities required to control methane and respirable dust below applicable standards and the locations where these velocities will be provided be included in the plan. Section 75.325(d) requires that areas where mechanized mining equipment, including longwall equipment, is being installed and removed be ventilated. Paragraph (r) requires that the quantity which will be provided be included in the ventilation plan.

The on-shift examination provisions in § 75.362(d) require that a methane test be made by a qualified person immediately before equipment is energized, taken into, or operated in a working place and at 20-minute intervals during the operation of this equipment. These tests are to be made at the last row of permanent support, unless they are required to be made closer to the face using an extendable probe or other acceptable means. Consistent with this provision, paragraph (s) requires that the locations where these tests will be made closer to the face than the last row of permanent support be specified in the ventilation plan.

In conjunction with existing § 70.208 (bi-monthly sampling; designated areas), paragraph (t) requires the plan to specify the locations where the operator must collect designated area samples, as well as the specific location of each sampling device, and the plan must include a description of the respirable dust control measures used at the dust generating sources for these locations.

Paragraph (u) requires the plan to specify the methane and dust control systems at underground coal dumps, crushers, transfer points, and haulageways. At these locations, freshly mined coal can liberate significant quantities of methane, and dust levels can be elevated.

Like the existing rule, § 75.327 limits the velocity of the air current in the belt haulage entry to 250 fpm unless the district manager approves a higher velocity. Paragraph (v) specifies that areas in the trolley haulage entries where the velocity will be greater than 250 fpm and the velocities at these locations be in the ventilation plan.

Paragraph (g) of § 75.333 requires that a crosscut be made or line brattice installed and maintained before mining is discontinued in an entry or room that is advanced more than 20 feet from the inby rib. Recognizing that conditions such as methane liberation may require a cross cut or line brattice in some entries or rooms advanced less than 20 feet, § 75.333(g) requires a shorter distance to be specified in the approved ventilation plan. This distance is required under paragraph (w).

Paragraph (x) requires a description of the bleeder systems to be used and the design of the system. The means of determining the effectiveness of the bleeder system is required to be included in the ventilation plan under paragraph (y). Paragraph (z) requires that the approved ventilation plan include the locations of evaluation points where measurements of methane and oxygen concentrations and tests to determine whether the air is moving in the proper direction will be made when these tests will not be made at the point of deepest penetration in nonpillared worked-out areas or when bleeder systems are not travelled in their entirety.

Related to worked-out areas and consistent with existing criteria, paragraphs (aa) and (bb) require the approved ventilation plan to specify the means for adequately maintaining bleeder entries free of obstructions such as roof falls and standing water and the location of ventilating devices such as regulators, stoppings and bleeder connectors used to control air movement through worked-out areas.

As discussed previously, under paragraph (cc), mines with a demonstrated history of spontaneous combustion must specify for MSHA's approval the measures that will be used to detect methane, carbon monoxide, and oxygen concentration during and after pillar recovery and in worked-out areas where no pillars have been recovered, including the actions that will be taken to protect miners from the hazards of spontaneous combustion. If a bleeder system will not be used in a spontaneous combustion mine, the ventilation plan also must include a description of the methods used to control spontaneous combustion, accumulations of methane-air mixtures, and other gases, dust, and fumes in the worked-out area.

Because of the increased use of degasification systems and the problems which can result such as mining into or through a vertical degasification hole, paragraph (dd), requires the ventilation plan to include information regarding the location of all vertical degasification holes and horizontal degasification holes in excess of 1,000 feet in length. Similarly, if methane drainage systems are used to control methane, paragraph (ee) requires a detailed sketch of each system to be included in the plan, as well as a description of the safety precautions that are used with these systems.

Section 75.335 (construction of seals) specifies methods and materials that must be used to create seals. Under paragraph (ff), the ventilation plan must include a description of the methods and materials that are used to create seals if those methods or materials will be different than those specified in § 75.335. The alternative methods or materials must be capable of withstanding a 20 psig explosion when installed.

Paragraph (gg) requires that when an alternative to installing a methane sensor on the longwall shearing machine is proposed, the alternative location or locations must be specified in the ventilation plan. As discussed previously under § 75.342 this provision is intended to provide flexibility in determining the best places on a particular longwall unit to locate the additional sensing device to provide maximum protection to miners.

Monitoring for carbon monoxide levels is specified in § 75.340 of this final rule. These systems, if used, must perform specific functions at specified levels above the ambient level as required by §§ 75.340 and 75.351. If monitoring systems are used, paragraph (hh) specifies that the ambient level of carbon monoxide in the areas where they are used and the method used to determine the ambient level be included in the ventilation plan.

Consistent with § 75.1707 of the existing rule, paragraph (ii) requires that the distance that separation between the primary escapeway and the belt or track haulage entries will be maintained if other than to the first connecting crosscut outby the section loading point be specified in the ventilation plan.

Section 75.361 addresses requirements for escapeways in anthracite mines and requires escapeways to be maintained 4 feet by 5 feet unless these dimensions cannot be maintained due to the extreme pitch of the coal seam. Under these circumstances, the dimensions to which these escapeways will be maintained and the locations where these dimensions will be maintained is required to be specified under paragraph (jj).

Under the proposal, before planned mining into an inaccessible area, the procedures for mining through were to be specified in the ventilation plan. This requirement is not retained in the final rule. Because of the infrequency of this occurrence and the fact that 2 cut-through or mining-through operations are seldom similar, the final rule, § 75.389, requires the procedures and precautions to be included in a separate plan which must be approved by the district manager. Typically, this has been handled in the ventilation plan. The ventilation plan normally would

have included the method of ventilation, the ventilation controls to be used, the air quantities and velocities to be maintained, and other procedures and precautions that would be used during the mining-through operations. The Agency intends that the plan required by the final rule will contain similar information.

A commenter suggested that the ventilation plan limit the number of pieces of diesel equipment that could operate on any split of air. This suggestion has not been included in the final rule because the operation of diesel equipment is the subject of a separate rulemaking. Until completion of that rulemaking, air contaminants from diesel equipment are addressed by § 75.321, air quality.

Section 75.372 Mine Ventilation Map

This section is derived in part from existing §§ 75.316–1, 75.1200 and 75.1200–1 It requires the operator to submit an accurate up-to-date mine ventilation map to the district manager at least once every 12 months.

The ventilation map provides basic information for evaluation of the mine s ventilation plan. So that enough maps are available for MSHA to effectively evaluate the plans, the operator must submit 3 copies.

Paragraph (a)(1) retains the existing provision that maps be scaled to not more than 500 feet to the inch and adds a provision that the scale be not less than 100 feet to the inch. Also, MSHA retains the requirement that a registered engineer or a registered surveyor must certify that the map is accurate.

Paragraph (a)(2) permits information required under § 75.371 to be shown on the map. As discussed previously, MSHA recognizes that some of the information required to be submitted under § 75.371 is best shown on a map. Rather than require additional maps, this information may be shown on the § 75.372 map. When shown on the § 75.372 map, only that portion of the map that contains information required under § 75.371 is subject to approval by the district manager.

Paragraph (b) lists the information that is required to be submitted to MSHA. MSHA will use the items specified in paragraph (b) in evaluating the mine s ventilation plan therefore this information must be accurate and up to date.

Under paragraph (b)(1), ventilation maps must show the mine name, company name, and the mine identification number. This requirement enables MSHA to develop a complete information base so that decisions affecting ventilation at the mine can be made on the basis of all relevant facts. To facilitate MSHA's understanding of the information submitted, all maps must have a legend identifying the scale of the map and the symbols used. The name of the individual submitting the map also is required to enable MSHA to contact directly the individual responsible for the information shown on the map.

Like the map requirements in existing § 75.316–1, paragraph (b)(2) requires the ventilation map to show all areas of the mine, including sealed and unsealed worked-out areas, and information regarding adjacent mine workings. All known mine workings on mine property that are located in the same coalbed, and all other known mine workings that are located in the same coalbed that are within 1,000 feet of existing or projected workings, must be on the map. Mining through unintentionally into an adjacent working could disrupt mine ventilation and expose miners to hazards from water accumulations, oxygen deficiency, accumulations of methane, or other gases. The final rule permits a scale not exceeding 2,000 feet to the inch for adjacent workings so that these areas can be more easily shown on the map. The proposal would have required all other known mine workings that are located in the same coalbed that are within 200 feet of existing or projected workings, to be on the map. The final rule has expanded this distance to 1,000 feet in recognition of the speed with which mining can advance and the fact that maps are now to be submitted every 12 months instead of every 6 months as was the case under the existing rule.

Paragraph (b)(4) retains the existing requirement that all known mine workings that are above or below the mine property be shown on the map. The distance between mine workings also must be shown. Overlying workings can present serious hazards Water can accumulate in such areas and inundate underlying active workings if a roof fall or similar event occurs. When old workings lie below an active mine, cracks or other openings into these workings can provide a path for methane or other gases to enter the active mine. In response to comments, the Agency will accept map overlays where appropriate.

Accidental mining into an oil or gas well underground can result in an ignition, fire, or explosion. Accordingly, paragraph (b)(5) requires the locations of all known oil and gas wells, and the location of all known oil or gas drill holes that penetrate the coalbed being mined, to be shown on the map. This was a requirement of the existing rule

Under paragraph (b)(6), the map must include the location and specifications of each main mine fan and backup fans. To provide information regarding air entering and leaving the mine, paragraph (b)(7) requires that each map show mine openings and the direction and quantity of air measured at each opening. Paragraph (b)(8) requires the elevation at the top and bottom of each shaft and slope and its dimensions to be on the map.

Under paragraph (b)(9) the direction of air flow in all underground areas of the mine must appear on the map. Under paragraph (b)(10) the maps must include the locations of all active working sections and the four-digit identification number for each mechanized mining unit. The location of all escapeways must also be shown under paragraph (b)(11). Paragraph (b)(12) requires the location of all ventilation controls, excluding temporary ventilation controls used on working sections, in order to provide a visual layout of the ventilation system of the mine. Paragraph (b)(13) requires the direction and quantity of air in each working section to be shown so that the air is depicted entering and leaving each split, passing through the last open crosscut of each set of entries or rooms, and at the intake end of each pillar line. Unlike the existing rule, the final rule does not require the map to show the volume of air at each working face. This does not reduce the level of protection provided miners by the existing standard because § 75.325 requires at least 3,000 cfm at each working face and at other working places specified in the ventilation plan. If more air is necessary at the face, § 75.325(a)(1) requires the increased quantity to be addressed in the approved ventilation plan. Thus, no additional safety benefit results from also requiring this information to be shown on the map.

Paragraph (b)(14) retains the existing requirement that at least 12 months of anticipated mine development be included on the map. These projections must show proposed ventilation controls, proposed bleeder systems, and the anticipated locations of intake and return air courses, belt entries, and escapeways. The location of existing methane drainage systems must also be depicted on the map under paragraph (b)(15).

Paragraph (b)(16) is a new provision which requires the map to show the location of all AMS sensors. This information verifies that sensors are located in areas where adequate monitoring can be maintained.

Paragraph (b)(17) requires the map to include contour lines that pass through the whole number elevations of the coalbed being mined. These lines must be spaced at 10-foot elevation levels, unless a wider spacing is permitted by the district manager. This provision is based on existing § 75.1200–1(m). The final rule does not retain the existing requirement that the ventilation map show any abnormal conditions, such as faults, that may affect the mine s ventilation system design. The requirement for contour lines showing the whole number elevations of the coalbed being mined will indicate any geologic abnormalities in the mine.

Under paragraph (b)(18) the location of proposed seals for worked-out areas must also be included on the map so that a determination can be made that an area of a mine can be sealed. Under § 75.334, each mining system must be designed so that each worked-out area can be sealed.

Under paragraph (c), the mine map that is required by existing § 75.1200 (mine map) may be submitted as the ventilation map if all the information required by the final rule is included on the map.

Section 75.373 Reopening Mines

This section is derived from existing § 75.325. Like the existing rule, it specifies that after a mine is abandoned or declared inactive, and before it is reopened, mining operations cannot begin until MSHA has been notified and the mine has been inspected.

In the proposal, MSHA proposed deletion of existing § 75.325, largely because existing § 75.1721 also addresses reopening mines and requires the operator to submit preliminary mine plans and inform the district manager of the approximate date for reopening. A commenter objected, stressing the need for MSHA to inspect mines before they are reopened.

Because of the commenter's objection, MSHA has reassessed the application of existing § 75.325. Under that rule, MSHA receives notification of the commencement of mining operations much closer to the actual start of these operations than under § 75 1721. When notified, MSHA will inspect the mine before mining operations begin but will not take enforcement action if any observed deficiencies are corrected promptly. This practice enables MSHA inspectors to assess accurately the proposed mining systems and to identify any potential problems that may present hazards to miners when mining operations commence. Therefore, the final rule retains existing § 75.325 without substantive change.

Section 75.380 Escapeways; Bituminous and Lignite Mines

This section is derived from existing §§ 75 1704, 75.1704–1, 75 1704–2, and 75.1707. The final rule establishes requirements for escapeways for bituminous and lignite mines. Escapeway requirements for anthracite mines are addressed separately in § 75.381 of the final rule.

Escapeways are the primary means of escape for miners during a mine fire or similar life-threatening emergency. Accordingly, the final rule retains the existing requirement that at least two travelable passageways in each mine be designated as escapeways and be provided from each working section. The final rule sets minimum requirements for all escapeways, including separate requirements for the primary escapeway and the alternate or secondary escapeways. The terms "primary" and "alternate" distinguish the two required escapeways from each other and are used to clarify which requirements in the rule apply to each.

Paragraph (a) retains the existing requirement that the escapeways must be maintained travelable and separate and distinct from each other. This increases the likelihood that if one escapeway loses its effectiveness as an escape route or becomes untravelable during a mine emergency, the other escapeway would still provide a way out of the mine.

Paragraph (b) requires escapeways from each working section and from each area where mining equipment is being installed or removed. These escapeways must be continuous to the surface escape drift opening or to the escape shaft or slope facilities to the surface. Paragraph (b)(2) recognizes that during the installation or removal of mechanized mining equipment, the term working section, as defined, may not be appropriate because in one case the loading point may not yet be located by the installation of a belt tailpiece or feeder and in the other, it may have already been removed. In these cases, the required escapeways must begin at the projected location of the loading point in areas where equipment is being installed and at the location of the last loading point for the section when equipment is being removed. This aspect of the final rule clarifies the existing provision and is necessary to provide safe escape for miners from hazards that may develop during this phase of the mining operation.

Consistent with existing regulations and policy, paragraph (c) prohibits escapeways from ending at a common shaft, slope, or drift opening. Thus, while mines may ventilate both escapeways from the same surface opening under paragraph (b), one of the two escapeways must continue from this location to a second shaft, slope, or drift to allow escape to the surface. Consistent with existing practice, however, paragraph (c) clarifies that the same shaft or slope may be used to provide the escapeways if the shaft or slope is separated by walls constructed of noncombustible material. When partitioned in this manner, the two escapeways are separate and distinct to the surface and thus comply with paragraph (b).

Under paragraph (d)(1), escapeways must be maintained in safe condition to always ensure passage by any person, including disabled persons. Paragraph (d)(2) requires all escapeways to be clearly marked to show the route and direction of travel to the surface. Together with the requirement in § 75.333 that doors be provided at specified intervals and that the location of all doors along escapeways be clearly marked so that doors may be easily identified by anyone traveling in the escapeway and in entries on either side of the escapeway, this requirement will greatly enhance the ease with which miners can escape. A commenter suggested that this provision also should specify that a lifeline be required through the escapeway and recommended that the lifeline be equipped with directional cones to indicate the direction of travel. Although lifelines may be feasible in some mines, and MSHA encourages their use, the Agency finds that in most mining systems lifelines would be subject to frequent damage from roof falls, haulage equipment, and other disturbances. Thus the overall safety benefits of these devices would be minimal and the final rule does not include the commenter's suggestion.

Also, to facilitate travel, paragraph (d)(3) requires escapeways to be maintained to at least a height of 5 feet from the mine floor to the mine roof, excluding the thickness of any roof support. Like the existing rule, this provision requires that the 5-foot clearance be maintained to the roof, not to the low point of any roof support. As under the existing § 75.1704–1(a), to minimize the impact of this requirement in lower coal seams, escapeways must be maintained to the height of the seam where the seam height is less than 5 feet. Paragraph (d)(4) requires escapeways to be maintained at least 6 feet wide. This requirement retains the existing provision in § 75 1704–1 that escapeways be maintained at a width of

at least 6 feet, so that a person on a stretcher can be easily carried out of a mine during an emergency. Additionally, as noted by commenters, maintaining a minimum width of 6 feet will enhance escape. MSHA had proposed a minimum width of 4 feet and continues to recognize circumstances where widths less than 6 feet may be necessary, such as where the route of travel passes through doors or other permanent ventilation controls or where necessary supplemental roof support is installed, such as cribs or timbers. At these locations, paragraphs (d)(4)(i) and (d)(4)(ii) require the escapeway to be wide enough to enable miners to escape quickly in an emergency. This provision is consistent with the existing rule which allows escapeways less than 6 feet wide to be used if the district manager is satisfied that the escapeway enables miners to escape quickly in an emergency. MSHA will determine, during inspection activities, whether the escapeways provide quick passage through areas where the route of travel is narrowed.

Paragraph (d)(5) requires escapeways to follow the most safe and direct practical route to the surface. Where escapeways cross over obstructions, such as overcasts or belts, paragraph (d)(6) requires them to be provided with ladders, stairways, ramps or similar facilities to allow miners to cross and transport disabled persons.

Paragraph (e) retains the existing provision requiring surface openings to be adequately protected to prevent surface fires, fumes, smoke and floodwater from entering the mine. This requirement helps to ensure that escapeways do not become threatened by hazards occurring on the surface and is particularly important if escapeways are ventilated by intake air, as the primary escapeway must be under § 75.380. A fire on the surface near an intake air opening that is part of an escapeway could produce carbon monoxide that could be drawn into the mine unless steps are taken to prevent this hazard.

Under paragraph (f), one of the two escapeways must be designated as the primary escapeway. This escapeway, as under existing § 75.1704, must be ventilated with intake air. Paragraph (f) prohibits the primary escapeway from containing compressors, certain electrical equipment, and diesel equipment. As proposed, however, the final rule does not require removal of this equipment in areas of mines developed before August 16, 1992. However, it does prohibit installation of this equipment in areas developed after August 15, 1992. As proposed, the final rule permits equipment in the escapeway necessary to maintain the escapeway in safe, travelable condition, including pumps specified under §§ 75.340(b)(2) through 75.340(b)(6). Also, haulage equipment necessary for the transportation of persons and materials is permitted. Additionally, if a roof fall occurs in a primary escapeway, equipment necessary to clean up or remove the fall and to support the roof would be permitted in the escapeway for the time necessary to complete that work.

Paragraph (f)(1)(ii) requires that any mobile equipment used or operated in the primary escapeway must be equipped with a multipurpose dry power type fire suppression system suitable for the intended purpose and listed or approved by a nationally recognized independent testing laboratory. This provision is in response to a commenter who suggested that no electrical equipment of any type be permitted in this escapeway. MSHA recognizes the need to protect the primary escapeway but the Agency also realizes that different mine designs and the need to maintain air courses safe for travel will necessitate the operation of some mobile equipment in the primary escapeway. For this reason, MSHA has elected to require fire suppression systems. Unlike the proposal, the final rule does not allow underground substations, power centers, and permanent pumping stations in the primary escapeway even if housed in fire proof structures and provided with an automatic fire suppression system. MSHA agrees with commenters that each mine should have a substantially "smoke-free" intake escapeway. Providing miners with a primary intake escapeway relatively free of fire sources will appreciably increase safety.

Derived from existing § 75.1707, paragraph (g) specifies that the primary escapeway must be separated from belt and trolley haulage entries for its entire length, from the first connecting crosscut outby the loading point to the surface. Separation of the primary escapeway from belt and trolley haulage entries minimizes the potential for fire and explosion hazards in this escapeway. The final rule, however, requires separation in older mining systems only where it existed before August 16, 1992. Therefore, separation is not required for areas where separation is not required under the existing rule. Existing § 75.1707 does not require separation in working sections of mines opened before March 30, 1970. In all other cases it authorizes the district manager to approve this separation for greater or lesser distances than are otherwise required and like the existing rule, the final rule retains this provision.

Paragraph (h) separately addresses the alternate escapeway and requires that it be separated from the primary escapeway for its entire length. Unlike the proposal, the final rule does not require the alternate escapeway to be ventilated with intake air. MSHA has referred this issue, along with several other issues, to an advisory committee approved by the Secretary of Labor. The final rule permits the primary and alternate escapeways to be ventilated from a common intake air shaft or slope opening. The practice of providing a pressure separation between air courses at the bottom of shafts and slopes is a widely accepted practice under the existing rule. This provision has been included in the final rule as a matter of clarification. It is not the Agency s intent however, to permit pressure separation anywhere but at the bottom of the shaft or slope involved.

Paragraph (i) addresses shafts and slopes in designated escapeways and requires that mechanical escape facilities be provided and maintained for each slope to the surface under specified circumstances. This provision addresses only those slopes that form a passage from the coal seam to the surface. It applies to shafts that are greater than 50 feet in depth and to slopes either inclined 18 degrees or more from the horizontal or inclined 9 degrees from the horizontal for a distance of at least 1,000 feet. The slope requirements clarify the proposal and are based on the suggestion of a commenter that shallow angle slopes do not provide a significant impairment to escape. The final rule adopts the commenter's recommendation but limits the distance of such slopes. Although escape may not be impeded by a shallow-angle slope over short distances, escape could become more difficult as the length of the shallow slope increases. The final rule modifies the existing provision in § 75.1704, which states that escape facilities must be provided for all slopes that are part of escapeways; however, the final rule does not reduce the level of protection provided miners by the existing rule. In short or shallow-angle slopes, escape may be impeded by escape facilities, especially where several miners are exiting the mine and the escape facilities are designed for a small number at a time. In these circumstances, no hazard would be presented if miners were to walk out of the mine, and escape would in most cases be accomplished more quickly

A commenter suggested that the final rule should require, based on existing criteria for district manager approval of escapeways, mechanical escape facilities in all shafts greater than 20 feet in depth, rather than for shafts greater than 50 feet in depth. Other commenters suggested that mechanical escape facilities should only be required for shafts greater than 100 feet in depth. The final rule does not adopt either of these recommendations. As discussed below, stairways are permitted instead of mechanical facilities in shafts less than 50 feet deep that are part of escapeways. As with short or shallow-angle slopes, in shallow-type shafts (less than 50 feet), escape usually can be made more quickly using stairways than mechanical escape facilities. Thus, the final rule does not reduce the level of protection provided by the existing criterion in § 75.1704–1(b).

Specific technical and performance requirements for mechanical escape facilities are included in § 75.382. Also, paragraph (j) requires mechanical escape facilities provided under paragraph (i) to be operational at the bottom of each shaft and slope that is part of an escapeway within 30 minutes of notification of surface mine personnel that an emergency requiring evacuation has occurred. A commenter questioned whether a single mobile hoist would be permitted to service more than one shaft which is part of an escapeway. Because during an emergency requiring the use of an emergency hoist or hoists, miners may be attempting to escape from more than one shaft or slope it is important that mechanical escape facilities be provided for each shaft or slope. Thus, the same escape facility may not service more than one shaft or slope at a mine. The Agency recognizes that some operators operate more than one mine in an area or that in some areas operators have pooled resources. Because the likelihood of events requiring simultaneous escape from more than one mine is remote, the Agency would accept an arrangement where more than one mine is serviced by the same mechanical escape facility provided (1) enough facilities are provided to satisfy the maximum need of the mine in the group that has the maximum demand and (2) facilities can be operational at the bottom of each shaft and slope that is part of an escapeway within 30 minutes of notification of surface mine personnel that an emergency requiring evacuation has occurred. Another commenter questioned whether 30 minutes was too long a time to provide mechanical escape facilities. MSHA's experience has been that 30 minutes is a reasonable amount of time given that it begins when miners on the surface first become aware of a problem and miners underground must be notified and must travel to the escape facility from their working stations.

Paragraph (k) requires a means of signalling a surface location to be provided at the bottom of each slope or shaft that is part of an escapeway. A person must always be on duty at this surface location when persons are underground. If a signal is activated or the evacuation of personnel is otherwise necessary, this person must take appropriate action to ensure that mechanical facilities are operational within 30 minutes at the bottom of shafts or slopes. In response to comments, paragraph (k) clarifies that no signal is required where automatically activated hoisting equipment is used.

Paragraph (l) requires stairways or mechanical escape facilities in escape shafts that are 50 feet or less in depth. If stairways are used, they must be made of concrete or metal, set at an angle not exceeding 45 degrees from the horizontal, and equipped on the open side with handrails. To facilitate escape, particularly during the transportation of disabled persons from the mine, the final rule requires platforms to be installed at intervals not to exceed 20 vertical feet in stairways. The platforms must be at least 2 feet by 4 feet and have handrails on open sides. Each of these requirements for stairways is retained without substantive change from existing § 75.1704–1.

Where shafts in designated escapeways are 5 feet or less in depth, the final rule, like the existing rule, allows a ladder to be used instead of stairways or mechanical facilities. As under the existing rule, ladders must be made of metal, anchored securely, and set at an angle of 60 degrees or less.

In slope or drift openings that are part of escapeways, paragraph (m) requires travelways to be designed to prevent slippage during escape. Such travelways are not required if mechanical escape facilities are used.

Section 75.381 Escapeways; Anthracite Mines

This section, derived from existing §§ 75.1704, 75.1704–1, 75.1704–2, and 75.1707, establishes requirements for escapeways for anthracite mines.

Commenters objected to the proposed escapeway provisions, stating that compliance with many of these provisions would not be possible in anthracite mines. Anthracite mines are notable for conditions and terminology distinct from most bituminous and lignite mines. Mining in anthracite mines is mostly done without electric face equipment or the types of permanent installations used in bituminous mines. In most anthracite mines, the direction of mining is typically vertical rather than horizontal, following the coal seam up steep pitches. Generally, anthracite mines are ventilated with one intake air course called a gangway and one return air course called a monkey.

In recognition of the distinct conditions of anthracite mines and in response to comments on the proposal, the final rule establishes separate escapeway requirements for anthracite mines. Since anthracite mines were not separately addressed in the proposal, §§ 75.381 through 75.385 of the proposal are now renumbered as §§ 75.382 through 75.386 in the final rule.

Paragraph (a) requires two separate and distinct passageways to be designated as escapeways in anthracite mines and paragraph (b) requires that these escapeways be provided from each working section continuous to the surface.

Paragraph (c) requires that each escapeway be maintained in a safe condition to always ensure the passage of anyone, including disabled persons, and that each escapeway be clearly marked to show the route of travel to the surface. Because mining in anthracite mines is conducted on steep pitches, often the coal face is actually the mine "roof." Under these circumstances, the meaning of the terms "height" and "width" with respect to the escapeways may be less clear than in bituminous and lignite mines. Rather than rely on these terms, paragraph (c)(3) requires escapeways in anthracite mines to be maintained to dimensions of at least 4 feet by 5 feet (the normal dimensions of return air courses in many anthracite mines). However, if the pitch or thickness of the coal seam does not permit these dimensions to be maintained, the dimensions of the escapeways must be specified in the approved ventilation plan.

Other general requirements for escapeways in anthracite mines are like those for bituminous and lignite mines. Under paragraph (c) escapeways must be provided with ladders, stairways, ramps, or similar facilities where the escapeways cross over obstructions. Also, paragraph (d) requires surface openings to be adequately protected to prevent surface fires, fumes, smoke, and flood water from entering the mine.

The final rule simplifies the requirements for the primary and alternate escapeways in anthracite mines, recognizing that most mines are ventilated by a single intake and single

return with little or no permanent electrical equipment, compressors, or diesels, since these types of equipment are not used in anthracite mines. The final rule therefore does not set requirements for a smoke-free primary intake escapeway, since nearly all escapeways in anthracite mines are currently free of most fire sources. Paragraph (e) requires the primary escapeway to be in intake air. Paragraph (f) requires the primary escapeway to be separated from the alternate escapeway for its entire length.

Paragraphs (g), (h), and (i) include requirements similar to those in paragraphs (i), (j), and (k) of § 75.380. Paragraph (g) requires mechanical facilities to be provided for each shaft or slope opening that is part of a primary escapeway. In most anthracite mines, such openings are normally the main routes of travel in and out of the mine. Paragraph (h) requires that within 30 minutes after mine personnel on the surface have been notified of an emergency requiring evacuation, mechanical escape facilities must be operational at the bottom of each shaft and slope opening. To enable this to occur, paragraph (i) requires the bottom of each shaft and slope opening that is part of a primary escapeway to be equipped with a means of signalling a surface location where a person is always on duty when persons are underground. Paragraph (g) also requires that when this signal is activated or evacuation of personnel is necessary, persons on the surface must take action to ensure that mechanical escape facilities are available to miners underground within 30 minutes, as specified in paragraph (h). To help persons in the escapeways, paragraph (g) requires ladders or mechanical escape facilities to be installed in all slopes that are part of escapeways.

Section 75.382 Mechanical Escape Facilities

This new section establishes requirements for mechanical escape facilities installed in escapeways under §§ 75.380 and 75.381. Under § 75.380, these facilities will be used for escape in shafts deeper than 50 feet, slopes inclined more than 18 degrees from the horizontal, and slopes inclined more than 9 degrees that are longer than 1,000 feet. For anthracite mines, § 75.381 requires facilities in each shaft or slope opening that is part of a primary escapeway, and for slopes that are part of escapeways, unless ladders are installed. This section includes provisions in proposed § 75.381.

Paragraph (a) requires mechanical escape facilities to be provided with overspeed, overwind, and automatic stop controls. These safety features minimize the risk of hoisting accidents during escape that are caused by mechanical malfunctions. So that facilities can be stopped if necessary in an escape situation, paragraph (b) requires facilities with platforms, cages, or other devices in which persons are carried to be equipped with brakes that can stop the conveyance when fully loaded.

Paragraph (c) requires mechanical escape facilities to be examined weekly. One commenter suggested that examinations be required daily; however, the Agency believes that a weekly examination is sufficient to assure proper functioning of the facility. This weekly examination includes examination of automatic elevators used for emergency escape purposes. It may be conducted at the same time as the daily examination of hoisting equipment required by existing § 75.1400–3. The examination includes an examination of headgear, connections, links and chains. Also, the final rule requires that at least once each week, hoists be run by a qualified hoisting engineer through one complete cycle of operation to verify that the facility is operational in an emergency requiring escape.

Commenters objected to paragraph (d) of the proposal, which would have required that a qualified hoisting engineer "be on duty" while any person is underground unless the facilities are operated automatically. The commenters stated that this proposed provision would conflict with § 75.380, which requires that mechanical escape facilities be operational at the bottom of shaft, slope, and drift openings within 30 minutes after personnel on the surface are notified of an emergency requiring evacuation. MSHA agrees and has made paragraph (d) consistent with § 75.380(j). Accordingly, under paragraph (d), a person trained to operate the mechanical hoist facility always must "be available" while any one is underground to send mechanical escape facilities to the bottom of each shaft and slope opening that is part of an escapeway within 30 minutes after personnel on the surface have been notified of an emergency requiring evacuation. As proposed, the final rule clarifies that no operator is required when automatically operated cages, platforms, or elevators are used. The change in the final rule to require a person trained to operate the mechanical hoist facility instead of the proposed certified hoisting engineer recognizes that MSHA currently has no method of certifying hoisting engineers and that if a person is trained he or she is capable of providing the necessary skills.

Paragraph (e) requires that escape facilities have rated capacities consistent with the loads handled. This prevents accidents from occurring due to failure of an overloaded escape facility. Paragraph (f) requires that manually operated facilities have indicators that reliably and accurately indicate the position of the facility. This enables the surface operator of the facility always to be aware of its location while persons are being transported.

Section 75.383 Escapeway Maps and Drills

This section, derived from existing § 75.1704–2, specifies requirements for escapeway maps and drills. These requirements ensure that miners are familiar with mine escape routes so that if escape is necessary, miners can reach the surface as quickly as possible. This section was proposed as § 75.382.

Paragraph (a) requires operators to maintain two types of escapeway maps. One map must be posted in each working section to show the designated escapeways from the working section to a location where miners must travel to meet the escapeway drill requirement in paragraph (b)(1). A second map showing the main escapeways must be posted at a surface location of the mine where miners congregate; that is, near the mine bulletin board, bathhouse, or waiting room. Posting maps at one of these locations gives miners the opportunity to become familiar with their escape routes.

All maps must be kept up to date. Therefore, any changes in the route of travel, locations of doors, or airflow direction must be shown on the map by the end of the shift on which changes are made so that during a mine emergency miners do not react based on inaccurate information. Similarly, after changes are made, the final rule requires miners to be informed of the changes before they enter the mine. Commenters differed in their opinion on this requirement; some commenters suggested that requiring posting of changes by the end of the shift on which they are made is unrealistic while another commenter suggested that changes be posted immediately. The Agency believes that posting the changes as proposed and as maintained in the final rule provides a reasonable time frame while providing necessary protection to miners.

Paragraph (b)(1) retains the existing requirement that each miner participate in a practice escapeway drill at least once every 90 days. In a clarifying change, the final rule adopts a commenter's suggestion to indicate more precisely the required distance to be traveled during this drill. Thus, the final rule requires that miners travel from the working section to the area where the split of air ventilating the working section intersects a main air course or for a distance of 2,000 feet outby the section loading point, whichever distance is greater. For miners whose working stations are outby or off the working section, travel from the section may not effectively familiarize them with their escape routes. Therefore, the final rule requires miners not working on sections to be drilled on escapeways from their work stations in the primary or alternate escapeway for a distance of 2,000 feet toward the nearest escape facility or drift opening. In response to a commenter who suggested that miners should be familiar with all routes off the section, paragraph (b)(2) provides that escapeway drills may not be conducted in the same escapeway as the immediately preceding drill.

At least once every 6 weeks and for each shift, paragraph (b)(2) requires at least 2 miners on each coal-producing section who normally work on that section to participate in a practice escapeway drill. These miners must travel escapeways from the section, accompanied by the section supervisor. The drill is to start at the location where the drill required for miners on the working section in paragraph (b)(1) ends and is complete when the miners reach the surface, mechanical escape facilities, or an underground entrance to a shaft, slope, or drift opening to the surface. This drill is retained from existing § 75.1704–2. It is necessary so that if the supervisor is absent from work when a mine emergency occurs or is performing duties at a location not on the section, there is a greater likelihood that other miners on the working section will be available and will be familiar with the escape routes to the surface. Consistent with this purpose, this drill must be conducted for each shift and miners who normally work on the section are required to be drilled. Also, so that the same miners on each shift are not designated to perform the drill each 6 weeks and in recognition of a commenter's suggestion that all miners need to become familiar with all of the escape routes, the final rule requires systematic rotation of section personnel so that all miners participate in this drill. Additionally, for the same reason, escapeway drills may not be conducted in the same escapeway as the immediately preceding drill.

In light of the commenter's recommendation that all miners need to be aware of all escape routes, the final rule requires in paragraph (b)(3) that at least once every 6 weeks, at least two miners on each maintenance shift and a supervisor participate in a practice escapeway drill similar to that required for persons on working sections under paragraph (b)(2). Like the drill required under paragraph (b)(2), this drill is required to be rotated between personnel and between escapeways.

Under paragraph (b)(4), the final rule requires that before or during escapeway drills miners must be informed of the locations of fire doors, check curtains, and controls designed to slow the travel of smoke such as smoke retarding doors, changes in routes of travel, and plans for diverting smoke from escapeways. During mine emergencies, especially fire situations, it may be necessary to use such devices to change ventilation to divert air from a fire or smoke from escapeways.

Paragraph (c) allows the escapeway drills to satisfy the fire drill and evacuation requirements of existing § 75.1101–23. This provision retains the existing § 75.1402–2(f) because the escape routes traveled during the escapeway drills are those used for all mine emergencies requiring evacuation, including mine fires.

Section 75.384 Shortwall and Longwall Travelways

This new section requires a travelway to be provided on the tailgate side of longwall or shortwall panels when both escapeways required by § 75.380 are on the headgate side of the longwall or shortwall. Safe passage off both sides of a longwall or shortwall panel is essential for safe escape in emergencies. Therefore, a travelway must be on the side of the block of coal opposite the escapeways, and it must follow the most direct and safe practical route to an escapeway. This section was proposed as § 75.383.

Currently, longwalls have face widths of about 400 to 1,000 feet, and generally the escapeways start at the loading point in the headgate entries. As MSHA's two-entry longwall mining report indicated, safe travel across a longwall face to the headgate entries may not be possible if an emergency occurs in the headgate area. In this situation, an unobstructed travelway through the tailgate entries is necessary to prevent trapping miners in face areas without a means of escape.

MSHA recognizes that the tailgate side of a longwall or shortwall is an area generally subjected to extensive geologic stress during mining and that ground failures are likely to occur in tailgate entries. Therefore, the final rule does not require the travelway always to be located in the tailgate entry immediately adjacent to the panel. This permits a route avoiding obstructions through other tailgate entries to be established if this route is the most direct and safe practical route to an escapeway. Under paragraph (b), the route of travel must be clearly marked.

Paragraph (c) establishes procedures to be followed if a roof fall or other blockage occurs in the travelway that prevents safe travel off the panel. In response to comments, the final rule requires mining to cease when a blockage occurs, a procedure also recommended in MSHA's two-entry task force report. This provision reduces the likelihood of miners becoming trapped on the longwall section if an emergency develops on the headgate side of the panel, thus preventing escape through the escapeways. After mining ceases, miners must be withdrawn to a safe area outby the section loading point, and MSHA must be notified immediately. Before mining is resumed or cleanup of the blockage begins, the procedures required by §§ 75.215 and 75.222 which address roof control, must be implemented. Commenters suggested the cross-reference to the applicable roof control standards to clarify the relationship between this provision and the roof control requirements. Sections 75.215 and 75.222 generally address procedures for supporting tailgate entries and set guidelines for roof control plan procedures necessary to protect miners if a ground failure occurs in a longwall travelway.

A commenter suggested that the final rule should require an escapeway off the tailgate side of longwalls ventilated with intake air. MSHA disagrees. Under § 75.380, escapeways must meet minimum requirements for height, width, and other factors. Roof support required to maintain tailgate entries open may limit entry clearances to the extent that it is impossible to meet escapeway dimension requirements. Also, because of the different conditions and ventilation methods used to provide adequate ventilation of longwalls and associated gob areas it is not always possible or even advisable to have an intake on the tailgate side of the longwall.

Section 75.385 Opening New Mines

This section retains the requirements in existing § 75.1705 without change and states that when new mines are opened, not more than 20 miners can be allowed in the mine until a connection is made between mine openings. This minimizes exposing persons to hazards in the initial stages of mine development when two escapeways continuous to the surface cannot be provided. The final rule requires connections to be made between mine openings to provide two escapeways as soon as possible.

Section 75.386 Final Mining of Pillars

This section retains existing § 75.1706 without change and addresses final mining of pillars. Similar to § 75.385, this provision applies to a mining situation in which two escapeways to the surface cannot be provided. Final mining of pillars is conducted during the close-out period of a mine. The final rule permits no more than 20 miners in the mine during this period and requires that the distance between the mine opening and the working face be no longer than 500 feet.

Section 75.388 Boreholes in Advance of Mining

This section revises and clarifies existing § 75.1701 and retains requirements that boreholes be drilled: (1) When an advancing working place approaches within 50 feet of any area in the mine that has been surveyed and certified by a registered engineer or registered surveyor, unless the area has been preshift examined; (2) within 200 feet of any area in the mine that has not been surveyed by a registered engineer or a registered surveyor, unless the area has been preshift examined; or (3) within 200 feet of any mine working of any adjacent mine located in the same coalbed that has not been preshift examined. The existing rule requires that boreholes be drilled when mining near an area which cannot be inspected. The final rule clarifies this to mean any area which has not been preshift examined.

Inaccessible areas of a mine can present several hazards to active workings when mining proceeds inadvertently or improperly into these areas. Inaccessible areas may contain potentially dangerous accumulations of gases or water, which could result in explosions or inundations.

To increase the likelihood of detecting potential hazards when boreholes are drilled, paragraph (b) includes requirements for the pattern of drilling and the length of the holes. Boreholes must be drilled into the working face, parallel to the rib and within three feet of each rib. Additional holes must be drilled not more than 8 feet apart across the face. The final rule retains the existing requirement for boreholes to be drilled at least 20 feet in depth in advance of the face and to be always maintained to a distance of at least 10 feet in advance of the face as mining continues.

Like the existing rule, paragraph (c) specifies requirements for drilling into at least one rib of advancing working places to detect potential hazards in inaccessible areas not directly ahead of the direction of advance. These boreholes must be drilled at angles of 45 degrees to the direction of advance, at least 20 feet deep, and at intervals not exceeding 8 feet.

Paragraph (d) is new and establishes procedures to be followed if a borehole penetrates an inaccessible area. Under these circumstances, as proposed, the final rule requires tests to be made to determine the direction of airflow in the borehole, the pressure differential between the active workings and the penetrated area, the concentration of methane, oxygen, carbon monoxide, and carbon dioxide, and whether water is impounded within the penetrated area. Paragraph (e) specifies the circumstances under which the borehole must be plugged. Wooden plugs or similar devices are required unless action is taken to dewater or ventilate penetrated areas, and one of three conditions is present. One condition is when tests conducted at boreholes indicate that the atmosphere in the penetrated area contains a hazardous concentration of gas, such as methane, and carbon monoxide, or is deficient in oxygen. Another condition is when tests for methane, oxygen, carbon monoxide, and carbon dioxide concentrations cannot be made because air from active workings is flowing into the penetrated area through the borehole. A third condition is when water is discharging from the penetrated area into mine workings through the boreholes.

To protect miners from inundations of overlying water, a commenter suggested that the final rule should also address procedures for mining in an area under a seam previously mined and known to contain water. The commenter also noted that when mining is conducted over a previously mined area, methane can be liberated from cracks in the overlying mine's floor, and water can migrate into the overlying mine as well. MSHA agrees that hazardous conditions can be encountered when mining is conducted over or under other mines. However, the necessary procedures for drilling boreholes to protect miners from these hazards may vary from mine to mine depending on many factors, including the thickness of the strata between mines and whether dewatering or degassing can be conducted, as appropriate. To provide the flexibility necessary to address the required procedures in specific situations, a new provision, paragraph (f) specifies that whenever mining is to be conducted above or below an inaccessible area of another mine, boreholes must be drilled, as necessary, under a plan approved by the district manager. This provision allows precautions to be developed as needed when mining is conducted above or below other previously mined areas. Similarly, because conditions may vary, paragraph (g) permits alternatives to the borehole patterns required by paragraphs (b) and (c) if the alternative provides the same protection to the miners and is approved by the district manager.

Section 75.389 Mining Into Inaccessible Areas

This new section establishes procedures for mining into inaccessible areas. Unlike the proposal, the final rule requires that a separate plan be developed and approved by the district manager for mining into or through inaccessible areas. The proposal would have required procedures to be specified and approved in the ventilation plan. As discussed previously, because of the infrequency of this occurrence and the fact that two operations are seldom similar, the final rule, § 75.389, requires these procedures and precautions for such action to be included in a separate plan which must be approved by the district manager rather than be approved in the ventilation plan.

As proposed, paragraph (a) requires that when an area is penetrated by a borehole drilled under § 75.388, mining must cease and may not resume until conditions in the penetrated area can be determined and safe procedures are specified in a plan approved by the district manager for mining into or through the area. The final rule also requires a copy of the procedures for mining into the penetrated area to be posted near the site of the mine-through and requires an explanation of the procedures to be given to miners involved in the operation.

To address hazards that can be expected to be encountered in the penetrated area, paragraph (b) sets out the minimum requirements for the mining-through procedures that must be included in the plan. The plan must specify the method of ventilation, the ventilation controls, and the necessary

air quantities and velocities for the affected working section and working place, and dewatering procedures to be used if the penetrated area contains water accumulations. Any additional procedures or precautions that will be followed to protect those involved in the mine-through operation must also be included in the plan.

Paragraph (c) requires air quality tests to be conducted by certified persons prior to and during mining-through operations, at intervals and locations necessary to protect miners. Also, only those persons involved in the mining-through operation are permitted in the mine, and an examination of affected areas by a certified person after the operation is completed is required before persons re-enter the mine.

Other Existing Sections Affected

Several existing provisions contained in 30 CFR part 70 (mandatory health standards for underground coal mines) and part 75 (mandatory safety standards for underground coal mines) refer to specific ventilation standards that are the subject of this rule. These provisions have been revised in the final rule so that the reference is to the appropriate section of the final rule rather to the existing standard. The existing provisions affected and the revisions are: Section 70.2(e), the definition for "designated area" referring to § 75.316, is updated to refer to § 75.371(t); § 70.208(e) dealing with locations for designated area samples referring to § 75.316, is updated to refer to § 75.371(t); § 75.1103–4(e) and § 75.1103–7(b) dealing with automatic fire sensor and warning device systems refer to § 75.321, are updated to refer to § 75.313; and, § 75.1721 (b)(7) and (b)(8) dealing with preliminary mine plans, refer to §§ 75.316–1, 75.316–2 and 75.330–1 and are updated to refer to §§ 75.371 and 75.372. Also, §§ 75.1801 through 75.1805, dealing with records of examinations, are removed.

Petitions for Modification

Operators with petitions for modification that involve the standards revised in this rulemaking need to determine the status of those petitions before the effective date of this final rule. If there are sections of this rule that are renumbered but remain substantively unchanged from the existing standards, operators with modifications granted for these standards need not reapply. However, operators with petitions for modifications granted for standards that have been revised must comply with the new rule on its effective date. New petitions for modification of the final rule may be submitted under 30 CFR part 44. If Agency assistance is needed, questions should be directed to the appropriate MSHA district office.

Metrication

The final rule has been prepared using the inch-pound system of measurement (English system) instead of the SI (metric) system. However, the Agency remains committed to accomplishing an orderly transition to the SI system. The following table is intended to aid in the conversion of the final rule to metric units.

Quantity	From	To	Multiply by
Length	Inches	Centimeters	2.54
	Feet	Meters	0.304
Area	Square feet	Square meters	0.093
Velocity	Feet/minute	Meters/second	0.005
Pressure	Lbs/sq.in.	Kilopascals	6.895
	Lbs/sq.ft.	Kilopascals	0.049
Air Quantity	Cu. ft./min.	Cu. meters/sec.	0.00047
Power	Horsepower	Kilowatts	0.746
Temperature	Degrees F	Degrees C	$T_c=(T_f-32)/1.8$

Derivation Table

The following derivation table cross references the final rule with the existing standard numbers from which it is derived.

New section	Old section
75.300	New.
75.301	New.
75.302	Partly new, 75.300.
75.310(a)	Partly new, 75.300–2 (a)(1) through (a)(3), (b) (1) and (2).
75.310(b) (1) and (2)	Partly new, 75.300–2(c).
75.310(c)	Partly new, 75.300–2(a)(3).
75.310(d)	75.300–2(b) (1) and (2).
75.310(e)	75.300–2(b)(2).
75.310(f)	75.300–2 (d) and (e).
75.311(a)	Partly new, 75.300, 75.300–3 (a)(1) and (a)(3).
75.311(b)	Partly new, 75.300–3(a)(1).
75.311(c)	New.
75.311(d)	75.300–3(b).
75.311(e)	75.300–2(a)(3).
75.311(f)	Partly new, 75.300–2(f).
75.311(g)	75.300–3(c).
75.311(h)	New.
75.312(a)	Partly new, 75.300, 75.300–4 (a) and (b).
75.312(b)	New.
75.312(c)	New.
75.312(d)	Partly new, 75.300–4(c).
75.312(e)	75.300–4(b).
75.312(f)	New.
75.312(g)	Partly new, 75.300, 75.300–4(d).
75.312(h)	75.300–4(e).
75.313(a)	Partly new, 75.302–4(b), 75.321.
75.313(b)	Partly new, 75.321, 75.321–1.
75.313(c)	Partly new, 75.321, 75.321–1.
75.313(d)	Partly new, 75.321, 75.321–1.
75.313(e)	New.
75.320(a)	Partly new, 75.303, 75.304, 75.304–3, 75.305–2, 75.307, 75.307–1, 75.308–2, 75.309(a), 75.309–1, 75.310–2, 75.314, 75.314–1, 75.315–1, 75.317.
75.320(b)	Partly new, 75.303, 75.304, 75.314, 75.317.
75.320(c)	Partly new, 75.303–2.
75.320(d)	Partly new, 75.303, 75.304, 75.314.
75.321(a)	75.301.
75.321(b)	75.301–5.
75.322	75.301–2.
75.323(a)	Partly new, 75.308, 75.309–2, 75.310–3.
75.323(b)	Partly new, 75.308, 75.316–2(d), 75.326.
75.323(c)	75.309, 75.309–2.
75.323(d)	Partly new, 75.310, 75.310–3.
75.323(e)	75.316–2, 75.329, 75.316–2(h).
75.324	Partly new, 75.322.
75.325(a)(1)	Partly new, 75.301, 75.301–1.
75.325(a)(2)	Partly new, 75.301–3.
75.325(a)(3)	Partly new, 75.302–4(g).
75.325(b)	Partly new, 75.301, 75.301–3.
75.325(c)	New.
75.325(d)	New.
75.325(e)	75.301.
75.326	Partly new, 75.301–4(a).
75.327	75.327, 75.327–1.
75.330(a)	75.302(c), 75.302–3.
75.330(b)	Partly new, 75.302(a) 75.302–1.
75.331(a)	Partly new, 75.302–4(a).
75.331(b)	Partly new, 75.302–4(c).
75.331(c)	Partly new, 75.302–4(e).
75.331(d)	Partly new, 75.302–4 (b), (c), (d) and (f).
75.332(a)	Partly new, 75.319, 75.319–1.

New section	Old section
75.332(b)	Partly new, 75.311, 75.312, 75.312-1.
75.333(a)	New.
75.333(b)	Partly new, 75.316-2(b), 75.326, 75.1707.
75.333(c)	New.
75.333(d)	New.
75.333(e)	Partly new, 75.316-2(b).
75.333(f)	New.
75.333(g)	Partly new, 75.316-2(c).
75.334(a)	Partly new, 75.329.
75.334(b)	Partly new, 75.316-2(e), 75.329.
75.334(c)	Partly new, 75.316-1(b)(5), 75.316-2 (e) and (f).
75.334(d)	New.
75.334(e)	Partly new, 75.330.
75.334(f)	New.
75.335	New.
75.340(a)	Partly new, 75.1105.
75.340(b)	New.
75.341	New.
75.342(a)	Partly new, 75.313, 75.313-1.
75.342(b)	Partly new, 75.313.
75.342(c)	Partly new, 75.313.
75.343	Partly new, 75.1105.
75.344	Partly new, 75.1105.
75.350	75.326.
75.351	New.
75.352	75.316-2(b), 75.326.
75.360(a)	75.303 (a) and (b).
75.360(b)	Partly new, 75.303(a).
75.360(c)	Partly new, 75.301-3, 75.303, 75.303-1.
75.360(d)	75.303(a).
75.360(e)	75.303(a).
75.360(f)	75.303(a).
75.360(g)	75.303(a), 75.323.
75.360(h)	Partly new, 75.303(a).
75.361(a)	Partly new, 75.301-3, 75.314.
75.361(b)	Partly new, 75.303(a).
75.362(a)	Partly new, 75.304, 75.304-2.
75.362(b)	Partly new, 75.303(a), 75.304(a).
75.362(c)	Partly new, 75.301-(b), 75.303-1, 75.303-1 (a), (b) and (c).
75.362(d)	Partly new, 75.304, 75.307, 75.307-1.
75.362(e)	75.302-4(a).
75.362(f)	Partly new, 75.309(a).
75.362(g)	New.
75.362(h)	New.
75.364(a)	Partly new, 75.305, 75.305-1, 75.316-2(f).
75.364(b)	Partly new, 75.305, 75.1704-2(c).
75.364(c)	Partly new, 75.305, 75.305-1, 75.306, 75.306-2.
75.364(d)	Partly new, 75.305, 75.323.
75.364(e)	New.
75.364(f)	New.
75.364(g)	75.305, 75.316-2(f).
75.364(h)	75.305, 75.306, 75.323.
75.364(i)	Partly new, 75.305.
75.370(a)	Partly new, 75.316, 75.316-2.
75.370 (b) through (e)	New.
75.370(f)	75.316.
75.370(g)	New.
75.371(a)	New.
75.371(b)	New.
75.371(c)	New.
75.371(d)	New.
75.371(e)	New.
75.371(f)	Partly new, 75.316-1.
75.371(g)	75.301.
75.371(h)	New.
75.371(i)	New.
75.371(j)	Partly new, 75.302-4(g).
75.371(k)	75.301-4.
75.371(l)	75.302-1(a).
75.371(m)	75.301.
75.371(n)	New.
75.371(o)	New.
75.371(p)	New.
75.371(q)	New.
75.371(r)	New.
75.371(s)	New.
75.371(t)	Partly new, 75.316-1(b).
75.371(u)	Partly new, 75.316-1(b).
75.371(v)	75.316-1(a), 75.327-1.
75.371(w)	New.
75.371(x)	75.316-1(b).
75.371(y)	75.316-2(f).
75.371(z)	75.316-2(f).
75.371(aa)	75.316-1.
75.371(bb)	75.316-1.
75.371(cc)	New.
75.371(dd)	New.
75.371(ee)	New.
75.371(ff)	75.329-2.
75.371(gg)	New.
75.371(hh)	New.
75.371(ii)	New.
75.371(jj)	New.
75.372(a)	Partly new, 75.316-1.
75.372(b)	Partly new, 75.316-1, 75.330, 75.330-1.
75.372(c)	New.
75.373	75.325.
75.380(a)	75.1704.
75.380(b)	Partly new, 75.1704.
75.380(c)	New.
75.380(d)	Partly new, 75.1704, 75.1704-1(a), 75.1704-2(a), 75.1704-2(b).
75.380(e)	75.1704.
75.380(f)	Partly new, 75.1704.
75.380(g)	75.1707.
75.380(h)	New.
75.380(i)	Partly new, 75.1704-1.
75.380(j)	Partly new, 75.1704-1.
75.380(k)	New.
75.380(l)	Partly new, 75.1704-1.
75.380(m)	New.
75.381(a)	75.1704.
75.381(b)	75.1704.
75.381(c)	Partly new, 75.1704.
75.381(d)	75.1704.
75.381(e)	New.
75.381(f)	Partly new, 75.1704.
75.381(g)	New.
75.381(h)	New.
75.381(i)	New.
75.382(a)	New.
75.382(b)	New.
75.382(c)	New.
75.382(d)	75.1704-1.
75.382(e)	New.
75.382(f)	New.
75.383(a)	Partly new, 75.1704-2.
75.383(b)	Partly new, 75.1704-2.
75.383(c)	New.
75.384	New.
75.385	75.1705.
75.386	75.1706.
75.388	Partly new, 75.1701.
75.389	New.

Redesignation Table

The following redesignation table cross references the existing standard numbers with the final rule standard numbers.

Old section	New section
75.300	75.302, 75.311, 75.312(a), 75.312(g).
75.300-1	Removed.
75.300-2(a)(1)	75.310(a)(1).
75.300-2(a)(2)	75.310(a) (1) and (2).
75.300-2(a)(3)	75.310(a) (3) and (4), 75.310(c), 75.311(e).
75.300-2 (b)(1)	75.310(a) (5) and (6), 75.310(d).
75.300-2(b)(2)	75.310(a) (5) and (6), 75.310(d), 75.310(e) (1), (3) and (4).
75.300-2(c)(1)	75.310(b)(1).
75.300-2(c)(2)	75.310(b)(2).
75.300-2(d)	75.310(f).
75.300-2(e)	75.310(f).
75.300-2(f)	75.311(f).
75.300-3(a)(1)	75.311 (a) and (b).
75.300-3(a)(2)	Removed.
75.300-3(a)(3)	75.311(a).
75.300-3(b)	Partly removed, 75.311(d).
75.300-3(c)	75.311(g).
75.300-4(a)	75.312(a).
75.300-4(b)	75.312 (a) and (e).
75.300-4(c)	75.312(d).
75.300-4(d)	Partly removed, 75.312(g).
75.300-4(e)	75.312 (g) and (h).
75.300-4(f)	75.312(g).
75.301	75.321(a), 75.325 (a), (b) and (e).
75.301-1	75.325 (a)(1) and (e)(1).
75.301-2	75.322.
75.301-3	75.325(a)(2), 75.360 (c)(1) and (c)(3), 75.361(a), 75.362(c).
75.301-4(a)	75.326.
75.301-4(b)(1)	Removed.
75.301-4(b)(2)	Removed.
75.301-4(c)	Removed.
75.301-5	75.321(b).
75.301-6	Removed.
75.301-7	Removed.
75.301-8	Removed.
75.302(a)	Partly removed, 75.330 (b)(1).
75.302(b)	Removed.
75.302(c)	75.330(a).
75.302-1(a)	75.330(b) (1) and (2), 75.371(1).
75.302-1(b) (1) and (2).	Removed.
75.302-2	Removed.
75.302-3	75.330(a).
75.302-4(a)	Partly removed, 75.331(a), 75.362(e).
75.302-4(b)	75.313(a), 75.331 (c) and (d).
75.302-4(c)	75.331(d).
75.302-4(d)	75.331 (a)(3) and (d).
75.302-4(e)	Partly removed, 75.331(c).
75.302-4(f)	75.331(d).
75.302-4(g)	Partly removed, 75.325 (a)(3), 75.371(j).
75.303(a)	75.320, 75.360 (a) through (g), 75.361(b), 75.362(b).
75.303(b)	75.360(a).
75.303-1	75.360(c), 75.362(c).
75.303-2(a)	Removed.
75.303-2(b)	75.320(c).
75.303-2(c)	Removed.
75.304	75.320 (a), (b) and (d), 75.362 (a) and (d).
75.304-1	Removed.
75.304-2	75.362.
75.304-3	Partly removed, 75.320 (a), (b) and (d).
75.305	Partly removed, 75.364 (a) through (d) and (g) through (i).
75.305-1	75.364 (a), (b) and (c).
75.305-2	Partly removed, 75.320(a).

Old section	New section
75.306	Partly removed, 75.364(c), 75.364(h).
75.306-1	Removed.
75.306-2	75.364(c).
75.307	75.320(a), 75.362(d).
75.307-1	Partly removed, 75.320(a), 75.362(d).
75.308	Partly removed, 75.323 (a) and (b).
75.308-1	Removed.
75.308-2	Partly removed, 75.320(a).
75.309(a)	75.323(c), 75.362(f).
75.309(b)	75.323(c).
75.309-1	Partly removed, 75.320(a).
75.309-2	75.323 (a) and (c).
75.309-3	Removed.
75.309-4	75.362(g).
75.310	75.323(d).
75.310-1	Removed.
75.310-2	Partly removed, 75.320(a).
75.310-3	75.323 (a) and (d).
75.311	Partly removed, 75.320, 75.332(b).
75.311-1	Removed.
75.312	75.332(b), Partly removed.
75.312-1	75.332(b).
75.312-2	Removed.
75.313	75.342.
75.313-1	Partly removed, 75.320 (b) and (d), 75.342(a)(4).
75.314	Partly removed, 75.361(a).
75.314-1	Partly removed, 75.320(a).
75.315	Removed.
75.315-1	Partly removed, 75.320.
75.316	75.370 (a) and (f), 75.371, 75.371 (g) and (k), 75.372(b)(6).
75.316-1	Partly removed, 75.371 (f), (t), (u), (v), (x), (aa) and (bb), 75.372 (a) and (b).
75.316-2	Partly removed, 75.370(a).
75.316-2(a)	Removed.
75.316-2(b)	75.333 (b) and (e), 75.352.
75.316-2(c)	75.333(g).
75.316-2(d)	75.323 (b), (c)(1) and (e).
75.316-2(e)	Partly removed, 75.334 (b) and (c).
75.316-2(f)	Partly removed, 75.334 (c) and (d), 75.364 (a) and (g), 75.371 (y) and (z).
75.316-2(g)	Removed.
75.316-2(h)	75.323(e).
75.316-2(i)	Removed.
75.317	Partly removed, 75.320 (a) and (b).
75.318	Removed.
75.319	75.332(a).
75.319-1	75.332(a).
75.321	Partly removed, 75.313 (a) through (d).
75.321-1	75.313 (b) and (c).
75.322	75.324.
75.323	Partly removed, 75.360(g), 75.364 (d) and (h).
75.324	Removed.
75.325	75.373.
75.326	75.323(b), 75.333(b), 75.350, 75.352.
75.327	75.327.
75.327-1	75.327.
75.328	Removed.
75.329	75.323(e), 75.334 (a) and (b), 75.335.
75.329-1	Removed.
75.329-2	Partly removed, 75.371(ff).
75.330	Partly removed, 75.334(e), 75.372(b).
75.330-1(a)	Partly removed, 75.372(b).
75.330-1(b)	Removed.
75.1105	Partly removed, 75.340(a), 75.343, 75.344.
75.1701	75.388.
75.1704	75.380 (a), (b), (d), (e) and (i), 75.381 (a) through (d) and (f).
75.1704-1	75.380(j), 75.381, 75.382(d).
75.1704-1(a)	75.380(d), 75.381(c).
75.1704-1(b)	75.380(i)(1), 75.381(g), 75.382(d).
75.1704-1(c)	75.380(1).
75.1704-2(a)	Partly removed, 75.380(d).
75.1704-2(b)	75.380(d).
75.1704-2(c)	75.364(b).
75.1704-2(d)	75.383(a).
75.1704-2(e)	75.383(b).
75.1704-2(f)	75.383(c).
75.1705	75.385.
75.1706	75.386.
75.1707	75.333(b), 75.380(g).
75.1707-1	Removed.

III. Paperwork Reduction Act

The final rule reduces and simplifies existing recordkeeping requirements for preshift and other examinations. For each preshift examination, the examiner is required to certify by initials, date, and time for each area examined, that the proper preshift examination was made. Also, under the final rule, a record is required to be made of hazardous conditions and their locations, whether or not these conditions have been corrected during the preshift examination.

The rule retains the existing requirement that the mine foreman review and countersign records of examinations. The mine foreman continues to have the responsibility to know if hazards are corrected or not.

The existing rule contains extensive criteria for evaluating and approving ventilation plans. As a result, comprehensive and often complex ventilation plans are required for each mine. The approved ventilation plan required by the final rule addresses ventilation practices at the mine and must be suitable to mining conditions. It also clarifies the scope of the current plan by making mandatory existing criteria that in the Agency's experience are applicable to all mines. Additionally, revisions to approved ventilation plans are required to be submitted once a ventilation plan is approved.

The collection of information requirements contained in the final rule were submitted to the Office of Management and Budget (OMB) in accordance with Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 35). OMB has approved these information requirements under the following control number: 1219-0088.

IV. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a Regulatory Impact Analysis (RIA) be performed for any rule that will have a $100 million or more annual effect on the economy or a major increase in costs or prices for consumers or individual industries. MSHA has determined that this final rule will not result in these effects. In order to justify this determination, MSHA has provided a final RIA (FRIA) for this rule. This FRIA is available from the MSHA docket office and is summarized below.

A. Population-at-risk

The final rule will affect 1,749 underground coal mines employing 76,525 miners. Of these underground coal mines, 896 were determined to be small mines employing a total of 9,082 miners and 853 were determined to be large mines employing a total of 67,443 miners. For purposes of this analysis, small mines are those employing fewer than 20 miners and large mines are those employing 20 or more miners.

Small mines employ an average of 10 miners per mine and generally are 1-section mines. Assuming the length of an average shift is 8 hours, MSHA estimated that 87 percent of these small mines operate 1 shift per day and 13 percent operate 2 shifts per day, for a total of 1,012 shifts. MSHA determined that these mines operate an average of 160 days a year, or 4 days per week for 40 weeks per year. They ventilate with 1 main mine fan and they shut down their fan when the mine is not working.

Large mines employ an average of 79 miners per mine and generally are 2- or 3-section mines. Assuming the length of an average shift is 8 hours, MSHA estimated that 15 percent of these large mines operate 1 shift per day, 38 percent operate 2 shifts per day, and 47 percent operate 3 shifts per day, for a total of 1,979 shifts. MSHA determined that these mines operate an average of 250 days a year, or 5 days per week for 50 weeks per year. As some of these mines ventilate with more than 1 main mine fan, MSHA determined that there are a total of 1,355 main mine fans at large underground mines. Unlike small mines, large mines operate their fans continuously, 365 days per year.

B. Benefits

The benefits of the final ventilation rule for underground coal mines are the lives saved and the injuries prevented by full compliance with the final rule. The primary benefit of the rule is the protection that the standards would provide to miners who would be

endangered by hazards related to methane accumulations and fires in underground coal mines. MSHA estimated that full compliance with the final rule could prevent about 6 fatalities, 2 injuries, and 2 non-injury accidents each year. However, there are about 70 annual non-injury accidents that would probably be prevented but cannot be definitively included due to incomplete information about the cause of the accidents. In addition, cases of coal worker's pneumoconiosis would be prevented.

C. Compliance Costs

In developing cost estimates, MSHA has taken into consideration industry wide safety practices. Current compliance costs are related to requirements for labor, equipment purchase and maintenance, and recordkeeping. MSHA has compared the costs associated with the final requirements with the costs of the existing requirements and is providing a summary of the incremental costs. MSHA estimated that in order to comply with the final ventilation rule, mine operators will incur a first-year cost of about $6,061,000 (about $3,500 per mine) or an annualized cost of about $1,528,000 (about $900 per mine). The annual cost of complying with the final rule will be about $17,244,000 (about $9,900 per mine) during the first year of compliance. This annual cost will increase by about $51,000 in the second year, about $615,000 in the third year, and about $666,000 in the fourth year in which it will stabilize at an annual cost of $17,910,000 (about $10,200 per mine).

D. Economic Impacts

MSHA's final ventilation rule will have a minimal impact upon labor productivity, will have little impact upon profits, will not involve an increase in prices, and will not affect mining output or mining employment. MSHA believes there will be no detrimental economic impact to this industry.

E. Regulatory Flexibility Certification

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory standards. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. This rule includes alternative compliance methods, several of which would directly benefit small mining operations.

MSHA estimated that the first-year cost to small mines will be about $1,773,000 (about $2,000 per mine) and the annualized cost will be about $514,000 (about $600 per mine). The annual cost to small mines will be about $1,672,000 (about $1,900 per mine) during the first year of compliance. This annual cost will increase by about $13,000 in the second year, about $91,000 in the third year, and about $104,000 in the fourth year in which it will stabilize at an annual cost of $1,776,000 (about $2,000 per mine).

At the same time, MSHA estimated the first-year cost to large mines will be about $4,288,000 (about $5,000 per mine) and the annualized cost will be about $1,014,000 (about $1,200 per mine). The annual cost to large mines will be about $15,572,000 (about $18,300 per mine) during the first year of compliance. This annual cost will increase by about $38,000 in the second year, about $524,000 in the third year, and about $562,000 in the fourth year in which it will stabilize at an annual cost of $16,134,000 (about $18,900 per mine).

The lack of a substantial cost increase for small mines in conjunction with the fact that similar hazards exist in both large and small mining operations indicates that regulatory relief is not warranted for small mining operations. Therefore, the Assistant Secretary has determined that the ventilation rule will not have a significantly adverse impact upon a substantial number of small entities.

List of Subjects

30 CFR Part 70

Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 75

Mine safety and health, Underground coal mines, Ventilation, Escapeways.

Accordingly, chapter I of title 30, Code of Federal Regulations, is amended as set forth below.

Dated: April 30, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, parts 70 and 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations are amended as follows:

PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 70 is revised as follows:

Authority: 30 U.S.C. 811 and 813(h).

Subpart A—General

2. Section 70.2 is amended by revising the definition for designated area to read as follows:

§ 70.2 Definitions.

The following definition applies in this part.

* * * * *

Designated area. An area of a mine identified by the operator under § 75.371(t) (Mine ventilation plan; contents) of this title and approved by the district manager.

* * * * *

Subpart C—Sampling Procedures

3. Paragraph (e) of § 70.208 is revised to read as follows:

§ 70.208 Bimonthly sampling; designated areas.

* * * * *

(e) Designated area samples shall be collected at locations to measure respirable dust generation sources in the active workings. The approved mine ventilation plan contents required by § 75.371(t) of this chapter shall show the specific locations where designated area samples will be collected. Each designated area will be assigned a four-digit identification number by MSHA.

* * * * *

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811, 957, and 961.

Subpart A—General

5. Section 75.2 is revised to read as follows:

§ 75.2 Definitions.

The following definitions apply in this part.

Act. The Federal Mine Safety and Health Act of 1977.

Active workings. Any place in a coal mine where miners are normally required to work or travel.

Anthracite. Coals with a volatile ratio equal to 0.12 or less. The volatile ratio is the volatile matter content divided by the volatile matter plus the fixed carbon.

Certified or registered. As applied to any person, a person certified or registered by the State in which the coal mine is located to perform duties prescribed by this part 75, except that in a State where no program of certification or registration is provided or where the program does not meet at

least minimum Federal standards established by the Secretary, such certification or registration shall be by the Secretary.

Coal mine. Includes areas of adjoining mines connected underground.

Low voltage. Up to and including 660 volts, medium voltage means voltages from 661 to 1,000 volts; and high voltage means more than 1,000 volts.

Permissible. (1) As applied to electric face equipment, all electrically operated equipment taken into or used inby the last open crosscut of an entry or a room of any coal mine the electrical parts of which, including, but not limited to, associated electrical equipment, components, and accessories, are designed, constructed, and installed, in accordance with the specifications of the Secretary, to assure that such equipment will not cause a mine explosion or mine fire, and the other features of which are designed and constructed, in accordance with the specifications of the Secretary, to prevent, to the greatest extent possible, other accidents in the use of such equipment. The regulations of the Secretary or the Director of the Bureau of Mines in effect on March 30, 1970, relating to the requirements for investigation, testing, approval, certification, and acceptance of such equipment as permissible shall continue in effect until modified or superseded by the Secretary, except that the Secretary shall provide procedures, including, where feasible, testing, approval, certification, and acceptance in the field by an authorized representative of the Secretary, to facilitate compliance by an operator with the requirements of § 75.500 within the periods prescribed in § 75.500.

(2) As applied to equipment other than permissible electric face equipment: (i) Equipment used in the operation of a coal mine to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire. (ii) The manner of use of equipment means the manner of use prescribed by the Secretary.

Qualified person. As the context requires:

(1) An individual deemed qualified by the Secretary and designated by the operator to make tests and examinations required by this part 75; and

(2) An individual deemed, in accordance with minimum requirements to be established by the Secretary, qualified by training, education, and experience, to perform electrical work, to maintain electrical equipment, and to conduct examinations and tests of all electrical equipment.

Respirable dust. Dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with part 74—Coal Mine Dust Personal Sampler Units of this title. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education, and Welfare are continued in effect.

Rock dust. Pulverized limestone, dolomite, gypsum, anhydrite, shale, adobe, or other inert material, preferably light colored, 100 percent of which will pass through a sieve having 20 meshes per linear inch and 70 percent or more of which will pass through a sieve having 200 meshes per linear inch; the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and which does not contain more than 5 percent combustible matter or more than a total of 4 percent free and combined silica (SiO_2), or, where the Secretary finds that such silica concentrations are not available, which does not contain more than 5 percent of free and combined silica.

Secretary. The Secretary of Labor or the Secretary's delegate.

Working face. Any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

Working place. The area of a coal mine inby the last open crosscut.

Working section. All areas of the coal mine from the loading point of the section to and including the working faces.

§ 75.1701 [Redesignated as § 75.388]

6. Section 75.1701 of subpart R is redesignated and revised as § 75.388, the text of which appears in subpart D below.

§§ 75.1704, 75.1704–1, 75.1704–2, 75.1707 [Redesignated as §§ 75.380–75.383]

7. Sections 75.1704, 75.1704–1, 75.1704–2 and 75.1707 of subpart R are redesignated and revised as §§ 75.380, 75.381, 75.382 and 75.383, the text of which appears in subpart D below.

§ 75.1705 [Redesignated as § 75.385]

8. Section 75.1705 of subpart R is redesignated as § 75.385, the text of which appears in subpart D below.

§ 75.1706 [Redesignated as § 75.386]

9. Section 75.1706 of subpart R is redesignated as § 75.386, the text of which appears in subpart D below.

10. Subpart D is revised to read as follows:

Subpart D—Ventilation

Sec.

Subpart D—Ventilation

§ 75.300 Scope.

This subpart sets requirements for underground coal mine ventilation.

§ 75.301 Definitions.

In addition to the applicable definitions in § 75.2, the following definitions apply in this subpart.

Air course. An entry or a set of entries separated from other entries by stoppings, overcasts, other ventilation control devices, or by solid blocks of coal or rock so that any mixing of air currents between each is limited to leakage.

Incombustible. Incapable of being burned.

Intake air. Air that has not yet ventilated the last working place on any split of any working section, or any worked-out area, whether pillared or nonpillared.

Intrinsically safe. Incapable of releasing enough electrical or thermal energy under normal or abnormal conditions to cause ignition of a flammable mixture of methane or natural gas and air of the most easily ignitable composition.

Noncombustible Structure or Area. Describes a structure or area that will continue to provide protection against flame spread for at least 1 hour when subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent.

Noncombustible Material. Describes a material which when used to construct a ventilation control results in a control that will continue to serve its intended function for 1 hour when subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent.

Return air. Air that has ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared. If air mixes with air that has ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared, it is considered return air. For the purposes of existing § 75.507–1, air that has been used to ventilate any working place in a coal producing section or pillared area, or air that has been used to ventilate any working face if such air is directed away from the immediate return is return air.

Worked-out area. An area where mining has been completed, whether pillared or nonpillared, excluding developing entries, return air courses, and intake air courses.

§ 75.302 Main mine fans.

Each coal mine shall be ventilated by one or more main mine fans. Booster fans shall not be installed underground to assist main mine fans except in anthracite mines. In anthracite mines, booster fans installed in the main air current or a split of the main air current may be used provided their use is approved in the ventilation plan.

§ 75.310 Installation of main mine fans.

(a) Each main mine fan shall be—

(1) Installed on the surface in an incombustible housing;

(2) Connected to the mine opening with incombustible air ducts;

(3) Equipped with an automatic device that gives a signal when the fan either slows or stops. The signal from this device shall be placed so that it will be seen or heard by a responsible person who is always on duty when persons are underground;

(4) Equipped with a pressure recording device or a main mine fan monitoring system, except that mines permitted to shut down main mine fans under § 75.311 may use an alternative device for monitoring main mine fan pressure provided it is approved in the ventilation plan;

(5) Protected by one or more weak walls or explosion doors, or a combination of weak walls and explosion doors, located in direct line with possible explosive forces;

(6) Except as provided under paragraph (e) of this section, offset by at least 15 feet from the nearest side of the mine opening unless an alternative method of protecting the fan and its associated components is approved in the ventilation plan; and

(b)(1) If an electric motor is used to drive a main mine fan, the motor shall operate from a power circuit independent of all mine power circuits.

(2) If an internal combustion engine is used to drive a main mine fan—

(i) The fuel supply shall be protected against fires and explosions;

(ii) The engine shall be installed in an incombustible housing and be equipped with a remote shutdown device;

(iii) The engine and the engine exhaust system shall be located out of direct line of the air current exhausting from the mine; and

(iv) The engine exhaust shall be vented to the atmosphere so that the exhaust gases do not contaminate the mine intake air current or any enclosure.

(c) If a main mine fan monitoring system is used under § 75.312, the system shall record mine ventilating pressure and monitor bearing temperature, revolutions per minute, vibration, electric voltage, and amperage. The system also shall be equipped with an automatic device that signals a surface location when—

(1) An electrical or mechanical deficiency exists in the monitoring system; or

(2) A sudden increase or loss in mine ventilating pressure occurs.

(d) Weak walls and explosion doors shall have cross-sectional areas at least equal to that of the entry through which the pressure from an explosion underground would be relieved. A weak wall and explosion door combination shall have a total cross-sectional area at least equal to that of the entry through which the pressure from an explosion underground would be relieved.

(e) If a mine fan is installed in line with an entry, a slope, or a shaft—

(1) The cross-sectional area of the pressure relief entry shall be at least equal to that of the fan entry;

(2) The fan entry shall be developed out of direct line with possible explosive forces;

(3) The coal or other solid material between the pressure relief entry and the fan entry shall be at least 2,500 square feet; and

(4) The surface opening of the pressure relief entry shall be not less than 15 feet nor more than 100 feet from the surface opening of the fan entry and from the underground intersection of the fan entry and pressure relief entry.

(f) In mines ventilated by multiple main mine fans, incombustible doors shall be installed so that if any main mine fan stops and air reversals through the fan are possible, the doors on the affected fan automatically close.

§ 75.311 Main mine fan operation.

(a) Main mine fans shall be continuously operated, except as otherwise approved in the ventilation plan, or when intentionally stopped for testing of automatic closing doors and automatic fan signal devices, maintenance or adjustment of the fan, or to perform maintenance or repair work underground that cannot otherwise be made while the fan is operating.

(b) Except as provided in paragraph (c) of this section, when a main mine fan is intentionally stopped and the ventilating quantity provided by the fan is not maintained by a back-up fan system—

(1) Only persons necessary to evaluate the effect of the fan stoppage or restart, or to perform maintenance or repair work that cannot otherwise be made while the fan is operating, shall be permitted underground;

(2) Mechanized equipment shall be shut off before stopping the fan; and

(3) Electric power circuits entering underground areas of the mine shall be deenergized.

(c) When a back-up fan system is used that does not provide the ventilating quantity provided by the main mine fan,

persons may be permitted in the mine and electric power circuits may be energized as specified in the approved ventilation plan.

(d) Electrical or mechanical deficiencies in a main mine fan shall be repaired promptly and any unusual variance in the mine ventilating pressure shall be investigated immediately.

(e) While persons are underground, a responsible person designated by the operator always shall be at a surface location where each main mine fan signal can be seen or heard.

(f) The area within 100 feet of main mine fans and intake air openings shall be kept free of combustible material, unless alternative precautions necessary to provide protection from fire or other products of combustion are approved in the ventilation plan.

(g) If multiple mine fans are used, the mine ventilation system shall be designed and maintained to eliminate areas without air movement.

(h) Any atmospheric monitoring system operated during fan stoppages shall be intrinsically safe.

§ 75.312 Main mine fan examinations and records.

(a) Each main mine fan and its associated components, including devices for measuring or recording mine ventilation pressure, shall be examined for proper operation by a person designated by the operator at least once each day that the fan operates unless a functioning main mine fan monitoring system is used.

(b)(1) If a main mine fan monitoring system is used, a person designated by the operator shall, at least every 7 days—

(i) Test the monitoring system for proper operation; and

(ii) Examine each main mine fan and its associated components.

(2) If the monitoring system malfunctions, the malfunction shall be corrected, or paragraph (a) of this section shall apply.

(c) At least every 31 days, the automatic fan signal device for each main mine fan shall be tested by stopping the fan.

(d) At least every 31 days, automatic closing doors in multiple main mine fan systems shall be tested by stopping the fan.

(e) Circular main mine fan pressure recording charts shall be changed before the beginning of a second revolution.

(f) Certification. Persons making main mine fan examinations shall certify by initials and date at the fan or another location specified by the operator, that the examinations were made. Each certification shall identify the main mine fan examined.

(g)(1) Recordkeeping. By the end of the shift on which the examination is made, persons making main mine fan examinations shall record, in a book maintained for that purpose, uncorrected defects that may affect the operation of the fan that are not corrected by the end of that shift.

(2) At mines permitted to shut down main mine fans under § 75.311, if a pressure recording device is not used, a record shall be made, in a book maintained for that purpose, of the time and fan pressure immediately before the fan is stopped, and after the fan is restarted and the fan pressure stabilizes.

(3) By the end of the shift on which the monthly test of the automatic fan signal device or the automatic closing doors is completed, persons making these tests shall record the results in a book maintained for this purpose.

(h) Retention period. Records, including records of mine fan pressure, shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and representatives of miners.

§ 75.313 Main mine fan stoppage with persons underground.

(a) If a main mine fan stops while anyone is underground and the ventilating quantity provided by the fan is not maintained by a back-up fan system—

(1) Electrically powered equipment in each working section shall be deenergized;

(2) Other mechanized equipment in each working section shall be shut off; and

(3) Everyone shall be withdrawn from the working sections and areas where mechanized mining equipment is being installed or removed.

(b) If ventilation is restored within 15 minutes after a main mine fan stops, certified persons shall examine for methane in the working places and in other areas where methane is likely to accumulate before work is resumed and before equipment is energized or restarted in these areas.

(c) If ventilation is not restored within 15 minutes after a main mine fan stops—

(1) Everyone shall be withdrawn from the mine;

(2) Underground electric power circuits shall be deenergized, except that circuits that are necessary to withdraw persons from the mine shall be deenergized as persons are withdrawn; and

(3) Mechanized equipment not located on working sections shall be shut off unless the equipment is necessary to withdraw persons from the mine.

(d)(1) When ventilation is restored—

(i) No one shall enter any underground area of the mine until an examination of the area is completed by a certified person and the area is determined to be safe; and

(ii) Certified persons shall complete an examination for methane before underground power circuits are energized in an area.

(2) If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(e) Any atmospheric monitoring system operated during fan stoppages shall be intrinsically safe.

§ 75.320 Air quality detectors and measurement devices.

(a) Tests for methane shall be made by a qualified person with MSHA approved detectors that are maintained in permissible and proper operating condition and calibrated with a known methane-air mixture at least once every 31 days.

(b) Tests for oxygen deficiency shall be made by a qualified person with MSHA approved oxygen detectors that are maintained in permissible and proper operating condition and that can detect 19.5 percent oxygen with an accuracy of ±0.5 percent. The oxygen detectors shall be calibrated at the start of each shift that the detectors will be used.

(c) Handheld devices that contain electrical components and that are used for measuring air velocity, carbon monoxide, oxides of nitrogen, and other gases shall be approved and maintained in permissible and proper operating condition.

(d) Through August 15, 1995, a permissible flame safety lamp may be used to make tests for oxygen deficiency required by the regulations in this part. After August 15, 1995, an oxygen detector approved by MSHA shall be used for such tests and permissible flame safety lamps may only be used as a supplementary testing device.

§ 75.321 Air quality.

(a) Areas where persons work or travel shall be ventilated by air containing at least 19.5 percent oxygen and not more than 0.5 percent carbon dioxide, and the volume and velocity of the air current in these areas shall be sufficient to dilute, render harmless, and carry away flammable, explosive,

noxious, and harmful gases, dusts, smoke, and fumes.

(b) Notwithstanding the provisions of § 75.322, for the purpose of preventing explosions from gases other than methane, the following gases shall not be permitted to accumulate in excess of the concentrations listed below:

(1) Carbon monoxide (CO)—2.5 percent
(2) Hydrogen (H_2)—.80 percent
(3) Hydrogen sulfide (H_2S)—.80 percent
(4) Acetylene (C_2H_2)—.40 percent
(5) Propane (C_3H_8)—.40 percent
(6) MAPP (methyl-acetylene-propylene-propodiene)—.30 percent

§ 75.322 Harmful quantities of noxious gases.

Concentrations of noxious or poisonous gases, other than carbon dioxide, shall not exceed the current threshold limit values (TLV) as specified and applied by the American Conference of Governmental Industrial Hygienists. Detectors or laboratory analysis of mine air samples shall be used to determine the concentrations of harmful, noxious, or poisonous gases.

§ 75.323 Actions for excessive methane.

(a) *Location of tests.* Tests for methane concentrations under this section shall be made at least 12 inches from the roof, face, ribs, and floor.

(b) *Working places and intake air courses.* (1) When 1.0 percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mechanized mining equipment is being installed or removed—

(i) Except intrinsically safe atmospheric monitoring systems (AMS), electrically powered equipment in the affected area shall be deenergized, and other mechanized equipment shall be shut off;

(ii) Changes or adjustments shall be made to the ventilation system to reduce the concentration of methane to less than 1.0 percent; and

(iii) No other work shall be permitted in the affected area until the methane concentration is less than 1.0 percent.

(2) When 1.5 percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mining equipment is being installed or removed—

(i) Everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the affected area; and

(ii) Except for intrinsically safe AMS, electrically powered equipment in the affected area shall be disconnected at the power source.

(c) *Return air split.* (1) When 1.0 percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, or the location at which the split is used to ventilate seals or worked-out areas, changes or adjustments shall be made to the ventilation system to reduce the concentration of methane in the return air to less than 1.0 percent.

(2) When 1.5 percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, or the 245 location where the split is used to ventilate seals or worked-out areas—

(i) Everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the affected area;

(ii) Other than intrinsically safe AMS, equipment in the affected area shall be deenergized, electric power shall be disconnected at the power source, and other mechanized equipment shall be shut off; and

(iii) No other work shall be permitted in the affected area until the methane concentration in the return air is less than 1.0 percent.

(d) *Return air split alternative.* (1) The provisions of this paragraph apply if—

(i) The quantity of air in the split ventilating the active workings is at least 27,000 cubic feet per minute in the last open crosscut or the quantity specified in the approved ventilation plan, whichever is greater;

(ii) The methane content of the air in the split is continuously monitored during mining operations by an AMS that gives a visual and audible signal on the working section when the methane in the return air reaches 1.5 percent, and the methane content is monitored as specified in § 75.351; and

(iii) Rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point.

(2) When 1.5 percent or more methane is present in a return air split between a point in the return opposite the section loading point and where that split of air meets another split of air or where the split of air is used to ventilate seals or worked-out areas—

(i) Changes or adjustments shall be made to the ventilation system to reduce the concentration of methane in the return air below 1.5 percent;

(ii) Everyone except those persons referred to in § 104(c) of the Act shall be withdrawn from the affected area;

(iii) Except for intrinsically safe AMS, equipment in the affected area shall be deenergized, electric power shall be disconnected at the power source, and other mechanized equipment shall be shut off; and

(iv) No other work shall be permitted in the affected area until the methane concentration in the return air is less than 1.5 percent.

(e) *Bleeders and other return air courses.* The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of air, or in a return air course other than as described in paragraphs (c) and (d) of this section, shall not exceed 2.0 percent.

§ 75.324 Intentional changes in the ventilation system.

(a) A person designated by the operator shall supervise any intentional change in ventilation that—

(1) Alters the main air current or any split of the main air current in a manner that could materially affect the safety or health of persons in the mine; or

(2) Affects section ventilation by 9,000 cubic feet per minute of air or more in bituminous or lignite mines, or 5,000 cubic feet per minute of air or more in anthracite mines.

(b) Intentional changes shall be made only under the following conditions:

(1) Electric power shall be removed from areas affected by the ventilation change and mechanized equipment in those areas shall be shut off before the ventilation change begins.

(2) Only persons making the change in ventilation shall be in the mine.

(3) Electric power shall not be restored to the areas affected by the ventilation change and mechanized equipment shall not be restarted until a certified person has examined these areas for methane accumulation and for oxygen deficiency and has determined that the areas are safe.

§ 75.325 Air quantity.

(a)(1) In bituminous and lignite mines the quantity of air shall be at least 3,000 cubic feet per minute reaching each working face where coal is being cut, mined, drilled for blasting, or loaded. When a greater quantity is necessary to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases, dusts, smoke, and fumes, this quantity shall be specified in the approved ventilation plan. A minimum air quantity may be required to be specified in the approved ventilation plan for other working places or working faces.

(2) The quantity of air reaching the working face shall be determined at or near the face end of the line curtain,

ventilation tubing, or other ventilation control device. If the curtain, tubing, or device extends beyond the last row of permanent roof supports, the quantity of air reaching the working face shall be determined behind the line curtain or in the ventilation tubing at or near the last row of permanent supports.

(3) If machine mounted dust collectors or diffuser fans are used, the approved ventilation plan shall specify the operating volume of the dust collector or diffuser fan.

(b) In bituminous and lignite mines, the quantity of air reaching the last open crosscut of each set of entries or rooms on each working section and the quantity of air reaching the intake end of a pillar line shall be at least 9,000 cubic feet per minute unless a greater quantity is required to be specified in the approved ventilation plan. This minimum also applies to sections which are not operating but are capable of producing coal by simply energizing the equipment on the section.

(c) In longwall and shortwall mining systems—(1) The quantity of air shall be at least 30,000 cubic feet per minute reaching the working face of each longwall, unless the operator demonstrates that a lesser air quantity will maintain continual compliance with applicable methane and respirable dust standards. This lesser quantity shall be specified in the approved ventilation plan. A quantity greater than 30,000 cubic feet per minute may be required to be specified in the approved ventilation plan.

(2) The velocity of air that will be provided to control methane and respirable dust below applicable standards on each longwall or shortwall and the locations where these velocities will be provided shall be specified in the approved ventilation plan. The locations specified shall be at least 50 feet but no more than 100 feet from the headgate and tailgate, respectively.

(d) Ventilation shall be maintained during installation and removal of mechanized mining equipment. The approved ventilation plan shall specify the quantity of air, the locations where this quantity will be provided and the ventilation controls required.

(e) In anthracite mines, the quantity of air shall be as follows:

(1) At least 1,500 cubic feet per minute reaching each working face where coal is being mined, unless a greater quantity is required to be specified in the approved ventilation plan.

(2) At least 5,000 cubic feet per minute passing through the last open crosscut in each set of entries or rooms and at the intake end of any pillar line, unless a greater quantity is required to be specified in the approved ventilation plan.

(3) When robbing areas where air currents cannot be controlled and air measurements cannot be obtained, the air shall have perceptible movement.

§ 75.326 Mean entry air velocity.

In exhausting face ventilation systems, the mean entry air velocity shall be at least 60 feet per minute reaching each working face where coal is being cut, mined, drilled for blasting, or loaded, and to any other working places as required in the approved ventilation plan. A lower mean entry air velocity may be approved in the ventilation plan if the lower velocity will maintain methane and respirable dust concentrations below the applicable levels. Mean entry air velocity shall be determined at or near the inby end of the line curtain, ventilation tubing, or other face ventilation control devices.

§ 75.327 Air courses and trolley haulage systems.

(a) In any mine opened on or after March 30, 1970, or in any new working section of a mine opened before that date, where trolley haulage systems are maintained and where trolley wires or trolley feeder wires are installed, an authorized representative of the Secretary shall require enough entries or rooms as intake air courses to limit the velocity of air currents in the haulageways to minimize the hazards of fires and dust explosions in the haulageways.

(b) Unless the district manager approves a higher velocity, the velocity of the air current in the trolley haulage entries shall be limited to not more than 250 feet per minute. A higher air velocity may be required to limit the methane content in these haulage entries or elsewhere in the mine to less than 1.0 percent and provide an adequate supply of oxygen.

§ 75.330 Face ventilation control devices.

(a) Brattice cloth, ventilation tubing and other face ventilation control devices shall be made of flame-resistant material approved by MSHA.

(b)(1) Ventilation control devices shall be used to provide ventilation to dilute, render harmless, and to carry away flammable, explosive, noxious, and harmful gases, dusts, smoke, and fumes—

(i) To each working face from which coal is being cut, mined, drilled for blasting, or loaded; and

(ii) To any other working places as required by the approved ventilation plan

(2) These devices shall be installed at a distance no greater than 10 feet from the area of deepest penetration to which any portion of the face has been advanced unless an alternative distance is specified and approved in the ventilation plan. Alternative distances specified shall be capable of maintaining concentrations of respirable dust, methane, and other harmful gases below the levels specified in the applicable sections of this chapter.

§ 75.331 Auxiliary fans and tubing.

(a) When auxiliary fans and tubing are used for face ventilation, each auxiliary fan shall be—

(1) Permissible, if the fan is electrically operated;

(2) Maintained in proper operating condition;

(3) Deenergized or shut off when no one is present on the working section; and

(4) Located and operated to avoid recirculation of air.

(b) If a deficiency exists in any auxiliary fan system, the deficiency shall be corrected or the auxiliary fan shall be deenergized immediately.

(c) If the air passing through an auxiliary fan or tubing contains 1.0 percent or more methane, power to electrical equipment in the working place and to the auxiliary fan shall be deenergized, and other mechanized equipment in the working place shall be shut off until the methane concentration is reduced to less than 1.0 percent.

(d) When an auxiliary fan is stopped—(1) Line brattice or other face ventilation control devices shall be used to maintain ventilation to affected faces; and

(2) Electrical equipment in the affected working places shall be disconnected at the power source, and other mechanized equipment shall be shut off until ventilation to the working place is restored.

§ 75.332 Working sections and working places.

(a)(1) Each working section and each area where mechanized mining equipment is being installed or removed, shall be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent ventilation controls.

(2) When two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each set of mining equipment shall be on a separate split of intake air.

(3) For purposes of this section, a set of mining equipment includes a single loading machine, a single continuous mining machine, or a single longwall or shortwall mining machine.

(b)(1) Air that has passed through any area that is not examined under §§ 75.360, 75.361 or 75.364 of this subpart, or through an area where second mining has been done shall not be used to ventilate any working place. Second mining is intentional retreat mining where pillars have been wholly or partially removed, regardless of the amount of recovery obtained.

(2) Air that has passed by any opening of any unsealed area that is not examined under §§ 75.360, 75.361 or 75.364 of this subpart, shall not be used to ventilate any working place.

§ 75.333 Ventilation controls.

(a) For purposes of this section: "doors" includes any doorframes, and "durable" describes a material and construction method that when used to construct a ventilation control results in a control that is structurally equivalent to an 8-inch hollow-core concrete block stopping with mortared joints as described in ASTM E72–80 Section 12—Transverse Load-Specimen Vertical, load only.

(b) Permanent stoppings or other permanent ventilation control devices constructed after August 15, 1992, shall be built and maintained—

(1) Between intake and return air courses, except temporary controls may be used in rooms that are 600 feet or less from the centerline of the entry from which the room was developed. Unless otherwise approved in the ventilation plan, these stoppings or controls shall be maintained to and including the third connecting crosscut outby the working face;

(2) To separate belt conveyor haulageways from return air courses, except where belt entries in areas of mines developed before March 30, 1970, are used as return air courses;

(3) To separate belt conveyor haulageways from intake air courses when the air in the intake air course is used to provide air to active working places;

(4) To separate the primary escapeway from belt and trolley haulage entries, as required by § 75.380(g); and

(5) In return air courses to direct air into adjacent worked-out areas.

(c) Personnel doors shall be constructed of noncombustible material and shall be of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between air courses, and shall be installed as follows in permanent stoppings constructed after August 15, 1992:

(1) The distance between personnel doors shall be no more than 300 feet in seam heights below 48 inches and 600 feet in seam heights 48 inches or higher.

(2) The location of all personnel doors in stoppings along escapeways shall be clearly marked so that the doors may be easily identified by anyone traveling in the escapeway and in the entries on either side of the doors.

(3) When not in use, personnel doors shall be closed.

(d) Doors, other than personnel doors, constructed after August 15, 1992, that are used in lieu of permanent stoppings or to control ventilation within an air course shall be:

(1) Made of noncombustible material or coated on all accessible surfaces with flame-retardant material having a flame-spread index of 25 or less, as tested under ASTM E162–87.

(2) Of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between or within air courses or entries.

(3) Installed in pairs to form an airlock. When an airlock is used, one side of the airlock shall remain closed. When not in use, both sides shall be closed.

(e)(1) Except as provided in paragraphs (e)(2) and (e)(3), all overcasts, undercasts, shaft partitions, permanent stoppings, and regulators installed after August 15, 1992, shall be constructed of durable and noncombustible material, such as concrete, concrete block, brick, cinder block, tile, or steel. No ventilation controls installed after August 15, 1992, shall be constructed of aluminum. Controls shall be maintained to serve the purpose for which they were built.

(2) In anthracite mines, permanent stoppings may be constructed of overlapping layers of hardwood mine boards, if the stoppings are a minimum 2 inches thick.

(3) When timbers are used to create permanent stoppings in heaving or caving areas, the stoppings shall be coated on all accessible surfaces with a flame-retardant material having a flame-spread index of 25 or less, as tested under ASTM E162–87, "Surface Flammability of Materials Using a Radiant Heat Energy Source."

(4) In anthracite mines, doors and regulators may be constructed of overlapping layers of hardwood boards, if the doors, door frames, and regulators are a minimum 2 inches thick.

(f) When sealants are applied to ventilation controls, the sealant shall have a flame-spread index of 25 or less under ASTM E162–87.

(g) Before mining is discontinued in an entry or room that is advanced more than 20 feet from the inby rib, a crosscut shall be made or line brattice shall be installed and maintained to provide adequate ventilation. When conditions such as methane liberation warrant a distance less than 20 feet, the approved ventilation plan shall specify the location of such rooms or entries and the maximum distance they will be developed before a crosscut is made or line brattice is installed.

§ 75.334 Worked-out areas and areas where pillars are being recovered.

(a) Worked-out areas where no pillars have been recovered shall be—

(1) Ventilated so that methane-air mixtures and other gases, dusts, and fumes from throughout the worked-out areas are continuously diluted and routed into a return air course or to the surface of the mine; or

(2) Sealed.

(b)(1) During pillar recovery a bleeder system shall be used to control the air passing through the area and to continuously dilute and move methane-air mixtures and other gases, dusts, and fumes from the worked-out area away from active workings and into a return air course or to the surface of the mine.

(2) After pillar recovery a bleeder system shall be maintained to provide ventilation to the worked-out area, or the area shall be sealed.

(c) The approved ventilation plan shall specify the following:

(1) The design and use of bleeder systems;

(2) The means to determine the effectiveness of bleeder systems;

(3) The means for adequately maintaining bleeder entries free of obstructions such as roof falls and standing water; and

(4) The location of ventilating devices such as regulators, stoppings and bleeder connectors used to control air movement through the worked-out area.

(d) If the bleeder system used does not continuously dilute and move methane-air mixtures and other gases, dusts, and fumes away from worked-out areas into a return air course or to the surface of the mine, or it cannot be determined by examinations or evaluations under § 75.364 that the bleeder system is working effectively, the worked-out area shall be sealed.

(e) Each mining system shall be designed so that each worked-out area can be sealed.

(f) In place of the requirements of paragraphs (a) and (b) of this section, for mines with a demonstrated history of spontaneous combustion, or that are

located in a coal seam determined to be susceptible to spontaneous combustion, the approved ventilation plan shall specify the following:

(1) Measures to detect methane, carbon monoxide, and oxygen concentrations during and after pillar recovery, and in worked-out areas where no pillars have been recovered, to determine if the areas must be ventilated or sealed.

(2) Actions that will be taken to protect miners from the hazards of spontaneous combustion.

(3) If a bleeder system will not be used, the methods that will be used to control spontaneous combustion, accumulations of methane-air mixtures, and other gases, dusts, and fumes in the worked-out area.

§ 75.335 Construction of seals.

(a)(1) Each seal constructed after August 15, 1992, shall be—

(i) Constructed of solid concrete blocks at least 6 by 8 by 16 inches, laid in a transverse pattern with mortar between all joints;

(ii) Hitched into solid ribs to a depth of at least 4 inches and hitched at least 4 inches into the floor;

(iii) At least 16 inches thick. When the thickness of the seal is less than 24 inches and the width is greater than 16 feet or the height is greater than 10 feet, a pilaster shall be interlocked near the center of the seal. The pilaster shall be at least 16 inches by 32 inches; and

(iv) Coated on all accessible surfaces with flame-retardant material that will minimize leakage and that has a flame-spread index of 25 or less, as tested under ASTM E162–87, "Surface Flammability of Materials Using a Radiant Heat Energy Source."

(2) Alternative methods or materials may be used to create a seal if they can withstand a static horizontal pressure of 20 pounds per square inch provided the method of installation and the material used is approved in the ventilation plan. If the alternative methods or materials include the use of timbers, the timbers also shall be coated on all accessible surfaces with flame-retardant material having a flame-spread index 25 or less, as tested under ASTM E162–87.

(b) A sampling pipe or pipes shall be installed in each set of seals for a worked-out area. Each pipe shall—

(1) Extend into the sealed area a sufficient distance (at least 15 feet) to obtain a representative sample from behind the seal;

(2) Be equipped with a cap or shut-off valve; and

(3) Be installed with the sampling end of the pipe about 12 inches from the roof.

(c)(1) A corrosion-resistant water pipe or pipes shall be installed in seals at the low points of the area being sealed and at all other locations necessary when water accumulation within the sealed area is possible; and

(2) Each water pipe shall have a water trap installed on the outby side of the seal.

§ 75.340 Underground electrical installations.

(a) Underground transformer stations, battery charging stations, substations, rectifiers, and water pumps shall be located in noncombustible structures or areas or equipped with a fire suppression system meeting the requirements of § 75.1107–3 through § 75.1107–16. This equipment also shall be—

(1) Ventilated by intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or

(2) Ventilated with intake air that is monitored for carbon monoxide or smoke by an AMS installed and operated according to § 75.351. Monitoring of intake air ventilating battery charging stations shall be done with sensors not affected by hydrogen; or

(3) Ventilated with intake air and equipped with sensors to monitor for heat and for carbon monoxide or smoke. The sensors shall deenergize power to the installation and activate doors that will automatically close when either of the following occurs:

(i) The temperature in the noncombustible structure reaches 165° F.

(ii) The carbon monoxide concentration reaches 10 parts per million above the ambient level for the area, or the optical density of smoke reaches 0.05 per meter. At least every 31 days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, or each smoke sensor shall be tested to determine that it functions correctly.

(b) This section does not apply to—(1) Rectifiers and power centers with transformers that are either dry-type or contain nonflammable liquid, if they are located at or near the section and are moved as the working section advances or retreats;

(2) Submersible pumps;

(3) Permissible pumps and associated permissible switchgear;

(4) Pumps located on or near the section and that are moved as the working section advances or retreats;

(5) Pumps installed in anthracite mines; and

(6) Small portable pumps.

§ 75.341 Direct-fired intake air heaters.

(a) If any system used to heat intake air malfunctions, the heaters affected shall switch off automatically.

(b) Thermal overload devices shall protect the blower motor from overheating.

(c) The fuel supply shall turn off automatically if a flame-out occurs.

(d) Each heater shall be located or guarded to prevent contact by persons and shall be equipped with a screen at the inlet to prevent combustible materials from passing over the burner units.

(e) If intake air heaters use liquified fuel systems—

(1) Hydrostatic relief valves installed on vaporizers and on storage tanks shall be vented; and

(2) Fuel storage tanks shall be located or protected to prevent fuel from leaking into the mine.

(f) Following any period of 8 hours or more during which a heater does not operate, the heater and its associated components shall be examined within its first hour of operation. Additionally, each heater and its components shall be examined at least once each shift that the heater operates. The examination shall include measurement of the carbon monoxide concentration at the bottom of each shaft, slope, or in the drift opening where air is being heated. The measurements shall be taken by a person designated by the operator or by a carbon monoxide sensor that is calibrated with a known concentration of carbon monoxide and air at least once every 31 days. When the carbon monoxide concentration at this location reaches 50 parts per million, the heater causing the elevated carbon monoxide level shall be shut down.

§ 75.342 Methane monitors.

(a)(1) MSHA approved methane monitors shall be installed on all face cutting machines, continuous miners, longwall face equipment, loading machines, and other mechanized equipment used to extract or load coal within the working place.

(2) The sensing device for methane monitors on longwall shearing machines shall be installed at the return air end of the longwall face. An additional sensing device also shall be installed on the longwall shearing machine, downwind and as close to the cutting head as practicable. An alternative location or locations for the sensing device required

on the longwall shearing machine may be approved in the ventilation plan.

(3) The sensing devices of methane monitors shall be installed as close to the working face as practicable.

(4) Methane monitors shall be maintained in permissible and proper operating condition and calibrated with a known methane-air mixture at least once every 31 days.

(b)(1) When the methane concentration at any methane monitor reaches 1.0 percent the monitor shall give a warning signal.

(2) The warning signal device of the methane monitor shall be visible to a person who can deenergize the equipment on which the monitor is mounted.

(c) The methane monitor shall automatically deenergize the machine on which it is mounted when—

(1) The methane concentration at any methane monitor reaches 2.0 percent; or

(2) The monitor is not operating properly.

§ 75.343 Underground shops.

(a) Underground shops shall be equipped with an automatic fire suppression system meeting the requirements of § 75.1107–3 through § 75.1107–16, or be enclosed in a noncombustible structure or area.

(b) Underground shops shall be ventilated with intake air that is coursed directly into a return air course.

§ 75.344 Compressors.

(a) Except compressors that are components of equipment such as locomotives and rock dusting machines and compressors of less than five horsepower, electrical compressors shall be—

(1) Located in a noncombustible structure or area; and

(2) Equipped with a heat activated fire suppression system meeting the requirements of § 75.1107–3 through § 75.1107–16.

(b) These compressors shall be operated only—

(1) While they can be seen by a person designated by the operator; or

(2) While they are ventilated by intake air coursed directly into a return air course or to the surface and equipped with sensors to monitor for heat and for carbon monoxide or smoke. The sensors shall activate doors to enclose the noncombustible structure or area when either of the following occur:

(i) The temperature in the noncombustible structure or area reaches 165° F.

(ii) The carbon monoxide concentration reaches 10 parts per million above the ambient level for the area, or the optical density of smoke reaches 0.05 per meter. At least once every 31 days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, and each smoke sensor shall be tested to determine that it functions correctly.

(c) Two portable fire extinguishers or one extinguisher having at least twice the minimum capacity specified for a portable fire extinguisher in § 75.1100–1(e) shall be provided for each compressor.

(d) In addition to electrical compressors, this section shall apply to diesel compressors.

§ 75.350 Air courses and belt haulage entries.

In any coal mine opened after March 30, 1970, the entries used as intake and return air courses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to March 30, 1970, that has been developed with more than two entries, that the conditions in the entries, other than belt haulage entries, are such as to permit adequately the coursing of intake or return air through such entries:

(a) The belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate, active working places, and

(b) when the belt haulage entries are not necessary to ventilate the active working places, the operator of such mine shall limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to ensure that air therein shall contain less than 1.0 volume per centum of methane.

§ 75.351 Atmospheric monitoring system (AMS).

(a) *Minimum requirements.* An AMS shall consist of sensors to monitor the mine atmosphere and instruments at a surface location designated by the operator to receive information from the monitoring sensors. Each AMS installed in accordance with §§ 75.323(d)(1)(ii), 75.340(a)(2) and 75.362(f) shall do the following:

(1) Monitor for circuit continuity and sensor function, and identify at the designated surface location any activated or malfunctioning sensor.

(2) Signal a designated surface location at the mine when any interruption of circuit continuity occurs or any sensor malfunctions.

(3) Signal affected working sections and the designated surface location when—

(i) The carbon monoxide concentration at any carbon monoxide sensor reaches 5 parts per million above the established ambient level for that area; or

(ii) The methane concentration at any methane monitoring station exceeds the maximum allowable concentration as specified for that location in § 75.323.

(4) Activate alarms at a designated surface location and affected working sections when the carbon monoxide concentration at any carbon monoxide sensor reaches 10 parts per million above the established ambient level for the area or when the optical density of smoke at any smoke sensor reaches 0.05 per meter.

(b) *Return splits.* (1) If used to monitor return air splits under § 75.362(f), AMS sensors shall monitor the mine atmosphere for percentage of methane in each return split of air from each working section between the last working place, or longwall or shortwall face, ventilated by that air split and the junction of that return air split with another air split, seal, or worked-out area. If auxiliary fans and tubing are used, the sensor also shall be located outby the auxiliary fan discharge.

(2) If used to monitor air splits under § 75.323(d)(1)(ii), AMS sensors shall monitor the mine atmosphere at the following locations:

(i) In the return air course opposite the section loading point or, if auxiliary fans and tubing are used, in the return air course outby the auxiliary fans and a point opposite the section loading point.

(ii) Immediately inby the location where the split of air meets another split of air, or inby the location where the split of air is used to ventilate seals or worked-out areas.

(c) *Electrical installations.* If used to monitor the intake air ventilating underground transformer stations, battery charging stations, substations, rectifiers, or water pumps under § 75.340(a)(2), at least one sensor shall be installed to monitor the mine atmosphere for carbon monoxide or smoke at least 50 feet and no more than 100 feet downstream in the direction of air flow.

(d) *Signals and alarms.* (1) A person designated by the operator shall be at a surface location where the signals and alarms from the AMS can always be seen or heard while anyone is underground. This person shall have access to two-way communication with working sections and with other identifiable duty stations underground. A mine map showing the underground monitoring system shall be posted at the surface location.

(2) If a signal from any AMS sensor is activated, the monitor producing the signal shall be identified, an examination shall be made to determine the cause of the activation, and appropriate action shall be taken.

(e) *Sensors.* (1) Each carbon monoxide sensor shall be capable of detecting carbon monoxide in air at a level of ±1 part per million throughout the operating range.

(2) Each methane sensor shall be capable of detecting 1.0 percent methane in air with an accuracy of ±0.2 percent methane.

(3) Each smoke sensor shall be capable of detecting the optical density of smoke with an accuracy of ±0.005 per meter.

(f) *Testing and calibration.* At least once every 31 days—

(1) Each carbon monoxide sensor shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate an alarm;

(2) Each smoke sensor shall be functionally tested;

(3) Each methane sensor shall be calibrated with a known methane-air mixture; and

(4) Each oxygen sensor shall be calibrated with air having a known oxygen concentration.

(g) *Intrinsic Safety.* Components of AMS installed in areas where permissible equipment is required shall be intrinsically safe.

(h) *Recordkeeping.* If a signal device or alarm is activated, a record shall be made of the date, time, type of sensor, and the reason for its activation. Also the maximum concentration detected at the sensor producing the signal shall be recorded.

(i) *Retention period.* Records shall be retained for at least 1 year at a surface location at the mine and made available for inspection by authorized representatives of the Secretary and representatives of miners.

§ 75.352 Return air courses.

Entries used as return air courses shall be separated from belt haulage entries by permanent ventilation controls.

§ 75.360 Preshift examination.

(a) Within 3 hours preceding the beginning of any shift and before anyone on the oncoming shift, other than certified persons conducting examinations required by this subpart, enters any underground area of the mine, a certified person designated by the operator shall make a preshift examination.

(b) The person conducting the preshift examination shall examine for hazardous conditions, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction, at the following locations:

(1) Roadways, track haulageways, and other areas where persons are scheduled to work or travel during the oncoming shift.

(2) Belt conveyors that will be used to transport persons during the oncoming shift and the entries in which these belt conveyors are located.

(3) Working sections and areas where mechanized mining equipment is being installed or removed, if anyone is scheduled to work on the section or in the area during the oncoming shift. This includes working places, approaches to worked-out areas and ventilation controls on these sections or in these areas.

(4) Approaches to worked-out areas along intake air courses if intake air passes by the worked-out area to ventilate working sections where anyone is scheduled to work during the oncoming shift.

(5) Seals along intake air courses where intake air passes by a seal to ventilate working sections where anyone is scheduled to work during the oncoming shift.

(6) Entries and rooms driven more than 20 feet off an intake air course without a crosscut or more than 2 crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift.

(7) Where unattended diesel equipment is to operate or areas where trolley wires or trolley feeder wires are to be or will remain energized during the oncoming shift.

(c) The person conducting the preshift examination shall determine the volume of air entering each of the following areas if anyone is scheduled to work in the areas during the oncoming shift:

(1) In the last open crosscut of each set of entries or rooms on each working section and areas where mechanized mining equipment is being installed or removed. The last open crosscut is the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses.

(2) On each longwall or shortwall in the intake entry or entries at the intake end of the longwall or shortwall face immediately outby the face and the velocity of air at each end of the face at the locations specified in the approved ventilation plan.

(3) At the intake end of any pillar line—(i) If a single split of air is used, in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined; or

(ii) If a split system is used, in the intake entries of each split immediately inby the split point.

(d) The district manager may require the certified person to examine other areas of the mine or examine for other hazards during the preshift examination.

(e) Any area of the mine where hazardous conditions are found shall be posted with a conspicuous danger sign where anyone entering the area would pass. Only persons designated by the operator to correct or evaluate the condition may enter this posted area.

(f) *Certification.* At each working place examined, the person doing the preshift examination shall certify by initials, date, and the time, that the examination was made. In areas required to be examined outby a working section, the certified person shall certify by initials, date, and the time at enough locations to show that the entire area has been examined.

(g) *Recordkeeping.* A record of hazardous conditions and their locations found by the examiner during each examination and of the results and locations of air and methane measurements shall be made in a book provided for that purpose on the surface before any persons other than certified persons conducting examinations required by this subpart enter any underground area of the mine. The record shall be made by the certified person who made the examination or by a person designated by the operator and shall be countersigned by the mine foreman. If the record is made by someone other than the examiner, the examiner shall verify the record by initials and date by the end of the shift for which the examination was made.

(h) *Retention period.* Records shall be retained for at least 1 year at a surface location at the mine and made available for inspection by authorized representatives of the Secretary and representatives of miners.

§ 75.361 Supplemental examination.

(a) Except for certified persons conducting examinations required by this subpart, within 3 hours before anyone enters an area in which a preshift examination has not been made for that shift, a certified person shall examine the area for hazardous conditions, determine whether the air is traveling in its proper direction and at its normal volume, and test for methane and oxygen deficiency.

(b) Certification. At each working place examined, the person making the supplemental examination shall certify by initials, date, and the time, that the examination was made. In areas required to be examined outby a working section, the certified person shall certify by initials, date, and the time at enough locations to show that the entire area has been examined.

§ 75.362 On-shift examination.

(a)(1) During each shift, a certified person designated by the operator shall examine each section where coal is produced and any area where mechanized mining equipment is being installed or removed during the shift. The certified person shall check for hazardous conditions, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction.

(2) Hazardous conditions shall be corrected immediately. If these conditions create an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected.

(b) During each shift that coal is produced, a certified person shall examine for hazardous conditions along each belt conveyor haulageway where a belt conveyor is operated. This examination may be conducted at the same time as the preshift examination of belt conveyors and belt conveyor haulageways, if the examination is conducted within 3 hours before the oncoming shift.

(c) Persons conducting the on-shift examination shall determine at the following locations:

(1) The volume of air in the last open crosscut of each set of entries or rooms on each working section and areas where mechanized mining equipment is being installed or removed. The last open crosscut is the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses.

(2) The volume of air on a longwall or shortwall, including areas where longwall or shortwall equipment is being installed or removed, in the intake entry or entries at the intake end of the longwall or shortwall.

(3) The velocity of air at each end of the longwall or shortwall face at the locations specified in the approved ventilation plan.

(4) The volume of air at the intake end of any pillar line—

(i) Where a single split of air is used in the intake entry furthest from the return air course immediately outby the first open crosscut outby the line of pillars being mined; or

(ii) Where a split system is used in the intake entries of each split immediately inby the split point.

(d)(1) A qualified person shall make tests for methane—

(i) Immediately before equipment is energized, taken into, or operated in a working place; and

(ii) At 20-minute intervals during the operation of equipment in the working place.

(2) These tests shall be made in working places at the last permanent roof supports, unless tests are required in the approved ventilation plan to be made closer to the working face using extendable probes or other acceptable means. When longwall or shortwall mining systems are used, tests shall be made at the location of the shearer, the plow, or the cutting head, as applicable, at 20-minute intervals. Also, when mining has been stopped for more than 20 minutes, tests shall be conducted at the location of the shearer, plow, or cutting head before startup.

(e) If auxiliary fans and tubing are used, they shall be inspected frequently.

(f) During each shift that coal is produced and at intervals not exceeding 4 hours, tests for methane shall be made by a certified person or by an atmospheric monitoring system (AMS) in each return split of air from each working section between the last working place, or longwall or shortwall face, ventilated by that split of air and the junction of the return air split with another air split, seal, or worked-out area. If auxiliary fans and tubing are used, the tests shall be made at a location outby the auxiliary fan discharge.

(g) Recordkeeping. At or by the completion of each shift during which examinations required by this section are conducted, a record of hazardous conditions found or reported to the certified person and their locations shall be made in a book kept on the surface for that purpose. The record shall be made by the person doing the examinations or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date. The record also shall include the corrective action taken and shall be countersigned by the mine foreman.

(h) Retention period. Records shall be retained for at least 1 year at a surface location at the mine and made available for inspection by authorized representatives of the Secretary and representatives of miners.

§ 75.364 Weekly examination.

(a) *Worked-out areas.* (1) At least every 7 days, a certified person shall examine unsealed worked-out areas where no pillars have been recovered by traveling to the area of deepest penetration, measuring methane and oxygen concentrations and making tests to determine if the air is moving in its proper direction in the area. An alternative method of evaluating the ventilation of the area may be approved in the ventilation plan.

(2) At least every 7 days, a certified person shall evaluate the effectiveness of bleeder systems used under § 75.334 (b) and (c) as follows:

(i) Measurements of methane and oxygen concentrations and a test to determine if the air is moving in its proper direction shall be made where air enters the worked-out area.

(ii) Measurements of methane and oxygen concentrations and a test to determine if the air is moving in its proper direction shall be made immediately before the air enters a return split of air.

(iii) At least once each week, bleeder entries used as part of a bleeder system under § 75.334, shall be traveled in their entirety, or to locations approved in the ventilation plan where measurements of methane and oxygen concentrations and a test to determine if the air is moving in its proper direction can be made.

(b) *Hazardous conditions.* At least every 7 days, an examination for hazardous conditions at the following locations shall be made by a certified person designated by the operator:

(1) In at least one entry of each intake air course, in its entirety, so that the entire air course is traveled.

(2) In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

(3) In each longwall or shortwall travelway in its entirety, so that the entire travelway is traveled.

(4) At each seal along return and bleeder air courses and at each seal along intake air courses not examined under § 75.360(b)(5).

(5) In each escapeway so that the entire escapeway is traveled.

(6) On each working section not examined under § 75.360(b)(3) during the previous 7 days.

(c) *Measurements and tests.* At least every 7 days, a certified person shall—

(1) Determine the volume of air entering the main intakes and in each intake split;

(2) Determine the volume of air and test for methane in the last open crosscut in any pair or set of developing entries or rooms, in the return of each split of air immediately before it enters the main returns, and where the air leaves the main returns; and

(3) Test for methane in the return entry nearest each set of seals immediately after the air passes the seals.

(d) Hazardous conditions shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected.

(e) The weekly examination may be conducted at the same time as the preshift or on-shift examinations.

(f)(1) The weekly examination is not required during any 7 day period in which no one enters any underground area of the mine.

(2) Except for certified persons required to make examinations, no one shall enter any underground area of the mine if a weekly examination has not been completed within the previous 7 days.

(g) *Certification.* The person making the weekly examinations shall certify by initials, date, and the time that the examination was made. Certifications and times shall appear at enough locations to show that the entire area has been examined.

(h) *Recordkeeping.* At the completion of any shift during which a portion of a weekly examination is made, a record of hazardous conditions, their locations, and the corrective action taken, and the results and location of air and methane measurements shall be made. The record shall be made by the person making the examination or a person designated by the operator and shall be countersigned by the mine foreman. If made by a person other than the examiner, the examiner shall verify the record by initials and date.

(i) *Retention period.* Records shall be retained for at least 1 year at a surface location at the mine and made available for inspection by authorized representatives of the Secretary and representatives of miners.

§ 75.370 Mine ventilation plan; submission and approval.

(a)(1) The operator shall develop and follow a ventilation plan approved by the district manager. The plan shall be designed to control methane and respirable dust and shall be suitable to the conditions and mining system at the mine. The ventilation plan shall consist of two parts, the plan content as prescribed in § 75.371 and the ventilation map with information as prescribed in § 75.372. Only that portion of the map which contains information required under § 75.371 will be subject to approval by the district manager.

(2) The proposed ventilation plan and any revision to the plan shall be submitted in writing to the district manager. When revisions to a ventilation plan are proposed, only the revised pages, maps, or sketches of the plan need to be submitted. When required in writing by the district manager, the operator shall submit a fully revised plan by consolidating the plan and all revisions in an orderly manner and by deleting all outdated material.

(3) A copy of the proposed ventilation plan, and any revision to the plan, submitted for approval shall be made available for inspection by the representative of miners and posted on the mine bulletin board.

(b)(1) The district manager will notify the operator in writing of the approval or denial of approval of a proposed ventilation plan or proposed revision.

(2) If the district manager denies approval of a proposed plan or revision, the deficiencies of the plan or revision shall be specified in writing and the operator will be provided an opportunity to discuss the deficiencies with the district manager.

(c) No proposed ventilation plan shall be implemented before it is approved by the district manager. Any intentional change to the ventilation system that alters the main air current or any split of the main air current in a manner that could materially affect the safety and health of the miners, or any change to the information required in § 75.371 shall be submitted to and approved by the district manager before implementation.

(d) Before implementing an approved ventilation plan or a revision to a ventilation plan, persons affected by the revision shall be instructed by the operator in its provisions.

(e) The approved ventilation plan and any revisions shall be available for inspection by the representatives of miners, and it shall be posted on the mine bulletin board.

(f) The ventilation plan for each mine shall be reviewed every 6 months by an authorized representative of the Secretary to assure that it is suitable to current conditions in the mine.

(g) Existing ventilation plans that conflict with this subpart D shall be revised to meet the requirements of this subpart D before February 15, 1993. This paragraph (g) shall expire August 16, 1993.

§ 75.371 Mine ventilation plan; contents.

The mine ventilation plan shall contain the information described below and any additional provisions required by the district manager:

(a) The mine name, company name, mine identification number, and the name of the individual submitting the plan information.

(b) Planned main mine fan stoppages, other than those scheduled for testing, maintenance or adjustment, including procedures to be followed during these stoppages and subsequent restarts (see § 75.311(a)) and the type of device to be used for monitoring main mine fan pressure, if other than a pressure recording device (see 75.310(a)(4)).

(c) Methods of protecting main mine fans and associated components from the forces of an underground explosion if a 15-foot offset from the nearest side of the mine opening is not provided (see § 75.310(a)(6)); and the methods of protecting main mine fans and intake air openings if combustible material will be within 100 feet of the area surrounding the fan or these openings (see § 75.311(f)).

(d) Persons that will be permitted to enter the mine, the work these persons will do while in the mine, and electric power circuits that will be energized when a back-up fan system is used that does not provide the ventilating quantity provided by the main mine fan (see § 75.311(c)).

(e) The locations and operating conditions of booster fans installed in anthracite mines (see § 75.302).

(f) Section and face ventilation systems used, including drawings illustrating how each system is used, and a description of each different dust suppression system used on equipment on working sections.

(g) Locations where the air quantities must be greater than 3,000 cubic feet per minute (see § 75.325(a)(1)).

(h) In anthracite mines, locations where the air quantities must be greater than 1,500 cubic feet per minute (see § 75.325(e)(1)).

(i) Working places and working faces other than those where coal is being cut, mined, drilled for blasting or loaded, where a minimum air quantity will be

maintained, and the air quantity at those locations (see § 75.325(a)(1)).

(j) The operating volume of machine mounted dust collectors or diffuser fans, if used (see § 75.325(a)(3)).

(k) The minimum mean entry air velocity in exhausting face ventilation systems where coal is being cut, mined, drilled for blasting, or loaded, if the velocity will be less than 60 feet per minute. Other working places where coal is not being cut, mined, drilled for blasting or loaded, where at least 60 feet per minute or some other minimum mean entry air velocity will be maintained (see § 75.326).

(l) The maximum distance if greater than 10 feet from each working face at which face ventilation control devices will be installed (see § 75.330(b)(2)). The working places other than those where coal is being cut, mined, drilled for blasting or loaded, where face ventilation control devices will be used (see § 75.330(b)(1)(ii).

(m) The volume of air required in the last open crosscut or the quantity of air reaching the pillar line if greater than 9,000 cubic feet per minute (see § 75.325(b)).

(n) In anthracite mines, the volume of air required in the last open crosscut or the quantity of air reaching the pillar line if greater than 5,000 cubic feet per minute (see § 75.325(e)(2)).

(o) Locations where separations of intake and return air courses will be built and maintained to other than the third connecting crosscut outby each working face (see § 75.333(b)(1)).

(p) The volume of air required at the intake to the longwall sections, if different than 30,000 cubic feet per minute (see § 75.325(c)).

(q) The velocities of air on a longwall or shortwall face, and the locations where the velocities must be measured (see § 75.325(c)(2)).

(r) The quantity of air and ventilation controls that will be provided during the installation and removal of mechanized mining equipment (see § 75.325(d)).

(s) The locations where the methane tests required by § 75.362(d) will be made closer to the working face than at the location of the last permanent roof supports using extendable probes or other acceptable means (see § 75.362(d)(2)).

(t) The locations where samples for "designated areas" will be collected, including the specific location of each sampling device, and the respirable dust control measures used at the dust generating sources for these locations (see § 70.208 of this chapter).

(u) The methane and dust control systems at underground dumps, crushers, transfer points, and haulageways.

(v) Areas in trolley haulage entries where the air velocity will be greater than 250 feet per minute and the velocity in these areas (see § 75.327(b)).

(w) Locations where entries will be advanced less than 20 feet from the inby rib without a crosscut being provided where a line brattice will be required. (see § 75.333(g)).

(x) A description of the bleeder system to be used, including its design (see § 75.334).

(y) The means for determining the effectiveness of bleeder systems (see § 75.334(c)(2)).

(z) The location of evaluation points where measurements of methane and oxygen concentrations and tests to determine whether the air is moving in the proper direction will be made to evaluate nonpillared worked-out areas (see § 75.364(a)(1) and bleeder systems (see § 75.364(a)(2)(iii)).

(aa) The means for adequately maintaining bleeder entries free of obstructions such as roof falls and standing water (see § 75.334(c)(3)).

(bb) The location of ventilating devices such as regulators, stoppings and bleeder connectors used to control air movement through worked-out areas (see § 75.334(c)(4)).

(cc) In mines with a demonstrated history of spontaneous combustion: a description of the measures that will be used to detect methane, carbon monoxide, and oxygen concentration during and after pillar recovery and in worked-out areas where no pillars have been recovered (see § 75.334(f)(1); and, the actions which will be taken to protect miners from the hazards associated with spontaneous combustion (see § 75.334(f)(2). If a bleeder system will not be used, the methods that will be used to control spontaneous combustion, accumulations of methane-air mixtures, and other gases, dusts, and fumes in the worked-out area (see § 75.334(f)(3)).

(dd) The location of all horizontal degasification holes that are longer than 1,000 feet and the location of all vertical degasification holes.

(ee) If methane drainage systems are used, a detailed sketch of each system, including a description of safety precautions used with the systems.

(ff) A description of the methods and materials to be used to seal worked-out areas if those methods or materials will be different from those specified by § 75.335(a)(1).

(gg) The alternative location for the additional sensing device if the device will not be installed on the longwall shearing machine (see § 75.342(a)(2)).

(hh) The ambient level in parts per million of carbon monoxide, and the method for determining the ambient level, in all areas where carbon monoxide sensors are installed.

(ii) The distance that separation between the primary escapeway and the belt or track haulage entries will be maintained if other than to the first connecting crosscut outby the section loading point (see § 75.380(g)).

(jj) In anthracite mines, the dimensions of escapeways where the pitch of the coal seam does not permit escapeways to be maintained 4 feet by 5 feet and the locations where these dimensions must be maintained (see § 75.381(c)(4)).

§ 75.372 Mine ventilation map.

(a)(1) At intervals not exceeding 12 months, the operator shall submit to the district manager 3 copies of an up-to-date map of the mine drawn to a scale of not less than 100 nor more than 500 feet to the inch. A registered engineer or a registered surveyor shall certify that the map is accurate.

(2) In addition to the informational requirements of this section the map may also be used to depict and explain plan contents that are required in § 75.371. Information shown on the map to satisfy the requirements of § 75.371 shall be subject to approval by the district manager.

(b) The map shall contain the following information:

(1) The mine name, company name, mine identification number, a legend identifying the scale of the map and symbols used, and the name of the individual responsible for the information on the map.

(2) All areas of the mine, including sealed and unsealed worked-out areas.

(3) All known mine workings on mine property that are located in the same coalbed within 1,000 feet of existing or projected workings. These workings may be shown on a mine map with a scale other than that required by paragraph (a) of this section, if the scale does not exceed 2,000 feet to the inch and is specified on the map.

(4) The locations of all known mine workings underlying and overlying the mine property and the distance between the mine workings.

(5) The locations of all known oil and gas wells and all known drill holes that penetrate the coalbed being mined.

(6) The locations of all main mine fans, installed backup fans and motors, and each fan's specifications, including size, type, model number, manufacturer, operating pressure, motor horsepower, and revolutions per minute.

(7) The locations of all surface mine openings and the direction and quantity of air at each opening.

(8) The elevation at the top and bottom of each shaft and slope, and shaft and slope dimensions, including depth and length.

(9) The direction of air flow in all underground areas of the mine.

(10) The locations of all active working sections and the four-digit identification number for each mechanized mining unit (MMU).

(11) The location of all escapeways.

(12) The locations of all ventilation controls, including permanent stoppings, overcasts, undercasts, regulators, seals, airlock doors, haulageway doors and other doors, except temporary ventilation controls on working sections.

(13) The direction and quantity of air—(i) Entering and leaving each split;

(ii) In the last open crosscut of each set of entries and rooms; and

(iii) At the intake end of each pillar line, including any longwall or shortwall.

(14) Projections for at least 12 months of anticipated mine development, proposed ventilation controls, proposed bleeder systems, and the anticipated location of intake and return air courses, belt entries, and escapeways.

(15) The locations of existing methane drainage systems.

(16) The locations of all atmospheric monitoring system sensors.

(17) Contour lines that pass through whole number elevations of the coalbed being mined. These lines shall be spaced at 10-foot elevation levels unless a wider spacing is permitted by the district manager.

(18) The location of proposed seals for each worked-out area.

(c) The mine map required by § 75.1200 may be used to satisfy the requirements for the ventilation map, provided that all the information required by this section is contained on the map.

§ 75.373 Reopening mines.

After a mine is abandoned or declared inactive, and before it is reopened, mining operations shall not begin until MSHA has been notified and has completed an inspection.

§ 75.380 Escapeways; bituminous and lignite mines.

(a) Except in situations addressed in § 75.381, § 75.385 and § 75.386, at least two separate and distinct travelable passageways shall be designated as escapeways and shall meet the requirements of this section.

(b)(1) Escapeways shall be provided from each working section, and each area where mechanized mining equipment is being installed or removed, continuous to the surface escape drift opening or continuous to the escape shaft or slope facilities to the surface.

(2) During equipment installation, these escapeways shall begin at the projected location for the section loading point. During equipment removal, they shall begin at the location of the last loading point.

(c) The two separate and distinct escapeways required by this section shall not end at a common shaft, slope, or drift opening, except that multiple compartment shafts or slopes separated by walls constructed of noncombustible material may be used as separate and distinct passageways.

(d) Each escapeway shall be—(1) Maintained in a safe condition to always ensure passage of anyone, including disabled persons;

(2) Clearly marked to show the route and direction of travel to the surface;

(3) Maintained to at least a height of 5 feet from the mine floor to the mine roof, excluding the thickness of any roof support, except that the escapeways shall be maintained to at least the height of the coalbed excluding the thickness of any roof support where the coalbed is less than 5 feet;

(4) Maintained at least 6 feet wide except—(i) Where necessary supplemental roof support is installed, the escapeway shall be not less than 4 feet wide; or

(ii) Where the route of travel passes through doors or other permanent ventilation controls, the escapeway shall be at least 4 feet wide to enable miners to escape quickly in an emergency;

(5) Located to follow the most direct, safe and practical route to the surface; and

(6) Provided with ladders, stairways, ramps, or similar facilities where the escapeways cross over obstructions.

(e) Surface openings shall be adequately protected to prevent surface fires, fumes, smoke, and flood water from entering the mine.

(f)(1) Primary escapeway. One escapeway that is ventilated with intake air shall be designated as the primary escapeway. In areas of mines developed after September 15, 1992, the primary escapeway shall not contain diesel equipment, electrical equipment described in § 75.340(a) and § 75.340(b)(1), or compressors described in § 75.344, except—

(i) Equipment necessary to maintain the escapeway in safe, travelable condition; and

(ii) Haulage equipment, other than belt and trolley haulage, necessary for the transportation of persons and materials.

(2) Mobile equipment used in the primary escapeway under paragraphs (f)(1)(i) and (f)(1)(ii) of this section shall be equipped with a multipurpose dry powder type fire suppression system suitable for the intended application and listed or approved by a nationally recognized independent testing laboratory. This fire suppression system shall be capable of both automatic and manual activation.

(g) Except where separation of belt and trolley haulage entries from designated escapeways did not exist before September 15, 1992, the primary escapeway shall be separated from belt and trolley haulage entries for its entire length, to and including the first connecting crosscut outby each loading point except when a greater or lesser distance for this separation is specified and approved in the ventilation plan and does not pose a hazard to miners.

(h) Alternate escapeway. One escapeway shall be designated as the alternate escapeway. The alternate escapeway shall be separated from the primary escapeway for its entire length, except that the alternate and primary escapeways may be ventilated from a common intake air shaft or slope opening.

(i) Mechanical escape facilities shall be provided and maintained for—

(1) Each shaft that is part of a designated escapeway and is greater than 50 feet in depth; and

(2) Each slope that is part of a designated escapeway that is either inclined 18 degrees or more from the horizontal or is inclined 9 degrees or more from the horizontal and is greater than 1,000 feet in length.

(j) Within 30 minutes after mine personnel on the surface have been notified of an emergency requiring evacuation, mechanical escape facilities provided under paragraph (i) of this section shall be operational at the bottom of shaft and slope openings that are part of escapeways.

(k) Except where automatically activated hoisting equipment is used, the bottom of each shaft or slope opening that is part of a designated escapeway shall be equipped with a means of signalling a surface location where a person is always on duty when anyone is underground. When the signal is activated or the evacuation of persons underground is necessary, the person shall ensure that mechanical escape facilities are operational as required by paragraph (j) of this section.

(l)(1) Stairways or mechanical escape facilities shall be installed in shafts that

are part of the designated escapeways and that are 50 feet or less in depth, except ladders may be used in shafts that are part of the designated escapeways and that are 5 feet or less in depth.

(2) Stairways shall be constructed of concrete or metal, set on an angle not to exceed 45 degrees from the horizontal, and equipped on the open side with handrails. In addition, landing platforms that are at least 2 feet by 4 feet shall be installed at intervals not to exceed 20 vertical feet on the stairways and equipped on the open side with handrails.

(3) Ladders shall be constructed of metal, anchored securely, and set on an angle not to exceed 60 degrees from the horizontal.

(m) A travelway designed to prevent slippage shall be provided in slope and drift openings that are part of designated escapeways, unless mechanical escape facilities are installed.

§ 75.381 Escapeways; anthracite mines.

(a) Except as provided in §§ 75.385 and 75.386, at least two separate and distinct travelable passageways shall be designated as escapeways and shall meet the requirements of this section.

(b) Escapeways shall be provided from each working section continuous to the surface.

(c) Each escapeway shall be—(1) Maintained in a safe condition to always ensure passage of anyone, including disabled persons;

(2) Clearly marked to show the route of travel to the surface;

(3) Provided with ladders, stairways, ramps, or similar facilities where the escapeways cross over obstructions; and

(4) Maintained at least 4 feet wide by 5 feet high. If the pitch or thickness of the coal seam does not permit these dimensions to be maintained other dimensions may be approved in the ventilation plan.

(d) Surface openings shall be adequately protected to prevent surface fires, fumes, smoke, and flood water from entering the mine.

(e) Primary escapeway. One escapeway that shall be ventilated with intake air shall be designated as the primary escapeway.

(f) Alternate escapeway. One escapeway that shall be designated as the alternate escapeway shall be separated from the primary escapeway for its entire length.

(g) Mechanical escape facilities shall be provided—

(1) For each shaft or slope opening that is part of a primary escapeway; and

(2) For slopes that are part of escapeways, unless ladders are installed.

(h) Within 30 minutes after mine personnel on the surface have been notified of an emergency requiring evacuation, mechanical escape facilities shall be operational at the bottom of each shaft and slope opening that is part of an escapeway.

(i) Except where automatically activated hoisting equipment is used, the bottom of each shaft or slope opening that is part of a primary escapeway shall be equipped with a means of signalling a surface location where a person is always on duty when anyone is underground. When the signal is activated or the evacuation of personnel is necessary, the person on duty shall ensure that mechanical escape facilities are operational as required by paragraph (h) of this section.

§ 75.382 Mechanical escape facilities.

(a) Mechanical escape facilities shall be provided with overspeed, overwind, and automatic stop controls.

(b) Every mechanical escape facility with a platform, cage, or other device shall be equipped with brakes that can stop the fully loaded platform, cage, or other device.

(c) Mechanical escape facilities, including automatic elevators, shall be examined weekly. The weekly examination of this equipment may be conducted at the same time as a daily examination required by § 75.1400–3.

(1) The weekly examination shall include an examination of the headgear, connections, links and chains, overspeed and overwind controls, automatic stop controls, and other facilities.

(2) At least once each week, the hoist shall be run through one complete cycle of operation to determine that it is operating properly.

(d) A person trained to operate the mechanical escape facility always shall be available while anyone is underground to provide the mechanical escape facilities, if required, to the bottom of each shaft and slope opening that is part of an escapeway within 30 minutes after personnel on the surface have been notified of an emergency requiring evacuation. However, no operator is required for automatically operated cages, platforms, or elevators.

(e) Mechanical escape facilities shall have rated capacities consistent with the loads handled.

(f) Manually-operated mechanical escape facilities shall be equipped with indicators that accurately and reliably show the position of the facility.

§ 75.383 Escapeway maps and drills.

(a) A map shall be posted in each working section, and in each area where mechanized mining equipment is being installed or removed, and shall show the designated escapeways from the working section to the location where miners must travel to satisfy the escapeway drill specified in paragraph (b)(1) of this section. A map showing the main escapeways shall be posted at a surface location of the mine where miners congregate, such as at the mine bulletin board, bathhouse, or waiting room. All maps shall be kept up to date, and any changes in route of travel, locations of any doors, or directions of airflow shall be shown on the maps by the end of the shift on which the changes are made, and affected miners shall be informed of the changes before entering the underground areas of the mine.

(b)(1) At least once every 90 days, each miner, including miners with working stations located between working sections and main escapeways, shall participate in a practice escapeway drill. During this drill, each miner shall travel the primary or alternate escapeway from the miner's working section or area where mechanized mining equipment is being installed or removed, to the area where the split of air ventilating the working section intersects a main air course, or 2,000 feet outby the section loading point, whichever distance is greater. Other miners shall participate in the escapeway drill by traveling in the primary or alternate escapeway for a distance of 2,000 feet from their working station toward the nearest escape facility or drift opening. An escapeway drill shall not be conducted in the same escapeway as the immediately preceding drill.

(2) At least once every 6 weeks and for each shift, at least two miners on each coal producing working section who work on that section, accompanied by the section supervisor, shall participate in a practice escape drill and shall travel the primary or alternate escapeway from the location specified in paragraph (b)(1) of this section, to the surface, to mechanical escape facilities, or to an underground entrance to a shaft or slope to the surface. Systematic rotation of section personnel shall be used so that all miners participate in this drill. An escapeway drill shall not be conducted in the same escapeway as the immediately preceding drill.

(3) At least once every 6 weeks, at least two miners on each maintenance shift and a supervisor, shall participate in a practice escape drill and shall travel

the primary or alternate escapeway from the location specified in paragraph (b)(1) of this section, to the surface, to mechanical escape facilities, or to an underground entrance to a shaft or slope to the surface. Systematic rotation of maintenance personnel and working sections shall be used so that all miners participate in this drill and the escapeways from all sections are traveled. An escapeway drill shall not be conducted in the same escapeway as the immediately preceding drill.

(4) Before or during practice escapeway drills, miners shall be informed of the locations of fire doors, check curtains, changes in the routes of travel, and plans for diverting smoke from escapeways.

(c) The practice escapeway drills may be used to satisfy the evacuation specifications of the fire drills required by § 75.1101–23.

§ 75.384 Longwall and shortwall travelways.

(a) If longwall or shortwall mining systems are used and the two designated escapeways required by § 75.380 are located on the headgate side of the longwall or shortwall, a travelway shall be provided on the tailgate side of that longwall or shortwall. The travelway shall be located to follow the most direct and safe practical route to a designated escapeway.

(b) The route of travel shall be clearly marked.

(c) When a roof fall or other blockage occurs that prevents travel in the travelway—

(1) Work shall cease on the longwall or shortwall face;

(2) Miners shall be withdrawn from face areas to a safe area outby the section loading point; and

(3) MSHA shall be notified.

Work may resume on the longwall or shortwall face after the procedures set out in §§ 75.215 and 75.222 are implemented.

§ 75.385 Opening new mines.

When new mines are opened, no more than 20 miners at a time shall be allowed in any mine until a connection has been made between the mine openings, and these connections shall be made as soon as possible.

§ 75.386 Final mining of pillars.

When only one mine opening is available due to final mining of pillars, no more than 20 miners at a time shall be allowed in the mine, and the distance between the mine opening and working face shall not exceed 500 feet.

§ 75.388 Boreholes in advance of mining.

(a) Boreholes shall be drilled in each advancing working place when the working place approaches—

(1) To within 50 feet of any area located in the mine as shown by surveys that are certified by a registered engineer or registered surveyor unless the area has been preshift examined;

(2) To within 200 feet of any area located in the mine not shown by surveys that are certified by a registered engineer or registered surveyor unless the area has been preshift examined; or

(3) To within 200 feet of any mine workings of an adjacent mine located in the same coalbed unless the mine workings have been preshift examined.

(b) Boreholes shall be drilled as follows:

(1) Into the working face, parallel to the rib, and within 3 feet of each rib.

(2) Into the working face, parallel to the rib, and at intervals across the face not to exceed 8 feet.

(3) At least 20 feet in depth in advance of the working face, and always maintained to a distance of 10 feet in advance of the working face.

(c) Boreholes shall be drilled in at least one rib of advancing working places described in paragraph (a) of this section. These boreholes shall be drilled—

(1) At an angle of 45 degrees to the direction of advance;

(2) At least 20 feet in depth; and

(3) At intervals not to exceed 8 feet.

(d) When a borehole penetrates an area that cannot be examined, and before mining continues, a certified person shall, if possible, determine—

(1) The direction of airflow in the borehole;

(2) The pressure differential between the penetrated area and the mine workings;

(3) The concentrations of methane, oxygen, carbon monoxide, and carbon dioxide; and

(4) Whether water is impounded within the penetrated area.

(e) Unless action is taken to dewater or to ventilate penetrated areas, boreholes shall be plugged with wooden plugs or similar devices when—

(1) Tests conducted at the boreholes show that the atmosphere in the penetrated area contains more than 1.0 percent methane, less than 19.5 percent oxygen, or harmful concentrations of carbon monoxide, carbon dioxide or other explosive, harmful or noxious gases;

(2) Tests for methane, oxygen, carbon monoxide, and carbon dioxide cannot be made because air from mine workings is flowing into the penetrated area; or

(3) Water is discharging through the boreholes from the penetrated area into the mine workings.

(f) If mining is to be conducted within 50 feet above or below an inaccessible area of another mine, boreholes shall be drilled, as necessary, according to a plan approved by the district manager.

(g) Alternative borehole patterns that provide the same protection to miners as the pattern established by paragraphs (b) and (c) of this section may be used under a plan approved by the district manager.

§ 75.389 Mining into inaccessible areas.

(a)(1) The operator shall develop and follow a plan for mining into areas penetrated by boreholes drilled under § 75.388.

(2) Mining shall not resume into any area penetrated by boreholes until conditions in the penetrated area can be determined under § 75.388 and the plan for mining-through into the area has been approved by the district manager.

(3) A copy of the procedures to be followed shall be posted near the site of the mining-through operations and the operator shall explain these procedures to all miners involved in the operations.

(b) The procedures specified in the plan shall include—

(1) The method of ventilation, ventilation controls, and the air quantities and velocities in the affected working section and working place;

(2) Dewatering procedures to be used if a penetrated area contains a water accumulation; and

(3) The procedures and precautions to be followed during mining-through operations.

(c)(1) Before and during mining-through operations, a certified person shall perform air quality tests at intervals and at locations necessary to protect the safety of the miners;

(2) During mining-through operations, only persons involved in these operations shall be permitted in the mine; and

(3) After mining-through, a certified person shall determine that the affected areas are safe before any persons enter the underground areas of the mine.

Subpart L—Amended

11. Paragraph (e) introductory text of § 75.1103–4 is revised to read as follows:

§ 75.1103–4 Automatic fire sensor and warning device systems; installation; minimum requirements.

* * * * *

(e) Except when power must be cut off in the mine under the provisions of § 75.313, automatic fire sensor and

warning device systems shall be capable of giving warning of fire for a minimum of 4 hours after the source of power to the belt is removed unless the belt haulageway is examined for hot rollers and fire as provided in paragraph (e) (1) or (2) of this section.

* * * * *

12. Paragraph (b) of § 75.1103–7 is revised to read as follows:

§ 75.1103–7 Electrical components; permissibility requirements.

* * * * *

(b) Be provided with protection against ignition of methane or coal dust when the electrical power is deenergized as required by § 75.313, but these components shall be permissible or intrinsically safe if installed in a return airway.

Subpart R—Amended

13. Paragraphs (b)(7) and (b)(8) of § 75.1721 are revised to read as follows:

§ 75.1721 Opening of new underground coal mines, or reopening and reactivating of abandoned or deactivated coal mines, notification by the operator; requirements.

* * * * *

(b) * * *

(6) A proposed roof control plan containing the information specified in § 75.220.

(7) A proposed mine ventilation plan containing the information specified in §§ 75.371 and 75.372;

(8) A proposed plan for sealing worked-out areas containing the information specified in §§ 75.371 and 75.372.

* * * * *

Subpart S—Amended

* * * * *

§ 75.1801 [Removed]

14. Section 75.1801 is removed.

§ 75.1802 [Removed]

15. Section 75.1802 is removed.

§ 75.1803 [Removed]

16. Section 75.1803 is removed.

§ 75.1804 [Removed]

17. Section 75.1804 is removed.

§ 75.1805 [Removed]

18. Section 75.1805 is removed.

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Friday
May 15, 1992

Part III

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of May 1, 1992, of 128 rescission proposals and 11 deferrals contained in the special messages for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991, and on February 19, March 10, March 20, April 8, and April 9, 1992.

Rescissions (Table A and Attachment A)

As of May 1, 1992, 128 rescission proposals totaling $7,879.5 million were pending before Congress. Of the total amount proposed for rescission, $7,862.8 is currently being withheld. Attachment A shows the history and status of each rescission proposed during FY 1992.

Deferrals (Table B and Attachment B)

As of May 1, 1992, $3,039.3 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1992.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

56 FR 50620, Monday, October 7, 1991.
56 FR 67402, Monday, December 30, 1991.
57 FR 6644, Wednesday, February 26, 1992.
57 FR 11140, Wednesday, April 1, 1992.
57 FR 11528, Friday, April 3, 1992.
57 FR 13151, Wednesday, April 15, 1992.
57 FR 13779, Friday, April 17, 1992.

Richard Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1992 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	7,879.5
Rescission proposals rejected by the Congress.....	---
Rescission proposals for which funding was previously withheld and has been released.....	-16.7
Rescission proposals for which funding was not withheld.....	---
Rescission proposals for which funding is currently being withheld.....	7,862.8

TABLE B

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	5,631.1
Routine Executive releases through May 1, 1992 (OMB/Agency releases of $3,725.2 million, partially offset by cumulative positive adjustments of $1,133.4 million).....	-2,591.8
Overturned by the Congress.....	---
Currently before the Congress.....	3,039.3

Attachments

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of May 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research Service								
Building and facilities	R92-36	250		3-20-92				
	R92-37	500		3-20-92				
	R92-38	500		3-20-92				
	R92-39	2,710		3-20-92				
	R92-40	375		3-20-92				
	R92-41	3,050		3-20-92				
	R92-42	225		3-20-92				
Cooperative State Research Service	R92-43	225		3-20-92				
	R92-44	750		3-20-92				
	R92-45	94		3-20-92				
	R92-46	39		3-20-92				
	R92-47	387		3-20-92				
	R92-48	85		3-20-92				
	R92-49	49		3-20-92				
	R92-50	125		3-20-92				
	R92-51	185		3-20-92				
	R92-52	120		3-20-92				
	R92-53	134		3-20-92				
	R92-54	100		3-20-92				
	R92-55	46		3-20-92				
	R92-56	200		3-20-92				
	R92-57	250		3-20-92				
	R92-58	50		3-20-92				
	R92-59	187		3-20-92				
	R92-60	140		3-20-92				
	R92-61	76		3-20-92				
Extension Service								
Extension Service	R92-62	647		3-20-92				
	R92-63	150		3-20-92				

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of May 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
National Agricultural Library								
National Agricultural Library	R92-64	500		3-20-92				
Animal and Plant Inspection Service								
Salaries and expenses	R92-35	100		3-20-92				
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R92-2	21,425		3-10-92				
DEPARTMENT OF DEFENSE								
Operation and Maintenance								
Operation and maintenance, Army	R92-3	92,850		3-10-92				
Operation and maintenance, Navy	R92-4	104,650		3-10-92				
Operation and maintenance, Marine Corps	R92-5	22,000		3-10-92				
Operation and maintenance, Air Force	R92-6	4,500		3-10-92				
Operation and maintenance, Defense Agencies	R92-7	20,200		3-10-92				
Procurement								
Aircraft procurement, Army	R92-103	133,000		4-9-92				
Procurement of weapons and tracked combat vehicles, Army	R92-9	110,000		3-10-92				
	R92-104	225,000		4-9-92				
	R92-105	196,300		4-9-92				
	R92-106	17,600		4-9-92				
Procurement of ammunition, Army	R92-10	1,000		3-10-92				
Aircraft procurement, Navy	R92-11	262,000		3-10-92				
	R92-107	15,000		4-9-92				

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As of May 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
	R92-108	8,000		4-9-92				
Weapons procurement, Navy	R92-12	13,200		3-10-92				
	R92-109	130,000		4-9-92				
	R92-110	4,000		4-9-92				
	R92-111	60,000		4-9-92				
Shipbuilding and conversion, Navy	R92-13	238,100		3-10-92				
	R92-101	2,765,900		3-20-92				
Other procurement, Navy	R92-14	41,300		3-10-92				
	R92-102	189,400		3-20-92				
	R92-112	10,000		4-9-92				
	R92-113	4,000		4-9-92				
	R92-114	2,000		4-9-92				
Procurement, Marine Corps	R92-15	40,200		3-10-92				
	R92-115	6,500		4-9-92				
Procurement, Defense Agencies	R92-16	154,800		3-10-92				
National guard and reserve equipment	R92-116	21,000		4-9-92				
	R92-117	799,300		4-9-92				
	R92-118	67,000		4-9-92				
	R92-119	9,300		4-9-92				
	R92-120	45,000		4-9-92				
	R92-121	15,000		4-9-92				
	R92-122	20,000		4-9-92				
	R92-123	60,000		4-9-92				
	R92-124	15,000		4-9-92				
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Army	R92-18	102,200		3-10-92				
	R92-125	4,000		4-9-92				
Research, development, test, and evaluation, Navy	R92-19	140,600		3-10-92				
Research, development, test, and evaluation, Air Force	R92-20	127,100		3-10-92				

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As of May 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
	R92-21	375,900		3-10-92				
	R92-126	3,000		4-9-92				
	R92-127	248,800		4-9-92				
Research, development, test, and evaluation, Defense Agencies	R92-128	5,000		4-9-92				
	R92-129	6,000		4-9-92				
	R92-130	70,000		4-9-92				
Military Construction								
Military construction, Army	R92-22	9,050		3-10-92				
Military construction, Navy	R92-23	17,400		3-10-92				
Military construction, Air Force	R92-24	6,000		3-10-92				
Military construction, Defense Agencies	R92-25	48,000		3-10-92				
Military construction, Army National Guard	R92-26	16,565		3-10-92				
Military construction, Air National Guard	R92-27	306		3-10-92				
Military construction, Army Reserve	R92-28	2,749		3-10-92				
Military construction, Naval Reserve	R92-29	36,000		3-10-92				
DEPARTMENT OF DEFENSE-CIVIL								
Corps of Engineers								
Construction, general	R92-91	3,000		3-20-92				
Operation and maintenance, general	R92-92	1,350		3-20-92				
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy research and development	R92-34	145		4-8-92				

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DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R92-30	25,000		3-10-92				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R92-65	547,659		3-20-92				
	R92-66	1,500		3-20-92				
	R92-67	1,000		3-20-92				
	R92-68	2,000		3-20-92				
	R92-69	150		3-20-92				
	R92-70	100		3-20-92				
	R92-71	1,200		3-20-92				
	R92-72	1,000		3-20-92				
	R92-73	1,300		3-20-92				
	R92-74	3,900		3-20-92				
	R92-75	2,500		3-20-92				
	R92-76	1,500		3-20-92				
	R92-77	500		3-20-92				
	R92-78	1,000		3-20-92				
	R92-79	1,000		3-20-92				
	R92-80	505		3-20-92				
	R92-81	65		3-20-92				
	R92-82	101		3-20-92				
	R92-83	1,500		3-20-92				
	R92-84	700		3-20-92				
	R92-85	1,000		3-20-92				

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of May 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
Annual contributions for assisted housing	R92-86	800		3-20-92				
Congregate services program	R92-1		16,700	2-19-92		16,700	4-6-92	
Flexible subsidy fund	R92-31	25,000		3-10-92				
Policy Development and Research								
Research and technology	R92-87	400		3-20-92				
DEPARTMENT OF THE INTERIOR								
National Park Service								
Construction	R92-89	7,700		3-20-92				
Operation of the national park system	R92-90	1,975		3-20-92				
Bureau of Indian Affairs								
Operation of Indian programs	R92-32	5,880		3-10-92				
Construction	R92-88	8,593		3-20-92				
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R92-33	9,880		3-10-92				
ENVIRONMENTAL PROTECTION AGENCY								
Research and development	R92-98	116		3-20-92				
Abatement, control and compliance	R92-93	1,250		3-20-92				
	R92-94	390		3-20-92				
	R92-95	70		3-20-92				
	R92-96	1,450		3-20-92				
Buildings and facilities	R92-97	20,000		3-20-92				

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

As of May 1, 1992 Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Rescinded	Amount Previously Withheld and Made Available	Date Made Available	Congressional Action
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Construction of facilities	R92-99	3,400		3-20-92				
Research and development	R92-100	750		3-20-92				
TOTAL RESCISSIONS		7,862,773	16,700		0	16,700		0

ATTACHMENT B
Status of FY 1992 Deferrals – As of May 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 4–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92–1	244,777		09–30–91					
	D92–1A		1,623,312	12–19–91	1,508,249			1,108,866	1,468,706
Foreign military financing	D92–8	1,908,000		12–19–91	996,300				911,700
Agency for International Development									
International disaster assistance,									
Executive	D92–2	40,704		09–30–91					
	D92–2A		12,483	02–19–92	42,731				10,456
Demobilization and transition fund	D92–9	13,000		12–19–91					13,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92–3	482,378		09–30–91	135,434				346,944
Expenses, brush disposal	D92–10	101,006		12–19–91					101,006
Timber salvage sales	D92–11	131,549		02–19–92	7,000				124,549
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92–4	1,416		09–30–91	93				1,324

ATTACHMENT B
Status of FY 1992 Deferrals – As of May 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 4–1–92
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92–5	7,317		09–30–91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92–6	30,053		09–30–91					
	D92–6A		24,750	12–19–91	25,000			24,520	54,323
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92–7	1,010,375		09–30–91	1,010,375				0
TOTAL, DEFERRALS		3,970,575	1,660,545		3,725,182	0		1,133,386	3,039,324

06–May–92

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federal register

Friday
May 15, 1992

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171–177

Hazardous Materials; Training for Safe Transportation; Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171–177

[Docket No. HM–126F; Amndt. No. 171–115, 172–126, 173–231, 174–70, 175–48, 176–31, 177–79]

RIN 2137–AB26

Training for Safe Transportation of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) to enhance training requirements for persons involved in the transportation of hazardous materials. This action is necessary to comply with the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) mandating that DOT regulate, under the HMR, the training of all hazardous materials (hazmat) employees. Based on information provided to RSPA through its hazardous materials incident reporting system, human error has been determined to be the probable cause of most transportation incidents and associated consequences involving the release of hazardous materials. These enhanced regulatory requirements will increase a hazmat employee's awareness of safety considerations involved in the loading, unloading, handling, storing, and transportation of hazardous materials, and improve emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials. Thus, they will aid in reducing hazardous materials incidents caused by human error and mitigate the effects of incidents when they occur.

DATES: These amendments are effective on July 1, 1992. However, compliance with the regulations amended herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, Telephone: (202) 366–4488.

SUPPLEMENTARY INFORMATION:

I. The Hazardous Materials Transportation Uniform Safety Act of 1990

The Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et. seq.*, gives the Secretary of Transportation the regulatory and enforcement authority to protect the Nation against the risks to life and property which are inherent in the transportation of hazardous materials in commerce. Section 7 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), enacted November 16, 1990, amended Section 106 of the HMTA to require training for the safe handling and transportation of hazardous materials. Section 106(b) of HMTA requires the Secretary of Transportation to issue, by regulation, requirements for training to be given by all "hazmat employers" to their "hazmat employees" regarding the safe transportation of hazardous materials, including emergency response. Section 106(b) of HMTA requires the coordination of emergency response training regulations with other Federal agencies, to ensure that there are no conflicts with regulations issued by the Occupational Safety and Health Administration (OSHA) of the Department of Labor or the Environmental Protection Agency (EPA). Section 106(b) also requires the Secretary to specify dates for the commencement and completion of training, and requires employers to certify that their employees have been trained and tested. Section 103 of the HMTA provides definitions for "hazmat employer" and "hazmat employee". A "hazmat employer" is a person who uses one or more of its employees in connection with (a) transporting hazardous materials in commerce, (b) causing hazardous materials to be transported or shipped in commerce, or (c) reconditioning or testing containers, drums, or packagings represented for use in the transportation of hazardous materials. This term includes an owner-operator of a motor vehicle who transports hazardous materials in commerce. This term also includes any department, agency, or instrumentality of the United States, a State, a political subdivision of a State, or an Indian tribe engaged in an activity described above.

A "hazmat employee" is an individual who is employed by a hazmat employer and who in the course of employment directly affects hazardous materials transportation safety. The term includes an owner-operator of a motor vehicle who transports hazardous materials in commerce. The term also includes an individual who is employed by a hazmat employer and who, during the course of employment, (a) loads, unloads, or handles hazardous materials; (b) reconditions or tests containers, drums, or packagings represented for use in the transportation of hazardous materials; (c) prepares hazardous materials for transportation; (d) is responsible for the safety of the transportation of hazardous materials; or (e) operates a vehicle used to transport hazardous materials.

II. Background

Existing 49 CFR Training Requirements

Currently, §§ 173.1, 174.7, 175.20, 176.13 and 177.800 contain general requirements for training. It is the duty of each person who offers hazardous materials for transportation to instruct each of his officers, agents, and employees having any responsibility for preparing hazardous materials for shipment as to the applicable HMR. In addition to these general requirements for training, the HMR contain specific training requirements applicable to carriers and drivers who transport flammable cryogenic liquids (§ 177.816) and highway route controlled quantities of radioactive materials (§ 177.825) by motor vehicle. For these categories of hazardous materials, carriers must ensure that drivers receive written training which includes, in part, instruction concerning the requirements in the HMR which pertain to the material being transported and the properties and potential hazards of that material. The purpose of these training requirements is to ensure that persons involved with hazardous materials transportation are aware of their duties and responsibilities under the HMR.

RSPA Proposal

On July 26, 1989, RSPA issued a notice of proposed rulemaking (NPRM, 54 FR 31144) which contained proposals to amend the HMR to require persons who perform functions involving the transportation of hazardous materials to receive training concerning regulatory requirements applicable to those functions, and persons who work in proximity to hazardous materials to receive training concerning hazardous materials awareness and safety procedures.

In the NPRM, RSPA solicited comments in a number of areas including identifying those persons to whom the training requirements would apply, the relationship between DOT and OSHA regulations, and the use of a Commercial Driver's License (CDL) to satisfy proposed requirements for training. In addition to the comments requested in the NPRM, RSPA held public hearings on October 3, 1989, in Salt Lake City, Utah, and October 11, 1989, in Washington, DC, to give further opportunity to comment on the proposals.

III. Discussion of Comments Received on the NPRM

RSPA received over 90 comments in response to questions raised in the NPRM. Comments were received from a variety of organizations, including trade associations, training consultants, railroads, steamship lines, chemical companies, truck lines, power companies, and government agencies. Several organizations provided oral comments at RSPA's public hearings. Speakers at the hearings included representatives from several trade associations and labor unions as well as a member of the public who was a conductor on a train involved in a hazardous materials incident.

Most of the commenters supported the idea of enhanced training requirements, but some expressed reservations regarding certain aspects of RSPA's training proposals. Comments received responding to questions asked in the NPRM have been grouped into issue areas. Major and secondary issue areas are outlined in the following sections.

Major Issues

The three major issues addressed by commenters were: (1) Persons who are required to be trained, (2) Use of the CDL's hazardous materials endorsement to satisfy training requirements, and (3) Relationship between current and proposed regulations of DOT and other Federal agencies.

Persons Who Are Required To Be Trained

In the NPRM, RSPA proposed to amend the HMR to require that persons who perform functions involving the transportation of hazardous materials receive training. RSPA proposed that the requirements apply to all persons involved in the preparation, documentation, packaging, marking, labeling shipping, handling, and transportation of hazardous materials. The proposed rule included persons who inspected or tested specification packagings or represented, marked, certified, sold, or offered packagings as meeting the requirements of the HMR or an exemption issued under the HMR. The proposed rule also included self-employed individuals. In additional, RSPA proposed that those persons working "in proximity" to hazardous materials receive training concerning hazardous materials awareness and safety procedures. Although RSPA referred to the term "in proximity" throughout the NPRM, the term was not defined. RSPA specifically requested comments on what types of workers would be covered by the term "in proximity", and whether the term was to vague.

A majority of the commenters discussed the use of the term "in proximity" and nearly all recommended the phrase not be used in the final rule. The commenters stated that the use of the term "in proximity" is vague and that no definition was offered in the preamble. Some commenters also suggested appropriate regulatory language. After reviewing the comments and in light of the HMTA amendments, RSPA agrees with the majority of commenters that the term "in proximity" is vague and may result in interpretive and enforcement problems. Therefore, the term "in proximity" is not used in this final rule.

Section 106(b) of the HMTA requires training for each "hazmat employee," as defined in section 103. RSPA is modifying the definition of "hazmat employee" in this final rule to clarify that it includes an individual who is self-employed and, as proposed in the NPRM, an individual who represents packagings as meeting the requirements of the HMR or an exemption by marking, certifying, selling, offering, testing, reconditioning, repairing, or modifying. Accordingly, RSPA will use the term "hazmat employee", as modified, to identify persons who are required to be trained. RSPA has made a corresponding clarification to the definition of "hazmat employer" to clarify who is responsible for ensuring that hazmat employees are trained.

Commercial Driver's License (CDL)

On July 15, 1988, the Federal Highway Administration (FHWA) issued a final rule (53 FR 27628) concerning commercial driver testing and licensing standards. Of particular interest in regard to this final rule is the FHWA requirement for specific endorsements to the CDL for hazardous materials drivers and (cargo) "tank vehicle" drivers. RSPA asked for comments in the NPRM on the use of the CDL and the required endorsements thereon to satisfy the HMTA training requirements. Several of the comments addressed the CDL, and most of those suggested it should satisfy RSPA's training proposals. The following comments from the Illinois Farm Bureau and the American Trucking Associations (ATA) are representatives of those received on this issue.

The Illinois Farm Bureau stated, "* * * the CDL hazardous materials and tank vehicle endorsements should be allowed to satisfy the training requirements proposed in this docket. Drivers who have received these endorsements should be excepted from all of the training requirements proposed here. The proposed testing requirements for these CDL endorsements are adequate to meet the intent of this proposed rule in that they address the four categories of training targeted by RSPA: general awareness/familiarization, function-specific, safety and driver's training."

ATA offered similar comments. The ATA stated that "* * * once a driver has obtained his CDL and its endorsements for hazards materials and tank vehicle, that driver should be excepted from the training requirement as proposed."

RSPA recognizes that compliance with the current requirements for a CDL with a tank vehicle or hazardous materials endorsement provides a driver with the general knowledge and skills necessary to safely operate a commercial motor vehicle with hazardous materials cargo and may satisfy the training requirements in § 177.816. As a hazmat employee, additional specialized training may be required based on the job function and material-specific requirements related to the handling of hazardous materials. The hazmat employer must determine the extent to which the CDL endorsement satisfies the training requirements in this final rule. It remains the responsibility of the hazmat employer to ensure that their hazmat employees are properly trained for each hazmat function in accordance with the requirements of this final rule. RSPA believes that the training requirements for hazmat employees who also drive commercial motor vehicles are supplemental to the licensing requirements of the CDL program. Accordingly, RSPA is not providing a blanket exception from this final rule for a hazmat employee who operates a commercial motor vehicle, with a tank vehicle or hazardous materials endorsement on a CDL.

Relationship to OSHA and EPA

On March 6, 1989, OSHA published a final rule entitled "Hazardous Waste Operations and Emergency Response", amending 29 CFR 1910.120 (54 FR 9294). That rule addresses the safety and health of employees involved in operations at certain hazardous waste sites and facilities, and in any emergency response to an incident involving hazardous substances. In particular, that rule provides specific standards for employee protection during initial hazardous waste site characterization and analysis, monitoring materials handling activities, training, and emergency response.

On August 24, 1987, OSHA published a final rule modifying the Hazard Communication Standard (HCS), in 19 CFR 1910.1200 (52 FR 31852). The original HCS rule, which was published on November 25, 1983, covered employees exposed to hazardous chemicals in the manufacturing sector of the industry. The modified rule extended applicability of the existing standard from employees in the manufacturing industry sector (Standard Industrial Classification (SIC) codes 20 to 39) to also include employees in the nonmanufacturing industry sector, such as those covered by 40-series SIC codes for transportation. The HCS requires employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training program. Generally, employers are required to establish written hazard communication programs that inform their employees about the hazardous chemicals present in the work place. Further, employers are also required to establish training programs which teach employees how to protect themselves from becoming exposed to the hazardous chemicals by using engineering controls and following safe procedures.

On June 23, 1989, the EPA issued a final rule (54 FR 26654) entitled "Worker Protection Standards for Hazardous Waste Operations and Emergency Response" to comply with the requirements of Title III of the Superfund Amendments and Reauthorization Act (SARA). The EPA final rule (40 CFR 311.1) states that the OSHA requirements of 29 CFR 1910.120 "apply to State and local government employees engaged in hazardous waste operations * * * in States that do not have a State plan approved under section 18 of the Occupational Safety and Health Act of 1970." Because no State has an approved plan, EPA effectively has extended OSHA requirements of 29 CFR 1910.120 to State and local employees in all 50 States.

Many of the commenters discussed two closely-related issues regarding the DOT/OSHA/EPA training requirements: (1) Whether the DOT/OSHA/EPA rules regarding training are duplicative requirements; and (2) Whether training provided for one agency's training requirements may be used to satisfy another agency's training requirements. The perception of some commenters was that the RSPA proposals would add another layer of training requirements for hazardous materials to an already complex world of OSHA and EPA training requirements.

There were several statements throughout the preamble to the NPRM suggesting that training performed to satisfy another agency's requirements could help satisfy the RSPA training proposals. Despite these statements, commenters indicated that there was some confusion regarding when, or how, OSHA or EPA requirements satisfy RSPA proposals. Some organizations appeared to believe that OSHA or EPA training cannot satisfy RSPA proposals. Several major firms have requested that RSPA explicitly state that OSHA or EPA-required training is sufficient to satisfy RSPA proposals.

Section 106(b) of the HMTA, as amended by HMTUSA, specifies that the Secretary shall take actions, as may be necessary, to ensure that training requirements established by DOT do not conflict with requirements issued by OSHA relating to hazardous waste operations and emergency response contained in part 1910 of title 29 CFR (and amendments thereto) and the regulations issued by the EPA relating to worker protection standards of hazardous waste operations contained in part 311 of title 40 CFR (and amendments thereto). Section 106(b)(3) specifies, in part, that for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), no action taken by the Secretary, with regard to Section 106, shall be deemed to be an exercise of statutory authority to prescribe or enforce standards on regulations affecting health or safety. It is clear that this language that a hazmat employee may be subject to DOT, OSHA, and EPA training requirements.

It is RSPA's position that training performed to satisfy another Federal agency's requirements may be used to satisfy the requirements of this final rule in whole or in part, depending on the nature and extent of that training. Duplicative training is not necessary when the requirements of § 172.704 are met by training received in response to OSHA or EPA requirements.

IV. Secondary Issues

Time Requirements for Completion of Initial Training

In the NPRM, RSPA proposed to require that training be received within 30 days of employment. RSPA proposed that this requirement would not restrict a new employee from performing hazardous materials job functions under proper supervision prior to the employee's receipt of training. RSPA also proposed to require that persons be retrained within 30 days of a change in hazardous materials job functions.

Several commenters recommended an extension of the time frame required for initial training from 30 days to at least six months. These commenters argue that 30 days is not sufficient time to implement a training program. For example, Detroit Edison "believes that DOT has imposed a requirement which far exceeds those currently in place for other Federal programs. Under RCRA, which regulates hazardous waste disposal, new employees are allowed a six-month exemption for initial training, assuming they are appropriately supervised."

A similar comment was received from the Association of American Railroads (AAR). AAR wrote, "the regulated community must be given sufficient time to implement training programs. The effective date of this rule should be established at a point far enough in the future to permit companies to establish training programs."

Section 106(b)(4) of the HMTA requires each hazmat employer to begin training its current hazmat employees within six months after issuance of this final rule. Section 106(b)(5) of the HMTA requires the Secretary to establish the date by which the training of current hazmat employees shall be completed. The date must be within a reasonable period of time six months after the date of issuance of this final rule or, in the case of an individual employed as a hazmat employee after such six-month period, within a reasonable period of time after the date the individual is to begin carrying out duties as a hazmat employee.

The final rule provides that a current hazmat employee must have completed training by April 1, 1993. Thus, hazmat employers are provided more than 10 months from the date of publication of this final rule to complete training for current hazmat employees.

For a new employee (i.e., a person employed on or after November 15, 1992), this final rule provides that training must be completed within 90 days of employment. As proposed in the NPRM, this final rule provides that a new employee may perform hazardous materials duties prior to completion of training provided that those duties are performed under the supervision of a properly trained and knowledgeable hazmat employee.

For a hazmat employee who changes job functions, this final rule requires that hazardous materials training in the new job functions be completed within 90 days after the hazmat employee changes job functions. As is the case with a new

hazmat employee, this final rule requires that a hazmat employee who changes job functions be under the supervision of a properly trained and knowledgeable hazmat employee until the training in those new functions is completed.

Nothing in this final rule relieves a hazmat employer from the responsibility to ensure compliance with the HMR regardless of whether the required training has been completed. RSPA has added a statement to § 172.704 in this final rule to clarify the hazmat employer's responsibility.

Recurrent Training

As proposed in the NPRM, RSPA is requiring recurrent training at least once every two years. Comments regarding the training cycle were divided in support of a one-, two-, or four-year cycle.

Commenters who supported a one-year cycle argued that frequently changing Federal regulations make it necessary to train on an annual basis to keep employees abreast of current regulatory requirements. Commenters also noted that current Federal Aviation Administration (FAA) regulations in 14 CFR part 135 require hazardous materials training on an annual basis.

Other commenters suggested that RSPA's training cycle be closely aligned with the four-year testing cycle used by most States for the CDL. These commenters argued that alignment with a four-year CDL cycle is more cost-effective and avoids duplicative training.

Even though a number of commenters supported a one- or four-year time span, the majority of commenters supported RSPA's proposed two-year training cycle. RSPA believes the two-cycle, as a minimum, is necessary to ensure that hazmat employees are kept aware of the constantly changing regulatory requirements. In this final rule, therefore, a two-year training cycle is adopted in § 172.704(c).

Although RSPA adopts a two-year training cycle in this rule, it is important to note that when more frequent training is required due to other Federal requirements, such as the annual hazardous materials training required by the FAA in 14 CFR for air carrier personnel, that cycle of training would continue. Hazmat employees whose job functions are subject to more frequent Federal training regulations may satisfy some, if not all, of the requirements of this final rule with other training.

In addition to the comments on a two-year cycle, several commenters recommended that RSPA substitute the word "biennially" for the words "every two years." These commenters believed that the term "every two years" would limit training to the two-year anniversary date of previous training with no latitude provided to vary a training schedule. RSPA's proposed language in § 172.704(c)(2) of the NPRM stated that training must be provided "at least" once every two years. It is RSPA's intent to allow training before the expiration of the two-year training period. RSPA believes this final rule provides employers sufficient latitude to adjust their training cycles to provide the required training within the two-year training cycle. Therefore, RSPA is retaining the phrase "at least once very two years" in § 172.704(c)(2).

Use of ICAO or IMDG Training To Satisfy RSPA Proposals

Some commenters suggested that training performed under international regulations be allowed to satisfy RSPA's training requirements. Specifically, these commenters recommended modification of the proposed rule text to expressly allow training in the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) or the International Maritime Dangerous Goods (IMDG) Code.

RSPA recently adopted many of the United Nations Recommendations on the Transport of Dangerous Goods (U.N. Recommendations) in a final rule issued under Docket HM-181, Performance-Oriented Packaging Standards (55 FR 52402, 12/21/90). RSPA agrees with commenters who suggested that training based on the U.N. Recommendations, as set forth in the IMDG Code and the ICAO Technical Instructions be accepted. Therefore, § 172.704 is modified to allow training based on either the ICAO Technical Instructions or the IMDG Code, as a substitute for that training directly required in the Hazardous Materials Regulations, when their use is authorized in 49 CFR 171.11 or 171.12 and such training complies with this final rule.

Federal-State Relationship

In the preamble to the NPRM, RSPA stated that it intended to restrict its preemption of State law to the minimum level necessary to achieve the objectives of the Hazardous Materials Transportation Act (HMTA) and the HMR. RSPA stated that it viewed the proposed training requirements as minimum requirements, and, in § 172.701, proposed to allow a State to impose more stringent training requirements on motor vehicle drivers only if its greater requirements do not directly conflict with the HMR requirements and apply only to individuals domiciled in that State.

Several organizations with drivers "domiciled" in over 30 States contend that if 30 or more States each adopt non-conflicting, but different training requirements, the organizations could be required to develop over 30 different training programs. These organizations recommend that States have non-conflicting training requirements applicable only to intrastate drivers. Intrastate applicability could be consistent with current DOT regulations and would clearly communicate that State requirements are not applicable to interstate operators.

Similar comments were received from smaller organizations. These organizations believe that § 172.701 gives the individual States too much latitude in promulgating rules for "additional" training, and increases the possibility that RSPA would be inundated with requests for inconsistency rulings by allowing the States such broad power. Commenters strongly support maximum uniformity and predict that inconsistent State training requirements will not enhance safety and will, in fact, be counterproductive.

Although the preemption language does allow States to impose more stringent requirements on drivers of vehicles transporting hazardous materials by highway, it is not an unlimited authority. The language recognizes the traditional regulation by States of their own resident drivers, particularly through drivers' licensing requirements and procedures. However, the language does not authorize States to impose requirements on non-residents and also does not authorize other governmental agencies to impose requirements. Furthermore, State requirements are limited to those which do not conflict with the HMR. RSPA, therefore, is retaining the proposed language because it represents an appropriate balancing of the interests of the States and the transportation industry.

In addition, the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) has imposed new requirements. Section 105(a)(4) of the HMTA, as amended by the HMTUSA, preempts any non-Federal (i.e., State, political subdivision, or Indian tribe) law or regulation concerning certain "covered subjects" unless the non-Federal requirement is "substantively the same" as the Federal law or regulation on that subject. The "covered subjects" are:

1. Designation, description, and classification of hazardous materials;
2. Packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
3. Preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;
4. Written notification, recording, and reporting of the unintentional release of hazardous materials in transportation;
5. Design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a February 28, 1991, final rule (56 FR 8616), RSPA added this new preemption standard to 49 CFR 107.202 to mirror the statute. Section 105(a)(5) of the HMTA, as amended by the HMTUSA, provides that if DOT issues a regulation concerning any of the covered subjects after the date of enactment of the HMTUSA (November 16, 1990), DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance.

To the extent that the requirements of this final rule involve any covered subjects, States, political subdivisions, or Indian tribes may only establish, maintain, and enforce laws, regulations, or other requirements concerning such subjects if they are substantively the same as the requirements in this final rule. RSPA has determined that the effective date of Federal preemption for these requirements will be April 1, 1993.

Suggested Special Training for Drivers of Radioactive Materials

Representatives from several Western States requested that RSPA develop special training for drivers transporting radioactive materials in mountainous regions and during periods of inclement weather. The States were supportive of RSPA's proposed driver training requirements, but recommended that increased emphasis be developed for driving under unusual conditions.

The Western Interstate Energy Board offered a synopsis of what the States would like developed. The Board wrote, "drivers should not encounter their first steep mountain grade or blizzard while transporting radioactive or other hazardous materials. The [Board] believes that DOT's proposed amendments to the driver training rules for hazardous materials should be expanded to require driver training in all types of terrain and in all types of weather conditions. Drivers should be trained to recognize when adverse conditions make it unsafe to continue driving and should know how to find a safe parking area to await improved conditions."

RSPA supports measures that will improve the safe transportation of hazardous materials. Accordingly, § 177.816(a)(3) is revised to include a provision that requires instruction on the dangers associated with conditions that a driver might encounter (e.g., blizzards, mountainous terrain, high winds).

Testing Requirements

In the NPRM, RSPA asked for comments regarding the need for testing requirements to ensure that persons covered by the provisions of this final rule were properly trained (54 FR 31147). RSPA received a number of comments in response to the testing question.

Although a few commenters suggested that training can be properly verified only through the use of a testing procedure, the vast majority of commenters supported RSPA's contention in the NPRM that the determination to administer a test is better left to the discretion of the employer. Section 106(b)(6) of HMTA requires that each hazmat employer certify that its hazmat employees are trained and have been tested in their respective transportation areas of responsibility. It is RSPA's position that the diversity of job functions covered by this final rule makes it impractical to develop specific requirements for testing all categories of employees to ensure they have been properly trained. There are no detailed testing procedures specified in this final rule. However, to satisfy section 106(b)(6) of HMTA, § 172.704(d)(5) of this final rule requires the employer to provide a record which includes certification that the hazmat employee has received training and has been tested.

Recordkeeping Requirements

Many comments were received regarding the proposal that a record of training, containing the name and signature of the person receiving the training and the name and signature of the individual providing the training, be maintained by the employer. Comments received indicate that a recordkeeping regulation requiring signatures would prevent the use of computerized recordkeeping systems maintained by many large companies.

Other comments addressed the proposed requirement that the training record be maintained for the duration of the employee's employment and for 90 days thereafter. Various organizations have suggested that only the most current record be retained and that records be maintained only for 90 days after an employee last worked in a hazardous materials job function.

After a review of the comments, RSPA agrees that the signature requirement proposed in the NPRM is not necessary to assure accurate records and could prohibit the use of computerized record systems. Accordingly, the requirements for signatures proposed in the NPRM for § 172.704(c) (1) and (4) are removed from this final rule. RSPA also agrees with commenters who suggested that only the most recent training record and certification be required to be kept. Section 172.704(d) is revised to require a record certifying each hazmat employee's current training, inclusive of the preceding two years, be created and retained by the hazmat employer for as long as the hazmat employee is employed by that employer under the definition in § 171.8 for hazmat employee, and for a period of 90 days thereafter.

Requests for Exclusion

The NPRM proposed that persons must be trained if they perform functions such as inspecting or testing specification packagings or representing, marking, certifying, selling or offering packagings as meeting the requirements of the HMR, or an exemption issued under the HMR. Several packaging manufacturers and trade associations commented on the proposed language in § 172.702(b)(10). Specifically, these commenters requested clarification of whether the proposed rule was meant to apply to container manufacturers, and some suggested that they be excluded from the training requirements.

Section 103 of the HMTA defines both "hazmat employee" and "hazmat employer". As discussed above, based upon these definitions and the NPRM, this final rule applies to a hazmat employee who repairs, modifies, reconditions, or tests containers, drums, or packagings represented for use in the transportation of hazardous materials. Therefore, RSPA has determined that container manufacturers are not excepted from the training requirements. However, this final rule does not require such employees to have safety training if they perform no other hazardous materials job function.

In addition to the packaging industry, requests for exclusion from this rule also

came from small quantity shippers, agricultural concerns, and some members of the maritime industry. RSPA has limited discretion under the HMTA. If an employer meets the definition of a "hazmat employer," that employer must train all of its employees who meet the definition of a "hazmat employee." In any case, RSPA does not believe exclusions are warranted. The small quantity shipper, agricultural employee, or maritime employee who handles hazardous materials has as much need to be trained as any other hazmat employee and, historically, has been required to be trained under the existing HMR training requirements.

Recommendations That a Supplemental Notice Be Developed

Several commenters, including the Steel Shipping Container Institute, IMC Fertilizer, Inc., the Hazardous Materials Advisory Council (HMAC), and PPG Industries, Inc., requested that RSPA develop a supplemental NPRM before proceeding to a final rule. These commenters based their requests on the large number of questions that RSPA asked in the preamble of Docket HM-126F and indicated a belief that some aspects of the NPRM, such as "in proximity" and the DOT/OSHA/EPA interface, were important enough to warrant further public consideration and comment. RSPA believes that the issues raised by and during this rulemaking have been adequately addressed in the NPRM, comments thereto, and in our evaluation of the merits of those comments, and that a supplemental NPRM is not warranted.

V. Provisions of this Final Rule

The purpose of this rulemaking is to ensure that each hazmat employer trains its hazmat employees regarding safe loading, unloading, handling, storing, and transporting of hazardous materials and emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials. After completion of training, each hazmat employer must certify, with appropriate documentation, that each hazmat employee received training and was tested on appropriate areas of responsibility. By requiring enhanced training, RSPA intends to increase a hazmat employee's awareness of safety considerations and regulatory requirements, thereby reducing the occurrence of hazardous materials incidents caused by human error.

To achieve these requirements, there are four categories of training. The first three categories apply to all modes of transportation while the fourth applies only to highway transportation and motor vehicle operators.

1. General Awareness/Familiarization Training

General awareness and familiarization training is intended to raise a hazmat employee's awareness of the HMR and the purpose and meaning of hazard communication requirements. Recognizing and identifying hazardous materials in the work place will be the result. In the case of employees who recondition or test packagings, such training will increase their awareness of the importance of the functions they perform. All hazmat employees must receive this training.

2. Function-specific Training

Function-specific training is intended to teach the necessary knowledge, skills, and abilities for an individual's job function. For example, a hazmat employee responsible for executing hazardous materials shipping papers will receive training on Subpart C of Part 172, including any applicable modal shipping paper requirements.

3. Safety Training

Safety training is for hazmat employees who handle or transport packagings containing hazardous materials during the course of transportation (e.g., packers and warehouse workers) and persons who have the potential for exposure to hazardous materials as a result of a transportation accident (e.g., drivers or members of a train crew). This training provides information concerning the hazards posed by materials in the work place, under normal conditions or in likely accident scenarios, and includes appropriate personal protection measures and, if applicable, how to use emergency response information, methods, and procedures for avoiding accidents, and any remedial actions necessary after a release of hazardous materials. This training is not intended to satisfy the training needs and requirements for hazmat employees whose primary responsibilities involve emergency response (see 29 CFR 1910.120). Rather, it is intended to address those employees who may have limited responsibilities for emergency response, such as notifying others of the emergency, using fire extinguishers, or taking immediate actions to mitigate the effects of an unintentional release of hazardous materials.

4. Driver Training

There are far more shipments of hazardous materials by motor vehicle and, correspondingly, more incidents involving the release of hazardous materials in the highway mode of transportation than for the rail, water, and air modes combined. Improved training of drivers has the potential for making significant gains in accident avoidance and accident mitigation. Consequently, drivers must be given not only general awareness/familiarization, function-specific and safety training, but also training on the safe operation of the motor vehicle which they operate or intend to operate and the applicable requirements of the Federal Motor Carrier Safety Regulations.

This final rule addresses broad subject areas in which training is to be received. With the exception of cargo tank and portable tank operations, detailed content of training is not specified. RSPA has intentionally made the requirements in this final rule as broad and objective as is practicable to accommodate training programs and materials currently used in both the public and private sectors. This approach provides the necessary latitude to both sectors for the development of effective training programs and/or materials. It is RSPA's position that responsible hazmat employers, either individually or through industry associations, are better able to determine the training needs of their employees. The responsibility for ensuring that the level of training is adequate and appropriate for each hazmat employee is that of the employer; therefore, no attempt has been made to specify the level and duration of training or testing. In addition, it is important to note that DOT does not intend to review or certify training programs for pre-approval purposes.

Because of the unique characteristics of cargo tank motor vehicles and motor vehicles transporting portable tanks, and because of the potential risks involved in transporting bulk cargos, RSPA regards special training requirements for drivers engaged in such operations as essential to the public safety. Therefore, this final rule requires in-depth training for drivers of this safety-sensitive class of vehicles that includes the safe operation of motor vehicles and the applicable requirements of the Federal Motor Carrier Safety Regulations. RSPA recognizes that compliance with the current requirements for a CDL with a tank vehicle endorsement may satisfy these special training requirements for this class of vehicle.

While responsibility for providing training would remain with the employer, the required training could be

provided by company training programs, outside training firms or consultants, Federal or State agencies, colleges and universities, or any other type of organization offering training that meets the objective requirements of this final rule. Examples of available training courses are provided later in this preamble.

RSPA is also requiring that employers develop and maintain a record which reflects the beginning and end of the required training for each employee. This requirement is necessary to verify compliance with training requirements.

Enforcement of the proposed training regulations pertaining to carriers will remain the primary responsibility of the various modal administrations. Each modal administration plans to ascertain compliance with training requirements when it conducts safety and compliance reviews of individual carriers. If it is determined that a carrier is not in compliance with the training requirements, appropriate action will be taken.

VI. Training Sources

Training material and instruction that may be used to satisfy some or all of the requirements of this final rule are available from a variety of sources. In the following sections we have listed examples of some common training sources. The sources listed are examples only and are not all-inclusive, nor are they required to be used to satisfy the requirements of this final rule.

International Organizations

Under § 172.702 of this final rule, employees in air transportation may be trained in the ICAO Technical Instructions if their functions are covered wholly by the ICAO regulations. Any training that meets the requirements set forth in § 172.704 of this final rule is acceptable.

As an aid to users of the ICAO Technical Instructions, ICAO has developed a dangerous goods training program that consists of six booklets that are arranged on a functional basis. Functional training areas covered include shippers and packers, cargo agents, operator's cargo acceptance staff, load planners and cargo handlers, flight crewmembers, and passenger handling staff and flight attendants. These training booklets are available from ICAO through various worldwide offices.

RSPA believes that the development of a training program requiring the use of the ICAO booklets would, for certain employees, satisfy some, if not all, the requirements of this final rule.

Federal Government

A number of Federal agencies offer training in hazardous materials transportation to eligible persons. Available training sources include in-residence schools, on-site instruction, and training materials that are available to the general public.

The Department of Defense offers many training courses to Federal employees and eligible civilian contract personnel. Schools such as the Army's Defense Ammunition School in Savanna, Illinois, the Transportation School at Ft. Eustis, VA, and the Joint Military Packaging Training Center at Aberdeen Proving Ground, Maryland, all offer specialized hazardous materials transportation training courses.

RSPA offers extensive hazardous materials transportation training. Its Transportation Safety Institute in Oklahoma City, OK, offers both resident and remote hazardous materials training for Federal, State and local government employees, and industry in all modes of transportation.

RSPA has also developed a number of training modules that are available to the general public in all 50 States, the Commonwealth of Puerto Rico, and U.S. territories. These modules consist of workbooks and audio/visual presentations that cover different subject areas of the HMR and can be used to help satisfy the requirements of this final rule. The first six modules cover the basics of the HMR, and include:

The Hazardous Materials Table
Shipping Papers
Packaging
Marking and labeling
Placarding
Carriers

For information on obtaining training modules from private sources call RSPA's electronic bulletin board, the Hazardous Materials Information Exchange (HMIX), on 1-800-PLANFOR or via data line on 708-972-3275. Additional modules are being developed to address specialized areas such as cargo tanks and hazardous wastes.

State and Local Governments

Various State and local governments provide, to eligible personnel, hazardous materials training that can help satisfy the requirements of this final rule. Like their Federal counterparts, State and local trainers provide both resident and remote instruction. For example, the State of Maryland, through its Department of Transportation, offers hazardous materials training to State and other eligible employees. The Port Authority of New York and New Jersey offers similar classes.

On a more localized level, organizations such as the Contra Costa County, California, Office of Emergency Services and the Bucks County, Pennsylvania, Emergency Services Training Center offer hazardous materials transportation training. Training is also available from various colleges and universities throughout the United States.

Private Sources

In addition to governmental training sources, a number of private organizations offer training courses to the general public. Some of these private firms provide training through seminars in cities across the United States. Others provide consulting services and training in-house at company facilities.

The Hazardous Materials Advisory Council (HMAC) is an international, non-profit membership organization involved in promoting safety and regulatory compliance in the transportation of hazardous materials. HMAC offers the community a wide variety of publications and special reports, each dealing with critical regulatory, legislative, and safety issues affecting hazardous materials transportation. Regular conferences and special programs present leading experts to speak about domestic and international hazardous materials transportation regulations and emerging issues. Additionally, HMAC's training programs provide a thorough understanding of U.S. and international regulations governing the transportation of hazardous materials. The expertise of the HMAC and its members was utilized in the development of the DOT Hazardous Materials Transportation training modules.

Most of these private training firms and their schedule of presentations are listed in various trade magazines. RSPA's electronic bulletin board, the Hazardous Materials Information Exchange (HMIX), lists training offered by private organizations. The HMIX list may be accessed by calling the data telephone number 708-972-3275 or for assistance 1-800-PLANFOR.

VII. Section-by-Section Review

A. Part 171; General Information, Regulations, Definitions

Section 171.8. Definitions are added for "hazmat employee" and "hazmat employer."

B. Part 172; Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements

Part 172. A new Subpart H—Training, including §§ 172.700 through 172.704, is added and the title of part 172 is revised to reflect training requirements.

Section 172.700. Section 172.700 is added, identifying the purpose of training requirements.

Section 172.701. Section 172.701 is added to emphasize that RSPA's training requirements are minimum requirements. The section also authorizes a State to impose more stringent training requirements on drivers if those requirements do not conflict with the HMR and apply only to drivers domiciled in that State.

Section 172.702. The requirements contained in this section apply to persons meeting the definition of a "hazmat employee." Although employers are responsible for ensuring that their employees are properly trained, it is acceptable for an employer to use the services of an employee on loan from another company, a transfer employee, or any other employee who had received the required hazardous materials transportation training from another source provided that the employer verifies that training has been received. Retraining is not necessary if required training for the job functions performed has occurred during the preceding two-year cycle required by this final rule.

Section 172.704. This section specifies the kinds of training required; specifies the training period for current employees, new employees, and employees who change hazardous materials job functions; and specifies recurrent training be provided at least once every two years. A current record of each employee's training, inclusive of the preceding two years, must be maintained by the employer for the duration of the employee's employment in each applicable hazardous materials job function and for 90 days thereafter. The record of training must contain the name of the person receiving the training, the completion date of the training, a copy or location of the training material presented or a description of the training given, and the name of the person presenting the training. A current record of relevant training received from a previous employer or source may be used to satisfy training requirements.

C. Part 173—Shippers—General Requirements for Shipments and Packagings

Section 173.1. In § 173.1, paragraph (b) is revised to reflect the new requirements for training of persons involved in the shipment and transportation of hazardous materials.

D. Part 174—Carriage by Rail; Part 175—Carriage by Aircraft; and Part 176—Carriage by Vessel

Sections 174.7, 175.20, and 176.13. These sections are revised to specifically require employers to provide the training as required by the new subpart H of part 172. Section 176.13 also requires that the record of training of a crewmember of a vessel who is also a hazmat employee be kept on board the vessel while the crewmember is in service on board the vessel, as required by § 172.704(d).

E. Part 177—Carriage by Public Highway

Section 177.800. Section 177.800 is revised for clarity and to specify that employers must provide the training required in part 172 and the additional driver (operator) training required by part 177.

Section 177.816. This section is revised to specifically identify training, in addition to that required by subpart H of part 172, that must be provided to drivers of motor vehicles. Drivers must be provided training in requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 383, 387, and 390 through 399); operation of the motor vehicle that the driver will be operating, including vehicle characteristics; proper procedures regarding tunnels, bridges, and railroad crossings; vehicle controls, including safety and emergency equipment; requirements for attendance and parking; and any other aspect relative to the safe operation of the motor vehicle. In addition, specialized training requirements for cargo tank motor vehicle operators and drivers of motor vehicles containing portable tanks are contained in this section. To avoid duplication of the requirements of § 172.704, the requirement proposed in the NPRM for a separate special training record for drivers of vehicles that contain flammable cryogenic liquids has been removed.

Section 177.825. In § 177.825, paragraph (d) is revised to eliminate unnecessary duplication of training requirements. Paragraph (d)(1) is changed to refer the reader to the training requirements found in subpart H of part 172 and § 177.816. The requirement for employers of drivers transporting highway route controlled quantities of radioactive materials to place a copy of the record of training in the driver's qualification file has been removed so as not to duplicate the requirements in § 172.704. For these drivers, the requirements of paragraphs (d) (2) and (3) to have a copy of the record of training and a route plan in the drivers' possession remain unchanged.

Rulemaking Analysis and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this final rule is not a "major rule" under Executive Order 12291. However, it is a significant rule under DOT's Regulatory Policies and Procedures (44 FR 11034) because of public interest and safety implications. This final rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The Hazardous Materials Transportation Act provides that State and local requirements concerning certain "covered subjects" are preempted. This final rule implements the specific statutory mandate at the minimum level necessary to achieve the objectives of the statute. Furthermore, provision has been made for States to impose additional training requirements for motor vehicle drivers as long as these requirements do not conflict with the Federal regulations and are imposed only upon "drivers" domiciled in that State.

C. Regulatory Flexibility Act

The existing regulations require employers to train their employees. This final rule merely specifies in greater detail the frequency and content of the training and requires a record of training. These additional requirements should have minimal impact on hazmat employers, some of whom are small entities. Based on limited information concerning size and nature of entities affected by this final rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Under section 106(b)(7) of the HMTA, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this final rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171 through 177 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

2. In § 171.8, the following definitions are added, as indicated, in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Hazmat employee means a person who is employed by a hazmat employer and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle which transports hazardous materials in commerce. This term includes an individual, including a self-employed individual, employed by a hazmat employer who, during the course of employment:

(1) Loads, unloads, or handles hazardous materials;

(2) Tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packagings as qualified for use in the transportation of hazardous materials;

(3) Prepares hazardous materials for transportation;

(4) Is responsible for safety of transporting hazardous materials; or

(5) Operates a vehicle used to transport hazardous materials.

Hazmat employer means a person who uses one or more of its employees in connection with: transporting hazardous materials in commerce; causing hazardous materials to be transported or shipped in commerce; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous materials. This term includes an owner-operator of a motor vehicle which transports hazardous materials in commerce. This term also includes any department, agency, or instrumentality of the United States, a State, a political subdivision of a State, or an Indian tribe engaged in an activity described in the first sentence of this definition.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The heading of part 172 is revised to read as set forth above.

4. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

5. A new subpart H is added to part 172 to read as follows:

Subpart H—Training

Sec.

Subpart H—Training

§ 172.700 Purpose and scope.

(a) *Purpose.* This subpart prescribes requirements for training hazmat employees.

(b) *Scope.* Training as used in this subpart means a systematic program that ensures a hazmat employee has familiarity with the general provisions of this subchapter, is able to recognize and identify hazardous materials, has knowledge of specific requirements of this subchapter applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures (see § 172.704).

(c) *Modal-specific training requirements.* Additional training requirements for the individual modes of transportation are prescribed in parts 174, 175, 176, and 177 of this subchapter.

§ 172.701 Federal/State relationship.

This subpart and the parts referenced in § 172.700(c) prescribe minimum training requirements for the transportation of hazardous materials. For motor vehicle drivers, however, a State may impose more stringent training requirements only if those requirements—

(a) Do not conflict with the training requirements in this subpart and in part 177 of this subchapter; and

(b) Apply only to drivers domiciled in that State.

§ 172.702 Applicability and responsibility for training.

(a) A hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements prescribed in this subpart.

(b) A hazmat employee who performs any function subject to the requirements of this subchapter may not perform that function unless trained in accordance with the requirements prescribed in this subpart. It is the duty of each hazmat employer to comply with the applicable requirements of this subchapter and to thoroughly instruct each hazmat employee in relation thereto.

(c) Training may be provided by the hazmat employer or other public or private sources.

§ 172.704 Training requirements.

(a) Hazmat employee training shall include the following:

(1) *General awareness/familiarization training.* Each hazmat employee shall receive general awareness/familiarization training designed to provide familiarity with the requirements of this subchapter and to

enable the employee to recognize and identify hazardous materials consistent with the hazard communication standards of this subchapter.

(2) *Function-specific training.* (i) Each hazmat employee shall receive function-specific training concerning requirements of this subchapter which are specifically applicable to the functions the employee performs.

(ii) Training conducted by hazmat employers, as necessary, to comply with, and when subject to, the requirements of the ICAO Technical Instructions or the IMDG Code, as authorized in §§ 171.11 and 171.12 of this subchapter, respectively, may be used, when appropriate, to the extent they serve as a substitute for the requirements of this section.

(3) *Safety training.* Each hazmat employee shall receive safety training concerning—

(i) Emergency response information required by subpart G of part 172;

(ii) Measures to protect the employee from the hazards associated with hazardous materials to which they may be exposed in the work place, including specific measures the hazmat employer has implemented to protect employees from exposure; and

(iii) Methods and procedures for avoiding accidents, such as the proper procedures for handling packages containing hazardous materials.

(b) *OSHA or EPA Training.* Training conducted by employers to comply with the hazard communication programs required by the Occupational Safety and Health Administration (OSHA) of the Department of Labor (29 CFR 1910.120) or the Environmental Protection Agency (EPA) (40 CFR 311.1), to the extent that training addresses the training specified in paragraph (a) of this section, may be used to satisfy the training requirements in paragraph (a) of this section, in order to avoid unnecessary duplication of training.

(c) *Initial and recurrent training.*—(1) *Initial training.* Each hazmat employer shall train each hazmat employee as follows:

(i) Training for a hazmat employee employed on or before November 15, 1992, shall be completed prior to April 1, 1993.

(ii) Training for a hazmat employee employed after November 15, 1992, shall be completed within 90 days after employment.

(iii) A hazmat employee who changes hazardous materials job functions shall complete training in the new job function(s) within 90 days after the change.

(iv) A hazmat employee described in paragraph (c)(1) (ii) or (iii) of this section, may perform new hazardous materials job functions prior to the completion of training provided the employee performs those functions under the supervision of a properly trained and knowledgeable hazmat employee.

(2) *Recurrent Training.* A hazmat employee shall receive the training required by this subpart at least once every two years.

(3) *Relevant Training.* Relevant training received from a previous employer or other source may be used to satisfy the requirements of this subpart provided a current record of training is obtained from hazmat employees' previous employer.

(4) *Compliance.* Each hazmat employer is responsible for compliance with the requirements of this subchapter regardless of whether the training required by this subpart has been completed.

(d) *Recordkeeping.* A record of current training, inclusive of the preceding two years, in accordance with this subpart shall be created and retained by each hazmat employer for each hazmat employee for as long as that employee is employed by that employer as a hazmat employee and for 90 days thereafter. The record shall include:

(1) The hazmat employee's name;

(2) The most recent training completion date of the hazmat employee's training;

(3) A description, copy, or the location of the training materials used to meet the requirements in paragraph (a) of this section;

(4) The name and address of the person providing the training; and

(5) Certification that the hazmat employee has been trained and tested, as required by this subpart.

(e) *Limitation.* A hazmat employee who repairs, modifies, reconditions, or tests packagings as qualified for use in the transportation of hazardous materials, and who does not perform any other function subject to the requirements of this subchapter, is not subject to the safety training requirement of paragraph (a)(3) of this section.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

7. In § 173.1, paragraph (b) is revised to read as follows:

§ 173.1 Purpose and scope.

* * * * *

(b) A shipment of hazardous materials that is not prepared in accordance with this subchapter may not be offered for transportation by air, highway, rail, or water. It is the responsibility of each hazmat employer subject to the requirements of this subchapter to ensure that each hazmat employee is trained in accordance with the requirements prescribed in this subchapter. It is the duty of each person who offers hazardous materials for transportation to instruct each of his officers, agents, and employees having any responsibility for preparing hazardous materials for shipment as to applicable regulations in this subchapter.

* * * * *

PART 174—CARRIAGE BY RAIL

8. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

9. Section 174.7 is revised to read as follows:

§ 174.7 Compliance and training.

(a) Unless this subchapter specifically provides that another person is to perform a particular duty, each carrier, including a connecting carrier, shall perform the duties specified and comply with all applicable requirements of this part and shall thoroughly instruct hazmat employees in relation thereto.

(b) A carrier may not transport a hazardous material by rail unless each of its hazmat employees involved in that transportation is trained as required by subpart H of part 172 of this chapter.

PART 175—CARRIAGE BY AIRCRAFT

10. The authority citation for part 175 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

11. Section 175.20 is revise to read as follows:

§ 175.20 Compliance and training.

(a) Unless this subchapter specifically provides that another person shall perform a particular duty, each operator shall comply with all applicable requirements in parts 106, 171, 172, and 175 of this chapter and shall ensure each of its hazmat employees receive training in relation thereto. (See also 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333.)

(b) A carrier may not transport a hazardous material by aircraft unless

each of its hazmat employees involved in that transportation is trained as required by subpart H of part 172 of this subchapter.

PART 176—CARRIAGE BY VESSEL

12. The authority citation for part 176 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, App. A to part 1.

13. Section 176.13 is revised to read as follows:

§ 176.13 Responsibility for compliance and training.

(a) Unless this subchapter specifically provides that another person shall perform a particular duty, each carrier shall perform the duties specified and comply with all applicable requirements in this part and shall ensure its hazmat employees receive training in relation thereto.

(b) A carrier may not transport a hazardous material by vessel unless each of its hazmat employees involved in that transportation is trained as required by subpart H of part 172 of this subchapter.

(c) The record of training required by § 172.704(c) of this subchapter for a crewmember who is a hazmat employee subject to the training requirements of this subchapter must be kept on board the vessel while the crewmember is in service on board the vessel.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

14. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

15. Section 177.800 is revised to read as follows:

§ 177.800 Purpose and scope of this part and responsibility for compliance and training.

(a) *Purpose and scope.* This part prescribes requirements, in addition to those contained in parts 171, 172, 173, 178 and 180 of this subchapter, that are applicable to the acceptance and transportation of hazardous materials by private, common, or contract carriers by motor vehicle.

(b) *Responsibility for compliance.* Unless this subchapter specifically provides that another person shall perform a particular duty, each carrier, including a connecting carrier, shall perform the duties specified and comply with all applicable requirements in this part and shall ensure its hazmat employees receive training in relation thereto.

(c) *Responsibility for training.* A carrier may not transport a hazardous material by motor vehicle unless each of its hazmat employees involved in that transportation is trained as required by this part and subpart H of part 172 of this subchapter.

16. Section 177.816 is revised to read as follows:

§ 177.816 Driver training.

(a) In addition to the training requirements of § 177.800, no carrier may transport, or cause to be transported, a hazardous material unless each hazmat employee who will operate a motor vehicle has been trained in the applicable requirements of 49 CFR parts 383, 387, 390 through 399 and the procedures necessary for the safe operation of that motor vehicle. Driver training shall include the following subjects:

(1) Pre-trip safety inspection;

(2) Use of vehicle controls and equipment, including operation of emergency equipment;

(3) Operation of vehicle, including turning, backing, braking, parking, handling, and vehicle characteristics including those that affect vehicle stability, such as effects of braking and curves, effects of speed on vehicle control, dangers associated with maneuvering through curves, dangers associated with weather or road conditions that a driver may experience (e.g., blizzards, mountainous terrain, high winds), and high center of gravity;

(4) Procedures for navigating tunnels, bridges, and railroad crossings;

(5) Requirements pertaining to attendance of vehicles, parking, smoking, routing, and incident reporting; and

(6) Loading and unloading of materials, including—

(i) Compatibility and segregation of cargo in a mixed load;

(ii) Package handling methods; and

(iii) Load securement.

(b) *Specialized requirements for cargo tanks and portable tanks.* In addition to the training requirement of paragraph (a) of this section, each person who operates a cargo tank or a vehicle with a portable tank with a capacity of 1,000 gallons or more must receive training applicable to the requirements of this subchapter and have the appropriate State-issued commercial driver's license required by 49 CFR part 383. Specialized training shall include the following:

(1) Operation of emergency control features of the cargo tank or portable tank;

(2) Special vehicle handling characteristics, including: high center of gravity, fluid load subject to surge, effects of fluid-load surge on braking, characteristic differences in stability among baffled, unbaffled, and multi-compartmented tanks; and effects of partial loads on vehicle stability;

(3) Loading and unloading procedures;

(4) The properties and hazards of the material transported; and

(5) Retest and inspection requirements for cargo tanks.

(c) The training required by paragraphs (a) and (b) of this section:

(1) May be satisfied by compliance with the current requirements for a CDL with a tank vehicle or hazardous materials endorsement; and

(2) Must conform to the requirements of § 172.704 of this subchapter with respect to frequency and recordkeeping.

17. In § 177.825, paragraph (d) is revised to read as follows:

§ 177.825 Routing and training requirements for Class 7 (radioactive) materials.

* * * * *

(d) No person may transport a package of highway route controlled quantity of Class 7 (radioactive) materials, as defined in § 173.403(l) of this subchapter, on a public highway unless:

(1) The driver is trained as required by subpart H of part 172 of this subchapter and § 177.816.

(2) A copy of the record of training required by § 172.704 of this subchapter is in the immediate possession of the driver.

(3) The route plan required in paragraph (c) of this section is in the immediate possession of the driver and the motor vehicle is operated by the driver in accordance with the route plan.

* * * * *

Issued in Washington, D.C., on May 11, 1992, under authority delegated in 49 CFR Part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

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