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Monday
June 5, 1989

Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW., Washington, DC
RESERVATIONS: 202-523-5240

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture to the Under Secretary for Small Community and Rural Development and the Administrator of the Farmers Home Administration (FmHA) to include all of the authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949 (42 U.S.C. 1480(d)), as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628. This assignment of responsibility includes: Determining and referring matters to the Department of Justice for litigation; determining and referring matters to the General Counsel of the United States Department of Agriculture to perform such litigation; and contracting with attorneys in the private sector to perform such litigation. Such actions may be taken only with the concurrence of the General Counsel.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Cohen, Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447-5565.

SUPPLEMENTARY INFORMATION: Section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, amended section 510(d) of the Housing Act of 1949 (42 U.S.C. 1480(d)) to provide the Secretary with certain authority and discretion regarding the conduct of litigation under section 502 of the Housing Act of 1949, 42 U.S.C. 1472. Previously, authority to conduct litigation arising out of FmHA lending activities was vested exclusively in the Attorney General of the United States. The amendment gave the Secretary the discretion of having section 502 litigation activities conducted by the General Counsel of the United States Department of Agriculture, by attorneys with whom the Secretary contracts, or by the Attorney General of the United States.

The Secretary has determined that the authority of the Secretary under section 510(d) will be delegated to the Under Secretary for Small Community and Rural Development and further redelegated to the Administrator of the Farmers Home Administration. Pursuant to this delegation of authority, the Administrator of the Farmers Home Administration will have the discretion, with the concurrence of the General Counsel, to determine whether to assign cases to the Attorney General of the United States, to the General Counsel of the United States Department of Agriculture, or to private attorneys with whom he contracts. This delegation of authority would enable the Administrator of the Farmers Home Administration to perform out-of-court litigation support functions relating to such actions.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

2. Section 2.23 is amended by adding a new paragraph (a)(19) to read as follows:

§ 2.23 Delegations of authority to the Under Secretary for Small Community and Rural Development.

(a)

(19) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949 (42 U.S.C. 1480(d)), as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel.

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation.

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farmers Home Administration and representation by the attorneys will either accelerate the process by which a family or person eligible for assistance

under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

3. Section 2.70 is amended by adding a new paragraph (a)(34) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a)

(34) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628 (42 U.S.C. 1480(d)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel.

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions.

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farmers Home Administration and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

For Subpart C.
Date: May 26, 1989.

Clayton Yeutter,

Secretary of Agriculture.

For Subpart I:
Date: May 23, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89-13239 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-14-M

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 296]

Food Stamp Program; Quality Control Arbitration Process Technical Amendment

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends Food Stamp Program regulations pertaining to the quality control arbitration process. It limits the scope of arbitration to the issue or issues in dispute between the State agency and the Food and Nutrition Service (FNS) regional office concerning the quality control case findings. The intent of the rule is to enhance efficiency of the quality control arbitration process. Proposed regulations were published in the **Federal Register** on September 30, 1987 at 52 FR 36581. Comments were solicited through November 30, 1987 This final rulemaking takes the comments received into account. Readers are referred to the proposed regulations for a more complete understanding of this rule.

EFFECTIVE DATE: This final rule is effective July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be directed to Mr. Duane Maddox, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, (703) 756-3457

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this final rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has classified it as "not major. The rule will not have an annual effect on the economy of $100 million or more. This rule will have no effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612. G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This action does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 44 U.S.C. 3507

Background

On September 30, 1987 the Department issued a proposed rule to limit arbitration of cases where the Federal findings and State agency findings either agreed or disagreed to a review of the points within the Federal findings that the State agency disputes. Thirteen comments were received, nine from State agencies, two from local agencies, one from a legal service, and one from an association. Seven commenters supported the proposed change; five opposed it. The reasons for supporting the change were increased efficiency and fairness to the State agency. Those opposing the change cited decreased accuracy and also fairness to the State agency. One commenter opposed to an issue-only review was particularly concerned that circumstances may have been overlooked or misinterpreted earlier in the quality control process that the arbitrator could find which would minimize the effect of the issue being arbitrated.

The Department has considered all the comments received and recognizes that there is a major difference of opinion among those concerned. A number of commenters want to continue the current process of a review of the entire case. Others want the review to be limited to the specific point or points raised by the State agency, regardless of any other potential basis for adjusting the finding in the case. After consideration of the comments, the Department has decided to adopt the rule as it was proposed, with one

exception. If the arbitrator finds any mathematical errors in the computation sheet, he or she shall correct the mathematical error and adjust the allotment amount.

The Department understands the concerns of both sides in this issue. Further, the Department issued the proposed rule principally to address the situation of a large number of cases being submitted simultaneously concerning one point, for example a sampling procedure or an implementation date. The Department's efficiency in arbitration has been hampered in several instances by the conduct of full case reviews in such situations. The final rule will permit the Department to improve its efficiency in arbitration while at the same time providing the flexibility to correct mathematical errors which may not have been raised by State agencies.

Implementation

This rulemaking is effective (30 days after publication date). State agencies may opt for either an entire case review or an issue only review for all cases for which an arbitration request was submitted before the effective date, provided that the arbitration decision has not already been made.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedures, Food Stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 272 and 275 are amended as follows:

1. The authority citation for Parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(111) is added to read as follows:

§ 272.1 General terms and conditions.

(g) *Implementation.*

(111) *Amendment No. 296.* The provisions of Amendment 296 are effective July 5, 1989.

PART 275—PERFORMANCE REPORTING SYSTEM

3. Section 275.3 is amended by adding two sentences between the first and second sentences in paragraph (c)(4).

§ 275.3 Federal monitoring.

(c) *Validation of State Agency Error Rates.*

(4) *Arbitration* The arbitration review shall be limited to the point(s) within the Federal findings that the State agency disputes. However, if the arbitrator in the course of the review discovers a mathematical error in the computation sheet, the arbitrator shall correct the error while calculating the allotment.

Date: May 30, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89–13291 Filed 6–2–89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 668]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 668 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period June 4 through June 10, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 668 (§ 910.968) is effective for the period June 4 through June 10, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

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

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

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

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

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

This regulation is consistent with the California-Arizona lemon marketing policy for 1988–89. The Committee met publicly on May 31, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

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

and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.968 is added to read as follows:

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

§ 910.968 Lemon Regulation 668.

The quantity of lemons grown in California and Arizona which may be handled during the period June 4, 1989, through June 10, 1989, is established at 400,000 cartons.

Dated: June 1, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–13410 Filed 6–2–89; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89–060]

Importation of Horses from Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by removing the requirement that horses imported into the United States from Argentina be quarantined for not less than seven days. We are removing this quarantine requirement because we have determined that Venezuelan equine encephalomyelitis (VEE) does not exist in Argentina. This rule will allow horses imported into the United States from Argentina that meet all the requirements for importation, to qualify in most cases for a shortened quarantine period (usually three days) upon importation into the United States.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7885.

SUPPLEMENTARY INFORMATION:

Background

Regulations of the Animal and Plant Health Inspection Service (APHIS) on animal importations in 9 CFR Part 92 (referred to below as the regulations) prohibit or restrict the importation of horses that could introduce various diseases, including Venezuelan equine encephalomyelitis (VEE), into the United States.

On March 13, 1989, we published in the **Federal Register** (54 FR 10356–10357 Docket No. 88–162) a document proposing to amend § 92.11(d)(1)(i) of the regulations by eliminating the requirement that horses imported into the United States from Argentina undergo a quarantine of not less than seven days to prevent the introduction of VEE into the United States.

Comments on the proposal were required to be postmarked or received on or before April 12, 1989. We received two comments from members of the public in support of the proposal. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal without change as a final rule.

Effective Date

This final rule is made effective on the date of publication. The final rule relieves certain restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete these restrictions.

Executive Order 12291 and Regulatory Flexibility Act

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

This regulation will generally reduce the time that horses imported from Argentina must spend in quarantine at the port of arrival, and will, therefore, reduce the cost to importers of expenses related to this quarantine. The number of horses imported from Argentina annually is small compared with the total number of horses imported annually. In 1988, of 30,000 imported horses, approximately 890 were imported from Argentina. These importations involved several hundred individuals importing one or a few horses, with no importations of large groups of horses. Because horses imported from Argentina under this rule will usually be quarantined for no more than three days while test results are obtained, the main economic effect of this rule will be to save importers the costs of quarantining their horses four additional days, a savings of approximately $238 per horse.

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

Paperwork Reduction Act

The rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, we are amending 9 CFR Part 92 as follows:

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17 2.51, and 371.2(d).

§ 92.11 [Amended]

2. In § 92.11(d)(1)(i) the words "and except with respect to horses from Argentina, are added immediately following the word "Mexico,

Done in Washington, DC, this 30th day of May 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13240 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Parts 145 and 147

[Docket No. 89-049]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The National Poultry Improvement Plan (referred to below as the Plan) is a federal-state-industry voluntary program for the improvement of poulty breeding stock and hatchery products. This goal is achieved primarily through the prevention and control of certain poultry diseases. We are expanding the Plan to include a new "U.S. Sanitation Monitored, Turkeys" program for reducing Salmonella levels in turkey flocks and products. We are also amending certain provisions of Parts 145 and 147 in order to increase the effectiveness of the Plan's monitoring and testing procedures, and to keep the Plan current with the latest improvements in poultry disease technology.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA; Room 771; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782; 301-436-5777

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as the Plan) is a cooperative federal-state-industry mechanism for controlling poultry diseases by identifying states, flocks, hatcheries, and dealers that meet certain disease control standards. Customers then have the opportunity to purchase stock that are tested "clean" of certain diseases, or that are produced under disease-prevention requirements.

The Plan currently consists of a variety of programs to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary. However, flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program.

The regulations for this voluntary program are contained in 9 CFR Parts 145 and 147 (referred to below as "the regulations"). These provisions are amended from time to time to incorporate new scientific information and technologies within the Plan.

We published in the **Federal Register** on January 6, 1989 (54 FR 418-427 Docket No. 86-110), a proposal to amend the regulations by making the following changes:

1. Establish a new "U.S. Sanitation Monitored, Turkeys" program and emblem for turkey flocks and products.
2. Require annual examination, by State Inspectors, of all records pertaining to flocks maintained primarily for production of hatching eggs.
3. Lower the minimum age at which turkeys can be blood tested.
4. Change certain procedures for blood testing flocks and individual birds for pullorum-typhoid.
5. Expand and improve the sanitation and flock management requirements of the "U.S. Sanitation Monitored" program for egg-type chicken breeding flocks.
6. Authorize egg yolk testing as an alternative method of monitoring certain multiplier breeding flocks classified as "U.S. M. Gallisepticum Clean."
7 Expand procedures used to determine if a flock is infected with the Mycoplasma organism for which it was tested.
8. Disclaim liability for failure, on the part of users, to adhere to Occupational Safety and Health Administration (OSHA) standards for formaldehyde fumigation.

Our proposed amendments were consistent with recommendations approved by the voting delegates to the June 1986 and 1988 meetings of the Biennial National Plan Conferences. Participants at these meetings represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating states.

Comments

Our proposal invited the submission of written comments, which were required to be received or postmarked by February 6, 1989. We subsequently published another document in the **Federal Register** on March 8, 1989 (54 FR 9842, Docket No. 89-023) re-opening and extending the comment period until April 7 1989. We received eleven comments before the deadline. No commenter opposed the proposed rule, although three commenters suggested relatively minor changes to the rule, discussed below.

Section 145.23(d)—U.S. Sanitation Monitored Program Qualifications

One commenter suggested that proposed § 145.23(d)(1)(vi) be changed from requiring pullorum-typhoid antigen testing of 300 birds from each flock, to requiring testing of 300 birds from primary breeding flocks and 150 birds from multiplier flocks. The commenter suggested this sample size because it would be consistent with the present requirements for testing flocks for the "U.S. *M. Gallisepticum* Clean" program (§ 145.23(c)) and the "U.S. *M. Synoviae* Clean" program (§ 145.23(e)).

We are not making any change in response to this comment. The sample size of 300 birds was designed to ensure a 95 percent probability of detecting flocks infected with Salmonellosis at an incidence of 1 percent. Because the best presently available research indicates that Salmonellosis can occur in flocks at an incidence as low as 1 percent, while the incidence of *Mycoplasma gallisepticum* and *M. synoviae* in flocks infected with these organisms is usually much higher, we believe it is important to test for Salmonellosis at a rate of 300 birds per flock. If later experience in flock testing shows that the incidence of Salmonellosis is normally greater than 1 percent, we will consider reducing the 300 bird sample size.

One commenter noted, regarding the discussion in the Background section of the proposed rule concerning isolation of *S. enteritidis* from environmental samples, that environmental contamination can also result from contaminated feed containing incompletely pasteurized animal protein products either prior to mixing or in complete feed. We agree with this comment. Since the comment does not relate to the rulemaking language of the proposal, no change to the rule is being made.

One commenter requested that *S. enteritidis* antigen be approved for use in the tests required by § 145.23(d)(1)(vi). We proposed to require use of pullorum-typhoid antigen, which is as effective as *S. enteritidis* antigen in detecting infected birds, and which is available in a form allowing rapid whole blood plate tests. Since the tests are used only as a screening device to identify birds to necropsy, a simple and rapid test is desirable. Because no available *S. enteritidis* antigen test currently meets these criteria, no change is being made in response to this comment.

Pelletized Feed Manufacturing Standards

One commenter addressed the standards for pelletized feed fed to flocks, contained in §§ 145.23(d)(1)(ii)(A) and 145.43(f)(3)(i). These proposed sections contain cooking time, temperature, and pressure standards designed to destroy any *Salmonella* present during the feed pellet manufacturing process. The commenter suggested that a requirement be added to require that during manufacture, the feed mix must contain a minimum moisture content of 14.5 percent. The commenter stated that this moisture content is necessary to ensure that all *Salmonella* present are destroyed by the temperature, pressure, and cooking time standards contained in these sections.

We agree that maintaining a 14.5 percent moisture content during the pelletized feed manufacturing process is advisable to ensure destruction of *Salmonella*, and are changing these sections accordingly.

Miscellaneous

Several commenters made suggestions that were outside the scope of the proposed rule, some of which addressed other areas of the National Poultry Improvement Plan. These suggestions are appropriate for discussion at the next Biennial National Plan Conference meeting in 1990.

We have replaced the term "birth" with the more accurate term "hatching" at several places in the rule. We have also made minor editorial changes and corrections to the proposed rule.

Based on the rationale set forth in the proposal and in this document, we are adopting the proposal, with the changes discussed in this document, as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

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

The Plan is a cooperative Federal-state program. Participation is voluntary. Changes to provisions of this program are based on recommendations of the Biennial National Plan Conference, which included representatives of member states, hatcheries, dealers, flock owners, and breeders. Plan participants requested that we make amendments to the regulations to incorporate new technology and information within the Plan.

The amendments made in this document should not cause significant changes in the cost of producing or buying poultry and poultry products, or in the amount of poultry and poultry products marketed because:

1. The annual examination of all records pertaining to flocks maintained primarily for production of hatching eggs should enable Official State Agencies to identify more of the flocks that have incurred a possible disease exposure. This should increase the effectiveness of the annual on-site inspection program, but will neither increase nor decrease the number of inspections conducted.

2. Changing the minimum age for blood testing turkeys will permit testing one month earlier than under current rules, but will neither increase nor decrease the number of birds tested annually.

3. Amendments to certain of the Plan s testing and monitoring procedures incorporate new technology and research findings. These changes should increase effectiveness and permit use of alternative tests and monitoring procedures for diseases prevented and controlled by Plan programs.

4. Amendments to the provisions of the "U.S. Sanitation Monitored, Turkeys" program will result in a slight increase in producer costs for additional testing. However, these same amendments should result in a slight reduction in the egg and chick mortality for participating flocks. It is difficult to project the degree to which these new producer costs and savings will be offset, because the regulations allow flock owners to choose among testing and feed alternatives. Nevertheless, we are certain that net costs or savings resulting from the changes will be significant, in terms of overall production costs, and will not affect the wholesale or retail cost of poultry or poultry products.

5. Cost-benefits to producers who decide to participate in the new "U.S. Sanitation Monitored, Turkeys" program will also roughly balance out. Producers will incur a small additional cost for required sanitation measures (although many producers are already engaging in some or all of these sanitation practices). The primary purpose of these measures is to reduce the incidence of Salmonella in the flock, but reduced Salmonella levels should, in turn, result in a slight increase in the number of surviving eggs and poults. The experience of the turkey industry in Minnesota—where a "U.S. Sanitation Monitored, Turkeys" program has been underway for seven years—is that profits from the sale of the additional eggs and poults roughly equals the cost of the additional sanitation measures.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR Parts 145 and 147 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, National Poultry Improvement Plan, Poultry and poultry products.

Accordingly, 9 CFR Parts 145 and 147 are amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for Part 145 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17 2.51, and 371.2(d).

§ 145.1 [Amended]

2. The definitions in § 145.1 are placed in alphabetical order and the paragraph designations are removed.

3. Section 145.1 is amended by adding new definitions in alphabetical order to read as follows:

§ 145.1 Definitions.

Exposed (Exposure). Contact with birds, equipment, personnel, supplies, or any article infected with, or

contaminated by, communicable poultry disease organisms.

Fluff sample. Feathers, shell membrane, and other debris resulting from the hatching of poultry.

Infected flock. A flock in which an authorized laboratory has discovered one or more birds infected with a communicable poultry disease for which a program has been established under the Plan.

Midlay. Approximately 2–3 months after a flock begins to lay or after a molted flock is put back into production.

Program. Management, sanitation, testing, and monitoring procedures which, if complied with, will qualify, and maintain qualification for, designation of a flock, products produced from the flock, or a state by an official Plan classification and illustrative design, as described in § 145.10 of this part.

Reactor. A bird that has a positive reaction to a test, required or recommended in Parts 145 or 147 of this chapter, for any poultry disease for which a program has been established under the Plan.

Succeeding flock. A flock brought onto a premises during the 12 months following removal of an infected flock.

4. In § 145.10, a new paragraph (k) is added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

(k) *U.S. Sanitation Monitored, Turkeys.* (See § 145.43(f).)

5. Paragraph (b) of § 145.12 is revised to read as follows:

§ 145.12 Inspections.

(b) The records of all flocks maintained primarily for production of hatching eggs shall be examined annually by a State Inspector. On-site inspections of flocks and premises will be conducted if the State Inspector determines that a breach of sanitation, blood testing, or other provisions has occurred for Plan programs for which the flocks have or are being qualified.

6. Section 145.14 is amended as follows:

a. The introductory paragraph is revised.

b. Paragraph (a)(1) is revised and a new footnote number "1" is added.

c. Paragraph (a)(3) is amended by removing "Salmonella" and inserting "pullorum-typhoid"

d. Paragraph (a)(4) is removed and reserved.

e. Paragraph (a)(5) is amended by removing the last three sentences.

f. Paragraphs (a) (6) through (10) are redesignated as paragraphs (a) (7) through (11) respectively and a new paragraph (a)(6) and footnote 2 are added.

g. Newly redesignated paragraph (a)(8) is amended by removing "with Salmonella antigens of" and inserting "for pullorum-typhoid in"

h. Newly redesignated paragraph (a)(9) is revised.

i. Newly redesignated paragraph (a)(10) is amended by removing "upon which a Salmonella classification is based" and inserting "for pullorum-typhoid"

j. Footnote number "1" and the reference in paragraph (b)(1) are renumbered "3"

The amended provisions of § 145.14 read as follows:

§ 145.14 Blood testing.

Poultry must be more than 4 months of age when blood tested for an official classification; *Provided,* That turkey candidates may be blood tested at more than 12 weeks of age under Subpart D, while game birds may be blood tested under Subpart E when more than 4 months of age or upon reaching sexual maturity, whichever comes first. Blood samples for official tests shall be drawn by an Authorized Agent or State Inspector and tested by an authorized laboratory, except that the stained antigen, rapid whole-blood test for pullorum-typhoid may be conducted by an Authorized Agent or State Inspector. For Plan programs in which a representative sample may be tested in lieu of an entire flock, the minimum number tested shall be 30 birds per house, with at least 1 bird taken from each pen and unit in the house. All birds must be tested in houses containing fewer than 30 birds.

(a) *For Pullorum-Typhoid.* (1) The official blood tests for pullorum-typhoid shall be the standard tube agglutination test, the microagglutination test, the enzyme-labeled immunosorbent assay test (ELISA), or the rapid serum test for all poultry; and the stained antigen, rapid whole-blood test for all poultry except turkeys. The procedures for conducting official blood tests are set forth in §§ 147.1, 147.2, 147.3, and 147.5 of this chapter and referenced in footnote 3 of this section. Only antigens approved by the Department and of the polyvalent type shall be used for the rapid whole-blood test. All microtest antigens and enzyme-labeled immunosorbent assay reagents shall also be approved by the Department.[1]

(4) [Reserved]

(6) When reactors are found in serum or blood from any flock, or *S. pullorum* or *S. gallinarum* organisms are isolated by an authorized laboratory from baby poultry, or from fluff samples produced by hatching eggs, the infected flock shall qualify for participation in the Plan with two consecutive negative results to an official blood test named in paragraph (a)(1) of this section. A succeeding flock must be qualified for participation in the Plan s pullorum-typhoid program with a negative result to an official blood test named in paragraph (a)(1) of this section. Testing to qualify flocks for Plan participation must include the testing of all birds in infected and succeeding flocks for a twelve month period, and shall be performed or physically supervised by a State Inspector. If the State Inspector determines that a primary breeding flock has been exposed to *S. pullorum* or *S. gallinarum,*[2] the Official State Agency shall require:

(i) The taking of blood samples—performed by or in the presence of a State Inspector—from all birds on premises exposed to birds, equipment, supplies, or personnel from the primary breeding flock during the period when the State Inspector determined that exposure to *S. pullorum* or *S. gallinarum* occurred.[2]

The criteria and procedures for Department approval of antigens and reagents may be obtained from Veterinary Biologics, BBEP APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

In making determinations of exposure, the State Inspector shall evaluate both evidence proving that exposure occurred and circumstances indicating high probability of contacts with: infected wild birds; contaminated feed or waste; or birds, equipment, supplies, or persons from or exposed to flocks infected with *S. pullorum* or *S. gallinarum.*

(ii) The banding of all birds of these premises—performed or physically supervised by a State Inspector—in order to identify any bird that tests positive; and

(iii) The testing of blood samples at an authorized laboratory using an official blood test named in paragraph (a)(1) of this section.

(9) Poultry from flocks undergoing qualification testing for participation in the Plan, that have a positive reaction to an official blood test named in paragraph (a)(1) of this section, shall be evaluated for pullorum-typhoid infection. The Official State Agency shall select one or more of the following procedures to be used in each circumstance, based on a cost-benefit analysis involving evaluation of such factors as: the value of the reactors and flocks at risk; the necessity for preserving birds from scarce genetic lines; the need for a quick determination of disease existence; and the cost for each retesting option versus the total availability of funds (when the state provides retesting subsidies):

(i) Reactors shall be submitted to an authorized laboratory for bacteriological examination. If there are more than 4 reactors in a flock, a minimum of 4 reactors shall be submitted to the authorized laboratory; if the flock has 4 or fewer reactors, all of the reactors must be submitted. The approved procedure for bacteriological examination is set forth in § 147.11 of this chapter. When reactors are submitted to the authorized laboratory within 10 days from the date of reading an official blood test named in paragraph (a)(1) of this section, and the bacteriological examination fails to demonstrate pullorum-typhoid infection, the Official State Agency shall presume that the flock has no pullorum-typhoid reactors.

(ii) The serum specimen that produced the positive reaction shall be retested at an authorized laboratory in accordance with procedures set forth in § 147.1 of this chapter for the standard tube agglutination test, or in § 147.5 of this chapter for the microagglutination test for pullorum-typhoid. If the reaction to this retest is positive in dilutions of 1:50 or greater for the standard tube agglutination test, or 1:40 or greater for the microagglutination test, additional examination of the bird and flock will be performed in accordance with paragraph (a)(9)(i) or (a)(9)(iii) of this section.

(iii) the reactors shall be retested within 30 days using an official blood test named in paragraph (a)(1) of this section. If this retest is positive, additional examination of the reactors and flock will be performed in accordance with paragraph (a)(9)(i) of this section. During the 30-day period, the flock must be maintained under a security system, specified or approved by the Official State Agency, that will prevent physical contact with other birds and assure that personnel, equipment, and supplies that could be a source of pullorum-typhoid spread are sanitized.

§§ 145.23, 145.33, 145.43, 145.53 [Amended]

7 Paragraph (b)(2)(iii) of §§ 145.23, 145.33, 145.43, and 145.53 is revised as follows:

(b)

(2)

(iii) The flock is located on a premises where either no poultry or a flock not classified as U.S. Pullorum-Typhoid Clean were located the previous year; *Provided,* That an Authorized Agent must blood test up to 300 birds per flock, as described in § 145.14, if the Official State Agency determines that the flock has been exposed to pullorum-typhoid. In making determinations of exposure and setting the number of birds to be blood tested, the Official State Agency shall evaluate the results of any blood tests, described in § 145.14(a)(1) of this part, that were performed on an unclassified flock located on the premises during the previous year; the origins of the unclassified flock; and the probability of contacts between the flock for which qualification is being sought and (a) infected wild birds, (b) contaminated feed or waste, or (c) birds, equipment, supplies, or personnel from flocks infected with pullorum-typhoid.

8. Section 145.23 is further amended as follows:

a. Paragraph (d)(1)(i) is revised.

b. Paragraph (d)(1)(iii) is removed.

c. Paragraph (d)(1)(iv) is redesignated as paragraph (d)(1)(iii).

d. Paragraph (d)(1)(ii) is redesignated as paragraph (d)(1)(iv) and a new paragraph (d)(1)(ii) and footnote 4 are added.

e. Paragraph (d)(1)(v) is redesignated as paragraph (d)(1)(vii) and revised, and a new paragraph (d)(1)(v) is added.

f. Paragraph (d)(1)(vi) is revised and and redesignated as paragraph (d)(1)(viii), and a new paragraph (d)(1)(vi) is added.

g. A new paragraph (d)(1)(ix) is added.

h. Paragraph (d)(2) is removed, and paragraphs (d) (3) and (4) are redesignated as paragraphs (d) (4) and (5), respectively.

i. New paragraphs (d) (2) and (3) are added.

The amended provisions of § 145.23 read as follows:

§ 145.23 Terminology and classification; flocks and products.

(d) *U.S. Sanitation Monitored.*

(1)

(i) The flock originated from a U.S. Sanitation Monitored flock, or meconium from the chick boxes and a sample of chicks that died within 7 days after hatching are examined bacteriologically for salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(ii) All feed fed to the flock shall meet the following requirements:

(A) Pelletized feed shall contain either no animal protein or only animal protein products produced under the Animal Protein Products Industry (APPI)/ Education Salmonella Reduction Program [4] a minimum moisture content of 14.5 percent, and must have been subjected to temperatures of 190 degrees F or above, 165 degrees F for at least 20 minutes, or 184 degrees F and 70 lbs. of pressure during the manufacturing process;

(B) Mash feed shall contain either no animal protein or only animal protein products supplement manufactured in pellet form and crumbled.

(v) Environmental samples shall be collected from the flock by an Authorized Agent, as described in § 147.12 of this chapter, when the flock is more than 4 months of age. The samples shall be examined bacteriologically for group D salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(vi) Blood samples from 300 birds shall be officially tested with pullorum-typhoid antigen when the flock is a minimum of more than 4 months of age. All birds with positive or inconclusive reactions, up to a maximum of 25 birds, shall be submitted to an authorized laboratory and examined for the presence of group D salmonella, as described in § 147.11 of this chapter.

Documents concerning the APPI/Education Salmonella Reduction Program may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 771; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

Cultures from positive samples shall be serotyped.

(vii) Hatching eggs are collected as quickly as possible and are handled as described in § 147.22 of this chapter and are sanitized or fumigated as described in § 147.25(a) of this chapter.

(viii) Hatching eggs produced by the flock are incubated in a hatchery that is in compliance with the recommendations in §§ 147.23 and 147.24(b) of this chapter, and sanitized either by a procedure approved by the Official State Agency or as prescribed in § 147.25 of this chapter.

(ix) A minimum of 30 dead-germ eggs, taken monthly from randomly selected hatches from the flock, shall be examined bacteriologically for group D salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(2) A flock shall not be eligible for this classification if *Salmonella enteritidis* (*S. enteritidis* ser Enteritidis) is isolated from a sample collected from the flock in accordance with paragraph (d)(1)(vi) or (d)(1)(ix) of this section.

(3) A flock shall be eligible for this classification if *Salmonella enteritidis* (*S. enteritidis* ser Enteritidis) is isolated from an environmental sample collected from the flock in accordance with paragraph (d)(v) of this section: Provided, That testing is conducted in accordance with paragraphs (d)(1)(vi) and (d)(1)(ix) of this section each 30 days and no positive samples are found.

§§ 145.24, 145.34, 145.44, and 145.54 [Amended]

9. Paragraph (a)(1)(ii) of §§ 145.24, 145.34, 145.44, and 145.54 is amended by removing "found in waterfowl" and inserting "found within the preceding 24 months in waterfowl" and by removing the phrase "for a period of two years"

10. Section 145.43 is amended as follows:

a. Paragraph 145.43(c)(1) is amended by removing "§ 145.14(b). and inserting "§145.14(b): *Provided,* That to retain this classification, a minimum of 30 samples from male flocks and 60 samples from female flocks shall be retested at 28–30 weeks of age.

b. Paragraphs (c)(1), (d)(1)(i), and (e)(1) and (3) of § 145.43 are amended by removing the phrase "4 months of age" and inserting the phrase "12 weeks of age"

c. The footnote and the reference in paragraph (d)(2) of § 145.43 are renumbered "5" and the newly designated footnote 5 is revised.

d. A new paragraph (f) and footnote 6 are added.

The amended provisions of § 145.43 read as follows:

§ 145.43 Terminology and classification; flocks and products.

(d)

(2)

[5] See footnote 3 to § 145.14(b)(1) of this part.

(f) *U.S. Sanitation Monitored, Turkeys.* A flock or hatchery whose owner is controlling or reducing the level of salmonella through compliance with sanitation and management practices as described in Subpart C of Part 147 of this chapter, and where the following monitoring, testing, and management practices are conducted:

(1) Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poults that died within 10 days after hatching, or both, from each candidate breeding flock produced by a primary breeder, are examined bacteriologically at an authorized laboratory for Salmonella.

(2) The poults for the candidate breeding flock are placed in a building that has been cleaned, disinfected, and examined bacteriologically for the presence of Salmonella by an Authorized Agent, as described in § 147.12 of this chapter.

(3) Feed for turkeys in the candidate breeding flock shall meet the following requirements:

(i) All feed manufactured in pellet form must contain a minimum moisture content of 14.5 percent and must have been subjected to temperatures of 190 degrees F or above, 165 degrees F for at least 20 minutes, or 184 degrees F and 70 lbs. of pressure during the manufacturing process.

(ii) Initial feed (for newborn poults to 2 weeks of age) shall be manufactured in pellet form, either with no animal protein or with animal protein products produced under the Animal Protein Products Industry/Education Salmonella Reduction Program.[4]

(iii) Succeeding feed (for turkeys 2 weeks or older) shall be as described in (f)(3)(ii) of this section, mash that contains no animal protein products, or mash that contains an animal protein products supplement that has been manufactured in pellet form and crumbled.

(4) Environmental samples shall be taken by an Authorized Agent, as described in § 147.12 of this chapter, from each flock at 12–20 weeks of age and examined bacteriologically at an authorized laboratory for Salmonella.

(5) Owners of flocks found infected with a paratyphoid Salmonella may vaccinate these flocks with an autogenous bacterin with a potentiating agent.[6]

(6) Environmental samples shall be taken by an Authorized Agent, as described in § 147.12 of this chapter, from each flock at 35–50 weeks of age and from each molted flock at midlay, and examined bacteriologically at an authorized laboratory for Salmonella.

(7) Environmental samples shall be taken, by an Authorized Agent using the procedures described in § 147.12 of this chapter, from the laying house after the flock is removed, and examined bacteriologically at an authorized laboratory for Salmonella.

(8) Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poults that died within 10 days after hatching, or both shall be cultured from poults produced from hatching eggs from each flock, as a means of evaluating the effectiveness of the control procedures.

§ 145.33 [Amended]

11. Paragraph (c)(1)(ii)(A) of § 145.53 is amended by revising the phrase "a random sample of at least" to read "a random sample of serum or egg yolk from at least"

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

12. The authority citation for Part 147 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17 2.51, and 371.2(d).

13. The introductory text of paragraph (b) of § 147.6 is amended by removing the phrase "additional agglutination" and inserting "additional culturing procedures, and agglutination"

14. Paragraph (b)(5) of § 147.6 is revised as follows:

§ 147.6 Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis.

(b)

(5) If HI titers of 1:80, positive enzyme-labeled immunosorbent assay (ELISA) titers, or SPD titers of 1:10 or higher are found, in conjunction with any of the criteria described in paragraph (a)(1) of this section, the Official State Agency shall presume the flock to be infected. If the indicated titers are found, but none

Preparation and use of this type of vaccine may be regulated by state statutes.

of the criteria described in paragraph (a)(1) of this section are evident, tracheal swabs from 30 randomly selected birds shall be taken promptly and cultured individually for Mycoplasma, and additional tests conducted in accordance with paragraph (b)(6) of this section before final determination of the flock status is made.

15. Section 147.25 is amended by adding a sentence to the end of the introductory paragraph to read as follows:

§ 147.25 Fumigation.

APHIS disclaims any liability in the use of formaldehyde for failure on the part of the user to adhere to the Occupational Safety and Health Administration (OSHA) standards for formaldehyde fumigation, published in the Dec. 4, 1987 **Federal Register** (52 FR 46168, Docket Nos. H-225, 225A, and 225B).

Done in Washington, DC, this 30th day of May 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13241 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Technical Amendments

AGENCY: Department of Energy.

ACTION: Final rule, technical amendments.

SUMMARY: The Department of Energy (DOE) today amends the Financial Assistance Rules, 10 CFR Part 600, to make technical, non-substantive corrections. DOE amended these rules three times in 1988 and after a detailed review of them, has identified a number of technical errors (typographical errors, repetitions, incorrect citations, and the like) which warrant correction. Correction of these minor errors does not involve any substantive change.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT:

Edward F Sharp, Business and Financial Policy Division (MA-422), U.S. Department of Energy, 1000 Independence Avenue SW Washington, DC 20585, (202) 586-8192.

Christopher Smith, Office of the Assistant General Counsel Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1526.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) is today amending the Financial Assistance Rules (10 CFR Part 600) to make non-substantive changes to correct errors appearing in it. There were three significant amendments to the Rules in 1988: changes to the way in which cooperative agreements are handled (53 FR 5260, February 22, 1988), adoption of the A-102 Common Rule (53 FR 8044, March 11, 1988), and the establishment of procedures for dealing with determinations of noncompetitive financial assistance and justifications of restricted eligibility (53 FR 12137 April 13, 1988). These changes not only involved policy issues, but, in the case of the common rule, a substantial reorganization of the Financial Assistance Rules, with renumbering of various sections. Inevitably, errors appeared in the text, including typographical mistakes, repetitions, and incorrect references.

II. Changes to 10 CFR Part 600

Section 600.2 is amended by deleting the reference to OMB Circular A-102 in paragraph (f)(i) and to OMB Circular A-124 in paragraph (f)(iii). Circular A-102 was replaced by the Common Rule (adopted by DOE as Subpart E of the Financial Assistance Rules) and Circular A-124 was cancelled in March 1987 The remaining numbering within the subsection is changed to reflect the deletions.

Section 600.10 is corrected to reinsert a subsection initially included in the February 22 revision and inadvertently deleted in the March 11 revision. Section 600.10(b) is corrected to remove the reference to OMB Circular A-102, Attachment M, as a result of the adoption of the Common Rule.

Section 600.14 is amended to correct a typographical error in paragraph (a) and a repetition in paragraph (e).

Section 600.20 is amended to correct a reference in paragraph (c) to § 600.108. This section was redesignated as § 600.32 in the March 11, 1988, Common Rule.

Section 600.28 is amended to delete paragraph (b)(4). It makes reference to § 600.27(g) which does not exist.

Section 600.30 is amended to clarify a citation in paragraph (a)(2).

Section 600.102 is amended to eliminate a reference to OMB Circular A-102 in paragraph (b)(1).

Sections 600.104, 600.106, and 600.108 of Subpart B of the Financial Assistance Rules are designated "Reserved" sections. They were redesignated as §§ 600.30, 600.31, and 600.32, respectively, in DOE's March 11, 1988, addendum to the A-102 Common Rule. There are sections in Subpart B following them.

Section 600.114 is amended to change a reference in (b)(ii) to reflect the redesignation of § 600.108 to § 600.32 in the March 11, 1988, **Federal Register** notice. This section is also amended to delete the duplicate inclusion of (b)(iv).

Section 600.119 is amended to clarify that the applicable section for procurement under financial assistance to governmental entities is contained in § 600.436, Subpart E, and to delete a reference to § 600.19(b)(1), which has been removed from the rule.

Section 600.207 is amended to correct the references in paragraphs (b) (7), (8) and (9) from § 600.118 to § 600.33.

Section 600.305 is amended to replace the reference in paragraph (c) to A-102 with the correct citation to Subpart E.

Section 600.315 is amended to replace the reference to A-102 with the correct citation to Subpart E.

Section 600.402 is amended to include the addition to the definition of "prior approval" contained in the March 11, 1988, final rule. It is also amended to replace, in the definition of "supplies, the word "part" with the word "subpart.

Section 600.403 is amended to replace "part" with "subpart"in the last line of paragraph (a)(3)(i).

III. Review Under Executive Order 12291

This rule was reviewed under Executive Order 12291 (February 17 1981). It involves only technical changes to the Financial Assistance Rules. DOE has concluded that it is thus not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. In accordance with requirements of the Executive order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

IV Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub.

L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the rule will have no effect on small entities. DOE thus certifies that this will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

V Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, 1or OMB's implementing regulations at 5 CFR Part 1320.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly technical changes clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulatory amendments will have direct effects on State recipients of financial assistance, but those direct effects will be insubstantial because they involve minor technical corrections to existing regulations. Accordingly, DOE has concluded that preparation of a federalism assessment is not warranted.

VIII. Discussion of Comments on Proposed Rule

A proposed rule announcing these changes was published on February 9, 1989 (52 FR 6296) with comments to be submitted by March 13, 1989. No public comments were received. One additional correction was added as a result of a comment by DOE staff.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights, Debarment and Suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian Tribal governments, Individuals, Inventions and patents, Non-profit organizations, Reporting and recordkeeping requirements, Small businesses.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Mangement.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is amended as follows:

PART 600—[AMENDED]

a. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308).

§ 600.2 [Amended]

b. Section 600.2 is amended by removing paragraphs (f)(1) (i) and (iii) and redesignating (f)(1)(ii) as (f)(1)(i) and (f)(1)(iv) through (f)(1)(vii) as (f)(1)(ii) through (f)(1)(v).

c. Section 600.10 is amended by removing paragraph (b), redesignating paragraph (a) as paragraph (b) and revising it, and by adding paragraph (a) to read as follows:

§ 600.10 Form and content of applications and preapplications.

(a) *General.* Applications shall be required for all financial assistance projects or programs. Preapplications shall be required for all construction, land acquisition, and land development projects or programs for which the need for Federal funding exceeds $100,000 unless the cognizant program office makes a written program determination to waive the preapplication requirement.

(b) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this part, in a program rule, or in the applicable solicitation, and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the applicable forms in the Standard Form 424 (SF 424) series. Such applicants shall not be required to submit more than the original and two copies of the application or preapplication.

§ 600.14 [Amended]

d. Section 600.14(a) is amended to change "from" in the first sentence to "for"

§ 600.20 [Amended]

e.–f. Section 600.20(c) is amended by revising the reference to "§ 600.108" to read "§ 600.32"

§ 600.28 [Amended]

g. Section 600.28(b) is amended by removing paragraph (b)(4).

§ 600.30 [Amended]

h. Section 600.30(a)(2) is amended by revising the reference to "§ 1040.4" to read "10 CFR 1040.4"

§ 600.102 [Amended]

i. Section 600.102(b)(1) is amended to remove the words "contained in OMB Circular A–102, as" in the second sentence.

§ 600.114 [Amended]

j. Section 600.114(b)(1)(ii) is amended by revising the reference to "§ 600.108(d)" to read "§ 600.32(d)"

k. Section 600.114(b)(1)(iv) is amended by removing the second version of this duplicated paragraph.

l. Section 600.119 is amended by revising paragraphs (a)(1) and (c)(2)(i) to read as follows:

§ 600.119 Procurement under grants and subgrants.

(a)

(1) This section does not apply to procurements covered by § 600.436, Subpart E.

(c)

(2)

(i) If DOE or the grantee determines, on the basis of a review in accordance with § 600.104 or § 600.105, that the grantee's or subgrantee's procurement procedures or operations do not comply with one or more of the applicable procurement system standards; or

§ 600.207 [Amended]

m. Section 600.207(b) (7), (8) and (9)(iii) are amended to revise the reference to "§ 600.118" to read "§ 600.33"

§ 600.305 [Amended]

n. In § 600.305, paragraph (b)(2)(ii) is amended by designating (c) as (C), and newly designated paragraph (b)(2)(ii)(C) is amended to revise the reference to Attachment F of Circular A-102, 'Uniform requirements for grants to State and local governments'" to read "§ 600.424 of Subpart E"

§ 600.315 Definitions.

o. Section 600.315 is amended to revise the reference to Attachment O of Circular A-102, 'Uniform requirements for grants to State and local governments, as implemented by § 600.119 of this part" to read "§ 600.436 of Subpart E"

p. Section 600.402 is amended to revise the definition of "prior approval" and "supplies" as follows:

§ 600.402 Definitions.

"Prior approval" means documentation evidencing consent prior to incurring specific cost. For the Department of Energy, this must be signed by a Contracting Officer.

"Supplies" means all tangible personal property other than "equipment" as defined in this subpart.

§ 600.403 [Amended]

q. Section 600.403(a)(3)(i) is amended by revising the reference to "part" to read "subpart"

[FR Doc. 89-13168 Filed 6-5-89; 8:45 am]
BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

[Rev. 4, Amdt. 4]

Business Loans; Export Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Title VIII of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418 (102 Stat. 1107), enacted August 23, 1988 (1988 legislation), amends the Small Business Act (15 U.S.C. 636) with respect to export loans. This final rule implements the amendments relating to the provisions affecting such export loans.

EFFECTIVE DATE: This rule is effective June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW Washington, DC 20416, telephone (202) 653-6574.

SUPPLEMENTARY INFORMATION: On December 27 1988, the Small Business Administration (SBA) published proposed regulations in the **Federal Register** (53 FR 52187) to implement the 1988 legislation. Two commenters responded. Their comments will be discussed in place. SBA presently is authorized to guaranty an export revolving line of credit loan (ERLC) not to exceed eighteen months in order to enable the borrower to utilize pre-export financing or to develop foreign markets. Under the 1988 legislation, an applicant small concern may be, but is not required to be, a small business export trading company or a small business export management company. This final amendment of § 122.54-2 of SBA regulations reflects this provision and in subsection (b) thereof it defines these entities. Both types of companies specialize in providing marketing and management services for firms which wish to engage in exporting but which have limited or no experience in selling abroad.

Section 122.54-3 is the same as present § 122.54-3 with respect to the use of proceeds, namely that proceeds can be used only to penetrate or develop a foreign market and/or to finance labor and materials for pre-export production. One commenter stated that the use of proceeds was too limited in its reference to pre-export production, and that there should be some mention of accounts receivable. SBA considers the comment well-founded; so it is adding a statement that the ERLC balance can remain outstanding until the insured accounts receivable or letters of credit are collected. New language was added to section 7(a)(14) of the Small Business Act concerning the use of proceeds, namely that SBA, in considering these ERLC loans, is to give weight to export-related benefits. The Agency decided not to include such language in the final regulation because of an explanatory statement in H.R. Rep. No. 38, 100th Cong., 1st Sess., at p. 32 (1987), that such statutory provision "is not intended to be read as a limitation on the existing mandate regarding export financing, but is intended to consider favorably those applications with export benefits which also meet other criteria which the Administration is required to consider.

Section 122.54-4, relating to fees, restates present § 122.54-4. Thus, a lender could continue to charge the borrower of an ERLC loan a commitment fee equal to one-fourth of one percent of the loan or $200, whichever is greater. Section 122.54-5, relating to collateral, restates present § 122.54-5. The only collateral acceptable continues to be that located in the United States, its territories and possessions. A commenter stated that the regulation should specifically allow export receivables as eligible collateral. The SBA interpretation of the law is that the program is not intended to take on a foreign risk. Only a domestic risk is acceptable. However, insured accounts receivable and letters of credit are eligible forms of collateral since the foreign risk is thereby replaced by dependence upon a domestic insurance company or lender. In any event, while the ERLC balance can remain outstanding until the insured accounts receivable or letters of credit are collected, the ERLC loan must terminate at the end of the statutory 18 months.

Section 122.54-6, relating to loan conditions, is the same as the existing regulation. One of the comments was that cash flow projections and monthly reports should be left to local SBA offices and that other documentation should be allowed, such as annual renewals. SBA is not changing the regulation based on these comments because cash flow projections have always been a part of SBA's short-term loan projections in order to estimate the inflow and outflow of funds. This is necessary in order to establish the amount of financing needed. Monthly reports are required in order to promote prudent servicing by the lender. With respect to allowing annual renewals instead of filing a new application, SBA believes any timesaving to the borrower would be minimal. Updated financial information required by a new application is essential to determine whether the risk to the lender is reasonable.

The 1988 legislation added a new subsection 16 to section 7(a) of the Small Business Act. This final rule adds new §§ 122.57 through 122.57-5 to SBA regulations to reflect a new category of international trade loans. Section 122.57-1 provides that the Agency could assist an eligible small business concern in an industry engaged in or adversely affected by international trade. The purpose of such guaranteed financing would be for the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods or services involved in international trade. SBA, in each case, is required to determine whether the upgrading of the plant or equipment would allow the applicant to improve its competitive position. If the loan would be made by a

Preferred Lender pursuant to Part 120, Subpart D of these regulations (13 CFR Part 120), the Preferred Lender would be required to make such a determination.

Section 122.57-2 provides that, in addition to meeting the eligibility criteria applicable to all loans made under section 7(a) of the Small Business Act, the applicant has to show that either (1) it is in a position to significantly expand existing export markets or to develop new export markets, or (2) it is adversely affected by import competition because it (i) is confronting increased direct competition with foreign firms in the relevant market and (ii) can demonstrate injury attributable to such competition. To show import competition the applicant must establish that increased imports of articles like, or directly competitive with, those produced by it have contributed importantly to a decline in its competitive position. To show that SBA assistance would help export promotion, the applicant would have to submit a business plan which identifies the amount of expected sales abroad and which provides information—such as an export marketing analysis and plan—to reasonably support projected export sales.

Section 122.57-3 states that the SBA guaranteed portion of a loan guaranteed under subsection 7(a)(16) of the Small Business Act could not exceed $1,000,000 for facilities or equipment. In addition, a borrower would be eligible for SBA financing not to exceed $250,000 to be used solely for working capital, supplies or an ERLC loan. Further, this section makes clear that the aggregate amount of $1,250,000 available from the business loan and investment fund (BLIF) would be reduced by any other financing from SBA pursuant to section 7(a) of the Small Business Act (Act). Thus, if the outstanding balance of the SBA guaranteed portion of a section 7(a) loan for facilities and equipment (F&E) is $200,000, applicant would be eligible under § 122.57 for $800,000 for F&E, plus $250,000 for working capital (WC). If the outstanding balance of the SBA guaranteed portion of a section 7(a) loan for F&E is $500,000 and $250,000 for WC, it would be eligible under § 122.57 for only $500,000 in F&E and no additional financing for WC. In both cases presented, the aggregate SBA guaranteed portion financing under section 7(a) of the Act could not exceed $1,250,000. Examples of this rule are reflected in the following chart:

Outstanding SBA portion of prior financing under Section 7(a) of the Act		Section 7(a)(16) eligibility		Aggregate from BLIF
F+E	WC	F+E	WC	
—0—	200,000	1,000,000	50,000	1,250,000
—0—	300,000	950,000	—0—	1,250,000
—0—	750,000	500,000	—0—	1,250,000
200,000	—0—	800,000	250,000	1,250,000
200,000	200,000	800,000	50,000	1,250,000
500,000	250,000	500,000	—0—	1,250,000
750,000	—0—	250,000	250,000	1,250,000

Section 122.57-4 provides that the only acceptable security would be collateral located in the United States, its territories and possessions. The 1988 legislation requires that the lender of international trade loans under subsection 7(a)(16) of the Small Business Act must obtain a first lien position or first mortgage on the property or equipment financed. This section of the regulations reflects this statutory requirement.

Section 122.57-5 reflects the statutory provision that a lender making a loan under this section would have to sell the guaranteed portion in the secondary market within 180 days of the date when full disbursement is completed. If the sale is not made within such time frame, the SBA guaranty would terminate without further action or notice by SBA. A commenter objected to the required sale, but since this is a statutory requirement, SBA has to implement that provision.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

SBA certifies that this rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

This final rule would impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. Section 122.57-2(c) requires the applicant to submiit a business plan which identifies the amount of expected sales abroad and which provides information to reasonably support projected export sales.

This rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan Programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby amends part 122, Chapter I, Title 13, Code of Federal Regulations, as follows:

1. The Table of Contents at the beginning of part 122, in Subpart B, is amended by adding new §§ 122.57 through 122.57-5 as follows:

Sec.
122.57 International trade loans under section 7(a)(16) of the Act.
122.57-1 Policy.
122.57-2 Eligibility.
122.57-3 Amount and percentage of loan guaranty.
122.57-4 Collateral and lien position.
122.57-5 Sale in secondary market.

2. The authority citation of Part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

3. Sections 122.54, 122.54-1, 122.54-2, 122.54-3, 122.54-4, 122-54-5, and 122.54-6 are revised to read as follows:

§ 122.54 Export revolving line of credit loans under Section 7(a)(14) of the Act.

§ 122.54-1 Policy.

The Act authorizes a revolving line of credit for pre-export financing and for export purposes in order to develop foreign markets. No such loan shall be made for a period which exceeds eighteen months.

§ 122.54-2 Eligibility.

(a) *General.* An applicant for an Export Revolving Line of Credit (ERLC) loan under this subsection, in addition to meeting the eligibility criteria applicable to all loans made under the authority of section 7(a) of the Act, 15 U.S.C. 636(a), shall have been in operation for at least 12 full months prior to filing an application. An

applicant small business concern may be, but is not required to be, a small business export trading company or a small business export management company. This 12-month requirement may be waived by the appropriate SBA regional office if the management of the applicant has sufficient export trade experience or other management ability to warrant an exception to the general rule. Waivers can be made only by regional office officials who have delegated authority to approve ERLC loans.

(b) *Definitions.* An export trading company and an export management company are independent firms which specialize in providing marketing and management services for firms which wish to engage in exporting but have limited or no experience in selling abroad.

§ 122.54-3 Use of proceeds.

Proceeds of an ERLC loan can be used only to penetrate or develop a foreign market and/or to finance labor and materials for pre-export production. Professional export marketing advice or services, foreign business travel or participation in trade shows are examples of eligible expenses related to developing or penetrating a foreign market. The cost of acquiring or renting office or commercial space in a foreign country, equipping such an office, or wages for a staff in such an office are examples of ineligible uses of proceeds. The ERLC balance may remain outstanding until the insured accounts receivable or letters of credit are collected.

§ 122.54-4 Fees.

In addition to other allowable fees (see § 120.104-2 of this Chapter), the participant in an ERLC loan may charge the borrower a commitment fee equal to one-fourth (¼) of one (1) percent of the loan or $200, whichever is greater. This fee shall not be charged until the SBA has approved the lender s request for guaranty.

§ 122.54-5 Collateral.

Only collateral that is located in the United States, its territories and possessions shall be acceptable security for these loans.

§ 122.54-6 Additional loan conditions.

(a) *Cash flow projection.* All ERLC loan applications shall include a projected cash flow chart for the term of the loan that supports the need for the funds and that evidences repayment ability. The projection must cover the applicant's total operation and clearly identify the intended use(s) of the loan proceeds and source(s) or repayment.

(b) *Monthly progress reports.* The ERLC borrowers must submit monthly progress reports to the Lender and explain discrepancies between the projected cash flow and the progress report.

3. Sections 122.57 122.57-1, 122.57-2, 122.57-3, 122.57-4, and 122.57-5 are added to read as follows:

§ 122.57 International Trade Loans Under Section 7(a)(16) of the Act.

§ 122.57-1 Policy.

The Act authorizes assistance to an eligible small business concern in an industry engaged in or adversely affected by international trade for the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade. For each loan request approved by the Agency, the SBA must make a determination that the upgrading of the plant or equipment will allow the applicant to improve its competitive position. If the loan is made under the Preferred Lender Program (PLP) (Part 120, Subpart D of these requlations), the PLP Lender must make such a determination.

§ 122.57-2 Eligibility.

(a) *General.* An applicant, in addition to meeting the eligibility criteria applicable to all section 7(a) loans, is eligible if it can establish that it is

(1) In a position to significantly expand existing export markets or to develop new export markets or

(2) Adversely affected by import competition because it is confronting increased direct competition with foreign firms in the relevant market and it can demonstrate injury attributable to such competition.

(b) *Import Competition.* An applicant, by narrative explanation submitted in writing with its loan application, must establish that increased imports of articles like, or directly competitive with, those produced by it have contributed importantly to a decline in its competitive position. In addition, an applicant must establish that an upgrading of plant and/or equipment is likely to help to improve its competitive position with respect to foreign competition.

(c) *Export Promotion.* In order for the applicant to show that SBA financial assistance is likely to significantly expand the applicant's export markets or to develop new export markets for the applicant, it must prepare and submit a business plan which identifies the amount of expected sales abroad and which provides information to reasonably support projected export sales.

§ 122.57-3 Amount and percentage of loan guaranty.

A guaranty commitment made by SBA pursuant to section 7(a)(16) of the Act shall not exceed 85 percent of the amount of the loan. Such guaranty commitment by SBA shall not exceed $1,000,000 of guaranty authority for financing of facilities or equipment. This is in addition to any other SBA financing made available to the same applicant solely for working capital, supplies, or ERLC purposes in an amount not to exceed $250,000. The aggregate amount of $1,250,000 available from the business loan and investment fund under this subsection shall be reduced by any other financing from SBA pursuant to section 7(a) of the Act.

§ 122.57-4 Collateral and lien position.

Only collateral that is located in the United States, its territories and possessions shall be acceptable security for a loan made under subsection 7(a)(16) of the Act. The Lender must take a first lien position or first mortgage on the property or equipment financed under this section. This is in addition to any other collateral security position which SBA may require.

122.57-5 Sale in secondary market.

Any Financial Institution making a loan under this section must agree to sell the guaranteed portion in the secondary market within 180 days of the date when full disbursement is completed (see Subparts G and H, Part 120 of these regulations). If the Financial Institution does not sell within this statutory time frame, the SBA guaranty shall terminate without further action or notice by SBA.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: April 12, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-13221 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26870; File No. S7-25-87]

Multiple Trading of Standardized Options

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of Rule 19c-5 under the Securities Exchange Act of 1934, which rule amends the rules of national securities exchanges ("exchanges") governing the listing and trading of standardized options. The Rule provides that, as of January 22, 1990, no rule, stated policy, practice, or interpretation of an options exchange shall restrict the listing of any new stock options class to a single exchange. In addition, effective January 21, 1991, but not before, Rule 19c-5 amends exchange rules to prohibit any exchange from limiting by any means its ability to list any stock options class because that options class is listed on another exchange. The Rule also contains a phased-in implementation schedule. Specifically, commencing January 22, 1990, an options exchange may list up to ten classes of standardized put and call options overlying exchange-listed stocks that were also listed on another options exchange on or before January 22, 1990.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas R. Gira, Attorney, Branch of National Market System Regulation, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5-1), 450 Fifth Street, NW Washington, DC 20549, at 202/272-2827

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Securities and Exchange Commission ("Commission" or "SEC") announces the adoption of Rule 19c-5 under the Securities Exchange Act of 1934 ("Act").[1] As of January 22, 1990, the effective date of this Rule, all national securities exchanges that provide a market for trading standardized put or call options ("options exchanges") are prohibited from restricting the listing of any new stock options class to a single exchange. In addition, the Rule provides that on January 21, 1991, no options exchange may have a rule that limits its ability to list any stock options class because that options class is listed on another options exchange.

Rule 19c-5 also provides a substantial phase-in period to reduce market structure and operational concerns. Specifically, the Rule does not take effect for almost eight months, until January 22, 1990. Commencing January 22, 1990, no options exchange can limit its ability to list at any one time up to ten standardized stock option classes overlying exchange-listed stocks that were also listed on another options exchange on or before January 22, 1990.[2] Further, as of January 22, 1990, no options exchange may limit its ability to list any standardized options class first listed on another options exchange on or after January 22, 1990, because that options class is listed on another options exchange. The Rule, however, would not restrict an options exchange's authority to choose, as a business matter, not to trade options already listed on another exchange.

The Commission proposed the adoption of a multiple trading [3] rule in a release issued on June 18, 1987 announcing the commencement of a proceeding pursuant to Section 19(c) [4] of the Act to consider whether to (1) adopt a policy permitting multiple market trading of standardized options on exchange-listed securities, and/or (2) adopt a rule amending the rules of national securities exchanges that provide a market in standardized options to remove restrictions on the multiple trading of options on exchange-listed securities.[5] In connection with this proceeding the Commission solicited comment on proposed Rule 19c-5 and held public hearings on February 11, 1988, to receive testimony from interested persons.[6]

The Commission s proposed rule was announced after more than a ten-year period during which the multiple trading of standardized options overlying exchange-listed securities was limited to relatively few options classes. Between the commencement of multiple trading on standardized options in 1976 and mid-1977 when the options exchanges agreed voluntarily to suspend further expansion of the options markets, only 22 options classes were multiply-traded.[7] Upon the termination of this options moratorium in 1980, the Commission precluded an immediate expansion in the number of multiply traded options based upon its finding that, while multiple trading could, "under appropriate circumstances, [8] benefit options investors, it raised a number of concerns. Among these concerns were: (1) Market fragmentation (*i.e.*, the failure of the prices in any one market to reflect all the buying and selling interest in a security); (2) member firm order routing practices that were automatically directing order flow to the market exhibiting the greatest volume, regardless of whether or not that exchange was offering the best execution for each order so routed; and (3) the potential negative impact on the financial position of regional exchanges, which were dependent on revenues from their options trading programs. In light of these concerns, the Commission deferred making a decision regarding the expansion of multiple trading until the exchanges could undertake a study of the feasibility of developing market integration facilities similar to those developed for stock trading.[9]

In conjunction with its determination to defer expansion of multiple trading, the Commission requested the options exchanges to develop a fair means for allocating options then not listed on any exchange. The exchanges' plan, termed the Allocation Plan, and approved by the Commission in 1980,[10] permitted the

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15 U.S.C. 78a *et seq.*, as amended.

These ten classes would be in addition to any option on an exchange-listed stock that was allowed to be traded on more than one options exchange as of the effective date of this Rule (*e.g.*, options on Disney Productions, Xerox, and National Semiconductor). Thus, the ten additional classes would consist of options on individual, exchange-listed equity securities that have been assigned to trading on a single exchange since 1980 pursuant to the Allocation Plan. *See* discussion *infra* at note 86 and accompanying text.

Multiple trading is the trading of standardized options with the same underlying security on more than one options exchange.

15 U.S.C. 78s(c)(1982).

See Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849 ("Proposal Release"). The Commission today is adopting rule that subsumes the proposed policy, as well as the proposed rule.

A copy of the hearing transcript, together with all comment letters received in connection with this proceeding, is available in the Public Reference Room at the Commission's home office in Washington, DC. *See* File No. S7-25-87.

In 1977, the self-regulatory organizations ("SROs") agreed to halt expansion of standardized options trading in conjunction with the commencement of Commission staff investigation into trading practices of the options markets. At the time of the moratorium's commencement the number of multiply-traded classes had declined to fifteen. *See* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess., 800-04 (Comm. Print 96-IFC3, December 22, 1978) ("Options Study Report").

Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426, 21431 ("Moratorium Termination Release").

The Commission envisioned that market integration system would provide prompt and efficient means of sending and receiving orders to purchase or sell multiply-traded options among options markets. *Id.* at 21431.

[10] *See* Securities Exchange Act Release No. 16863 (May 30, 1980), 45 FR 37928.

options exchanges thereafter to list new options for which they would be the sole market, and to remain the sole market for existing options which were not multiple traded at that time.

Following adoption of the Allocation Plan, the SROs submitted a report to the Commission that concluded that the development of options market integration facilities, particularly a limit order exposure system [11] suggested by the Commission, was not feasible at that time.[12] Thereafter, the SROs made no substantial efforts to develop any market integration facilities. As a result, options on exchange-listed equity securities continued to be listed for trading pursuant to the Allocation Plan.

Despite the absence of options market integration facilities, the Commission permitted multiple-trading of new options products approved for trading subsequent to the termination of the options moratorium. In approving these new products, the Commission took the position that competitive market forces should be allowed to shape the structure of the options markets to the maximum extent possible,[13] and that multiple trading could benefit the market for these products through enhanced price competition, improvements in exchange services, and innovation in contract design.[14] Based largely upon these rationales,[15] the Commission approved multiple trading for options on stock indexes,[16] Treasury securities,[17] foreign currencies,[18] and OTC stocks.[19]

In November 1986, the Commission published two staff studies that attempted to measure the cost savings to investors arising from the multiple trading of options on OTC stocks.[20] Both Staff Studies found that the spreads between the bid and the offer for options subject to multiple trading were significantly narrower than the spreads for options listed exclusively on one exchange.[21] The DEPA Study estimated that investors who traded OTC options saved in the aggregate $25 million from June 1985 to May 1986 as a result of narrower spreads.[22] The OCE Study estimated that investors would receive an annual cost savings of $150 million if multiple trading were expanded to include all individual equity options.[23] The OCE Study also found that its data supported the "contestable markets" theory, which maintains that effective competition is not dependent upon the number of actual competitors, but rather only upon the ease of entry and exit in the market. Thus, the OCE Study found that "options eligible for multiple listing have significantly lower spreads despite having virtually all their volume on a single exchange."[24] The findings of both studies were challenged by the CBOE, Phlx, and Pacific Stock Exchange ("PSE"), each of whom submitted a critique of the Studies prepared by an economist retained for that purpose.[25] These critiques questioned the methodology of the Studies and argued that, even if the conclusions of the Studies were accepted, they overestimated the cost savings that could be realized from multiple trading.[26]

In the release proposing the adoption of Rule 19c-5, the Commission stated that it preliminarily had determined that exchange rules prohibiting multiple trading may now be inconsistent with the Act, particularly because they may impose a burden on competition no longer necessary in furtherance of the Act's purposes.[27] The Commission also stated that a continued deferral of multiple trading may be inconsistent with sections of the Act requiring "fair competition among brokers and dealers [and] among exchange markets,"[28] and the "economically efficient execution of securities transactions."[29] The Commission based its decision to reconsider the expansion of multiple trading on developments, including improvements in trading technologies, taking place in the options markets since adoption of the Allocation Plan and the largely positive experience with multiple trading of options on non-equity securities and OTC stocks. The Commission found that no specific harm

[11] The Commission envisioned that a limit order exposure system would provide for simultaneous representation of public limit orders from all options exchanges and provide floor participants on those exchanges with access to those public limit orders. *Id.*

[12] Interim Report of the American, Pacific, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange in Response to Release No. 34-16701 (January 8, 1981), *see also* Supplementary Report of the American, Pacific, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange in Response to Release No. 34-16701 (September 1, 1981) ("Supplementary Task Force Report").

[13] *See* Securities Exchange Act Release No. 18297 (December ., 1981), 46 FR 60376, 60377-78.

[14] *See, e.g.*, Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310, 20330-31 (approving in principle proposals by the National Association of Securities Dealers, Inc. ("NASD"), options exchanges, and New York Stock Exchange ("NYSE") to trade options on over-the-counter ("OTC") stocks) ("OTC Approval Release").

[15] The Commission also took into account the fact that, because the options at issue were not yet listed on any exchange, no exchange had invested capital in developing market for these products on the basis of enjoying an exclusive franchise, and accordingly that there was no threat that multiple trading would negatively affect the existing market structure. *Id.* at 20328 n. 178. The Commission cautioned, however, that it did not interpret the Act as charging it with responsibility to ensure the continued viability of a particular marketplace or participant. *See, e.g., id.* at 20331.

[16] *See* Securities Exchange Act Release No. 19264 (November 22, 1982), 47 FR 5398 (approving exchange proposals to trade options on broad-based stock indexes) and Securities Exchange Act Release No. 20075 (August 12, 1983), 48 FR 37556 (approving proposal by the American Stock Exchange ("Amex") to trade options on narrow-based indexes).

[17] *See* Securities Exchange Act Release No. 19125 (October 14, 1982), 47 FR 46934.

[18] *See* Securities Exchange Act Release No. 19133 (October 14, 1982), 47 FR 46946 (approving the Philadelphia Stock Exchange ("Phlx") foreign currency options program) and Securities Exchange Act Release No. 22471 (September 26, 1985), 50 FR 40636 (approving the Chicago Board Options Exchange ("CBOE") foreign currency option program). The CBOE elected to delist its foreign currency options in August 1987 due to insufficient volume, thereby making the Phlx the exclusive market for options on foreign currencies. *See* Securities Exchange Act Release No. 26059 (September 2, 1988), 53 FR 35144.

[19] *See* OTC Approval Release, *supra* note 14.

[20] *See* Directorate of Economic and Policy Analysis, "The Effects of Multiple Trading on the Market for OTC Options, (November 1986) ("DEPA Study"), and Office of the Chief Economist, "Potential Competition and Actual Competition in the Options Market, (November 1986) ("OCE Study") (referred to collectively as "Staff Studies" or "Studies").

[21] The DEPA Study compared the spreads in Amex-listed options on OTC stocks to those in singly-listed Amex options on exchange-listed stocks for three sample periods between June 1985 (shortly after trading on OTC options began) and March 1986 (after trading volume had concentrated on one exchange, the Amex). The Study found that the spreads in multiply-traded options were on average 19.8% narrower than the spreads in the singly-traded options. DEPA Study, *supra* note 20, at 9. The OCE Study drew similar conclusions from a different sample pool, finding that multiple trading reduced spreads by as much as 20% in low volume options. The OCE found, however, that the measurable impact of multiple trading on spreads diminishes as options volume increases, and estimated that the impact disappears at volume level of approximately 1,500 contracts per day. OCE Study, *supra* note 20, at 17-18, 24.

[22] DEPA Study, *supra* note 20, at 7.

[23] OCE Study, *supra* note 20, at 21.

[24] *Id.* at 2.

[25] *See* Comment on SEC Staff Studies of Multiple Trading of Options, by Hans R. Stoll (Owen Graduate School of Management, Vanderbilt University), February 5, 1987; Memorandum Concerning SEC Staff Studies of Multiple Trading in Options, by Seymour Smidt (Johnson Graduate School of Management, Cornell University) February 9, 1987; and Competitivity of Options Trading Under the Options Allocation Plan, by Gregory Connor (University of California at Berkeley), March 4, 1987. Copies of these papers are in the public file for this proceeding.

[26] *See* Proposal Release, *supra* note 5, at 52 FR 23852.

[27] *See* sections 6(b)(8) and 23(a)(2) of the Act [15 U.S.C. 78f(b)(8) and 78w(a)(2)(1982)].

[28] *See* section 11A(a)(1)(C)(ii) of the Act [15 U.S.C. 78k-1(a)(1)(c)(ii)(1982)].

[29] *See* section 11A(a)(1)(C)(i) of the Act [15 U.S.C. 78k-1(a)(1)(C)(i)(1982)].

to the markets had resulted from multiple trading of OTC options, including the absence of either significant price disparities between different markets in the same option class or significant problems with the execution of customer orders. While the Commission reaffirmed its belief that market integration facilities may be beneficial in a multiple trading environment, it stated that, in view of the burden on competition imposed by the Allocation Plan, it could not defer indefinitely its consideration of these issues in anticipation of exchange undertakings to develop such facilities.

II. Recent Trading Experience and Studies

In the Proposal Release, the Commission described the multiple trading experience in options on OTC stocks from the commencement of trading in June 1985 to the time of the Release's issuance in June 1987 The Commission found that, within the first few weeks of multiple trading, the Amex captured the majority of order flow in each of the eight multiple-traded OTC options that it listed, and within a few months had increased its market share to almost 90% in each option class.[30] By June 1987 only two of the original nine multiple-traded OTC options continued to be multiple-traded, and in both instances the primary market accounted for more than 99% of the volume.[31]

By June 1987 however, there had been some additional multiple listings in OTC options for which a dominant market had not emerged. In Mentor and Microsoft options, which began trading on the PSE and Amex in March 1987 neither exchange clearly established itself as the primary market within the first few months of dual trading. Volume in Microsoft was fairly evenly divided between the exchanges until October 1987 (seven months after the start-up of dual trading), when the PSE increased its market share to 75%, a position which it has continued to hold and increase through the present with no significant exceptions.[32] During the first six months of trading in Mentor options, market share on average was divided approximately 55/45, with the PSE garnering the larger volume; between September 1987 and August 1988 the PSE increased its market share to approximately 67%.[33] The trading experience in Battle Mountain Gold ("BMG") options, listed on the CBOE and Amex since September 1987 exhibited a similar pattern. Although the CBOE captured more than 50% of the trading volume in five of the first six months of trading, it did not show a market share greater than 65% until March 1988, seven months after the start-up of dual trading. Moreover, in February 1989, seventeen months after BMG options were listed, the CBOE's market share was only 60%.[34] While it is too early to discern a pattern, in four other recently listed multiply-traded OTC options no exchange acquired a dominant market share within the first few weeks of trading. Indeed, in Blockbuster options, listed on the Amex and the CBOE since July 1988, the CBOE's market share averaged 59% between October and December 1988 while the Amex averaged 41%.[35]

In connection with this proceeding, both the PSE and CBOE submitted to the Commission data regarding the occurrence of trade-throughs [36] in multiply-traded options on OTC stocks.[37] The CBOE's examination of trading in BMG options during two five-day periods revealed a trade-through rate of approximately 19% in both periods measured as a percentage of the total number of trades on both exchanges. The CBOE further found that the majority of trade-throughs in both study periods were 1/6th of a point away from the quotation disseminated by the other market (61.5% in the first period and 71.4% in the second), and 23.8% of those occurring in the second period were ⅛th of a point away from the best quote. The PSE's study of trade-throughs in Microsoft options occurring during the week of September 8–11, 1987 estimated that approximately 5% of the total number of trades occurring on both exchanges were trade-throughs.[38] Applying this trade-through rate to the total number of trades in Microsoft between March 9, 1987 (the start-up of dual trading) and December 31, 1987 and making assumptions regarding average trade size (13 contracts) and average price disparity (⅛th point or $12.50 per contract), the PSE estimated a potential trade-through cost to investors of approximately $586,000 ($700,000 on an annualized basis) in this option class. The PSE also found that its trade-through data indicated that large investors, *i.e.*, those who bought or sold a greater number of contracts per trade, were less likely to experience the negative effect of trade-throughs than small investors, owing to lower price discrepancies on larger trades.[39]

The Commission's Office of Economic Analysis ("OEA") [40] reviewed the trading data submitted by the PSE and CBOE and found that both studies were over-inclusive in the number of trades they identified as possible trade-throughs.[41] Specifically, the OEA Study found that one-half of the BMG trade-throughs identified by the CBOE were based on quotes over one hour old, thereby making it questionable whether, given the thinly-traded nature of the option, the quotes which were traded-through continued to reflect the market for the option at the time of the alleged trade-through. Although OEA found that the PSE excluded more trade-throughs

[30] *See* Proposal Release, *supra* note 5, 52 FR at 23851. Amex market share in the first month of trading was approximately as follows: Apollo, 72%; Apple, 77%; ChiChi's, 94%; DSC, 64%; Intel, 81%; Intergraph, 80%; Lotus, 68%; and Tandem, 70%.

[31] Those options are Apple and Genentech. *Id.*

[32] The PSE's market share in Microsoft slipped below 75% only twice between October 1987 and August 1988. In March and April, 1988, its market share fell slightly, to 74.61% and 71.22%, respectively. Between December 1988 and April 1989, the PSE's market share averaged 90%.

[33] This figure represents the average monthly market share over twelve month period. Between December 1988 and April 1989, the PSE's market share in Mentor options averaged 73.2%.

[34] Between March and June, 1988 the CBOE averaged a monthly market share of 65.27%. In July 1988, its market share increased to 81%; however, between December 1988 and April 1989, the CBOE's market share averaged 71.2%.

[35] From December 1988 to April 1989, however, CBOE market share averaged 74.7%. The other three recently listed OTC options are Micron (June 1988), Henley Group (August 1988), and Itel Corporation (October 1988). Market share in Micron through August 1988 was split between the PSE, Amex and CBOE approximately 52%, 32% and 15%, respectively (3 month averages). Between December 1988 and April 1989, however, the PSE's market share averaged 65.1% while the CBOE and Amex averaged 18.9% and 16%, respectively. Market share in Itel options, listed on the CBOE and the PSE since October 1988, was evenly divided (48/52%) between October and December 1988. Since February 1989, the CBOE has captured 99% of the order flow. The Commission has been informed that Henley group options are to be delisted in the near future.

[36] A "trade-through" occurs when transaction takes place in one market even though another market is contemporaneously quoting superior price.

[37] *See* Memoranda from Eileen Smith, CBOE, to Joseph Levin, CBOE, re Battle Mountain Gold Trade-Throughs, dated January 13, 1988 and January 26, 1988 ("BMG Memos") (copies in Public File No. S7–25–87) and Multiple Market Trade/Quote Analysis ("Microsoft Study"), Appendix B to Statement of the Pacific Stock Exchange, Inc. in Response to SEC Release No. 34–24613, dated January 27, 1988 ("PSE response").

[38] The PSE found 29 possible cases (2.5% of the total number of trades on both exchanges) where the Amex traded through PSE quotes. The 5% figure cited in the text above reflects the PSE's assumption that there were an equal number of cases where the PSE traded through Amex quotes.

[39] *See* PSE response, *supra* note 37, at 13.

[40] In 1988, DEPA and OCE were combined to form OEA.

[41] *See* Information Memorandum to the Commission from OEA regarding trade-throughs in multiply-traded options, dated September 23, 1988. A copy of the memorandum has been placed in the public file of this proceeding.

involving stale quotes than did the CBOE, the PSE's analysis still contained a number of questionable trade-throughs.[42] Moreover, OEA estimated that, if one assumed all PSE trade-throughs *were* correctly identified, the cost to investors during the periods studied was $1.19 per contract traded through. This cost would fall to .29¢ per contract if OEA's estimate of the trade-through rate were used.[43] In either case, OEA found that its estimate regarding the cost *savings* realized by investors as a result of narrower spreads in Microsoft due to multiple trading ($11.25 per contract) was significantly greater than the cost of the trade-throughs.

III. Summary of Comments

The Commission received more than eighteen comment letters and heard testimony from 15 individuals in connection with proposed Rule 19c-5.[44] The Commission also has received several letters from members of Congress concerning the proposal.[45]

A. Commentators Opposed to Rule 19c-5

The majority of commentators, including three of the SROs that provide a market for standardized options trading, urged the Commission not to adopt Rule 19c-5 at the current time.[46] The chief arguments cited in opposition to the Rule are: (1) multiple trading will fragment trading interest between markets, resulting in disparate pricing, trade-throughs, and best execution problems; [47] (2) multiple trading in any option is likely to be short-lived and the gains to be derived are doubtful; [48] (3) multiple trading will impose additional significant costs on the SROs and providers of market information, which costs will be passed on to broker-dealers and their customers; [49] and (4) real and potential competition presently exists in the market for standardized options, making it unnecessary to adopt Rule 19c-5.[50]

A majority of commentators that oppose the adoption of Rule 19c-5 stressed the harm to public investors that they allege will result from the absence of a centralized market or linked markets for each equity option. They believe that, in a multiple trading environment in which order flow is divided between market centers, there will be numerous instances where customers will not receive best execution [51] of their orders, thereby imposing significant costs on public investors.[52] They argued that each market ultimately will become less deep and less liquid, thereby negatively affecting the prices at which customers can trade and the market making ability of floor traders. They stated that best execution problems will be further exacerbated by the absence of firm quotes in the options markets [53] and the

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[42] Of the total number of trade-throughs identified by the PSE, 10% were based on quotes more than 35 minutes old, and two were for transactions involving 100 and 200 contracts, a size at which a trade reasonably could occur outside the inside quote. Upon excluding those trades for which OEA did not find confirming evidence of a trade-through (*e.g.*, excluding those trades which were not confirmed by trade at the quoted price in the traded-through market or a subsequently occurring trade at a superior price), it concluded that the PSE's data could support a finding that only 3.4% of Microsoft trades in the sample period were trade-throughs. Applying the same standard of review to the CBOE's data did not yield useful information in OEA's opinion largely because of the thinly-traded nature of BMG options. *See id.* at 4.

[43] *Id.* at 5.

[44] Since publication of the notice of the Commission meeting to consider adoption of proposed Rule 19c-5, the Commission has received several additional comments regarding the proposed Rule. These comments, in large part, reaffirmed prior positions of the commentators and urged deferral of action on the proposed Rule. In the interest of prompt publication of this release, these comments are not summarized in this release, although the comments were considered by the Commission and will be placed in the public file.

[45] Congressional comments on proposed Rule 19c-5 generally requested that the Commission study certain issues relevant to the expansion of multiple trading and resolve these issues in a manner consistent with the Act before acting on the Rule proposal. *See, e.g.*, letter from John D. Dingell *et al.*, Chairman, U.S. House of Representatives Committee on Energy and Commerce, to David S. Ruder, Chairman, SEC, dated October 16, 1987; letter from Senator John Heinz *et al.*, Senate Committee on Banking, Housing, and Urban Affairs, to David S. Ruder, Chairman, SEC, dated August 9, 1987. Congressman Dingell requested that the Commission consider (1) the impact of multiple trading on the regional exchanges; (2) the costs of establishing duplicative trading facilities in various markets; and (3) the competitive cost of diverting resources of the U.S. securities exchanges away from foreign competition to inter-exchange competition. Senator Heinz requested that the Commission consider (1) the feasibility of developing a national market system for options; (2) the safeguards necessary for public limit orders in a multiple trading environment; and (3) the costs and benefits of multiple trading in the absence of market linkage facilities. *See also* letter from Senators Timothy E. Wirth and John Heinz, Senate Committee on Finance, to David S. Ruder, Chairman, SEC, dated February 5, 1988, suggesting that the Commission postpone public hearings scheduled for February 11, 1988, until such time as the Commission collected additional data concerning the incidence of trade-throughs in multiply-traded OTC options. Similar requests were made by Congressmen Dingell and Thomas J. Bliley, Jr. (*see* letter from John D. Dingell to David S. Ruder, dated January 20, 1988; letter from Thomas J. Bliley, Jr. to David S. Ruder, dated February 10, 1988).

[46] The three SROs that oppose the Rule are the CBOE, Phlx, and PSE. The NYSE, which became a participant in the Allocation Plan in 1985, urged the Commission to defer consideration of a multiple trading rule until such time as the exchanges, the securities industry, and the SEC had thoroughly studied the events leading up to the October 1987 market break, and analyzed what impact multiple trading of key index stocks would have had on the markets at that time. The NYSE endorsed the concept of initially "grandfathering" options classes already allocated to a single exchange in the event the Commission determined to adopt Rule 19c-5. *See* letter to Jonathan G. Katz, Secretary, SEC, from James E. Buck, Vice President and Secretary, NYSE, dated February 10, 1988 ("NYSE letter").

[47] *See, e.g.*, letter from William L. Larsen, Assistant Vice President and Director of State and Regulatory Affairs, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, SEC, dated February 29, 1988 ("SIA comment"); letter from David B. Weinberger, Managing Partner, O'Conner & Associates ("OCA"), to Jonathan G. Katz, Secretary, SEC, dated February 10, 1988 ("OCA comment"); letter from Patrick W. Powell *et al.*, Chairman, Options Round Table ("ORT"), to David S. Ruder, Chairman, SEC, dated June 14, 1988 ("ORT comment"); Response of Philadelphia Stock Exchange to Securities Exchange Act Release No. 34-24613, submitted to the SEC on September 17, 1987 ("Phlx response"); and letter from Brenda J. Swenson (options trading desk employee of a brokerage firm) to David S. Ruder, dated October 4, 1988.

[48] *See, e.g.*, Statement of Chicago Board Options Exchange, Inc. in Response to Release No. 34-24613, dated February 1, 1988 ("CBOE response"). *See also*, letter from Alger B. Chapman, Chairman and Chief Executive Officer, CBOE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated January 5, 1989 ("CBOE response No. 2").

[49] *See, e.g.*, SIA comment, OCA comment, and ORT comment, *supra* note 47; letter from Robert J. Casale, Group President, Automatic Data Processing (Brokerage Services Division) to Jonathan G. Katz, Secretary, SEC, dated February 29, 1988 ("ADP letter") at 2; and letter from Kenneth B. Allen, Senior Vice President, Government Relations, Information Industry Association, to Jonathan G. Katz, Secretary, SEC, dated February 12, 1988 ("IIA letter") at 3.

[50] *See, e.g.*, letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to David S. Ruder, Chairman, SEC, *et al.*, dated February 22, 1988 ("CBOE letter"); OCA comment, *supra* note 47, at 2; and Phlx response, *supra* note 47, at 20-22.

[51] In this context, "best execution" refers to the obligation of a broker to execute a customer's order in the best market. *See* Section 11A(a)(1)(C)(iv) of the Act [15 U.S.C. § 78k-1(a)(1)(C)(iv)(1982)]. See *infra* note 127 accompanying text for a discussion of the Commission's expectation that broker-dealers who route retail options orders to a single exchange will review periodically the quality of other competing markets to assure that their customers are receiving best execution of their orders.

[52] As noted previously, the PSE and CBOE each submitted data on the number of trade-throughs they observed in discrete time periods in Microsoft and BMG options, respectively. *See supra* notes 36-39 and accompanying text.

[53] In the past, options exchange market makers (including specialists) generally were not required by exchange rules to honor their displayed quotes; thus, options quotes were not, technically speaking, "firm" in the same sense that equity market makers are required, by rule, to honor their quotes. *See* Securities Exchange Act Rule 11Ac1-1 ("Quote Rule") [17 CFR 240.11Ac1-1 (1988)]. Recently, the options exchanges have undertaken initiatives to make quotes firm for smaller orders (*see infra* notes 100-05 and note 137 and accompanying text.) Moreover, even if market maker quotes are not required by Commission regulation to be firm, they cannot be fictitious and must be consistent with the maintenance of fair and orderly markets. *See also* Options Market Structure, Securities Exchange Act Release No. 26871 (May 26, 1989) at notes 50-52 and accompanying text ("Market Structure Paper") (published elsewhere in this edition of the Federal Register).

present inability of exchange member firms to redirect order flow from the floor of one exchange to another in the event another market quotes a superior price prior to order execution.[54]

Several commentators also expressed the opinion that multiple trading could foster an environment in which exchange rules regarding the priority of order execution are easily ignored, thereby degrading the overall pricing efficiency of the market for a particular option. For example, if a cross transaction [55] could not be executed favorably on one exchange because of the presence of public limit orders placed with the specialist or Order Book Official, the transaction could be effected in another market without regard to the existence of customer orders at the first exchange.[56]

Several commentators addressed the issue of whether it is currently desirable or even feasible to design market integration facilities that would alleviate best execution and pricing problems. The PSE stated that facilities similar to the Intermarket Trading System ("ITS") [57] for equity securities should be in place before multiple trading commences, but agreed that the extension of an ITS-type system to options raises numerous problems because of the structure of the options markets and the derivative nature of the securities.[58] These problems include the large number of options series that would have to be included in the system, the derivative nature and volatility of options, and the use of multiple component options strategies (*e.g.*, spread and combination orders.) [59] Further, the PSE and CBOE commented that, if multiple trading were initiated prior to the development of market integration facilities, the exchange(s) that had become primary markets would have no incentive to participate in the development of a system that ultimately could bring about a loss in their market share.[60]

Several commentators opposed to the Rule stated that, in the event multiple trading is expanded to include options not currently multiple traded, there will be only a short period of competition between markets, followed by the emergence of a single, dominant market for each option.[61] The commentators believe that this phenomenon will be dictated by broker-dealer order routing practices and capabilities, whereby broker-dealer firms pre-select the one market to which they will direct their order flow prior to the actual start-up of multiple trading.[62] They argue that, once a single market becomes dominant, the benefits to be derived from actual competition (such as a reduction in quoted spreads) disappear and potential competitors, lacking any order flow, have little ability thereafter to challenge the primary market.[63]

One commentator, the CBOE, argued that the NYSE would have an unfair competitive advantage in a multiple trading environment which encompassed NYSE-listed stocks.[64] The CBOE believes that the NYSE's failure to dominate the market in OTC options is irrelevant to the issue of its possible domination in options on stocks for which it is the primary market. Moreover, the CBOE asserted that the NYSE's competitive advantage would be greatly increased in the event it were permitted at some future time to engage in side-by-side trading.[65]

Several commentators, including the three exchanges that oppose adoption of the Rule, challenged what they perceive to be a key assumption in the Commission's formulation of Rule 19c-5—namely, that Commission adoption of a multiple trading rule is needed as an incentive to spur exchange competition. The exchanges argued that competition already exists in numerous forms in the markets for singly-traded options, as evidenced by the presence of competing marketmakers on each options floor; competition between exchanges in the areas of product development, execution and routing systems, and services to members; and competition with foreign markets and U.S. commodities markets. Two commentators also argued that in proposing Rule 19c-5 the Commission appeared to be elevating the goal of

[54] One commentator predicted that broker-dealer firms could be open to legal liability in the event orders are inadvertently sent to the wrong market, traded-through on another market, and ultimately not filled, prior to trading halt or significant news announcement. *See* letter from Lyn Lane, Vice President, Rauscher Pierce Refines Inc. ("RPR"), to Alice N. Rome, Special Counsel, Division of Market Regulation, SEC, dated September 1, 1987 ("RPR letter").

[55] A cross transaction occurs when the same broker acts as agent on both sides of the trade. As general matter, this practice only occurs if the broker first attempts to obtain better price in the market by publicly bidding above the highest bid or offering below the lowest offer. *See, e.g.*, CBOE Rule 6.74.

[56] *See, e.g.*, OCA comment, *supra* note 47, at 5-6. In addition, in CBOE response No. 2, *supra* note 48, the CBOE provided data it believes demonstrates that "secondary" options markets are used to facilitate crosses or to enable market makers to trade away from the primary market. For discussion of the Commission's views toward block-trading in multiple trading environment, see *infra* notes 114-18 and accompanying text.

[57] ITS, developed jointly by several equity exchanges, permits orders for the purchase and sale of multiple-traded securities to be routed among market centers. In 1980, when the Commission asked the options exchanges to study various alternative market integration facilities, it noted that an ITS-type system for options might be difficult to develop in the absence of firm quote rule for options. *See* Moratorium Termination Release, *supra* note 8, 45 FR at 21431-32.

[58] A similar opinion was expressed by PSE member who commented on the proposal. *See* letter from Don C. Whitaker, President, Don C. Whitaker, Inc., to Richard Ketchum, Director, Division of Market Regulation, SEC, dated June 22, 1987.

[59] *See* PSE response, *supra* note 37 at 5-9. The Phlx argued that the SEC can bring about actual or "real" competition in the options markets only by (1) requiring that quotes from all competing markets be displayed; (2) that all orders be routed to the best market; and (3) that limit orders in all markets receive equal protection. *See* Phlx response, *supra* note 47 at 40. The CBOE commented: "We do not believe that systems can be created within reasonable period of time or at reasonable expense—if they can be created at all—that would alleviate the adverse effects of multiple trading CBOE response, *supra* note 48, at 26.

[60] *See* PSE response, *supra* note 37, at 1 and CBOE response, *supra* note 48, at 27.

[61] *See, e.g.*, testimony of Nicholas Giordano, President, Phlx, Transcript of February 11, 1988, Public Hearing on the Multiple Trading of Options (corrected copy) ("Hearing Transcript") at 40-41. Some exchange commentators differentiated between what they view as the probable effect of an expansion of multiple trading in new listings and the effect of an expansion on options classes currently traded in single market. The CBOE commented that it is unlikely that order flow in the latter category of options will shift away from the currently designated markets. See testimony of Alger Chapman, Chairman, CBOE, Hearing Transcript at 16-17; *see also* testimony of Ivers Riley, Senior Executive Vice President, Amex, Hearing Transcript at 83 (fears of so-called "cherry-picking" the most-desirable options listings from other exchanges are "greatly exaggerated").

[62] Several commentators alleged that member firm order routing decisions are tainted by the consideration of factors unrelated to market quality. *See, e.g.*, CBOE letter, *supra* note 50, at 4-5 (alleging that in the past order flow has been redirected from one exchange to another as result of enforcement actions taken in one market against member firm, and because of the willingness of specialist on competing exchange to absorb losses that competing market-maker could not) and PSE response, *supra* note 37, at 11 ("[w]ithout best price execution rule, there will be tendency to place orders with the exchange where it is most convenient, and not necessarily the one with the best price.")

[63] *See, e.g.*, CBOE response, *supra* note 48, at 12-13. The CBOE argues that, upon the emergence of dominant market, "actual and potential competition cease to exist. To think that there will be potential competition from those who fought and lost—or from those who were unable or unwilling to fight—is to ignore the realities of the world in which such decisions are actually made.

[64] *See id.* at 17-19.

[65] "Side-by-side" trading is generally defined as the trading of derivative and underlying securities at the same physical location. "Dual" market making, a related term, refers to simultaneous market making in an option and its underlying security by the same person or firm. Presently, NYSE specialists are permitted to acquire and hold positions in listed options on any of their specialty stocks in their specialist trading accounts "where appropriate to offset the risk of making market in the underlying stock. *See* Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708, 5709. We assume that, in the context of this proceeding, the CBOE's objection is to both dual market making and side-by-side trading.

competition above other regulatory purposes, (*e.g.*, the protection of investors and the maintenance of fair and orderly markets), rather than weighing the benefits of increased competition against its impact on these other regulatory purposes.[66]

Several commentators argued that Commission adoption of Rule 19c-5 at the current time would impose burdensome costs on the options exchanges and the securities industry at a time when they are ill-equipped to bear such expenses. These commentators stressed that the direct costs of the Rule, such as investments in the design and development of market integration facilities as well as possible loss of options revenue, could place U.S. options exchanges at a competitive disadvantage vis-a-vis foreign options markets and domestic commodity markets, and could result in decreased funding for product development.[67] The commentators further stated that these costs must be considered in light of the significant volume and revenue declines experienced by the options exchanges following the October 1987 market break.[68] SRO commentators also questioned whether there is presently sufficient market making capital available to support an increase in the number of multiple-traded option classes.

The CBOE recommended that, if multiple trading were permitted, it should be done on a prospective basis only.[69] The CBOE asserts that there is a sufficient number of option-eligible stocks that do not currently have options overlying them to provide an adequate basis for examining the effects of expanded multiple trading without jeopardizing exchange resources in a full-scale expansion to multiple trading.

Exchange commentators also suggested that purveyors of options information (*i.e.*, the Options Price Reporting Authority ("OPRA") [70] and the private vendors that publicly disseminate options last sale information and quotations) do not have the capacity to handle the increased message traffic that might be associated with multiple trading.[71] For example, if several exchanges multiply-traded most or all existing listed options, the number of displayed quotations would increase dramatically, especially with the large number of series traded in many options classes. The CBOE estimated that the cost to vendors involved in upgrading their systems to meet increased demand "could be in the range of $100 to $200 million [72] In light of the vendor problems with series proliferation during the October market break, these commentators argued that increased options information from multiple trading could overload vendor systems.[73]

Those options information vendors who commented on the proposed rule expressed similar concerns. For example, the Information Industry Association ("IIA") stated that the expansion over the past several years in options quotation and trading information has strained "the electronic computer systems and communications networks of financial information service vendors. [74] IIA expressed the concern that, should this expansion continue as a result of multiple trading, there could be serious operational problems and significant increases in processing costs, which costs would be passed on to brokerage firms and the public. It indicated that measures designed to promote a more efficient information dissemination system should be considered prior to expanding the number of multiply-traded options.[75] Another vendor commentator, Automatic Data Processing, urged the Commission to determine whether all market data vendors have the capacity to disseminate options data on an accurate and timely basis.[76]

B. Comments in Support of Rule 19c-5

Two SROs [77] and two broker-dealer firms [78] commented favorably on the Commission's proposal to expand multiple trading. The Amex suggests that the Allocation Plan has "outlived its usefulness" and in fact has become detrimental to the options exchanges, their members, and public customers. The Amex commented that, under the Plan, exchanges have no incentive to delist options that are only thinly traded and feel compelled to list new options for which they will have an exclusive franchise, regardless of the potential of a particular class to attract significant trading interest. As a result, exchange and member firm resources are committed to marketing and supporting products that would be delisted in a more competitive environment for lack of order flow. The Amex also objected to a continuation of the Allocation Plan on the grounds that it prevents investors from realizing the savings benefits associated with multiple trading in the form of reduced spreads—benefits which the Amex believes would outweigh the possible negative impacts of multiple trading, at least in options classes not presently allocated to a single exchange.[79]

The Amex states that the Allocation Plan should be abandoned. If, however, a wholesale expansion of multiple trading would cause problems for firms and information vendors, the Amex suggests several means to permit a gradual or "phased-in" expansion of multiple trading, including an alternative whereby multiple trading of options currently limited to trading on one exchange would be phased-in over a period of time.[80] While the Amex states that it prefers a wholesale end to the Allocation plan, it suggests that a "phased-in approach might lessen potential problems for retail firms in terms of order routing and staffing decisions, for vendors in terms of accommodating increased traffic in quotation and execution reporting, and

[66] *See* CBOE response, *supra* note 48, at 1-2; Phlx response, *supra* note 47, at 22-23.

[67] *See, e.g.*, Phlx response, *supra* note 47, at 49-50 and PSE response, *supra* note 37 at 19.

[68] A comparison of cumulative year-end trading volume figures in all standardized options for the years 1987 and 1988 shows that the options markets have experienced a significant 35.8% decline in trading volume (305,130,000 contracts for 1987 versus 195,927,000 contracts for 1988).

[69] *See* CBOE response No. 2, *supra* note 48.

[70] OPRA is responsible for collecting from the options exchanges last sale and quotation information for all standardized options and disseminating that information to private vendors.

[71] *See, e.g.*, CBOE response, supra note 48, at 19-23.

[72] *Id.* at 22-23 (footnote omitted).

[73] For a discussion of vendor capacity issues, *see* Division of Market Regulation, *The October 1987 Market Break* (February 1988), at 8-8 and 8-22.

[74] *See* IIA letter, *supra* note 49, at 2.

[75] Specifically, IIA made the following three suggestions: (1) that quotation reporting be allowed to commence prior to the market opening in order to reduce the number of price reports at the market opening; (2) that quotation reporting on inactive contracts be deferred until after the market opening; and (3) that use of "auto-quote" systems (*i.e.*, systems that automatically generate quotations in all series of an option contract based on trade report in one series) be discouraged. *See id.* at 4. The Commission also received letter from Knight-Ridder Financial Information Group ("KR") that expressed support for the IIA's position. *See* letter from Thomas J. Jordan, Chairman, KR, to Jonathan G. Katz, Secretary, SEC, dated March 7, 1988.

[76] *See* ADP letter, *supra* note 49, at 1-2.

[77] *See* Statement of the American Stock Exchange regarding Multiple Trading of Options, dated February 1, 1988 ("Amex statement"); and Introductory Statement [of] John T. Wall, and Testimony of Peter B. Madoff, National Association of Securities Dealers, Inc. on Multiple Trading of Options, dated February 11, 1988 ("NASD statement").

[78] *See* letter from Daniel P Tully, President and Chief Operating Officer, Merrill Lynch & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated September 10, 1987 ("Merrill Lynch letter") and letter from Anson M. Beard, Jr., Managing Director, Morgan Stanley, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1988 ("Morgan Stanley letter").

[79] *See* Amex statement, *supra* note 77, at 11-12.

[80] *See id.*

for the exchanges in terms of losing dominant markets previously established.

The NASD [81] expressed views similar to the Amex, commenting that in its opinion multiple trading enhances market depth and liquidity without increasing transaction costs or compromising investor protection. It cited the recent OTC options trading experience in Mentor and Microsoft options [82] as evidence that the development of a primary market soon after the institution of multiple trading is not a foregone conclusion. Further, the NASD asserts that, where primary markets have emerged, they have been won on the basis of market quality. The NASD postulates that markets that do enjoy a dominant share of order flow "continue to be disciplined by the threat of future competition. [83] Unlike the Amex, the NASD expressed a preference for an across-the-board expansion of multiple trading, rather than implementation of multiple trading on a prospective basis for optionable stocks not previously allocated to a single exchange.

Morgan Stanley and Merrill Lynch express support for proposed Rule 19c-5. Morgan Stanley states that in its experience multiple trading provides customers with improved execution possibilities, and in addition has the potential to increase liquidity in the options market by attracting additional sources of capital and market making talent. The firm states that the competitive benefits of multiple trading will outweigh the costs incurred by member firms to develop price and quotation integration facilities, which the firm views as a requirement for best execution of customer orders.[84]

Merrill Lynch states that it supports Rule 19c-5 because its OTC options customers have not been disadvantaged by multiple trading and the firm's selection of primary markets. The firm notes that this position represents a departure from its position of a decade ago, when it opposed an expansion of multiple trading due largely to the fact that no order routing systems existed which automatically could route customer orders to the market with the best price.[85] Although such a system still does not exist, Merrill Lynch supports an expansion of multiple trading because of its "favorable" experience with OTC options "and the Commission's acceptance of brokerage firm market designation practices.[86] Merrill Lynch recommends, however, that, in the event multiple trading is extended to a large number of options classes, the Commission should consider (1) adopting standards regarding what constitutes "public" versus "professional" volume (so that firms consistently have reported data upon which to base their order routing decisions), and (2) requiring that all exchanges commence multiple trading in an option class on the same day (so that firms have sufficient time and information to make routing decisions).[87] Merrill Lynch states that adoption of these measures would promote fair competition between exchanges in the absence of market integration facilities.

IV Discussion

After a careful review of the record, including all comment letters and the testimony of all witnesses, the Commission believes adoption of a rule to permit multiple trading of all options classes is desirable and wholly consistent with the Act and its purposes. In order to reduce operational concerns raised by commentators and to provide an opportunity for the markets to implement any market integration facilities that they believe are appropriate, the Commission has designed the Rule to provide the exchanges with a substantial phase-in period. The discussion below provides the rationale, justification, and authority for the Commission s decision to adopt Rule 19c-5, and discusses certain modifications made to the Rule as initially proposed.

A. Description of Rule 19c-5 and New Commission Policy on Multiple Trading

Rule 19c-5, as adopted, adds to the rules of national securities exchanges that provide a trading market in standardized put or call options a prohibition, commencing on the effective date of this Rule, January 22, 1990, against the allocation of any new stock options class to a single exchange, and thus ends the Allocation Plan. Therefore, any stock options class first listed on an options exchange on or after January 22, 1990 can be multiply traded. For the reasons discussed below, the Commission also has determined to permit multiple trading of previously listed options on exchange listed stocks. Accordingly, beginning January 22, 1990, each options exchange will be permitted to multiply trade at any one time up to ten additional stock options classes overlying exchange-listed stocks that were trading on another options exchange on or before January 22, 1990.[88] In order to ease market structure and operational concerns raised by an immediate expansion of multiple trading, however, the Commission has designed Rule 19c-5 to provide a phased-in expansion of multiple trading on exchange-listed stocks. Specifically, the Rule provides that as of January 22, 1990, no exchange rule can limit the exchange's ability to list any stock options class first listed on an options exchange on or after January 22, 1990, because that option is listed on another options exchange. Finally, the Rule also provides that as of January 21, 1991, no options exchange can limit by any means its ability to list any stock options class because that class is listed on another exchange. Under Rule 19c-5, an exchange unilaterally could decide, as a business matter, not to multiple trade any particular option. An exchange could not, however, reach an agreement with one or more other exchanges to refrain from multiple trading.

As noted elsewhere, several commentators expressed concern that implementation of the Rule immediately following its adoption would not provide

[81] In 1985, the NASD received Commission approval, in principle, to display quotations in standardized put and call options on NASDAQ stocks and stock indexes. Prior to commencing an options program, however, the Commission determined that the NASD would need to implement fully automated options audit trail. In addition, before NASD market makers can engage in integrated market making, the Commission determined that exchanges which traded both stock and options would have to be eligible to obtain unlisted trading privileges ("UTP") in OTC stocks and the NASD would have to implement regulatory standards and surveillance procedures to detect frontrunning abuses. *See* OTC Approval Release, *supra* note 14, 50 FR at 20315-27. As of the date of this Release, these requirements have not been fulfilled. Indeed, the NASD commenced program to trade standardized options on certain OTC stock indexes in September 1985, but the program was terminated in July 1986 due to lack of volume. *See* Securities Exchange Act Release No. 22404 (September 13, 1985), 50 FR 38235.

[82] *See* discussion *supra* notes 32-33 and accompanying text.

[83] NASD Statement, *supra* note 77, at 5.

[84] The firm comments that the costs of building such facilities should be viewed as "an important investment in more efficient options markets, and that in the long term these facilities would help maintain the competitive posture of U.S. securities markets in global trading environment. Morgan Stanley letter, *supra* note 78, at 3.

[85] *See* attachment to Merrill Lynch letter, *supra* note 78.

[86] Merrill Lynch letter, *supra* note 78, at 2.

[87] *Id.*

[88] Under the Rule, any of the pre-existing options eligible for multiple trading, whether overlying OTC stocks or exchange-listed stocks, could be multiply traded and would not count as one of the ten additional options classes. In addition, no stock option class first listed on an options exchange on or after January 22, 1990, would count as one of the ten additional options classes. Moreover, the ten options classes chosen need not remain static: an exchange can replace any of the ten at any time.

sufficient time for the exchanges, member firms and options information processors to make any systems modifications and listing decisions they deemed appropriate or necessary. Several commentators also stated that a wholesale expansion of multiple trading to include previous as well as future options listings would be particularly burdensome. The Commission, however, continues to believe that, just as with the introduction of new options products,[89] multiple trading of options on exchange-listed stocks listed after the effective date of the Rule will not have a radical effect on existing markets because no options exchange's financial viability is dependent on revenues from these products. In response to these concerns, Rule 19c-5, as adopted, will permit a gradual expansion of multiple trading by limiting to ten the number of existing listed options on exchange-listed securities that any exchange may subject to multiple trading between January 22, 1990, and January 21, 1991.[90] As discussed below, the Commission believes the phased-in implementation schedule of Rule 19c-5 affords the options exchanges, broker-dealers, information vendors, and other market participants ample time to consider and implement necessary changes to accommodate the introduction of multiple trading of options on exchange-listed securities.

The Commission also has designed Rule 19c-5 to address the treatment of replacement options during the phase-in period. Specifically, Rule 19c-5 provides that an options exchange can replace any of its ten selected options with another option listed prior to January 22, 1990, if the option is involuntarily delisted as a result of a merger or failure to satisfy options listing standards.[91]

Finally, in response to commentators' requests and congressional concern that the Commission provide direction to the SROs and the securities industry regarding the design of facilities to integrate the market for standardized options trading, the Commission today is releasing a staff paper describing alternative initiatives for the development of market integration systems.[92] As explained in detail in that document, the Commission believes that the technological means to achieve the goal of integration presently exist; the Commission also believes, however, for reasons stated below, that the development of market integration facilities prior to the expansion of multiple trading as contemplated by Rule 19c-5 is not required by the Act.

B. Statutory Requirements

As stated in the Introductory section of this Release, the Commission proposed Rule 19c-5 pursuant to sections 6(b)(8) and 11A(a)(1)(C) (i) and (ii) of the Act [93] sections which, respectively, (1) prohibit a national securities exchange registered with the Commission from imposing "any burden on competition not necessary or appropriate" in furtherance of the purposes of the Act, and (2) direct the Commission to promote the "economically efficient execution of securities transactions; [and] fair competition among brokers and dealers, [and] among exchange markets These sections codify a Congressional intent that the U.S. securities markets, including options markets, be free from competitive restraints to the furthest extent possible consistent with the other goals of the Act.[94] Accordingly, in addressing the multiple trading issue, the Commission has examined carefully the evidence regarding the positive impact of exchange competition arising from multiple trading on investors, as well as arguments regarding the potential negative effect of multiple trading on the exchanges, their member firms, and retail customers.

Having examined this evidence, we believe the benefits to be derived from an expansion of multiple trading have been demonstrated and amply documented by the Commission, its staff, and several of the commentators. The Commission begins with the premise that, under the Act, market participants should have the ability to select the marketplace of their choice. Thus, the Act disfavors the imposition of a particular market on investors via a government-sanctioned lottery, at least in situations in which there is no evidence of significant negative impacts occurring as a result of multiple trading. This requirement consistently has been a factor in positions taken by the commission since the introduction of standardized options trading. Indeed, in 1980, the Commission approved the Allocation Plan only as an interim step until structural problems with multiple trading could be resolved. This interim step has become entrenched as the options exchanges have ceased efforts to develop market integration facilities which would resolve these structural problems.

In considering the adoption of rules such as Rule 19c-5, the Act requires the Commission "to balance the perceived anticompetitive effects of the regulatory policy or decision at issue against the purposes of the Exchange Act that would be advanced thereby and the costs of doing so." [95] Implicit in this calculus is the Act's initial preference for providing investors with marketplace choice; this choice should be restricted only when it might lead to serious regulatory abuses or a market failure.[96]

In examining multiple options trading, the Commission finds that the Act's initial preference for marketplace choice is supported strongly by the benefits that multiple trading has and will provide to the marketplace. First, multiple trading could lead to an improvement in market making quality. The Commission staff studies found that investors could directly benefit from multiple trading by paying reduced transaction costs.[97] The extent to which these costs can be reduced has been debated by commentators throughout this proceeding.[98] The Commission nevertheless believes that the staff studies amply demonstrate that multiple trading provides at least significant short term improvements in the quality of multiple-traded options markets. Given the longer period of time it has taken for multiple trading battles to settle on a dominant marketplace since these studies were conducted,[99] it is likely that these benefits will prove even more significant. Further, the Commission notes that, if an exchange emerges as the dominant marketplace

[89] For a discussion of the Commission's rationale for permitting multiple trading of new options products, see *supra* notes 13–15 and accompanying text.

[90] In other words, between January 22, 1990, and January 21, 1991, maximum of fifty (50) options classes previously limited to trading on single exchange could be listed for multiple trading (assuming the five SROs currently approved as options markets each selected their maximum allotment and each SRO did not duplicate the selection of another SRO). Under the phased-in policy, an options exchange would not be prohibited from selecting the same options class for listing as selected by another exchange, but such a selection would count against the ten total selections permitted that exchange.

[91] Of course, any option newly listed to replace an involuntarily delisted option will be eligible to be multiply traded without counting against the ten total selections permitted each exchange.

[92] *See* Market Structure Paper, *supra* note 53.

[93] Rule 19c-5 is also consistent with sections 19(c) and 23(a)(2) of the Act [15 U.S.C. 78s and 78w (1982)].

[94] Senate Comm. on Banking, Housing & Urban Affairs, *Report to Accompany S. 249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 7, 13, *reprinted in* 1975 U.S. Code Cong. & Ad. News 179 ("Senate Report").

[95] *Id.* at 13–14.

[96] Therefore, competition is not "paramount to the great purposes of the Act, but the need for and effectiveness of regulatory actions in achieving those purposes have to be weighed against any detrimental impact on competition. *Id.* at 14.

[97] *See* DEPA Study, *supra* note 20, at 7; OCE Study, *supra* note 20, at 24.

[98] *See supra* notes 25–26 and accompanying text.

[99] *See supra* notes 32–35 and accompanying text.

for a particular option, it still could be challenged in the future for that option if it does not continue to provide an adequate market for that option.

Second, multiple trading has spurred the options exchanges to increase the quality of the services they provide. In response to battles for a particular option or to the initiation of OTC options trading generally, the exchanges have improved operational services, enhanced market making requirements, and provided incentives to attract order flow. For example, the PSE and the PHLX have imposed trading crowd market making requirements to improve trading crowd performance ("ten-up requirements")[100] and the Commission has approved CBOE, PSE, and PHLX programs that require exchange members to evaluate the quality of their exchange's markets. In addition, the CBOE has implemented a quasi-specialist system, involving a Designated Primary Market Maker ("DPMM"), to enhance market making for new options.[101] The system is used for all new OTC options, and is a response to the CBOE's failure to achieve primary market status in the first round of OTC options in 1985.[102]

Similarly, both the Amex and CBOE have expanded the use of their small order routing and execution systems as a means to compete for OTC options. When the CBOE was limited to using its Retail Automatic Execution System ("RAES")[103] for only six equity options during a pilot phase, it replaced a relatively inactive allocated option with an option on the OTC stock Battle Mountain Gold when the option was introduced on the CBOE and the Amex. The Amex immediately placed the Battle Mountain Gold option on its small order execution system.[104] Moreover, as the CBOE expanded the use of RAES to an additional 75 options, and placed new OTC options on the system, the Amex expanded its system to all multiply traded options. In addition, the PHLX has filed a proposed rule change with the Commission to adapt its automated order routing and confirmation system, known as AUTOM" to include an automated execution feature for certain eligible market and marketable limit orders.[105]

Thus, the Commission believes that, at a minimum, multiple trading in OTC stocks has spurred the options exchanges to increase trade handling and execution quality.[106] The Commission believes that further expansion of multiple trading will continue to encourage service innovations by the options exchanges.

The Commission has weighed the reasonably anticipated benefits against the possible adverse consequences of an expansion of multiple trading—namely, market fragmentation, domination by one market, and harm to the financial integrity of particular exchanges.[107] While, as described below, enhancements to the multiple trading environment may be appropriate, we have determined that on balance the benefits to be derived from an expansion under the currently existing market structure outweigh any reasonably anticipated costs. The experience in OTC options has provided the Commission with an opportunity to review the operation of multiple trading, albeit on a reduced scale. The OTC options experience has been largely a positive one; few of the feared problems have surfaced while several marketplaces have been provided a meaningful opportunity to compete for business. Given the Act's preference for marketplace choice and the benefits which multiple trading has engendered to date, Rule 19c-5 should be adopted unless serious and far-reaching harms would result. As described below, the Commission believes that the problems, if any, that would result from full scale multiple trading would be small and manageable.

1. *Market Fragmentation.* Those commentators who oppose an expansion of multiple trading cited market fragmentation and its potential consequences (*e.g.*, failure of the market to reflect all buying and selling interest, trade-throughs, and best execution problems) as the chief problem with multiple trading in the absence of market integration facilities. Opinions of the commentators regarding the degree to which market fragmentation will occur were mixed. Some commentators believe that multiple trading in the absence of market linkages is likely to result in numerous exchanges each listing the same option classes; others believe that a single, dominant market will emerge for all options trading. As noted previously, some commentators differentiated between the market fragmentation which may arise in classes currently trading on a single exchange, and that which may occur in classes not yet listed.

Having considered the evidence before us, we believe that it is unlikely the adoption of Rule 19c-5 will result in either a significantly large number of fragmented options classes or significant fragmentation within a single class. Historically, the exchange which has first established a market in an option generally has been successful in maintaining a major proportion of order flow against any challenger. Accordingly, the Commission does not anticipate that options markets will challenge currently existing primary markets for a significant number of their options listings,[108] nor do we believe that any competition that does arise in multiply-traded options will, in the typical case, involve multiple competitors. Indeed, the Commission believes that it is unlikely that a new market will challenge an existing market unless the existing exchange is providing a poor market or the

[100] PSE rules require that, when market makers are responsible for the best bid and/or offer in certain specified option classes, customer orders are to be filled to a minimum depth of ten contracts by the market makers in the trading crowd. *See* Securities Exchange Act Release No. 23775 (November 4, 1986), 51 FR 41886. The PHLX's ten-up requirement applies to all options series traded on the PHLX and to instances where floor traders are not quoting the best bid or offer. *See* Securities Exchange Act Release No. 26669 (March 27, 1989), 54 FR 13282. In addition, the CBOE and the Amex have filed proposed rule changes with the Commission to impose a ten-up requirement on their floor traders on pilot program basis. *See* Securities Exchange Act Release No. 26570 (February 24, 1989), 54 FR 8857 and Release No. 26834 (May 18, 1989).

[101] Under the DPMM program, CBOE committee appoints DPMM to a particular option class. In addition to the normal obligations of floor broker and market maker, the DPMM responsibilities include: (1) disseminating accurate market quotations; (2) honoring market quotations; (3) maintaining regular presence at the trading post; (4) participating in automatic execution systems, as applicable; and (5) resolving trading disputes, among others. *See* Securities Exchange Act Release No. 24934 (September 22, 1987), 52 FR 36122.

[102] *See supra* notes 30–31 and accompanying text.

[103] RAES automatically executes public customer market and marketable limit orders of ten or fewer contracts against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system. Subsequently, RAES has been approved for all CBOE-equity options. *See* Securities Exchange Act Release No. 25995 (August 15, 1988), 53 FR 31781.

[104] The Amex's automatic execution system, known as Auto-Ex, executes public customer market and marketable limit orders of 20 or fewer contracts at the best bid or offer displayed at the time the order is entered into the system. *See* Securities Exchange Act Release No. 25996 (August 15, 1988), 53 FR 31779.

[105] *See* rule filing SR-PHLX-89-03.

[106] If an options exchange does not provide an adequate level of execution services, that failure could conceivably affect its market share. For instance, in 1978, Merrill Lynch changed its primary market designation for several options classes from the CBOE to the Amex due to "operational difficulties" of the CBOE. Options Study Report, *supra* note 7, at 836–38.

[107] The Commission notes that the Act does not require minimum number of options exchanges or mandate that any exchange be allowed to survive by shielding it from fair competition.

[108] We note that this position is in accord with the opinion of at least two options exchanges, one of which opposes Rule 19c-5. *See* testimony of Alger Chapman, Chairman, CBOE, Hearing Transcript, *supra* note 61, at 16–17 and testimony of Ivers Riley, Senior Executive Vice President, Amex, *id.* at 83.

competitor is prepared to provide an excellent market and superior services.

The Commission does not believe that, in those classes in which there is substantial market fragmentation (either in the short or long run), there will be significant negative impacts on investors. To the contrary, improvements in market making quality should be the most significant in those classes for which there are competitive markets. Even in those classes in which a dominant or single market exists, the threat of potential competition could have a disciplining effect on market prices.[109]

Moreover, in the OTC option context, problems with "trade throughs" have not, in the Commission's judgment, exceeded the benefits obtained from multiple trading.[110] While the evidence is mixed as to the number of trade-throughs that may occur in a multiple trading environment, we find that the potential incidence and cost of trade-throughs does not appear to approach the potential for cost savings from exchange competition.[111]

Further, we do not believe that the presence of competing markets will result in significant pricing problems at the opening, inferior execution of public limit orders, or serious pricing problems resulting from the executions of block-size trades away from the primary market. The experience with multiple trading of OTC options demonstrates that the exchanges have the ability to mitigate pricing problems at the opening. Indeed, Commission staff studies of multiple trading of OTC options found no evidence of pricing problems at the opening. One of the exchanges that opposes Rule 19c-5 testified at the public hearing that, although initially disparate prices occurred at the opening on an average of two or three times a week in one multiple-traded class, within a relatively short period of time the competitor exchange delayed its opening until the primary market had established a price.[112] The Commission also notes that one large retail firm, Merrill Lynch, commented that it has received very few customer complaints concerning executions received in multiple-traded OTC options.[113] In addition, we believe that the best execution obligations of all brokerage firms will aid in ensuring that public customers generally receive the best available price.

Regarding the potential for block-sized transactions to be routed away from the primary market in order to avoid public limit orders, the Commission recognizes that this practice could have a negative effect on the pricing efficiency of the market and on the protection of public customer limit orders placed with specialists and Order Book Officials. The Commission is unable to conclude, however, that trading large options orders away from the primary market is likely to become widespread in a multiple trading environment. Although the CBOE has provided some evidence regarding the frequency with which this practice may occur,[114] its data does not suggest that more than a minimal percentage of an option's order flow consists of blocks executed away from the primary exchange. Accordingly, while the Commission does not believe its impact will be significant, the Commission will monitor this practice closely as multiple trading expands.[115] If this practice does prove material, the Commission believes that the proper response would not be for the Commission to restrict multiple trading but instead for the options SROs to develop market integration systems which would permit system-wide protection of limit orders.[116]

In sum, the market fragmentation problems from OTC options have been minimal, and little evidence exists that full-scale multiple trading would increase significantly these problems. Rather than restrict options from multiple trading, and thereby remove the substantial benefits that such competition provides, the Commission believes that the exchanges should work on reducing any perceived market fragmentation problems. Rule 19c-5 will not take effect for almost eight months, and there will be a one-year phase-in period thereafter. During this time, the options exchanges should review the desirability of implementing cost-effective market integration systems.[117] Moreover, the phase-in period would provide ample time for the exchanges to increase communication procedures among themselves for openings of multiply-traded option classes and to resolve any problems regarding the introduction of new option classes. In this connection, the Commission has today authorized the publication of a staff white paper which analyzes the costs and benefits of these potential initiatives. The Commission will use the phase-in period to monitor trade-throughs, block avoidance, and any other possible problems that may result from multiple trading, and will consult with the options exchanges should unanticipated problems develop. It bears repeating, however, that by adopting Rule 19c-5, the Commission has concluded that these issues do not warrant delaying multiple trading any longer. There are sound reasons for pursuing the development of market integration facilities, but the Commission does not believe that meaningful progress on these issues will occur so long as some of the existing options markets who oppose multiple trading believe that the failure to develop such facilities will further delay multiple trading.

2. *Fair competition.* Several commentators objected to Rule 19c-5 on the grounds that "fair" competition[118] between exchanges as mandated by the Act is impossible to achieve in the absence of a neutral order routing switch,[119] a firm quote rule,[120] and a

[109] As noted, *supra* notes 97-106 and accompanying text, however, the Commission's decision to adopt Rule 19c-5 does not rest primarily on the benefit of potential competition on transaction prices, but rather on the other improvements in exchange services and market quality engendered by multiple trading.

[110] *See supra* notes 40-43 and accompanying text.

[111] We also note that, because by definition trade-throughs reflect prices in fragmented market, the estimated cost of the trade-throughs identified by the PSE and CBOE may reflect the positive pricing attributes of competing markets. As noted previously, the majority of trade-throughs identified by the PSE and CBOE occurred between 1/16th and 1/8th point away from the best quote. Because the relative narrowness of the spreads in these markets may be at least partly attributed to inter-exchange competition, the trade-through price may be indicative of what the broader quotations would have been if the option were not subject to multiple trading.

[112] *See* testimony of Charles Henry, president, CBOE, Hearing Transcript, *supra* note 61, at 20-23.

[113] *See* Merrill Lynch letter, *supra* note 78, at 2.

[114] *See* CBOE response No. 2, *supra* note 48, at 3.

[115] Indeed, even assuming that significant portion of options order flow was in block-size transactions and that such orders were executed away from the primary market, the effect on public limit orders of such executions (as the CBOE has argued in other contexts, including the development of RAES) would depend on whether the block transactions were effected at prices which would otherwise trigger the execution of eligible public limit orders on the primary market and whether those orders were nevertheless executed. For example, in 1981, the CBOE reported that booked limit orders represented only 15% of its total contract volume, and booked and executed orders represented only 7% of total contract volume. *See* Supplementary Task Force Report, *supra* note 12, at 8-11.

[116] *See* Market Structure Paper, *supra* note 53, at notes 76-83 and accompanying text.

[117] *Id.* at Part V.

[118] *See* Section 11(A)(a)(i)(C)(ii) [15 U.S.C. 78k1(a)(i)(c)(ii)(1982)].

[119] The Commission envisions that a neutral order routing switch would permit any broker or dealer to route options orders from its offices to any competing options exchange. *See* Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354, 4358 and Moratorium Termination Release, *supra* note 8, 45 FR at 21431.

[120] *See supra* note 53 and accompanying text.

vendor display requirement similar to that for equities.[121] We do not agree.[122] If ever valid, these rationales appear outdated in view of the competition between exchanges for OTC options over the last year.

In regard to the fairness of competition in the absence of market linkage facilities, the Commission recognizes that brokerage firms generally do select, prior to the commencement of multiple trading in a particular class, the market to which they will direct their retail customer order flow. Although this situation has been the norm since the advent of options trading, the factors which firms consider in selecting a primary market appear to have increasingly emphasized market quality considerations. For example, in 1978, after reviewing trading practices in the then-existing options markets, Commission staff found that volume was the principal determinant in market selection decisions, so much so that the staff concluded that "exchanges other than the exchange designated as primary are effectively precluded from competing for automatically routed customer orders. [123] In 1985, however, with the start-up of multiple trading in OTC options, it appeared that, while volume was among the selection criteria, it was but one factor considered, and the selection factors in the aggregate emphasized market quality rather than market dominance.[124] The Commission believes that the more recent multiple trading experiences (*e.g.*, in Mentor, Microsoft, BMG, and Blockbuster options) evidence a continuing effort by brokerage firms to engage in a good faith evaluation of the liquidity and general operational capabilities of each competing marketplace, rather than simply to route all orders in all option classes to one exchange. Indeed, the fact that volume in the most recently contested options has been, at least initially, evenly split between at least two markets indicates that firms are not automatically directing order flow in all of their OTC options to a single market. Moreover, once firms have made an initial order routing decision, they have not locked themselves into that choice. Data from OTC options demonstrates that firms have switched order routing decisions months after the start-up of trading in an option, not just during the initial weeks of trading.[125]

Several commentators stated that firm order routing decisions are "unfair" because they are based on the consideration of factors unrelated to market quality, *e.g.*, enforcement efforts undertaken by a particular exchange against a broker-dealer member, affiliations between a firm and particular specialists, and "old-boy" networks. Similarly, the argument has been made that the exchanges located outside New York (*i.e.*, the "regional" exchanges) are at a distinct competitive disadvantage in their efforts to attract order flow, possibly because of a preference on the part of major broker-dealers for exchanges located in close proximity to themselves. Moreover, while the potential for consideration of irrelevant factors will exist in an options multiple trading environment (just as it exists for equity securities), the self-interest of brokerage firms in ensuring that their customers receive best execution and that the firms themselves are well serviced by the exchanges should discipline any tendency to consider factors unrelated to market quality.[126] Moreover, the Commission expects that "those broker-dealers that automatically route retail customer orders in a particular security to a pre-designated market [will], at a minimum, make periodic assessments as to the quality of such markets. [127] In addition, as discussed above, the recent battles over OTC options indicate that the exchanges outside of New York can obtain a primary market status in contests with the Amex. Finally, the Commission notes, too, that the order routing decisions of Merrill Lynch, one of the largest options retail firms, do not appear to reflect a prejudice either for or against exchanges located outside New York.[128]

A related argument, raised by the regional exchanges, is that an expansion of multiple trading will severely reduce their profitability, particularly in light of the decrease in options trading volume since the October 1987 market break, and ultimately may result in the closure of some or all of the regional exchanges.[129] The Commission does not believe that this argument is correct. The evidence before us clearly demonstrates the capacity of the regional exchanges to compete for, and in some instances dominate, trading in any new option class.[130] Moreover, for

[121] *See* Rule 11Ac1-2 under the Act ("Vendor Display Rule"), [17 CFR 240.11Ac1-2 (1988)].

[122] The Quote Rule, cited *supra* note 53, requires equity markets to make available to quotation vendors the highest bid and lowest offer for certain equity securities that they trade. These bids and offers must be honored up to the size displayed. Although the Quote Rule is not applicable to options trading, pursuant to the OPRA plan each exchange collects and transmits to the OPRA system "bids and offers at stated prices or limits sufficient in number and timeliness to reflect the current state of the market in such security. In addition, the Vendor Display Rule, *supra* note 121, provides that, in displaying quotations from the equities markets, securities information vendors must include either: (1) The best bid and best offer from among all markets (with identifiers indicating the market(s) reporting the best bid and offer), or (2) montage showing quotations from all reporting markets. The Vendor Display Rule by its terms does not apply to quotations for options. Many vendors, however, provide a montage showing the quotes of competing exchanges in each series of multiply-traded class. It appears that most, if not all vendors, display in some form quotation information from all markets multiply trading particular option class.

[123] Options Study Report, *supra* note 7 at 854.

[124] *See, e.g.*, Merrill Lynch letter, *supra* note 78, at 1- 2.

[125] For example, in Mentor options, which began trading in March 1987 on both the PSE and the Amex, the PSE market share decreased from 76.8% in April 1988 to 56.5% in July 1988, while the Amex's market share increased from 23.2% to 43.5% over the same period. This shift occurred 17 months after Mentor options trading began. A similar market shift occurred in Microsoft options. From September 1987 to November 1987, nine months after Microsoft options trading began, the PSE's market share increased from 66.7% to 84.8%, while the Amex's decreased from 33.3% to 15.2%.

[126] Where it is alleged that brokerage firm order routing decision is influenced by exchange disciplinary proceedings against the firm, the Commission will not hesitate to investigate and take appropriate enforcement action.

[127] Securities Exchange Act Release No. 16590 (February 19, 1980), 45 FR 12391, 12400 n.118 (Rule 11Ac1-2 Adopting Release). The Commission also notes that:

Broker-dealers who choose to automatically route their customer orders to designated market should be alert for unusual market conditions in the designated market which would require brokers to take additional measures (such as disclosure of market conditions or special handling of customer orders). Examples of such unusual market conditions would include substantial price disparity between the designated market and other markets, extreme volatility of the market in the security, and unusual trading patterns. *Id.*

See also Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360, 20366 (1978 Status Report on the Development of National Market System).

[128] *See* Merrill Lynch letter, *supra* note 78, at 1-2.

[129] The regional exchanges also argued that any loss of revenue and/or increased costs associated with the expansion of multiple trading would place them at a competitive disadvantage vis-a-vis foreign options exchanges. The Commission, however, believes it is highly unlikely that foreign exchanges will be able to attract a significant amount of order flow from U.S. options exchanges in the near future. Few options on U.S. stocks are traded on foreign exchanges, and none has generated any significant order flow. Moreover, in the one instance where fungible options on the same underlying security have been traded contemporaneously in the U.S. and abroad (options on the Major Market Index, traded on the Amex and European Options Exchange), the U.S. market has captured the vast majority of order flow. Finally, the Commission believes the enhanced competition among U.S. options markets resulting from the adoption of Rule 19c-5 will act as catalyst for more efficient markets which will attract foreign options order flow to U.S. exchanges.

[130] For trading statistics discussion, see *supra* notes 32-35 and accompanying text.

the reasons discussed above, the Commission believes that it is unlikely that competing markets generally will be successful in capturing a substantial market share in options already trading on an exchange. For example, the CBOE listed an option on the Standard & Poor's 100 Index ("OEX"), which has captured the large majority of index options volume, and no other options exchange has been successful in shifting away from the CBOE a significant percentage of the OEX's volume to its own index options. In addition, the regional exchanges have demonstrated their ability to be innovative in the design of new options products. In particular, trading on the Phlx in foreign currency options in 1988 constituted 46.7% of its total contract volume and provides the exchange with a substantial additional source of income.[131] Finally, as the Commission repeatedly has cautioned, the Act does not charge it with a responsibility to ensure by regulatory fiat the continued viability of a particular market participant.[132]

At least one commentator has argued that the NYSE, as the dominant market for equity securities trading, would have unfair competitive advantages over the other options exchanges in an expanded multiple trading environment, particularly if the exchange were permitted to engage in side-by-side trading.[133] The Commission does not agree. Rule 19c-5 as adopted does not allow the NYSE to engage in side-by-side trading in options on NYSE-listed stocks, and by no means reflects a Commission determination regarding the merits of that issue.[134] In addition, the NYSE has shown no ability to dominate other options exchanges in the competition for OTC-multiply-traded options. In fact, the NYSE has not become the primary market for any multiply traded option.

The Commission recognizes the CBOE's concern that the NYSE would have competitive advantages if options overlying stocks listed on the NYSE were multiply traded. Given the existing physical separation of the options and stock trading floors on the NYSE, however, the Commission cannot conclude that the NYSE, in comparison to the other options exchanges, would be able to provide market participants with substantially superior execution efficiency or market information. Further, the Commission cannot conclude that allowing the NYSE to participate in multiple trading would be unfair because NYSE specialists would engage in tying and other predatory practices. As we stated in the Proposal Release,[135] we question whether NYSE specialists would risk misusing their market power (for example, by providing inferior stock executions to firms which route their options order flow to other markets) in an effort to attract volume. In the absence of any evidence that the NYSE has engaged in predatory acts since the commencement of its option program, we cannot presume that the exchange would seek to do so in an expanded multiple trading environment.[136]

We also do not believe that the absence of firm quote and vendor display rules will preclude or inhibit fair competition between the exchanges.[137] The Commission understands that many vendors, including Quotron and ADP provide a montage for OTC options showing the quotes for each series on competing exchanges. Other vendors permit retrieval on separate displays of quotation and transaction information for all markets trading a particular class.[138] Thus, accurate and complete information is available.[139] Moreover, because Rule 19c-5 is drafted so as to permit only a gradual expansion of multiple trading, the exchanges and vendors will have sufficient time to undertake measures designed to provide the most useful information in quotation displays of multiply traded options.[140]

3. *Dissemination of Information.* There appears to be general agreement among the commentators that measures to increase the capacity of both OPRA and private vendors should be undertaken in order to accommodate an expansion of multiple trading. What steps should be taken, however, and how much they will cost, remains unclear. No firm cost estimates have been submitted to the Commission (although one commentator speculated that "[o]n an overall industry basis, the cost will be in the range of $100 to $200 million" [141]), nor has any commentator submitted evidence indicating that systems enhancements are, from a technological standpoint, impossible to develop. In addition, the Commission believes that some commentators have overestimated the information increase that would be engendered by multiple trading. As noted previously, we believe it is unlikely that adoption of the Rule will result in geometric increases in either the total number of multiple-traded options, or in the number of markets each trading the same option class. For example, of the 449 OTC stocks eligible for options trading, only 103 (23%) have options overlying them,

[131] For example, the Phlx was the first exchange to develop market in foreign currency options, and successfully overcame a challenge by the CBOE for share of that market.

[132] *See, e.g.*, Moratorium Termination Release, *supra* note 8, 45 FR at 21430; Options Study Report, *supra* note 7, at 864–70.

[133] *See supra* notes 64–65 and accompanying text.

[134] When the NYSE was approved for options trading on individual stocks several restrictions were imposed to address concerns arising from the NYSE's status as the primary market for all NYSE-listed stocks. For instance: (1) The stock and options trading floors are physically separated (*i.e.*, no side-by-side trading); (2) there is no integrated market making; and (3) options traders are prohibited from executing transactions in options on individual stocks for one hour after leaving the equity floor. *See* Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250.

[135] Proposal Release, *supra* note 5, at 52 FR 23854.

[136] Moreover, such conclusion only would, perhaps, suggest that the NYSE should not be allowed to trade multiply-listed options on stocks which are listed on the NYSE, not that the NYSE should be completely banned from competitively trading options on non-NYSE stocks.

[137] Without exception, in the past few years each of the options exchanges has required that their specialists and market makers voluntarily honor their quotes in certain options series to a minimum depth of contracts, usually ten. These requirements were imposed even in situations in which no multiple trading of options on exchange-listed stocks was involved, and we can discern no reason why they could not be imposed in a price-competitive environment. In fact, an expansion of multiple trading will provide the exchanges with additional incentive to encourage the honoring of quotes, at least to a minimum size. *See, e.g.*, PSE Rule VI, Sections 48 and 79, and PSE Options Floor Procedure Advice B-12; and Phlx Rule 1033(A). In addition, the Amex and the CBOE, through the use of their automated execution systems, require their specialists/floor traders to, in effect, honor the prevailing inside quote for trades up to ten contracts in certain series. *See also supra* notes 100–05 and accompanying text and Market Structure Paper, *supra* note 53, at notes 50–52 and accompanying text.

[138] Quotron and ADP also provide their customers with quotation and transaction information in this format.

[139] The Commission also notes that it will not permit vendors to discontinue displaying market information from any exchange about a multiply-traded option.

[140] The Commission notes the inconsistency of commentators arguing on the one hand that fair competition will be precluded or inhibited because of broker-dealer order routing practices that are unresponsive to which competing market is disseminating the best quote, and on the other that fair competition is unattainable because of the absence of firm quote and vendor display rules for options.

[141] *See* CBOE response, *supra* note 48, at 19–23. The CBOE, however, stated that "[i]t is difficult to estimate the cost." The CBOE did not detail what assumptions it was making about the degree to which options would be multiple traded and did not explain the basis for its "overall industry" cost estimate. Nevertheless, the Commission preliminarily believes that the costs to the industry will not be this dramatic because, as discussed above, the Commission does not believe there will be high incidence of multiple trading of currently outstanding options. Indeed, CBOE's estimate of potential file records expansion, which is based on whether "all outstanding option classes that are now solely listed were multiple-traded by every market, describes situation which will not occur.

of which only 10 (9.7%) are multiply traded. Moreover, Rule 19c-5 as adopted is well suited to accommodating the need of the exchanges and the information industry to test and determine the capacity limits of current systems, design system improvements, and calculate estimated costs, well in advance of any significant increase in the number of multiply-traded classes. The exchanges and disseminators of options information will have approximately six months to prepare for an increase in the number of multiple listings, and this increase will be limited, and to a large extent predictable, for the first 12 months following the Rule's adoption. Finally, even though the Commission is sensitive to the impact of Rule 19c-5 on the operational capacities of OPRA and private vendors and has designed the Rule to provide these entities with ample time to make systems enhancements well before there is any significant increase in the number of multiply-traded options, the Commission nevertheless believes potential vendor capacity concerns should not dictate the resolution of such an important market structure issue as multiple options trading.

4. *Other Issues Raised by the Commentators*—a. *Grandfathering:* Several exchange commentators expressed a preference for grandfathering those options already trading on one exchange pursuant to the Allocation Plan, in the event the Commission determined to adopt Rule 19c-5.[142] As already mentioned, however, the vast majority of desirable optionable stocks have been allocated to one exchange. If the Rule were not to apply to these option classes, the benefits investors could derive from multiple trading would be severely circumscribed. The Commission is sympathetic, however, with concerns expressed by commentators that, if the Rule were imposed quickly and across-the-board (*i.e.*, to previous as well as future listings), neither the industry nor the options exchanges would have sufficient time to plan for the Rule's implementation. In response to these concerns, the Rule as initially proposed has been modified so as to take effect on January 22, 1990, approximately six months after its adoption. In addition, affected parties will have an additional year between January 22, 1990, and January 21, 1991, in which to prepare for full implementation of the Rule.

[142] *See, e.g.*, NYSE letter, *supra* note 46, and CBOE response No. 2, *supra* note 48.

b. *Same Day Start-Up:* One commentator, Merrill Lynch, suggested that the Commission require all exchanges that desire to trade the same option to begin multiple trading on the same day. The Commission believes that such a requirement is inconsistent with the central concept of multiple trading: That the options exchanges be free to trade any eligible option at any time. A government-imposed uniform commencement of trading in an option would lessen the incentive for options exchanges to list what they judge to be a desirable option and would be an inappropriate restraint on the business judgment of an individual exchange. The Commission, however, does believe that options markets should provide their members a notice period, prior to the commencement of trading in a new options class, sufficient to permit their members to prepare operationally and to evaluate the relative merits of any competing markets. The Commission urges the options SROs to reach agreement on such uniform notice period.

c. *Other Means to Enhance Multiple Trading:* [143] Merrill Lynch also suggested that the Commission set standards for defining "public" versus "professional" trading volume and disseminating this information. If this were accomplished, broker-dealers would have a more accurate picture of how order flow is being routed to several exchanges trading an option, which would not only help them in examining their own routing decisions but also provide a more realistic indication of the volume and activity in a particular option. The Commission agrees that this information would be useful and would enhance fair competition among exchanges. Accordingly, the Commission encourages the options exchanges to develop such a capability. More specifically, the Commission requests each of the options exchanges to submit by September 18, 1989, a report detailing the criteria applied to distinguish "public" from "professional" orders, and an analysis of the feasibility of separately reporting public and professional trading volume.

[143] In regard to the IIA's three suggestions as to the improvement of information system dissemination prior to an expansion of multiple trading, (*see supra* note 75 and accompanying text), the Commission believes that the options exchanges should consider the capacity enhancements recommended by IIA. For the reasons discussed above, however, the Commission does not agree with the IIA that multiple trading would result in such an increase in informational processing costs that multiple trading should be deferred until the problems are solved.

The comment by Merrill Lynch underscores the responsibility that the options exchanges have to ensure that their members engage in fair competition in multiple trading contests. An important, but certainly not the only, factor in firm order-routing decisions for multiply traded options is which exchange is attracting the majority of public order flow from other firms. This may be particularly important in the first few months of multiple trading competition until a primary market has developed. Market makers at an exchange, in order to present an appearance of activity, might be tempted to engage in trading among themselves to an excessive (and often riskless) degree. This conduct is generally known as chumming. Such conduct could take the form of riskless or near riskless box or spread trading among market makers, a pattern of establishing and then reversing trades among a group of market makers, or merely a level of trading between market makers that is highly disproportionate to the usual level of market maker trading in non-dually traded options.[144] The Commission believes that this type of activity would be a failure of the market makers to uphold their obligations under SRO rules to maintain a fair and orderly market,[145] would be inconsistent with just and equitable principles of trade,[146] and would be violative of Sections 9 and 10 of the Act.[147] Accordingly, in light of Rule 19c-5, the Commission emphasizes the importance of the options exchanges maintaining adequate surveillance procedures to detect chumming.[148]

[144] *See* Securities Exchange Act Release No. 13433 (April 5, 1977), 11 SEC Doc. 2194 (April 19, 1977) ("Chumming Release"). The Commission recently imposed sanctions on the CBOE for failure to prosecute properly a chumming case. *See* Securities Exchange Act Release No. 26809 (May 11, 1989).

[145] *See* Amex Rules 170 and 958; CBOE Rule 8.7; and NYSE Rules 104 and 758, Phlx Rules 1014 and 1020, and PSE Rule VI, Section 79.

[146] *See* Amex Rule 16, CBOE Rule 4.1, NYSE Rule 401, Phlx Rule 707, and PSE Article XI, Section 1.

[147] Sections 9 and 10 of the Act [15 U.S.C. 78i and 78j (1982)]. *See* Chumming Release, *supra* note 144. Accordingly, in light of the adoption of Rule 19c-5, the options exchanges will have to reevaluate the adequacy of their surveillance procedures to detect chumming. The Commission, however, does not believe this will be difficult task because the exchanges already have implemented procedures which are used to detect chumming in OTC stock options.

[148] The Commission urges the SROs to ensure that their listing and marketing activities also are consistent with the concept of fair competition. For example, the phase-in-period for multiple trading should provide the SROs with sufficient time to agree on procedures governing the timing and selection process for listing new options. This is particularly significant in light of the Merrill Lynch suggestion of a uniform start-up date.

V Conclusion

In consideration of the above, the Commission has determined to adopt Rule 19c-5. After a careful review of the record before us, the Commission believes Rule 19c-5 is necessary and appropriate in furtherance of the Act, particularly Sections 6, 11A, 19(c) and 23.

VI. Availability of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis ("FRFA") in accordance with the Regulatory Flexibility Act regarding Rule 19c-5 has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposal release. Members of the public who wish to obtain a copy of the FRFA should contact Thomas R. Gira, Attorney, Branch of National Market System Regulation, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5-1), 450 Fifth Street, NW Washington, DC 20549.

VII. Statutory Basis and Text of Rule

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w 240.19c-5 also issued under Sections 6, 11A, and 19 of the Securities Exchange Act of 1934, 48 Stat. 885, as amended, 89 Stat. 111, as amended, and 48 Stat. 898, as amended, 15 U.S.C. 78f, 78k-1, and 78s.

2. By adding 240.19c-5 as follows:

240.19c-5 Governing the multiple listing of options on national securities exchanges.

(a) The rules of each national securities exchange that provides a trading market in standardized put or call options shall provide as follows:

(1) On and after January 22, 1990, but not before, no rule, stated policy, practice, or interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of this exchange to list any stock options class first listed on an exchange on or after January 22, 1990, because that options class is listed on another options exchange.

(2) During the period from January 22, 1990, to January 21, 1991, but not before, no rule, stated policy, practice, or interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of this exchange to list up to ten classes of standardized stock options overlying exchange-listed stocks that were listed on another options exchange before January 22, 1990. These ten classes shall be in addition to any option on an exchange-listed stock trading on this exchange that was traded on more than one options exchange before January 22, 1990.

(3) On and after January 21, 1991, but not before, no rule, stated policy, practice, or interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of this exchange to list any stock options class because that options class is listed on another options exchange.

(b) For purposes of paragraph (a)(2) of this Rule, if any options class is delisted from an options exchange as a result of a merger of the equity security underlying the option or a failure of the underlying security to satisfy that exchange's options listing standards, then the exchange is permitted to select a replacement option from among those standardized options overlying exchange-listed stocks that were listed on another options exchange before January 22, 1990.

(c) For purposes of this Rule, the term "exchange" shall mean a national securities exchange, registered as such with the Commission pursuant to Section 6 of the Securities Exchange Act of 1934, as amended.

(d) For purposes of this Rule, the term "standardized option" shall have the same meaning as that term is defined in Rule 9b-1 under the Securities Exchange Act of 1934, as amended, 17 CFR 240.9b-1.

(e) For purposes of this Rule, the term "options class" shall have the same meaning as that term is defined in Rule 9b-1 under the Securities Exchange Act of 1934, as amended, 17 CFR 240.9b-1.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: May 26, 1989.

[FR Doc. 89-13144 Filed 6-2-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

RIN 2125-AC35

Truck Size and Weight; National Network—Oregon

May 10, 1989.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document corrects, clarifies and removes routes not on the Primary System from the National Network for trucks in the State of Oregon.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning (202) 366-0233, Mr. Philip W Blow, Office of Motor Carrier Information Management and Analysis, (202) 366-4036, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1356, Federal Highway Administration, 400 Seventh Street, SW Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportion Assistance Act (STAA) of 1982, Pub. L. 97-424, 96 Stat. 2097 may operate, was first established by the final rule (23 CFR Part 658) published in the **Federal Register** at 49 FR 23302, June 5, 1984, and is located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed or described by category in Appendix A of the rule. Additional routes not on the network but available for STAA vehicles were also identified at State request.

The FHWA will make such technical amendments from time to time, in the interest of maintaining accuracy for Appendix users, and publish them as a final rule in the **Federal Register**. The only changes to Network routings included in this amendment provide for the removal of ineligible routes (routes not on the Primary System).

Corrections and Clarifications

The format has been adjusted for clarity by listing all route numbers in numerical order beginning with the US

numbers routes and following with the State numbered routes. Contiguous segments with the same route number have been combined.

Route descriptions of some of the listings have been clarified by providing additional information for termini of segments such as cross route numbers and locality names. Spelling and punctuation corrections have been made where necessary.

Ineligible Routes

The National Network consists of the Interstate System and other qualifying Federal-aid primary highways.

The two following routes in the State of Oregon were removed from the Federal-aid primary system when I-5 was completed in their vicinity:

OR 99 from OR 42 (Winston) to I-5 (Myrtle Creek)

OR 99 from OR 38 (Drain) to I-5 (Yoncalla)

The following route OR 201 was incorrectly listed in the June 5, 1984, **Federal Register** as:

US 201 from Spur US-95 to Idaho State Line

The correct listing should be:

OR 201 from US 20 Cairo to US 95 Spur near Weiser, ID

Therefore, route OR 201 is being correctly listed.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the technical amendments contained in this document are being issued for the purpose of removing ineligible routes, public comment is impracticable and unnecessary. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedures Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information since the revisions incorporated in the regulation require no interpretation. A regulatory impact analysis was prepared for the June 5, 1984, rulemaking which initially designated the National Network and is available for inspection in the Headquarters Office of the FHWA, 400-7th Street SW Washington, DC. Based on this analysis and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this document does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The final rule is in response to an application by the State and will expedite further review on substantive issues raised by the application.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on: May 26, 1989.

R.D. Morgan,

Executive Director.

In consideration of the foregoing, the FHWA amends Chapter 1 of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of Oregon to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658 [Amended]

2. Appendix A to Part 658 is amended by revising the State of Oregon section to read as follows:

Posted route No.	From	To
	Oregon	
US 20	US 101 Newport	ECL Sweet Home.
US 20	OR 126 Sisters	ID State Line Nyssa.
US 26	US 101 Cannon Beach Junction.	Mitchell.
US 30	US 101 Astoria	I-405 Portland.
US 30	In Cascade Locks.	
US 30	I-84 W. of Pendleton.	I-84 E. of Pendleton.
US 30 BR	OR 201 Ontario	ID State Line.
US 95	NV State Line	ID State Line.
US 95 Spur	OR 201	ID State Line Weiser, ID.
US 97	CA State Line	WA State Line.
US 101	CA State Line	Gold Beach.
US 101	SCL Port Orford	OR 126 Florence.
US 101	US 20 Newport	OR 18 Otis.
US 101	MP 75.54 N. of Beaver.	WA State Line.
US 197	OR 216 Maupin	WA State Line.
US 199	CA State Line	OR 99 Grants Pass.
US 395	CA State Line	US 26 John Day.
US 395	Long Creek	Pendleton.
US 395	I-84 Stanfield	US 730 near Umatilla.
US 730	I-84 Boardman	WA State Line.
OR 6	US 101 Tillamook.	US 26 near Banks.
OR 8	OR 47 Forest Grove.	OR 217 Beaverton.
OR 11	US 30 Pendleton	WA State Line.
OR 18	US 101 Otis	OR 99W Dayton.
OR 19	OR 206 Condon	I-84 Arlington.
OR 22	OR 18 near Willamina.	US 20 Santiam Jct.
OR 31	US 97 La Pine	US 395 Valley Falls.
OR 34	OR 99W Corvallis.	US 20 Lebanon.
OR 35	Baseline Road MP 82.11.	I-84 Hood River.
OR 38	US 101 Reedsport.	I-5 Anlauf.
OR 39	CA State Line	OR 140 E. of Klamath Falls.
OR 42	US 101 Coos Bay.	OR 42S Coquille.
OR 47	OR 99W near McMinnville.	US 26 N. of Banks.
OR 51	OR 99W Monmouth.	OR 22 near Eola.
OR 58	I-5 Eugene	US 97 near Chemult.
OR 62	Medford	Trail.
OR 78	Burns	US 95 Burns Junction.
OR 82	I-84 La Grande	Joseph.
OR 99	Ashland	Central Point.
OR 99	I-5 E. of Rogue River.	I-5 Grants Pass.
OR 99	I-5 Eugene	OR 99W/E Junction City.
OR 99E	I-5 Salem	US 26 Portland.
OR 99E	I-5 Albany	OR 99/99W Junction City.
OR 99W	OR 99/99E Junction City.	I-5 Portland.
OR 126	US 101 Florence	US 26 Prineville.
OR 138	OR 38 Elkton	I-5 near Sutherlin.
OR 140	US 97 Klamath Falls.	OR 39 E. of Klamath Falls.
OR 201	US 26 Cairo	US 95 Spur near Weiser, ID.
OR 206	US 97 Wasco	OR 19 Condon.

Posted route No.	From	To
OR 207	US 730 Cold Springs Jct.	MP 23.56 Kinzua Rd.
OR 212	E. Jct. OR 224 near Rock Ck. Corner.	US 26 near Boring.
OR 214	I-5 Woodburn	OR 213 Silverton.
OR 217	US 26 Beaverton	I-5 Tigard.
OR 223	Kings Valley Hwy. in Dallas.	OR 99W Rickreall.
OR 224	OR 99E Milwaukie.	E. Jct. OR 212 near Rock Ck Corner

[FR Doc. 89-13279 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3598-6]

Prevention of Significant Deterioration Delegation of Authority State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: The Regional Administrator for EPA, Region 9, San Francisco, has amended the agreement delegating full authority to the State of Hawaii to implement and enforce the Federal Prevention of Significant Deterioration (PSD) Program.

DATES: The effective date of delegation is January 5, 1989.

ADDRESSES:

Hawaii Department of Health, Environmental Protection and Health Services Division, 1250 Punchbowl Street, Honolulu, HI 96813

Mailing Address: Hawaii Department of Health, Environmental Protection and Health Services Division, Post Office Box 3378, Honolulu, HI 96801.

FOR FURTHER INFORMATION CONTACT: Robert Baker, New Source Section (A-3-1), Air Operations Branch, Air and Toxics Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Telephone: (415) 974-8209.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency has delegated, under the provisions which are found in 40 CFR 52.21(u), to the State of Hawaii: (A) Authority over all sources in that State subject to review for the Prevention of Significant Deterioration of Air Quality, pursuant to Part C, section 169 of the Clean Air Act, as amended August 7 1977 and the requirements promulgated at 40 CFR 52.21; and (b) authority of review, administer, and enforce throughout the State the PSD requirements imposed by the Clean Air Act sections 101, 110 and 160-169, and 40 CFR 52.21 as amended August 7 1980 and subsequent amendments.

Information on this delegation together with a copy of the delegation is provided below.

On July 28, 1983, the Director of the Hawaii Department of Health requested delegation of authority for PSD. Full delegation was granted on August 15, 1983. The delegation was amended on December 12, 1988 and the amended delegation became effective on January 5, 1989. The following letter and attached agreement represent the terms and conditions of the amended delegation.

December 12, 1989.

Mr. David P Howekamp,

Director, Air Management Division, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105

Dear Mr. Howekamp:

Subject: Amended U.S. EPA/DOH Delegation Agreement of the Regulations for Prevention of Significant Deterioration (PSD) of Air Quality

The Hawaii Department of Health has reviewed and agrees with the subject amended U.S. EPA/DOH PSD delegation agreement. The signed document is being returned for U.S. EPA concurring signature.

If you have any questions, please feel free to call Mr. Wilfred Nagamine of the Environmental Permits Branch at (808) 548-6410.

Sincerely,

Bruce S. Anderson, PH.D.

Deputy Director for Environmental Health.

Amended Agreement for Delegation of Authority of the Regulations for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21) Between USEPA and Hawaii DOH

The undersigned, on behalf of the Hawaii Department of Health (Hawaii DOH) and the United States Environmental Protection Agency (USEPA), hereby agree to the delegation of authority for the administrative, technical and enforcement elements of the source review provisions of 40 CFR 52.21, Prevention of Significant Deterioration (PSD), as they may be amended and in accordance with the permit review requirements in 40 CFR 124 Subparts A and C, from the USEPA to the Hawaii DOH, subject to the terms and conditions below. This delegation is enacted pursuant to 40 CFR 52.21 (u), Delegation of Authority, and supersedes the agreement dated August 15, 1983 signed by Hawaii DOH and EPA.

I. General Delegation Conditions

A. Authority is delegated for all sources under the jurisdiction of Hawaii DOH that are subject to review for PSD. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act.

B. This delegation may be amended at any time by the formal written agreement of both the Hawaii DOH and the USEPA, including amendments to add, change, or remove conditions or terms of this Agreement.

C. If the Regional Administrator determines that the State is not implementing or enforcing the PSD program is accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation, after consultation with the Hawaii DOH, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the State. Nothing in this paragraph shall preclude USEPA from exercising its enforcement authority, as provided in paragraph V.B. below.

D. The permit appeal provisions of 40 CFR 124.19 shall apply to all appeals to the Administrator on permits issued by the Hawaii DOH under this delegation. For purposes of implementing the federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by Hawaii DOH is required to contain statements which indicate that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit is 30 days after the final decision to issue, modify, revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. The Hawaii DOH shall inform USEPA (Region IX) in accordance with conditions of this delegation when there is public comment requesting a change in the preliminary determination or in a draft permit condition. Failure by Hawaii DOH to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

E. By this agreement, the Hawaii DOH assumes authority for enforcement and permit modification/amendment for EPA issued NSR/PSD permits.

F This delegation of authority becomes effective upon the date that both parties have signed this Agreement.

II. Communications Between USEPA and Hawaii DOH

The Hawaii DOH and USEPA will use the following communication procedures:

A. The Hawaii DOH will report to the USEPA on a quarterly basis the compliance status of the sources that have received a PSD permit from either the Hawaii DOH or USEPA. The Compliance Data System (CDS) will be used for this purpose. Compliance determinations will be made with respect to the conditions established in the PSD permits.

B. The Hawaii DOH will forward to USEPA, at the beginning of the public comment period, a summary of (1) the findings related to each PSD application for new sources, major modifications and amendments, (2) the justification for the Hawaii DOH's preliminary determination, and (3) a copy of the draft PSD permit. Should there be any comments or concerns about the pending PSD permit, USEPA will communicate these comments and concern to the Hawaii DOH as soon as possible prior to the close of the public comment period.

C. The Hawaii DOH will forward to USEPA copies of the final action on the PSD permit applications at the time of issuance, as well as copies of substantive public comments. Any public comments not incorporated will be addressed, and a summary of the responses will be provided.

D. The Hawaii DOH will send to EPA a copy of all applicability determinations and justifications made that would involve PSD exemption for new or modified major sources due to netting.

III. Revision To Title 40 CFR 52.21

A. This delegation covers any revisions that are promulgated for 40 CFR 52.21 and 40 CFR 124. The terms "40 CFR 52.21" and "40 CFR 124" as used in the delegation request and throughout this Agreement, include such regulations as are in effect on the date this Agreement is executed and any revisions that are promulgated after that date.

B. The revisions that have been promulgated for 40 CFR 52.21 since the effective date (August 15, 1983) of the previous delegation agreement include the following:

1. Stack Height Regulations as promulgated on July 8, 1985 (50 FR 27892);

2. Revised Modeling Guidelines as promulgated on September 9, 1986 (51 FR 32176); and,

3. PM-10 Regulations as promulgated on July 1, 1987 (52 FR 24634).

The Hawaii DOH is required to incorporate the above revisions into its PSD review, and to ensure that any permits issued by the Hawaii DOH comply with these final regulations.

C. In addition, the following USEPA policies apply to PSD review in Hawaii:

1. According to USEPA guidance published on September 22, 1987 and supplemental guidance published on July 28, 1988, all delegated agencies must now consider pollutants not subject to the Clean Air Act in their Best Available Control Technology (BACT) determinations. The BACT determinations must include a review of the toxic effects of unregulated pollutants and the impact of the proposed BACT on the emissions of these pollutants.

2. The Hawaii DOH must consult with the appropriate Federal, State, and local land use agencies prior to issuance of preliminary determinations on PSD permits.

In particular, USEPA requires that the Hawaii DOH must:

(a) Notify the Fish and Wildlife Service (FWS) and USEPA when a PSD permit application has been received, in order to assist USEPA in carrying out its non-delegable responsibilities under Section 7 of the Endangered Species Act (PL 97-304). Hawaii DOH must:

(b) Notify potential applicants of the potential need for consultation between USEPA and the FWS if an endangered species may be affected by the project.

USEPA's data sheet may be used for this process (copy enclosed).

(c) Refrain from issuing a final PSD permit unless the FWS has determined that the proposed project will not adversely affect any endangered species.

3. According to USEPA guidance published on June 26, 1987 delegated agencies are required to look at certain control options when making BACT determinations for municipal waste combustors. Specifically, these agencies should consider a dry scrubber for sulfur dioxide control, a baghouse or electrostatic precipitator for particulate control, and efficient combustion techniques for carbon monoxide control in their BACT determinations for this type of source.

4. Additional BACT guidance issued on December 1, 1987 by USEPA, states that the Regional Office is to encourage the application of "top-down BACT determinations in the Region. This means that USEPA will consider as deficient any BACT determinations that do not begin with the most stringent control options available for that source category.

5. Upon notification from EPA, Hawaii DOH will implement such new regulations or directives pending revision of this agreement.

IV Permits

A. For all PSD permit applications filed with Hawaii DOH, USEPA will assist the Hawaii DOH in the BACT determination. Subsequent to August 1, 1988, concurrence by USEPA will be required for each BACT determination. USEPA will ensure Hawaii DOH access to the BACT Clearinghouse.

B. All modeling analyses for determination of increment consumption and compliance with NAAQS will require concurrence by USEPA. The signatures of USEPA and Hawaii DOH on the final PSD permit shall constitute concurrence on the BACT determinations and the modeling analyses.

C. In any matter involving interpretation of Sections 160-169 of the Clean Air Act, or 40 CFR 52.21 and 40 CFR 124 where guidance on the implementation, review, administration, or enforcement of these Sections has not been sent to the Hawaii DOH, USEPA will be contacted and requested to provide the appropriate guidance.

D. The Hawaii DOH will at no time grant any waiver to the PSD permit requirements.

E. Permits issued under this delegation shall contain language stating that the Federal PSD requirements have been satisfied.

F Authorities to Construct must include appropriate provisions, as specified in Attachment A, to ensure permit enforceability. Permit conditions shall, at a minimum, contain reporting requirements on initiation of construction, start-up, and source testing (where applicable) and continuous emissions monitoring (where applicable). In all cases where tests are required, the test methods shall be specified. All cases where CEMS are required, appropriate testing and reporting requirements shall be included. Upset/breakdown and malfunction conditions shall be included in all permits.

G. U.S. EPA and Hawaii DOH will jointly concur on any future modifications and amendments affecting emissions and emission limitations at Kahe Units 1-6.

V Permit Enforcement

A. The primary responsibility for enforcement of the PSD regulations in the State of Hawaii will rest with the

Hawaii DOH. The Hawaii DOH will enforce the provisions that pertain to the PSD program, except in those cases where the rules or policy of the Hawaii DOH are more stringent. In that case, the Hawaii DOH may elect to implement the more stringent requirements.

B. Taking into consideration the terms of the USEPA-Hawaii DOH Enforcement Agreement, nothing in this delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations or any PSD permit issued by the Hawaii DOH pursuant to this agreement.

C. In the event that the Hawaii DOH is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the Hawaii DOH will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude USEPA from exercising its enforcement authority.

Date: December 12, 1988.

John C. Lewin, M.D.,

Hawaii Department of Health.

Date: January 5, 1989.

David P Howekamp,

U.S. Environmental Protection Agency.

Attachment A

1. Identification of all points of emission (both stack and fugitive).

2. Specification of a numerical emission limitation for each point of emission in terms of mass rate or concentration limitations. If emission testing based on a numerical emission limitation is feasible, the permit may instead prescribe a design, operational, or equipment standard. Any permits issued without numerical emission limitations must contain conditions which assure that the design characteristics or equipment will be properly maintained or that the operational conditions will be properly performed so as to continuously achieve the assumed degree of control.

3. Limitations of factors which were the basis for air quality impact analysis must be specified (e.g. hours of operation, stack height, materials processed which affect emissions).

4. Methods and frequency of determining continued compliance for each point of emission must be referenced (if part of the SIP or subject to NSPS or NESHAPS) or explicitly identified if a reference method is not used.

5. Record keeping requirements which enable the agency to ascertain continued compliance especially where factors such as hours of operation, throughput of materials, sulfur content of fuels, fuel usage, type or quantity of materials processed are conditions or the permit.

6. A condition that the permit will expire if the construction is not commenced within a certain specified time frame.

7 The condition that the source is responsible for providing sampling and testing facilities at its own expense.

8. Reporting requirements which enable the agency to monitor the progress of source construction and compliance including the date by which construction is completed, and if different from the completion of construction date, the date by which full compliance is to be achieved.

9. Permits issued under this delegation should contain language stating that the Federal PSD requirements have been satisfied.

10. As a courtesy to sources exempted from PSD review due to federally enforceable operational or process restrictions, or the use of controls more stringent than required by applicable SIP limits, the source should be advised that any relaxation of those limits may subject the entire source to full PSD review as if construction had not yet begun. Suggested language is as follows:

"This source is exempt from PSD review because of (e.g. "a requirement that operation is limited to eight hours per day"). Any relaxation in this limit that increases your potential to emit above the applicable PSD threshold will require a full PSD review of the entire source.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. This delegation became effective on August 15, 1983; therefore, it serves no purpose to delay this technical revision, adding the State's address to the Code of Federal Regulations.

A copy of the request for delegation of authority is available for public inspection at the U.S. Environmental Protection Agency, Region 9 Office, Air & Toxics Division, Air Operations Branch, 215 Fremont Street, San Francisco, California 94105.

This rulemaking is under the authority of sections 101, 110, 160–169 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7401, 7410, 7470–79 and 7501(a)].

Dated: May 25, 1989.

Daniel McGovern,

Regional Administrator.

[FR Doc. 89–13290 Filed 6–2–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3597-4]

Approval and Promulgation of Implementation Plans

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is disapproving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Ameri-Cal Corporation in Medina County. The revision would allow a permanent relaxation of the volatile organic compound (VOC) emission limits previously approved by USEPA for the paper coating line at the Ameri-Cal Corporation facility in Medina County, Ohio.

USEPA's action is based upon a May 9, 1986, revision request that was submitted by the State. The source is located in Medina County which is part of the Cleveland ozone demonstration area. USEPA is disapproving this revision because the State has not demonstrated that the requested revision would limit VOC emissions to levels reflecting the application of reasonable available control technology (RACT), and that the revision would not interfere with timely attainment of the ozone standard or with progress toward attainment in the interim. The source remains subject to the control requirements of the Ohio Administrative Code (OAC), Rule 3745–21–09(F).

EFFECTIVE DATE: This disapproval will become effective on July 5, 1989.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: (It is recommended that you telephone the contact person provided below before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 353–3849.

SUPPLEMENTARY INFORMATION: On May 9, 1986, the Ohio Environmental Protection Agency (OEPA) submitted, as a revision to its ozone SIP a request for a SIP revision that consists of a permanent relaxation of the VOC emission limits for the paper coating line.

The Ameri-Cal Corporation operates a custom-design knife-over-roll adhesive

coating line (Source K001) which coats and cures the adhesive laminate to the paper substrate materials. This is defined as a paper coating line and is subject to OAC Rule 3745-21-09(F) which limits the emission of VOC to 2.9 pounds per gallon of coating less water.

Alternatively, the source may comply with this rule via the installation of add-on control equipment. Ameri-Cal Corporation is subject to the April 1, 1982, compliance date contained in OAC Rule 3745-21-04(C)(5).

OEPA had submitted to USEPA a request for a SIP revision that consists of a permanent relaxation of the VOC emission limits for the paper coating line. This request was submitted in the form of a variance issued by OEPA to Ameri-Cal. The variance contains the following terms and conditions:

1. Source K001 is required to utilize coatings with VOC contents, not to exceed 4.8 lbs/gallon of coating less water
2. Source K001 shall not emit VOC in excess of 22.7 tons per year
3. The company is required to maintain detailed records on coatings used and submit a semi-annual report indicating that the variance requirments are met.

In order to support the SIP revision request, OEPA submitted information that purported to demonstrate that it is not economically reasonable for Ameri-Cal to install add-on control equipment, and the coatings which comply with OAC Rule 3745-21-09(F) are not currently available and are not expected to be available in the near future.

On May 3, 1988, (53 FR 15703), USEPA proposed to disapprove this SIP revision because the source is located in Medina County, which is part of the Cleveland demonstration area, and the State did not demonstrate that the revision would limit VOC emissions to levels reflecting the application of RACT, or lacking such a RACT demonstration, that the revision would not interfere with timely attainment of the ozone standard or with progress towards attainment in the interim.

The notice of proposed rulemaking further identified the following two possible means of making the second demonstration:

1. The State of Ohio may remove Medina County, which is an attainment area, from the Cleveland demonstration area and show that the relaxation would not interfere with attainment or maintenance in either Medina County or the Cleveland demonstration area.

2. The State of Ohio may wish to provide further technical support that this relaxation is already considered in the Cleveland demonstration of attainment (i.e., the emissions increase from this relaxation is explicitly considered in Cleveland's demonstration of attainment). If already included, USEPA could only approve the revision if and when the Cleveland SIP is approved.

In response to this proposed rulemaking, USEPA received one comment from OEPA on June 1, 1988, addressing each of these points and the question of RACT.

1. *OEPA Comment:* It is OEPA's understanding that when USEPA finalizes its "post-87" policy for ozone, Medina County must be included in the post-87 attainment area for Cleveland since it is part of the Cleveland Standard Metropolitan Statistical Area.

USEPA Responses: Under the proposed post-87 ozone policy, OEPA would be required to include Medina County as part of the Cleveland demonstration area. The notice of proposed rulemaking only concerned the requirements for 1982 SIPs.

If the Post-1987 policy is finalized as proposed, OEPA would not have the option of supporting this revision by removing Medina County from the demonstration area.

2. *OEPA Comment*: The State believes that the SIP revision submittal demonstrates that this relaxation would not interfere with the attainment or maintenance of the ozone standard in Medina County or the Cleveland demonstration area. The current SIP allowable VOC emission rate for the paper coating line is 10.3 tons/year at the 1985 level of production. By limiting the level of production, and by relaxing the VOC content limitation of the adhesives used in the paper coating line, the proposed maximum emission rate would be 22.7 tons/year (or 107.1 kilograms per average summer day) which is 12.4 tons/year (or 58.5 kg/day) greater than that currently allowed for a given level of production. Actually, under the SIP approved rules, Ameri-Cal Corporation can substantially increase production if it uses complying coatings. The allowable emissions could approach or exceed the emission rate proposed under the SIP revision.

Moreover, the proposed relaxation will not produce a measurable or demonstrable effect on the ambient air quality in light of the total VOC emissions for the Cleveland demonstration area. In the attainment demonstration submitted May 16, 1986, the State projected total point and area source emissions to be 274,513 kilograms per average summer day in 1987 The relaxation associated with Ameri-Cal Corporation will be less than .02 percent of the total. Ameri- Cal Corporation's emissions are also insignificant when compared to the total emission estimate for Medina County, which is now designated "attainment" for ozone.

USEPA Response: OEPA still has not provided any evidence that the level of emissions allowed by this revision were explicitly considered in Cleveland's demonstration of attainment. Therefore, OEPA has not adequately demonstrated that the revision will not interfere with timely attainment of the ozone standard.

3. *OEPA Comment:* As described in the SIP revision request, Ameri-Cal Corporation had been unable to comply with the SIP requirements due to the lack of RACT for this particular paper coating line at the current level of production. Complying adhesives do not exist for the company's knife-over-roll coater. If Ameri-Cal Corporation should find a greatly expanded market for its products, the Ohio EPA will re-evaluate RACT to determine whether the installation of add-on control equipment will be RACT under the circumstances.

USEPA Response: OEPA's comment does not provide any additional information, beyond the original submittal, concerning whether this revision represents RACT for Ameri-Cal. The issues reiterated by OEPA were considered by USEPA in the proposed action.

Conclusion: USEPA is disapproving the SIP revision request for Ameri-Cal Corporation in Medina, Ohio, because OEPA still has not demonstrated that the requested revision will limit VOC emissions to a level reflecting the application of RACT, and that the revision will not interfere with timely attainment of the ozone standard, or with progress towards attainment in the interim.

Under Executive Order 12291, today s action is not "Major. Review of this action by the OMB was waived on January 6, 1989.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: May 22, 1989.

Valdas V. Adamkus,

Regional Administrator.

40 CFR Part 52 Subpart KK is amended as follows:

PART 52—[AMENDED]

Ohio—Subpart KK

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1885 is amended by adding new paragraph (k) to read as follows:

§ 52.1885 Control Strategy: Ozone.

(k) Disapproval. On May 9, 1986, the Ohio Environmental Protection Agency submitted a revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). This revision request consists of a permanent relaxation of the VOC emission limits previously approved by USEPA for the paper coating line at the Ameri-Cal Corporation facility in Medina County, Ohio. As a result of USEPA's disapproval, the source remains subject to the control requirements of the Ohio Administrative Code (OAC) Rule 3745–21–09(F).

[FR Doc. 89–13222 Filed 6–2–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6833]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646–2717

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the require floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in an of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Community name	County	Community No.	Effective date
Colorado	Greeley, city of	Weld	080184	June 5, 1989
Kansas	Lake Quivira, city of	Johnson and Wyandotte.	200166	Do.
Do.	Unincorporated areas	Leavenworth	200186	Do.

State	Community name	County	Community No.	Effective date
Do	Lecompton, city of	Douglas	200091	Do.
Do	Leona, city of	Doniphan	200082	Do.
Do	Moline, city of	Elk County	200093	Do.
Do	Natoma, city of	Osborne	200254	Do.
Do	Neodesha, city of	Wilson	200359	Do.
Do	Oberlin, city of	Decature	200073	Do.
Do	Unincorporated areas	Pawnee	200566	Do.
Nebraska	Gibbon, city of	Buffalo	310015	Do.
Do	Henderson, city of	York	310378	Do.
Do	Hubbell, village of	Thayer	310220	Do.
Do	LaVista, city of	Sarpy	310192	Do.
Do	Linwood, village of	Butler	310028	Do.
Do	Litchfield, village of	Sherman	310295	Do.
Do	Lodgepole, village of	Cheyenne	310038	Do.
Do	Loup City, city of	Sherman	310215	Do.
Do	Maxwell, village of	Lincoln	310300	Do.
Do	Newman Grove, city of	Madison	310393	Do.
Do	Omaha, city of	Douglas	315274	Do.
Do	Papillion, city of	Sarpy	315275	Do.
North Dakota	Burlington, city of	Ward	380650	Do.
Do	Casselton, city of	Cass	380020	Do.
Do	Harwood, city of	Cass	380338	Do.
Do	Harwood, township of	Cass	380259	Do.
Ohio	Ashtabula, city of	Ashtabula	390011	Do.
Do	Fairview Park, city of	Cuyahoga	390108	Do.
Do	Florida, village of	Henry	390263	Do.
Do	Gambier, village of	Knox	390310	Do.
Do	Germantown, village of	Montgomery	390411	Do.
Do	Gettysburg, village of	Darke	390686	Do.
Do	Glona Glens, village of	Medina	390381	Do.
Do	Grand Rapids, village of	Wood	390585	Do.
Do	Hartford, village of	Licking	390331	Do.
South Dakota	Belle Fourche, city of	Butte	460012	Do.
Wyoming	Douglas, town of	Converse	560013	Do.
Do	Evansville, town of	Natrona	560071	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: May 19, 1989.

[FR Doc. 89-13256 Filed 6-2-89 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 402

RIN 0970-AA72

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Office of Refugee Resettlement, FSA, HHS.

ACTION: Final rule with comments.

SUMMARY: This rule amends the final rule implementing the State Legalization Impact Assistance Grants (SLIAG), published on March 10, 1988. This action changes the deadline by which Fiscal Year 1990 State SLIAG applications are due from July 15, 1989 to October 1, 1989, and the deadline by which a State's FY 1990 application must be approvable by the Secretary from October 1, 1989 to December 15, 1989. This will give States sufficient time to develop actual cost data which can be used in preparing their FY 1990 applications.

DATES: Final rule effective June 5, 1989; comments must be received on or before July 5, 1989.

ADDRESSES: Comments may be mailed to Division of State Legalization Assistance, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade SW 6th floor, Washington, DC 20447

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson (Director), 202-252-4571 (FTS 252-4571).

SUPPLEMENTARY INFORMATION: The State Legalization Impact Assistance Grant (SLIAG) regulation at 45 CFR 402.43 currently requires that States submit their FY 1990 applications by July 15, 1989, and that those applications be approvable by the Secretary of Health and Human Services by October 1, 1989. The regulation, and other guidance issued to States, contemplates that the cost estimates in their FY 1990 applications, which include updated cost estimates for FY 1989, be based on actual cost data from FY 1988 and from FY 1989. At the time the regulation was published, we expected that States would have complete cost data for FY 1988 by December 31, 1988, when annual reports on FY 1988 costs were due, and would have at least partial FY 1989 cost data before submitting the FY 1990 application.

States' annual reports submitted pursuant to 45 CFR 402.51(e) indicate that most States need more time to establish FY 1988 costs for a substantial number of programs. It appears that States may not have actual cost data for at least some programs in time to use it in an application that would be due July 15, 1989. The inability of many States to base their FY 1990 application estimates on actual cost data will create a less equitable treatment of States. The great variation in quality of estimates may well risk punishing States that can use actual costs, on the one hand, or require us to apply an extremely rigid standard to all estimates not based on actual costs.

To help States document costs, we are working on several initiatives. The major effort is a system that would enable States to determine their actual costs by matching the Social Security numbers of program participants against the Social Security numbers of eligible legalized aliens. (The system is being designed so that such a matching system can be employed while maintaining the strict confidentiality requirements set forth by the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) for information concerning lawful

temporary residents.) We expect this system to be in place and available to States by June 1, 1989. That the system will be available this soon is an example of exemplary interagency cooperation among the Immigration and Naturalization Service, the General Services Administration, and the Family Support Administration and the Social Security Administration within the Department of Health and Human Services. However, we recognize that it may be impossible for most States to access the system and receive cost data in time to incorporate this information into their FY 1990 applications by July 15, 1989.

By extending the deadline for the FY 1990 application, we can obviate the need for States to prepare cost estimates for FY 1989 and projections for FY 1990 in the absence of empirical data on the participation of eligible legalized aliens in State and local programs, and then to resubmit cost estimates as experiential data becomes available. This will ease the administrative burden on all levels of government involved in SLIAG and will ensure an equitable allocation of funds.

We are therefore extending the deadline for submitting the FY 1990 application to October 1, 1989, and the deadline for that application to be approvable by the Secretary to December 15, 1989. This will give States sufficient time to develop actual cost data which can be used in preparing their FY 1990 applications. This change will delay our allocating FY 1990 SLIAG funds from November 1989 to January 1990. However, this will not disadvantage States. FY 1990 funds are not available for allocation before October 1 in any case, and cost estimates in States' FY 1989 applications indicate that States will have more than ample FY 1988 and FY 1989 grant funds to carry over into the first part of calendar year 1990. If a State wishes to submit a completed application before October 1, 1989, we will review it promptly and approve it at the earliest possible time.

Because the amendments set out in this rule pertain to agency procedure or practice under section 553(b) of the Administrative Procedure Act, we have dispensed with a Notice of Proposed Rulemaking. We will consider any comments received and, if necessary, publish another rule.

Regulatory Procedures

In accordance with 5 U.S.C. 605(b), the Secretary certifies that this rule does not have a significant adverse economic impact on small business entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalogue of Federal Domestic Assistance Program No. 13.786, State Legalization Impact Assistance Grants)

List of Subjects in 45 CFR Part 402

Administrative cost, Allocation formula, Aliens, Allotment, Education, Grant programs, Immigration, Immigration Reform and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State Legalization Impact Assistance Grants.

Dated: March 17 1989.

Wayne A. Stanton,

Principal Deputy Assistant Secretary, Family Support Administration.

Approved: May 5, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, 45 CFR Part 402 is amended as follows:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for Part 402 continues to read as follows:

Authority: Sec. 204, Pub. L. 99-603.

2. Section 402.43 is amended by revising the second sentence in paragraph (a) and the second sentence in paragraph (b) and adding the OMB control number at the end of the section to read as follows:

§ 402.43 Application deadline.

(a) Applications for Federal fiscal years 1989, 1990, and 1991 must be received no later than July 15, 1988, October 1, 1989, and July 15, 1990, respectively.

(b) In order to receive funds under this Part for FY 1989, FY 1990, and FY 1991, a State's application must be approvable by the Secretary by October 1, 1988, December 15, 1989, and October 1, 1990, respectively.

(Approved by the Office of Management and Budget under control number 0970-0079)

[FR Doc. 89-13184 Filed 6-2-89; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-74; RM-5649]

Radio Broadcasting Services; Oxnard and Glendale, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275A in lieu of Channel 271A at Oxnard, California. This channel substitution avoids any potential interference to an Oxnard station which may result from the modified facilities of Station KMPC-FM, Glendale, California. The applicants for the Oxnard will be permitted to amend their pending applications without loss of cut-off protection. The reference coordinates for Channel 275A at Oxnard are 34-13-08 and 119-12-59. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 10, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-74, adopted May 4, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended under California by removing Channel 271A and adding Channel 275A at Oxnard.

Federal Communications Commission.

Bradley P Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-13249 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-443; RM-5366, RM-5736 and RM-5737]

Radio Broadcasting Services; Picayune, MS, Pascagoula, MS, and Ponchatoula, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 291C2 in lieu of Channel 292A at Picayune, Mississippi, and modifies the license of Station WRMH, Picayune, Mississippi, to specify operation on Channel 291C2. In taking this action, we dismissed counterproposals to allot Channel 291A to Ponchatoula, Louisiana, and Channel 290C2 to Pascagoula, Mississippi, at the request of the respective proponents. The reference coordinates for Channel 291C2 at Picayune are 30-34-29 and 89-59-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 10, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-443, adopted May 4, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Mississippi by removing Channel 292A and adding Channel 291C2 at Picayune.

Federal Communications Commission.

Bradley P Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-13250 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-574; RM-6478]

Radio Broadcasting Services; Kirksville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 233C for Channel 233C1 at Kirksville, Missouri, in response to a petition filed by KIRK, Inc. We shall also modify the license of Station KRXL(FM) to specify operation on Channel 233C in lieu of Channel 233C1. The coordinates for Channel 233C are 40-14-34 and 92-25-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 10, 1989.

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. 88-574, adopted May 5, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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. In § 73.202(b), the Table of FM Allotments under Missouri is amended by removing Channel 233C1 and adding Channel 233C at Kirksville.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-13251 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-493; RM-6431, RM-6445]

Radio Broadcasting Services; West Point and Blair, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kelly Communications, Inc., substitutes Channel 300C1 for Channel 300A at West Point, Nebraska, and modifies its license for Station KWPN-FM to specify operation on the higher powered channel. Channel 300C1 can be allotted to West Point in compliance with the Commission's minimum distance sparation requirments and can be used at Station KWPN-FM's licensed site. The coordinates for this allootment are North Latitude 41-47-06 and West Longitude 96-40-39. This action also dismisses the mutually exclusive request of LDH Communications, Inc. to substitute Channel 299A for Channel 292A at Blair, Nebraska, and the modification of its license for Station KBWH-FM accordingly, based on its withdrawal of interest. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 7 1989.

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. 88-493, adopted May 4, 1989, and released May 24, 1989. 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, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by adding Channel 300C1 and removing Channel 300A at West Point, Nebraska.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-13252 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-544; RM-6487]

Radio Broadcasting Services; Shadyside, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Adventure Three, Inc., substitutes Channel 239B1 for Channel 239A at Shadyside, Ohio, and modifies its construction permit for Station WBJY to specify operation on the higher powered channel. Channel 239B1 can be allotted to Shadyside in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.0 kilometers (4.4 miles) north to accommodate petitioner's desired transmitter site. Canadian concurrence has been received since Shadyside is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATE: Effective July 7 1989.

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. 88-544, adopted May 5, 1989, and released May 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202), 857-3800, 2100 M Street NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by removing Channel 239A and adding Channel 239B1 at Shadyside, Ohio.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-13253 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 60]

RIN 2127-AC01

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; grant of petitions for reconsideration.

SUMMARY: On November 23, 1987 NHTSA published a final rule which, among other things, responded to the dummy positioning issues raised in petitions for reconsideration of the 1986 final rule adopting the Hybrid III test dummy. Three of the petitions for reconsideration of that 1987 rule asked that the positioning procedures for the test dummy's head and feet be amended to make the procedures more specific. NHTSA agrees with these petitioners about the need for such changes, and so is amending the head and feet positioning procedures along the lines requested by the petitioners.

EFFECTIVE DATE: The changes to the Hybrid III test dummy positioning procedures are effective December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Chief, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street, SW Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION: On July 25, 1986 (51 FR 26688), NHTSA published a final rule adopting the Hybrid III test dummy as an alternative for use in determining compliance with the injury criteria in dynamic crash testing under Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). This rule established the technical specifications and calibration requirements to be met by the new test dummy, an additional injury criteria to be met when the new test dummy was used, and the procedures to be used to position the new test dummy during Standard No. 208 compliance testing.

More than a dozen petitions for reconsideration of that rule were timely filed with NHTSA. The petitions addressed all facets of the final rule, but most focused on the additional injury criteria. The agency responded to all of the issues raised in these petitions, *except the dummy positioning issues*, in a notice published on March 17 1988; 53 FR 8755.

While these petitions for reconsideration were pending, NHTSA was formulating a final rule requiring light trucks and light multipurpose passenger vehicles equipped with manual lap/shoulder belts at the front outboard seats to comply with the injury criteria of Standard No. 208. While formulating this rule, the agency decided that it ought to expedite its consideration of the dummy positioning issues raised in the petitions for reconsideration of the Hybrid III final rule. This decision to expedite was necessary because those dummy positioning procedures would also be used to position the Hybrid III test dummies in light trucks and multipurpose passenger vehicles. Absent an agency response to those petitions, only the older test dummy could be used in compliance testing for light trucks and multipurpose passenger vehicles. Accordingly, the final rule that established dynamic testing requirements for light trucks and light multipurpose passenger vehicles also responded to the petitions for reconsideration of the Hybrid III test dummy positioning procedures (52 FR 44898; November 23, 1987).

NHTSA received five petitions for reconsideration of the November 23, 1987 final rule. Three of those petitions sought some modifications of the dynamic testing requirements. NHTSA responded to those petitions on December 14, 1988 (53 FR 50221). In that notice, the agency indicated that it had not finished evaluating the petitions relating to the Hybrid III test dummy positioning procedures, and that a response to those petitions would be published at a later time. This notice responds to those petitions relating to the test dummy positioning procedures.

The petitioners in this case were Ford, Honda, and Toyota. The petitions focused on the positioning procedures for the head and feet of the Hybrid III test dummy. These petitions are granted, for the reasons explained below.

The head positioning procedures established for the Hybrid III test dummy in passenger cars specified that the head accelerometer mounting

platform is horizontal within ½ degree. However, the final rule extending dynamic testing to light trucks and MPVs noted that NHTSA had encountered difficulties in properly leveling the Hybrid III test dummy's head in "vehicles that had very upright seats with non-adjustable seatbacks;" 52 FR 44898, at 44903; November 23, 1987 To address this problem, the final rule established a sequence of head positioning procedures to be followed when positioning the Hybrid III test dummy in "vehicles with upright seats with non-adjustable backs.

In its petition for reconsideration of the 1987 rule, Ford asserted that the problem of leveling the dummy's head does not arise from the fact that the seats are non-adjustable. Ford correctly noted that section S8.1.3 of Standard No. 208 requires that adjustable seat backs be placed at the manufacturer's nominal design riding position, and not be adjusted out of that position. Instead, Ford alleged that the problem of leveling the dummy's head arises when seats are "very upright, either because the seats are non-adjustable or because that is the manufacturer's nominal design riding position Accordingly, Ford suggested that the reference to "non-adjustable seats" be deleted from the head positioning procedures. Toyota raised a similar point in its petition, asserting that Standard No. 208 specifies clearly the head positioning procedures to be followed for non-adjustable seatbacks but does not specify any head positioning procedures for adjustable seatbacks.

NHTSA has not encountered any difficulties in positioning Hybrid III test dummies in vehicles where the seats have adjustable backs. The manufacturer's nominal design riding position for vehicles with adjustable seats has to date always resulted in a seat position inclined to the rear of the vehicle. However, NHTSA agrees with the point that vehicles with adjustable seats could be produced with a very upright nominal design riding position, and that such vehicles would pose the same head positioning difficulties that have been encountered in vehicles with non-adjustable seats. To avoid any potential difficulties, this notice amends the head positioning procedures for the Hybrid III dummy to provide that those procedures should be followed in all vehicles, regardless of whether the seats are adjustable or non-adjustable. This notice also adds language to the head positioning procedures to clarify that before the neck bracket of the Hybrid III is adjusted, the neck bracket should be set at "0" (the non-adjusted position) and after the neck bracket of the Hybrid III is adjusted, the test dummy should remain within the limits for the H point and the pelvic angle.

The other dummy positioning issue raised in the petitions for reconsideration of the 1987 rule was the issue of foot positioning. As the foot positioning procedures for the Hybrid III dummy were being developed, both Ford and Toyota asserted that the agency should use the same foot positioning procedures for the Hybrid III dummy as it used for the older Part 572 Subpart B test dummy. In response to these assertions, the final rule stated:

> NHTSA agrees with Ford and Toyota that the foot positioning procedures for the two test dummies should be the same. NHTSA has made the necessary changes to the Hybrid III foot positioning procedures to conform them with the procedures used with the Part 572 Subpart B test dummy. 52 FR 44904; November 23, 1987

Ford, Toyota, and Honda stated in their petitions for reconsideration that NHTSA had not made the foot positioning procedures for the two test dummies the same, notwithstanding its stated intent to do so. Honda noted that the Hybrid III foot positioning procedures do not specify how to place the test dummy's feet for vehicles with a footrest or for vehicles with wheelhouse projections in the passenger compartment after September 1, 1991. Prior to that date, the rule permits the feet of the Hybrid III test dummy to be positioned according to the same procedures specified for the Part 572 Subpart B test dummy.

The agency has already expressly stated that the foot positioning procedures for the two test dummies should be the same. NHTSA agrees with the petitioners' assessment that the amendments made to the Hybrid III foot positioning procedures in the November 23, 1987 final rule did not achieve the goal of making the foot positioning procedures the same for the two test dummies. Therefore, this notice adopts as the foot positioning procedures for the Hybrid III test dummy the foot positioning procedures that have already been adopted for the Part 572 Subpart B test dummy.

This notice also removes section S12 from Standard No. 208, and the reference to that section in S10 of Standard No. 208. Section S12 set forth optional positioning procedures for the Part 572 Subpart B dummy that could be used until September 1, 1987 Since that date has now passed, there is no continuing need to refer to those optional positioning procedures in Standard No. 208.

Impact Assessments

NHTSA has considered the impacts of these changes to the Hybrid III test dummy positioning procedures in response to the petitions for reconsideration. The agency has determined that these impacts are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The changes to the test dummy positioning procedures do not affect the estimates of costs and other impacts set forth in the final regulatory evaluation that was prepared in connection with the final rule establishing the dynamic testing requirements for light trucks and MPVs. Interested persons are referred to that document, which is available in NHTSA Docket No. 74–14, Notice 53. Copies of that regulatory evaluation may be obtained by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

As noted above, the only differences between the rule considered in that regulatory evaluation and this response to the petitions for reconsideration are the two modifications of the Hybrid III test dummy positioning procedures. These modifications do not impose any burdens on any party. Instead, the modifications to the positioning procedures will result in more consistent crash test results, by more clearly specifying precisely how the Hybrid III test dummy is to be positioned in a vehicle prior to a crash test. Changes to the positioning procedures do not affect the cost of purchasing a Hybrid III test dummy or the cost of conducting a crash test. Because of these minimal impacts, a full regulatory evaluation has not been prepared for this response to the petitions for reconsideration.

NHTSA has also considered the effects of this action under the Regulatory Flexibility Act. I hereby certify that the modifications to the Hybrid III test dummy positioning procedures made in response to the petitions for reconsideration will not have a significant economic impact on a substantial number of small entities. These changes will only affect manufacturers that conduct their own crash testing, few of which are small entities. As described above, no adverse impacts will be associated with these modifications of the Hybrid III positioning procedures. Further, since no price increases will result from these modifications to the test dummy

positioning procedures, small organizations and small governmental entities will not be affected by this action when they purchase new vehicles.

NHTSA has also analyzed this regulatory action for the purposes of the National Environmental Policy Act, and determined that this action will not have a significant impact on the quality of the human environment.

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S10 is amended by revising the introductory text to read as follows:

S10. *Test dummy positioning procedures.* Position a test dummy, conforming to Subpart B of Part 572 of this chapter, in each front outboard seating position of a vehicle as set forth below in S10 through S10.9. Each test dummy is restrained during the crash tests of S5 as follows:

3. S11 is amended by revising S11.1 and S11.6 to read as follows:

S11. *Positioning Procedure for the Part 572 Subpart E Test Dummy.*

S11.1 *Head.* The transverse instrumentation platform of the head shall be horizontal within ½ degree. To level the head of the test dummy, the following sequences must be followed. First, adjust the position of the H point within the limits set forth in S11.4.3.1 to level the transverse instrumentation platform of the head of the test dummy. If the transverse instrumentation platform of the head is still not level, then adjust the pelvic angle of the test dummy within the limits specified in S11.4.3.2 of this standard. If the transverse instrumentation platform of the head is still not level, then adjust the neck bracket of the dummy the minimum amount necessary from the non-adjusted "0" setting to ensure that the transverse instrumentation platform of the head is horizontal within ½ degree. The test dummy shall remain within the limits specified in S11.4.3.1 and S11.4.3.2 after any adjustment of the neck bracket.

S11.6 *Feet.* The feet of the driver test dummy shall be positioned in accordance with S10.1.1 (b) and (c) of this standard. The feet of the passenger test dummy shall be positioned in accordance with S10.1.2.1 (b) and (c) or S10.1.2.2 (b) and (c) of this standard, as appropriate.

4. S12 is removed.

Issued on May 30, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-13211 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 54, No. 106
Monday, June 5, 1989

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-073]

Ports of Entry for Certain Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning foreign quarantine notices by adding a plant inspection station at the port of Houston, Texas. Adding a station through which certain plants and plant products may be imported would facilitate the importation of these plants and plant products into the United States.

DATES: Consideration will be given only to comments received on or before July 5, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-073. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 638, Federal building, 6505 Belcrest Road Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to amend the regulations concerning foreign quarantine notices contained in 7 CFR Part 319, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products, and referred to below as the regulations. These regulations prohibit the importation into the United States of certain articles from foreign countries and localities, including certain plans and plant products, as a means of preventing the introduction into the United States of certain tree, plant, and fruit diseases, or injurious insects, that are new to or now widely prevalent or distributed within and throughout the United States. These regulations also restrict the importation into the United States of certain articles from foreign countries and localities, including certain plants and plant products, as a means of preventing the entry into the United States of certain injurious plant diseases, injurious insect pests, and other plant pests.

Restricted articles, with the exception of certain restricted articles from Canada, can be imported or offered for importation into the the United States only at ports of entry listed in § 319.37-14(b) of the regulations. Restricted articles that are not required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations can be imported or offered for importation at any port of entry listed in paragraph (b) of 319.37-14. However, restricted articles that are required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations can only be imported or offered for importation at parts of entry designated by an astrisk in § 319.37-14(b). These latter ports of entry have plant inspection stations; i.e., special inspection and treatment facilities. Restricted articles that are required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations must be imported only at ports of entry that have a plant inspection station because these restricted articles appear to present a substantial risk of carrying injurious plant diseases, insect pests, or other plant pests at the time of importation. Plant inspection stations have the special treatment and inspection facilities adequate for taking necessary action with respect to such articles in order to prevent the introduction of accompanying injurious plant diseases, injurious insect pests, or other plant pests.

Only some of the ports of entry listed in paragraph (b) of § 319.37-14 have plant inspection stations. Texas currently has 15 ports of entry, but only three of these ports—Brownsville, El Paso, and Laredo—have plant inspection stations. A fourth plant inspection station would provide a more conveniently located facility for importers in the Houston area, and would relieve the workload on other plant inspection stations in the area.

We are therefore proposing to add a plant inspection station at the port of Houston, Texas. This new station would have the special inspection and treatment facilities needed to import certain restricted articles, including certain plants and plant products, that are required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations. These restricted articles cannot be imported through Houston's existing inspection location, because it does not have a plant inspection station which is equipped with the necessary holding, treatment, and inspection facilities.

Executive Order 12291 and Regulatory Flexibility Act

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

The addition of a plant inspection station in Houston, Texas, would facilitate the importation of restricted articles, including certain plants, into the United States. We believe the addition of this facility would have a positive but small economic impact on importers, since Texas already has three inspection stations through which plants

requiring written permits pursuant to § 319.37-3(a) (1) through (6) of the regulations may be imported. We have no way of projecting how heavily the new plant inspection station would be used, but we estimate that between 5 and 20 commercial importers—most of them small entities—would use these new facility on a regular basis. Most of them would realize small savings in transportation costs since they would now have access to a fourth plant inspection station. The primary impact on these importers, therefore, would be increased convenience.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subject in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Nursery stock, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we are proposing to amend 7 CFR Part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for Subpart Nursery stock, Plants, Roots, Bulbs, Seeds, and other Plants Products would be revised to read as follows:

Authority: 7 U.S.C. 150dd-150ff, 154, 155, 157 159, 160, 162, and 164a; 7 CFR 2.17 2.51, and 371.2(c).

§ 319.37-14 [Amended]

2. In § 319.37-14(b), the entry for Texas would be amended by adding an asterisk immediateley before the word "Houston" and by adding, immediately under the word "Houston" the information as shown below:

§ 319.37-14 Ports of entry.

(b)

Lists of Ports of Entry

Texas

(Airport) Houston Plant Inspection Station, 3016 McKaughhan, Houston, TX 77032

Done in Wasington, DC, This 30th day of May 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13242 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89-1, Notice No. 2]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The FHWA has been considering options for restructuring and reformatting Part VI of the MUTCD with the objective of improving the application of effective traffic control devices in a work zone. On December 23, 1988, FHWA Docket 89-1, Notice No. 1 (53 FR 51826), made the initial recommendations from this effort available to the public for review and comment. The information received from Notice No. 1 has been evaluated and many of the suggestions and comments have been incorporated in this notice. This notice makes the second Public Information Package covering current recommended changes to Part VI available to the public for review and comment.

DATE: Comments on action and materials cited in this notice must be received on or before February 15, 1990. Comments received after that date will be considered to the extent practicable.

ADDRESS: Submit written, signed comments, to FHWA Docket 89-1, Notice No. 2, Federal Highway Administration, HCC-10, 400 Seventh Street SW Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION OR A COPY OF THE PUBLIC INFORMATION PACKET CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, 400 Seventh Street, SW Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration as the National Standard for highways open to public travel. Part VI "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations" of the MUTCD sets forth basic principles and prescribes standards for traffic control during construction, maintenance, and other work operations on streets and highways. It has been determined that Part VI needs to be revised to better serve the highway community. A contractor has been retained by the FHWA to review Part VI and to recommend changes. The text of Part VI is to be expanded to include additional "utility" and "emergency" subject areas as well as to include recent research results and other areas not adequately covered in the current MUTCD, Part VI. Also improved graphics will be added along with the clarification of ambiguous language. On December 23, 1988, FHWA Docket 89-1, Notice No. 1 (53 FR 51826), made the contractor's initial recommended changes to Part VI available to the public for review and comment. The information received from Notice No. 1 has been evaluated and many of the suggestions and comments have been incorporated. This notice announces the availability of a second Public Information Package that provides the contractor's current recommended changes to Part VI. The contractor will be working very closely with the FHWA's Office of Traffic Operations to ensure that all of the comments are appropriately considered. This notice is being published to inform the public of the status of the contract to rewrite Part VI of the MUTCD and to request comments on the work done since Notice No. 1.

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7 Appendix D. It may be purchased for $22.00 (domestic price)

from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050-001-00308-2. The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD is a promulgation of uniform national traffic control devices standards and applications for use on all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

Issued on: May 30, 1989.

R. D. Morgan,

Executive Director.

[FR Doc. 89-13280 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-160]

RIN 1218-AA28

Health Standards; Methods of Compliance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: By this notice the Occupational Safety and Health Administration (OSHA) proposes to modify the existing provisions for controlling employee exposures to toxic substances found in 29 CFR 1910.1000(e) and 29 CFR 1910.134(a)(1). The Agency proposes to incorporate additional flexibility in its methods of compliance requirements by more explicitly setting forth the circumstances under which respiratory protection may be used in lieu of engineering controls. While some additional approaches are not reflected in actual proposed regulatory language, comment is requested on the appropriateness of addressing all of the various areas discussed by this notice in a final methods of compliance rule. This action is being taken based on data the Agency has received in response to an Advance Notice of Proposed Rulemaking (ANPR) published in February, 1983 (48 FR 7473) that solicited comment on its policy relating to the use of engineering controls and respirators and on data found in OSHA's 6(b) rulemaking records addressing the methods of compliance issue (Ex.4).

Notice is also given, herein, that certain modifications to the compliance requirements with respect to short-term exposures in the recently promulgated standards for benzene (52 FR 34460), formaldehyde (52 FR 46168), and ethylene oxide (53 FR 11414) may result from this rulemaking.

DATE: Comments and requests for a hearing should be submitted by October 3, 1989.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Officer, Docket No. H-160, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW Washington, DC 20210.

Requests for a hearing should be submitted in quadruplicate to Mr. Tom Hall, OSHA, Division of Consumer Affairs, Docket No. H-160, Room N-3637 U.S. Department of Labor, 200 Constitution Ave., NW Washington, DC, 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue. NW Washington, DC 20210. Telephone: (2D2) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA's methods of compliance policy, first adopted by OSHA from national consensus standards in 1971, and subsequently included in OSHA substance specific health standards, requires that employers rely primarily on feasible engineering controls to prevent employee exposures from exceeding permissible levels. This requirement, in particular, is stated in the OSHA Respiratory Protection Standard, 29 CFR 1910.134(a)(1), which applies to all exposures to airborne toxic substances, and in the Air Contaminant Standard, 29 CFR § 1910.1000(e), which applies to exposures to 600 substances listed in Tables Z-l, Z-2, and Z-3. Thus, 29 CFR 1910.1000(e) requires employers to first implement engineering and administrative controls to comply with the permissible exposure limits for substances listed in the above Tables. Similar language appears in OSHA's generic respirator standard which set forth the conditions of respirator use required to protect the health of employees. (29 CFR 1910.134(a)(1)). These standards were adopted without full rulemaking proceedings to allow OSHA to quickly put into place a body of workable regulations, pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 *et seq*).

This methods of compliance policy has also been incorporated in every health standard adopted pursuant to section 6(b) of the Act after OSHA's evaluation of the related rulemaking records. All substance specific health standards (except for the 13 carcinogen standards, 29 CFR 1910.1003-1016. which mandate specific engineering controls) and the carcinogen policy (29 CFR Part 1990) recite a generalized preference for engineering and work practice controls. However, in each such standard OSHA has identified circumstances or operations where the record shows the infeasibility or impracticality of installing engineering controls and has allowed reliance on respiratory protection as well. However, the generic standards, 29 CFR 1910.1000(e) and 134(a)(1), do not set out most of these modifying circumstances in their regulatory texts.

In certain recognized situations and conditions under OSHA's substance specific standards, engineering controls are not required and respirator use is permitted. For example, the following standards permit the use of respiratory protective devices during installation of feasible engineering controls, where engineering controls are not feasible. and where it is necessary to supplement engineering controls in order to achieve full compliance: asbestos, arsenic, lead, coke ovens, cotton dust, DBCP acrylonitrile, and ethylene oxide. Other specific allowances for respirator use can be found in standards for arsenic (maintenance and repair), lead (for employees exposed less than 30 days per year), coke ovens (maintenance and repair), acrylonitrile (maintenance, repair, and vessel cleaning), and ethylene oxide (collection of quality assurance samples, removal of biological indicators, loading and unloading of tank cars, changing ethylene oxide tanks, vessel cleaning, and maintenance and repair activities). These examples provide a clear indication of the Agency's realistic expectations with respect to the implementation of engineering controls and of the flexibility implied with respect to the meaning of "feasible engineering controls. In addition, in an enforcement context, it may be demonstrated that for specified operations engineering controls are infeasible. OSHA seeks comment on whether these specific types of allowances should be explicitly built into the general methods-of-compliance provisions.

OSHA s policy has been criticized by some as too inflexible, not cost-effective, often unnecessary for health

protection and outdated based on the argument that sufficient progress has been made in respirator technology and application to permit their use on a wider scale.

In order to address these criticisms OSHA published an ANPR on February 22, 1983, to solicit public comment on issues such as preference for engineering controls, comparative protectiveness of respirators and engineering controls, total costs of respirators and engineering controls, and the use of engineering controls even if such controls fail to reduce levels to below the PEL. OSHA was also seeking information that would help the Agency to focus on three primary policy considerations:

The first consideration was health protection. It had been postulated that there may be many instances where respirators would provide protection to employees equivalent to engineering controls, and that their routine use should be permitted.

The second consideration was that respirator technology and use practices have progressed significantly since initial adoption of OSHA's compliance requirements in 1971. As a result of many of these advances, the consensus among many occupational health professionals concerning what constitutes a reasonable effective respirator program has changed. This point is demonstrated by the issuance of the American National Standards Institute (ANSI) Z-88.2-1980 standard, entitled "Practices for Respiratory Protection, a revision of the 1969 ANSI standard. In addition, improved respiratory protection programs are currently being addressed in a proposed revision of OSHA's respiratory protection standard (29 CFR 1910.134). It was suggested, therefore, that, in the presence of such programs, respirators would be capable of taking a more significant role in air contaminant protection than they have had before.

The third consideration was cost-effectiveness. There may be instances where the costs of engineering controls would exceed the expected costs of respiratory protection, and where the routine use of respirators may provide adequate employee protection. Should such instances exist, reasonable allowances for the use of respiratory protection should be made.

For the foregoing reasons, it was felt to be timely and appropriate to reexamine OSHA's policy on methods of compliance.

Over 135 ANPR comments were received, with a wide range of responses from industry, labor, health organizations, and others. In addition, rulemaking records from other standards which OSHA has promulgated have been re-examined and relevant exhibits have been placed in this record. Labor unions opposed any change in the role of respirators in current programs. In addition, NIOSH, and Los Alamos and Lawerence Livermore research laboratories, highly respected for their expertise and experience in exposure control technology, also opposed changing the existing policy.

The preponderance of data in this and other rulemaking records (ethylene oxide, cotton dust, DBCP acrylonitrile, arsenic, lead, asbestos, cancer policy) support the industrial hygiene principle that engineering controls, where feasible, are more effective in controlling exposure than other means.

Commenters representing unions, (2-53, 2-102, 2-122, 2-98), universities (2 120), research organizations (2-128, 2-138, 2-131, 2-81), and health associations (2-89), contended that the requirement to implement feasible engineering controls should be maintained. Industry representatives that acknowledged the superiority of feasible engineering controls include AT&T (2-59), DOW (2-71), Monsanto (2-88), and ALCOA (2-103).

These commenters agreed that engineering controls provide reliable and consistent levels of protection to a large number of workers and are not dependent on individual human performance. Data submitted to the record support this assertion. Performance of engineering controls can be monitored continually, inexpensively, and can be predicted at the design stage. As stated by DOW, "The primacy of engineering controls for controlling exposure is an accepted principle of occupational health" (2-71). AT&T commented that "Engineering controls should always be given primary consideration" (2-59). Los Alamos' Industrial Hygiene Group has stated.

> That there are no analytical results to indicate that respirators offer equal or better protection than engineering controls and with very few exceptions respirators simply cannot offer the same degree and reliability of protection to employees, as properly designed and operated engineering controls (2-131).

The University of North Carolina commented that:

> All industrial hygiene practice indicates feasible engineering controls should take precedence (Ex. 2-120).

ALCOA, addressing the reliability of engineering controls and respirators, provided the following:

> Engineering controls generally provide better and more reliable methods of protecting employee health Improperly wearing respirators can be a continual problem. While we believe this occurs less than 5% of the time in many of our plants, we expect it occurs more frequently in some plants—possibly in the order of 30% or more of the time. (Ex. 2-103).

Many industry commenters, however, called for increased flexibility in OSHA's compliance policy; still others for abandonment of the preference for engineering controls. For example, the Chemical Manufacturers Association stated [Ex. 2-72], in response to the question of whether OSHA should require the use of feasible engineering controls "in preference" to the use of respirators, as follows:

> As long as the employer meets a permissible exposure limit (PEL), controls the skin contact, or meets the appropriate biological levels that are consistent with employee health and safety, OSHA should not require any specific control strategy [sic]. Means for achieving such standards will often involve engineering controls and the use of respirators as well as administrative and work practice controls. Methods of reducing exposure to the desired level will be different in each workplace and the combination of engineering, administrative, and work practice controls and use of respirators should be left to the employer.

Representing a broad cross section of industry, the National Association of Manufacturers [Ex. 2-91] similarly stated, arguing that OSHA's current methods policy was actually counterproductive to worker safety and health, as follows:

> The threshold question is whether current OSHA standards requiring employers to implement feasible engineering controls to maintain air contaminants in the workplace to within prescribed permissible exposure limits and permitting engineering controls are not feasible, not yet installed, or are inadequate is conducive to the "most effective" protection of workplace health. It is the NAM's belief that almost exclusive reliance on engineering controls while not accounting for situational variations is neither the most effective approach nor in the best interest of overall worker protection.
>
> Few professionals in industry would argue that engineering controls are not the "ideal" means for the elimination or mitigation of workplace hazards. However, ideal solutions rarely work as well as expected in practice and practical concerns must also be considered. These practical concerns include all hazards rather than a single hazard and must be viewed in relation to and interacting with a total workplace safety and health program. Under this total program, the ideal solution for the control of one hazard may likely limit an employer's ability to address the remaining segments of the program. Thus, preference for one form of control over another, unmindful of the variables involved,

we believe, is counterproductive to the effectiveness of a balanced and truly effective overall safety and health program. For this reason, the feasibility of an engineering control should not be the sole determinant of its use and OSHA policy should not reflect this short-sighted goal.

Specific companies reflected similar concerns. Thus, the DOW Chemical Company [Ex. 2-71] noted:

The prime concern in any reconsideration of the methods-of-compliance provisions must be maintenance of safety and health protection for employees to prevent work-related injuries, illness and death. Such protection cannot be achieved by mandating a hierarchy of control techniques. Dow recommends that OSHA delete or modify any mandatory preference to allow employers greater flexibility to use their professional judgment to determine the balance of engineering controls, work practices, operator training *and* personal protective equipment that is most effective for them in achieving the appropriate level of protection.

Another major chemical company, Du Pont, emphasized the effectiveness of respirators together with the need for greater flexibility:

Much has changed since the current methods of compliance policy was adopted. Data obtained from research on the performance of respirators in the workplace, much of it performed by DuPont, lend strong support to the conclusion that respirators provide reliable employee protection when used in a good respirator program.

Recent research on workplace protection factors demonstrates that respirators provide effective control for exposure to airborne chemicals when they are used correctly in a good respirator program. In many cases they provide the most cost effective means of control. Accordingly, DuPont believes that respirators, like engineering and administrative controls, have a proper role to play in the protection of employee's. Therefore, DuPont recommends that each employees personal work environment be maintained at a safe exposure level through implementation of cost-effective engineering controls augmented as necessary by personal protective equipment and/or work practice controls. The choice of methods should depend on the factors in each specific situation.

The choice of the proper method(s) of compliance involves, therefore, far more than the simple dichotomy of engineering controls versus respirators. For this reason, the question "Which are better, engineering controls or respirators?" cannot be satisfactorily answered in the abstract. As the information and comments offered by Du Pont in the enclosure will indicate, the choice of the proper method(s) of compliance is best made on an individualized basis by industrial hygiene professionals. So long as the two criteria identified above have been met, an employer should not be needlessly contrained from choosing the control strategy that makes sense for his particular operation.

Atlantic Richfield Company [Ex. 2-80], in endorsing comments submitted by the American Petroluem Institute [Ex. 2-73], noted:

Employers should have the option to select a protective control strategy rather than being mandated to adhere to the current rigid hierarchy of exposure controls. The ultimate goal of any control strategy must be the adequate protection of workers exposed to contaminants. Varying control strategies will achieve that goal at least equally well, and often more cost-effectively, as the fixed controls provided by current policy.

In support of this recommendation we want to emphasize that the statutory language of the OSH Act does not mandate the primacy of engineering controls. Support for this conclusion is fully developed in API's comments.

OSHA should recognize the significant advances in both technology and applicability of respirators in the last decade. New methods and procedures for fit-testing and respirator fit reliability have been developed.

Other commenters expressed similar concerns. (See Cast Metals Federation [Ex. 2-49], Horston Lighting & Power [Ex. 2-21], the American Gas Association [Ex. 2-77], SCM Corporation [Ex. 2-21], and National Agricultural Chemicals Association [Ex. 2-77]. National Paint and Coatings Association, Inc. [Ex. 2-78]. Motor Vehicles Manufacturers Association [Ex. 2-95], and The Health Industries Manufacturers Association [Ex. 2-110].

This rulemaking does not address the assessment and reduction of any absolute existing risks but rather addresses the possible change in risk abatement associated with the use of respirators instead of engineering controls. The nature of the risks involved concerns differences in degree of protection between respirators and engineering controls as applied in various types of work situations involving different air contaminants.

The Proposal

OSHA proposes to modify its existing requirements in 29 CFR 1910.1000(e) and 134(a)(1) that specify primary reliance on feasible engineering and work practice controls, by further clarifying the circumstances, based on experience with OSHA's 6(b) standards and data and information submitted for the record, under which more extensive use of respirators may be appropriate.

The record does identify specific situations where engineering controls generally may not be feasible, and where respirators may have to be used (Exs. 2-51, 2-72, 2-131). OSHA, therefore, is proposing to specify five sets of circumstances where there will be no need for employers to show that engineering and work practice controls are not feasible before an employer can rely on respirators to reduce employee exposure to required levels.

In large part, these circumstances reflect the current application of the two standards involved and circumstances recognized in substance-specific standards. By setting out explicit situations OSHA hopes to make future application of the methods of compliance policy more uniform and understandable.

It is noted that provisions adopted under this standard will not change the compliance provisions found in OSHA's existing substance specific standards with the possible exceptions of the STEL provisions in the ethylene oxide (29 CFR 1910.1047), benzene (29 CFR 1910.1028) and formaldehyde (29 CFR 1910.1048) standards. The preamble to those standards indicated that if evidence were to be submitted during this rulemaking, appropriate to ethylene oxide, benzene or formaldehyde on the STEL compliance issue OSHA would consider making appropriate changes to each rule. If information developed in the course of this rulemaking demonstrates that changes should be made in any of the existing substance specific standards, OSHA will amend these standards to permit employers to elect to use either respirators or engineering controls to achieve compliance with those existing short term limits.

The circumstances listed define concrete situations where OSHA has or would have treated the primary reliance on engineering controls as infeasible in most cases. Within these circumstances employers will be able use any combination of engineering or work practice controls and respiratory protection to effectively reduce employee exposures to required levels.

OSHA also notes that as under the current standards, OSHA's enforcement of the hierarchy of controls provision is on a case by-case basis. Other situations where engineering controls may be infeasible can be more easily identified because of the explicit examples provided in the proposed provisions.

OSHA has recognized other circumstances where respirators are essential to guarantee employee health in some substance-specific standards. Thus, OSHA has provided that in work operations such shutdown and repair activities respirators may be used as a primary control strategy. (See 29 CFR 1910.1048(a)(1)(ii), Formaldehyde; 1910.1047(g)(1)(ii), Ethylene oxide (EtO); 1910.1043(f)(1)(ii), Cotton dust; 1910.1029(g)(1)(b), Coke Oven emissions;

1910.1018(h)(1)(ii), Inorganic arsenic; 1910.1001(g)(ii), Asbestos, tremolite, anthophyllite, and actinolite).

OSHA has not proposed an explicit exclusion for maintenance activities for the generic standards. As OSHA observed in the preamble to the carcinogen policy, based on its review of that voluminous record, although these activities are "intermittent, often unpredictable and often undertaken when engineering controls break down some maintenance activities are feasibly controlled by engineering and work practice controls" 45 FR 5226. Moreover, the Agency believes that routine activities that are performed on a repeated or scheduled basis can be controlled through implementation of feasible engineering and work practice controls. Compliance plans can be developed and engineering controls implemented for predictable activities, including routine maintenance. However, OSHA raises for comment the question of whether it is necessary to require that all feasible engineering controls such as ventilation systems be installed solely for maintenance activities. Specifically, OSHA would like to receive examples of instances which would demonstrate that an engineering control requirement exclusively for maintenance exposures would or would not be appropriate. (For activities such as shutdown and repair, which are necessary due to unexpected or unpredicted occurrences, respirators would be permitted as they would be the only available source of protection against exposure.)

The Agency does agree, however, that there may be some activities that are considered to be maintenance that may have to be performed with respirators due to the absence of other controls. Nevertheless, as discussed above, the Agency believes many maintenance activities lend themselves to control by engineering means. OSHA does not have sufficient information to list specific maintenance jobs commonly performed in general industry that may require widespread use of respirators. Therefore, the Agency is interested in receiving comment on the practicality of listing specific maintenance jobs for which engineering controls are generally infeasible or maintenance activities where respirator use is otherwise appropriate based on consideration of duration, frequency and whether routine or not.

Thus, data are solicited regarding circumstances, conditions, frequency, and duration of the types of industry-wide maintenance activities that typically require the use of respirators due to the general infeasibility of engineering control implementation or for which respirators would, in any case, provide sufficient protection.

The five sets of circumstances that have been identified by OSHA from data in the record where engineering controls may generally be infeasible include:

1. During the time necessary to install feasible engineering controls;

2. Where feasible engineering controls result in only a negligible reduction in exposure;

3. During emergencies, life saving, recovery operations, repair, shutdowns, and field situations where there is a lack of utilities for implementing engineering controls;

4. Operations requiring added protection where there is a failure of normal controls; and

5. Entries into unknown atmospheres.

A provision-by-provision discussion of the proposed revisions follows:

1. OSHA is proposing to allow primary reliance on respiratory protection during the time necessary to install or implement feasible engineering controls. This circumstance was specifically identified in submissions to the ANPR (Exs. 2-91, 2-50), and in all substance specific standards (see e.g. 29 CFR 1910.104(g)(1)(i), EtO; 1910.1045(h)(1)(i), cotton dust).

2. OSHA is proposing to allow primary reliance on respiratory protection where engineering control implentation would result in only a negligible reduction in exposures. OSHA requests comment on whether setting forth this additional explicit regulatory language is necessary in light of existing provisions requiring that only feasible engineering means be implemented to reduce exposures. Current OSHA enforcement policy and practice recognize that the degree of expected exposure reduction is part of the determination of feasibility. Therefore, OSHA feels that it may be unnecessary to supplement the current compliance requirements with specific language as suggested above. Further, to define in regulatory terms on a broad basis what a "negligible" reduction in exposure level is in general industry as a result of engineering control implementation, as opposed to defining it on a case-by-case enforcement basis, may prove to be confusing to employers and impractical to OSHA. Nevertheless, since the potential success of exposure reduction is considered in determining feasibility, proposing specific language to that effect would not change current OSHA policy and therefore, may be appropriate for clarification purposes. Comment is requested on this issue.

OSHA points out that this exception does not cover the required supplemental use of respirators when feasible engineering controls do not "achieve full compliance" pursuant to 29 CFR 1910.1000(e). Rather, it refers to situations where engineering controls would achieve exposure reductions only to a negligible degree.

Comments in response to the ANPR identified some operations which may be covered by this proposed provision. However, further case-by-case analysis still will be required (Exs. 2-131, 2-118, 2-132). Thus, for example, the American Foundrymen's Society (AFS) asserts that "technical limitations prevent the control of dust exposures to within permissible exposure limits by engineering means at most chipping and grinding operations. (Ex. 2-44). Spray painting booths were also cited as virtually impossible to engineer to achieve substantial exposure reduction (Ex. 2-36). OSHA notes however, that engineering controls may be feasible to implement, and the issue may be the degree to which they are effective. The proposed provision would allow reliance on respirators when feasible engineering controls only achieve negligible exposure reduction. If in the case of foundries, the installation of local exhaust hoods and increased housekeeping make little difference in the employee's exposure because of unalterable difficulties in hood placement, then the provision may apply. If however, engineering controls can reduce exposures, although not down to the PEL's, the unrevised supplemental respirator use provision of § 1910.1000(e) would, as now, come into play and require a combined control strategy, and not total reliance on respirator protection.

OSHA also notes that confining discussion about the effectiveness of feasible engineering controls to "conventional" controls may dictate unwarranted conclusion of infeasibility, loss of productivity or ineffectiveness. NIOSH has pointed out that, for example, in the plastics and resins industry, implementing controls for cotton dust, and in silica flour milling, engineering control modifications and innovation increased production and control effectiveness over "conventional" technology. (Ex. 2-81). Innovative controls which are available will have to be assessed before this exception may be relied on.

3. The third provision proposed by OSHA to permit reliance on respiratory equipment encompasses several

circumstances where total reliance on engineering controls would be ineffective or inappropriate. These are emergencies, recovery operations, unscheduled repairs shutdown, and in field situations where there is a lack of utilities for implementing engineering controls.

OSHA believes that in these circumstances, respiratory protection has proven itself generally as the most and often the only practical means to minimize employee exposure. Respirators may be the only means of protection in situations where engineering controls cannot be implemented due to the remoteness of the locale, other configuration of the site, or the characteristic of the work operation. Further, some of the defects of respirators, i.e., lack of employee acceptance and degradation of fit over time are greatly reduced by the short time they may be worn during emergencies, recovery operations, unscheduled repairs and shutdown. Most submissions supported respirator use in circumstances similar to exception three. For example, Monsanto noted that during emergencies (liquid spills, fire fighting, etc.) respirators are used in operations where routine protection is achieved by engineering controls (Ex. 2-88). API noted that respirators are the only means to provide emergency protection in the event of an equipment failure (Ex. 2-93).

Most substance specific standards permit primary respirator use in these situations (See e.g. §§ 1910.1018(h)(1)(ii), arsenic; § 1910.1029(g)(1)(d), coke oven emissions); and § 1910.1044(h)(1)(iv), DBCP).

4. OSHA is also proposing to allow reliance on the use of respirators in operations involving materials which are primarily controlled by engineering devices to protect employees in the case of control breakdown. OSHA's intent is to allow respiratory protection to be used as a redundant control system where redundancy is considered necessary either because of the toxicity of the substance or the possibility of engineering breakdown. For example, Conoco, Inc. stated that "standby or back-up respiratory protection is normally maintained in all locations where hydrogen sulfide (H_2S) gas is produced in case of accidents" (Ex. 2-60).

5. The fifth circumstance proposed to allow reliance on respiratory protection is for entries into unknown atmospheres. Preliminarily, OSHA intends to cover confined spaces or vessel entry and tank cleaning and vessel cleaning. Most commenters who addressed this issue agreed that respiratory protection was essential for these activities, and that engineering controls were, in the main, infeasible (Ex. 2-112).

OSHA believes that employees will be effectively protected in the situations evisioned in provisions 4 and 5, by the proper selection and use of respiratory protection.

The Agency requests comments on all aspects of these proposed provisions. In particular, the clarity of the "exception provisions" is of concern to the Agency, because one reason for these provisions is to provide certainty and uniformity of application to employers and OSHA enforcement personnel.

In addition to requesting comment on the appropriateness of allowing the use of respirators during the activities discussed above, OSHA requests data, views, and comment on other situations, as discussed below, where it may be acceptable to use respirators in lieu of engineering controls, and which should be allowed for, as part of this rulemaking, in a final methods of compliance rule.

Specifically, comment is sought on the appropriateness of permitting the use of respirators for work situations in which the hazardous exposure is of very brief duration. OSHA permits the use of respirators in specific activities in a number of its existing section 6(b) standards based, in part, on the short duration of the activity. For example, respirator use is permitted under the ethylene oxide standard (29 CFR 1910.1047) during the collection of quality assurance samples, removal of biological indicators, and changing of ethylene oxide tanks or cylinders. These activities are typically brief in nature. The concept of according acceptability of respirators for intermittent use is also found in the benzene (52 FR 34460) and lead (29 CFR 1910.1025) standards which, in general, permit their use where the regulated substance is used in the workplace less than a total of 30 days per year. These exceptions to implementation of engineering controls were adopted in each specific standard based on data that demonstrated the acceptability of the use of respirators for those particular circumstances in those particular substance using industries. Thus, it is not presently clear to OSHA whether such exclusions can be appropriately applied generally. Another regulatory agency, the Mine Safety and Health Administration (MSHA), is also exploring the issue of ways to permit more flexibility in required exposure control methods for unusual situations. For example, MSHA is considering permitting the use of respirators in "tasks such as maintenance or investigative activities [which] require occasional entry into hazardous atmospheres. Comments submitted to the Methods of Compliance record also argued for incorporation of flexibility in respirator use under certain conditions. One commentor stated that respirator use should be permitted in lieu of feasible engineering controls for a certain percentage of time per individual, per work station (Ex. 2-43). This suggests, perhaps, that employers should be allowed to establish a "respirator budget" to allocate a certain number of days per year or hours per day for employees to wear respirators in lieu of feasible engineering controls. Comment and data is sought that demonstrate that "budgeted" respirator use will result in reliable and predictable control equivalent to that afforded by engineering controls. Others supported allowing employers to rely on respirators to control exposures for short term tasks (Ex. 2-61), and for high exposure variability, infrequent and small exposed population job tasks (Exs. 2-88, 2-93). None of these comments, however, provided substantial data to the record demonstrating that employee protection would not be compromised by permitting the use of respirators in these instances in lieu of feasible engineering controls. Receipt of such data is requested by OSHA.

As indicated above, however, OSHA is not convinced based on available data that it is appropriate for the Agency to adopt broadly applicable generic exposure control provisions incorporating intermittency or short duration of operation as a basis for permitting the use of respirators in lieu of engineering controls, as found in the specific standards discussed above. Therefore, comment and data are solicited that demonstrare or refute the appropriateness of adopting this approach into a final rule on OSHA s methods of compliance requirements, based on the frequency and duration of the activity, that could be applied to general industry. Comment is also specifically requested on whether actual final regulatory language which would reflect this approach should incorporate specific time limitations as to the duration and frequency of use per work shift and what these specific time limitations should be, or should, rather, such language be phrased in general, flexible terms such as "brief duration, "short duration, or "brief intermittent use" without specific time limitations. If a time limitation is suggested, the Agency requests data and information as to the appropriate time period and why adequate protection would be

provided by respirators during that period.

Related to the issue of the appropriateness of permitting short duration use of respirators, as discussed above, is the issue of specifically permitting respirators to be used to achieve compliance with short-term exposure limits (STELs). The preambles to the recently promulgated benzene (52 FR 34460) and formaldehyde (52 FR 46168) standards, for which STELs were adopted, and the preamble to the ethylene oxide standard (53 FR 11414), for which an excursion limit was adopted, indicated that OSHA would consider in its Methods of Compliance rulemaking whether different principles should apply as to means of compliance for the STEL or excursion limit, such as using respirators to meet the short-term limit, but not the TWA. Neither the ethylene oxide, benzene nor the formaldehyde standard adopted a provision allowing respirators to be used to achieve compliance with the short-term limit in lieu of feasible engineering controls because data in their specific respective records did not justify such an allowance. It is noted in each standard's preamble that if evidence is submitted in the Methods of Compliance rulemaking, appropriate to ethylene oxide, benzene or formaldehyde on the short-term limit compliance issue OSHA will consider making appropriate changes to each rule. OSHA therefore requests, additional data beyond those received during the specific 6(b) rulemakings, addressing the question of whether the compliance requirements in these standards should be modified with respect to control of short-term exposures. Data and views are solicited on circumstances under which it would or would not be appropriate to permit employers to elect to use either engineering controls or respirators as the primary means of limiting exposure to within the benzene STEL, the formaldehyde STEL, or the ethylene oxide excursion limit.

Based on information received during this rulemaking, that is pertinent to these substances with respect to compliance requirements for control of short-term exposures, OSHA will either amend these standards to permit employers broader discretionary use of respirators regarding STEL compliance in this rulemaking, or will reaffirm the conclusions reached during the previous rulemakings for each of the three substances.

OSHA presently does not have sufficient data to justify proposing to include regulatory language allowing STEL compliance for all substances to be achieved solely through the use of respirators. Since OSHA has received no documentation that convinces the Agency that respirators can be used as a consistently effective means of routinely meeting STEL's on a widespread basis, the Agency is raising this issue for comment.

The Agency is raising this issue for comment in conformance with statements to that effect in the ethylene oxide, benzene and formaldehyde standards. OSHA therefore requests substantive technical data concerning conditions and situations under which respirators can be employed successfully in lieu of other controls to achieve STEL or excursion limit compliance, and concerning how and why the use of respirators for protection against short-term exposures can be differentiated from protection against TWA exposures with respect to effectiveness.

Comment on another area where broader use of respirators may be acceptable is also being requested by OSHA. As discussed earlier, the question arises whether there are circumstances in the workplace where the protection afforded by respirators would be equal to the protection provided through implementation of engineering controls. In particular, the question arises whether there are circumstances where the costs of the respirator program would be less than those of engineering controls and yet equal protection would be afforded by either. Are there circumstances in which cost effectiveness factors are a legitimate consideration in determining the acceptability of one exposure control method over another. Also, what workplace factors would have to be considered to evaluate the effectiveness of a control method before costs could be taken into account? A number of factors that may be appropriate to consider in determining whether engineering controls or respirators will provide adequate protection in a particular situation were raised for comment in the ANPR. OSHA seeks further comment on how factors such as described below should be taken into account by OSHA or the employer in determining the acceptability of using either engineering controls or respirators. Workplace factors which may affect the performance and degree of protection provided by exposure control means may include: number of exposed employees and number of employees with respirator fitting problems; severity of acute and chronic health effects; length and frequency of exposure; ability to measure and ensure the adequacy of exposure control; work rate; temperature and humidity of the workplace: ability to assess the probability of protection failure; detectability of control failure before harm; and the extent to which employees may be expected to wear respirators for any required period. Comment received on these factors as set forth in the ANPR revealed that an important role is played by each in determining the suitability of compliance methodology. Engineering controls were suggested as being particularly preferred where health effects are more severe, where there are more lengthy and frequent periods of exposure; where respirator failure warning properties do not exist; where the work rate exertion level is greater, where significant respirator fit problems exist, and where extreme temperature and humidity conditions exist. OSHA again raises for comment the question as to how or if these workplace factors should be viewed in deciding whether engineering controls or respirators are most appropriate and, further, how these factors could be reflected in a final rule to define those circumstances where respirator use would provide appropriate protection and would, thus, be permitted under the rule. How would it be determined that employees would be provided with the desired degree of protection? It is noted here that OSHA is in the process of revising its standard on respiratory protection (29 CFR 1910.134) and that consideration should be given as to whether an increased degree of protection may result where respirators are used in comformance with the new respirator program provisions.

It is not clear to OSHA at this time, however, how it can be determined that respirator use is equally protective as engineering controls, costs notwithstanding. Nevertheless, OSHA seeks comment that would show the appropriateness of allowing cost effectiveness to be incorporated as a control method selection factor.

In the preceeding discussion, OSHA has maintained its support for a continuance of its existing compliance method hierarchy, but has also suggested that, under certain specific sets of circumstances, it may be appropriate to allow respirator use in lieu of feasible engineering controls, thus providing flexibility in determining the appropriate method of compliance. For example, OSHA seeks comment on a requirement to permit respirator use in lieu of feasible engineering controls in certain instances where the employer has submitted a comprehensive written

respirator compliance program to the Agency. This compliance plan would be subject to OSHA approval and would be required to demonstrate to the Agency that the use of respirators under the circumstances described would provide protection to the employee equivalent to that afforded if feasible engineering controls were implemented. OSHA believes, however, that this flexibility may not be appropriate where the substance involved is a carcinogen, has no identified dose-response threshold, continues to pose a significant risk at the PEL, has no respirator breakthrough warning properties, or if there are no means of determining the specific in-use effectiveness of the respirator. On the other hand, if the effectiveness of respirators can be monitored readily in some manner, such as by biological monitoring, it may be appropriate to permit their limited use. The Agency solicits comment on the issue of OSHA approved respirator use. Views are sought on criteria which should be considered and met for respirator compliance program approval and on circumstances, as suggested above, under which respirator use should not be permitted in lieu of feasible engineering controls.

An alternative which would provide even more flexibility with regard to respirator use is to allow employers under any circumstances to comply with exposure limits by any method the employer deems advisable. Some commenters have suggested that establishment and enforcement of a good respirator program will result in effective exposure control where respirators are used in place of engineering controls, and that employers should be allowed to implement such respirator programs under the standard in circumstances deemed appropriate by the employer (Exs. 2-61, 2-88, 2-93, 2-94, 2-109). For example, the Ethyl Corporations states that "The government should not regulate the need for engineering controls but should regulate the use of personal protective equipment, requiring the employer to show that protection is being provided" (Ex. 2-109). The American Petroleum Institute asserts that "The burden should rest on the employer to demonstrate that its employees are protected by whatever [control] strategy is chosen (Ex. 2-93). Finally, 3M states that A well written performance standard should satisfy the requirement that OSHA ensure that exposures are within permissible exposure limits while allowing the employer to be concerned with the 'how of meeting a specific 'standard" (Ex. 2-88). OSHA is not convinced that, as suggested by these commentors, implementation of even a strong respirator programs will result in equivalency of protection afforded by respirators as compared to engineering controls. The inherent limitations of respirators preclude their providing equivalent protection to engineering controls for use as the primary means of exposure control in most all circumstances where implementation of engineering controls are feasible. A control method which limits contaminant entrance into the workplace (e.g. engineering controls) has been clearly shown to be a more effective application of industrial hygiene principles than one that does not. Nevertheless, OSHA seeks comment on whether continuance of the control hierarchy is still necessary in any form, and whether adoption of a purely performance oriented compliance provision into a final methods of compliance rule is a viable option. Comments in support of discontinuance of the control hierarchy should describe the specific circumstances under which such a change would be appropriate and how it would result in continued equivalent employee protection. Data and information are also sought that can demonstrate that adoption of a performance oriented compliance requirement will maintain the protection afforded employees under current methods of compliance provisions. If the employer is permitted to choose any mix of control methods to achieve compliance, should choice of the method be at the discretion of the employer or should the method chosen be required to be approved by a professional in the field of safety and health or other technicially qualified person? Commenters supporting continuance of OSHA s current policy should provide pertinent data that demonstrate the necessity of maintaining primary reliance on feasible engineering and work practice means of exposure control.

Based on the preceeding discussion, OSHA proposes to add a new paragraph 1910.1000(f) that explicitly sets forth circumstances in the workplace where employers may choose to use respirators in lieu of engineering means as a permissible method of controlling employee exposures to toxic substances listed in the Z-tables of section 1910.1000. OSHA also proposes to modify section 1910.134(a)(1) by incorporating a statement of reference that indicates that respirators may be used in lieu of control in the circumstances listed under proposed paragraph 1910.1000(f).

Regulatory Impact

OSHA has not performed a preliminary Regulatory Impact Analysis, Regulatory Flexibility Analysis, or paperwork clearance package for this action since adoption of the proposed requirements would add no new regulatory burdens on employers with respect to either costs or information collection.

II. Pertinent Legal Authority

Authority for this action is found primarily in sections 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(b), 657(c), and 657(g)(2).

III. Public Participation

Interested persons are invited to submit written data, views, and arguments on this proposed amendment. These comments must be postmarked on or before October 3, 1989, and submitted in quadruplicate to the Docket Officer, Docket No. H-160, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW Room N-3670, Washington, DC 20210, (202)523-7894. Written submissions must clearly identify the provisions of the proposal which are addressed, and the position taken on each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions will be part of the record of the proceeding.

Requests for Hearing

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons who desire that OSHA hold an oral hearing on the proposal may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must specify with particularly the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
3. Each objection must be separately stated and numbered; and
4. The objections must be accompanied by a detailed summary of the evidence proposed to be introduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make those objections or

recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" if the interested persons desire to request an oral hearing.

Requests for a hearing should be submitted in quadruplicate, postmarked on or before October 3, 1989, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-160, Room N-3637 U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8615.

IV References

A complete set of the references in Docket H-160 upon which this proposed action is based is available for examination and copying at the OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW Washington, DC 20210, between 8:30 am. and 4:30 pm,. Monday through Friday, legal holidays excepted.

V Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW Washington, DC 20210.

Pursuant to sections 4, 6(b), 8(c) and 8(g)(2) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), 29 CFR Part 1911 and Secretary of Labor's Order No. 9-83 (48 FR 35736), 29 CFR Part 1910 is proposed to be amended as set forth below.

List of Subjects in 29 CFR Part 1910

Chemicals, Diving, Electric power, Electronic products, Fire prevention, Gases, Hazardous materials, Health records, Noise control, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Signed at Washington, DC, this 25th day of May.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

Subpart I—[Amended]

1. The authority citation for Subpart I of Part 1910 is revised as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059) or 9-83 (48 FR 35736), as applicable. Section 1910.134 also issued under 29 CFR Part 1911.

2. The last sentence of paragraph (a)(1) of § 1910.134 is proposed to be revised to read as follows:

§ 1910.134 Respiratory protection.

(a) Permissible practice

(1)

When effective engineering controls are not feasible, while they are being instituted, or in circumstances meeting the requirements of 29 CFR 1910.1000(f), appropriate respirators may be used pursuant to the following requirements.

Subpart Z—[Amended]

3. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657· Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

All of Subpart Z issued under Sec 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of Table Z-1-A, Table Z-2 or Table Z-3. The latter were issued under Sec. 6(a) (5 U.S.C. 655 (a)).

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2 and Table Z-3 also issued under 5 U.S.C. 533. Section 1910.1000, Tables Z-1-A, Z-2 and Z-3 not issued under 29 CFR 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.101028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

4. Section 1910.1000 is proposed to be amended by revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 1910.1000 Air contaminants.

(e) Except as provided by paragraph (f) of this section. to achieve compliance with paragraphs (a) through (d) of this section, administrative or engineering controls must first be determined and implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or any other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and/or technical measures used for this purpose must be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with § 1910.134.

(f) Respiratory protection may be used in lieu of administrative or engineering controls to achieve compliance with paragraphs (a) through (d) of this section under the following circumstances:

(1) During the time necessary to install feasible engineering controls;

(2) Where feasible engineering controls result in only a negligible reduction in exposure.

(3) During emergencies, life saving, recovery operations, repair, shutdowns, and field situations where there is a lack of utilities for implementing engineering controls.

(4) Operations requiring added protection where there is a failure of normal controls; and

(5) Entries into unknown atmospheres.

[FR Doc. 89-13157 Filed 6-2-89; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3598-1]

Approval and Promulgation of Implementation Plans; Harris County, TX; Disapproval of Alternative Reasonably Available Control Technology Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes disapproval of a State Implementation Plan (SIP) revision submitted by the State of Texas on January 12, 1987 This revision is to the Ozone Control Strategy For Harris County (Houston) to allow alternative reasonably available control technology (RACT) for metal surface coating processes at Richmond Tank Car Company's railroad tank car repair and coating facility (In Sheldon, Harris County, Texas.) This action proposes disapproval of the SIP revision for Richmond Tank Car Company under Section 110 of the Clean Air Act (CAA).

This revision would allow higher volatile organic compound (VOC) emission limits and long term (30 day) averaging of emissions from interior and exterior railroad tank car coating lines. EPA proposes to disapprove this revision for the following reasons: (1) The revision request does not contain adequate support that low solvent coating alternatives are not available. (2) The revision request does not contain adequate support that all potential add-on control options have been considered. (3) The revision request fails to provide fully enforceable emission limits and necessary recordkeeping requirements to demonstrate compliance with the revision. (4) The revision request fails to adequately demonstrate that Reasonable Further Progress (RFP) will be maintained. (5) The revision request does not contain adequate support that 30-day averaging of coating solvent content emissions is justifiable in light of the inadequate RFP demonstration.

DATES: Comments must be received on or before July 5, 1989.

ADDRESSES: Written comments should be sent to Thomas H. Diggs, Chief, SIP/New Source Section (6T-AN), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the SIP and EPA s evaluation report (Evaluation Report for Disapproval of Alternative Reasonably Available Control Technology Determination for Richmond Tank Car Company, August 1987) are available for public review during normal business hours at the following locations: Texas Air Control Board, 6330 Hwy 290 East, Austin, Texas 78723; and EPA, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202. Those wishing to view the documents at the EPA offices are requested to call the contact named below at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Jim Callan, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION:

Background

Harris County, Texas was designated as an ozone nonattainment area in 1978. Under the requirements of the 1977 Clean Air Act Amendments for such nonattainment areas, the State of Texas submitted a SIP revision in April of 1979 demonstrating that Harris County would not meet the December 31, 1982, deadline for attainment of the National Ambient Air Quality Standards (NAAQS) for ozone despite implementing all reasonably available control measures. These measures for stationary sources are outlined in EPA s Control Technique Guideline (CTG) series as to how they apply to particular source categories. Surface coating processes at Richmond Tank Car Company are a Set II CTG VOC source. TACB adopted RACT regulations for Set II CTG source categories as revisions to Regulation V Control of Air Pollution from VOC's. The rule applicable to Richmond Tank Car is Regulation V Rule 115.191(9), Miscellaneous Metal Parts and Products, and this Rule has a final compliance date of December 31, 1982. These regulations were approved by the EPA on July 10, 1981 (45 FR 35642), and September 29, 1981 (46 FR 47544).

Since the 1979 Ozone SIP acknowledged that Harris County could not attain the ozone standard by the end of 1982, Texas was required to adopt further controls for Harris County in preparation of an Extension SIP (extension of the attainment date for areas with severe ozone problems), demonstrating attainment by December 31, 1987 The State developed this 1982 Ozone SIP for Harris County. Following the state's submittal of final revisions, the Harris County 1982 ozone plan was approved by the EPA on June 26, 1985 (50 FR 26359).

Harris County has continued to show monitored violations of the ozone standard during 1984–1986 as well as during 1985–1987 (see Appendix A of the November 24, 1987 proposed Post-1987 Ozone and CO Policy (52 FR 45100)). Therefore, the State was notified on May 26, 1988, that the ozone SIP for Harris County was substantially inadequate to achieve the NAAQS (this notification is termed a SIP-Call).

During a March 15, 1983, inspection of Richmond Tank Car's Sheldon facility, TACB witnessed violations of TACB Regulation V Rules 115.191 (Surface Coating Processes, Emission Limits). A Notice of Violation (NOV) (including permit reporting and recordkeeping requirements) was issued by TACB on February 13, 1985, to Richmond Tank Car for violating TACB rule 115.191(9). Pursuant to section 113(a)(1) of the Clean Air Act, EPA Region VI issued a similar NOV Letter to Richmond Tank Car on September 9, 1985, citing daily violations of the coating solvent content rule.

TACB's surface coating rule includes an exemption provision which allows alternative emission limitation requirements for any facility demonstrating to TACB that those alternative requirements will result in the lowest emission rate that is technologically and economically reasonable. All exemptions pursuant to this exemption provision, Rule 115.193(c)(6), are submitted to EPA as SIP revisions to be reviewed and evaluated by EPA. Richmond Tank Car requested an exemption under TACB rules 115.193(c)(6) in an August 27 1985, letter to TACB. EPA explained to Richmond Tank Car in an October 2, 1985, meeting that no exemption from current emission limits is allowed until the State and EPA approve a SIP revision.

TACB submitted to EPA a draft Board Order adopting an exemption for Richmond Tank Car on February 7 1986. In EPA's comments of March 11, 1986, deficiencies in the draft exemption were cited. These included the failure of the revision to adequately demonstrate that it provided the lowest emission rate that was economically and technologically feasible, and to demonstrate maintenance of RFP in Harris County. TACB submitted to EPA in a letter dated June 11, 1986, a Notice of Public Hearing slated for July 17 1986, and copies of TACB Board Order No. 86.05 which addresses the issue in question. EPA Region 6 identified deficiencies regarding the draft public hearing proposal in a letter to the TACB on June 20, 1986. These comments were reiterated in a July 23, 1986, letter to TACB Hearing Examiner for inclusion in the Public Hearing record. The TACB revised the SIP revision request and approved it on October 24, 1986. Notice of the TACB's approval was sent to Richmond Tank Car in a December 18, 1986, letter. The SIP revision proposal was formally submitted by the State to EPA s Administrator on January 12, 1987 Details of this proposed revision are discussed in the following Section.

During the pendency of the exemption before EPA, Richmond initiated a Chapter 11 bankruptcy proceeding. This action could render the exemption request moot; however, EPA is aware of interest in continuing to operate the Richmond facility. Consequently, EPA continues to act upon the exemption request.

Operations

Richmond Tank Car (Richmond) operates a rail car manufacture, repair, and coating facility in Sheldon, Texas which is in the ozone nonattainment county of Harris. During the early 1980's, the facility manufactured and repaired railroad tank and hopper cars. The manufacture of railcars at Richmond decreased from a production rate of approximately 4800 new cars in 1980 to 150 in 1984, and all manufacturing

operations were suspended in 1986. Notwithstanding the Chapter 11 bankruptcy proceeding, the repair and maintenance operations are expected to continue to function under new management. The facility has the capability of manufacturing and coating/painting new tank cars and hopper cars, and repairing and recoating used tank cars and hopper cars.

Coating of new and used rail cars is conducted within the confines of one building at the Richmond facility. Two railroad tracks run parallel through the length of the building to facilitate the transfer of the cars through each of the five process steps. Step one involves cleaning and preparation of the metal surfaces by slag blasting, VOC solvent rinsing, or water rinsing, as is required. Step two involves the actual spray coating conducted in either a Devilblis Water-wash spray booth in the case of exterior coating, or in an open flash-off area immediately following the spray booth in the case of interior coating. In step three, cars are left to dry, either partially or fully, in a flash-off area. Dependent upon the curing requirements of the coating, step four involves the car being either baked in one of two ovens (maximum temperature of 200–250°F), air dried, or forced-air dried with portable heaters. Step five involves stenciling of the completed car.

While all coating processes are housed in one structure, no control of VOC emissions from the cleaning, flash-off, and stenciling areas is provided. Air output from both spray booths are vented to the atmosphere. Emissions captured in both ovens are routed to a thermal oxidizer (incinerator) with primary heat exchange. This incinerator is designed for 1656 SCFM exhaust from each oven for a total of 3312 SCFM.

Tank car coating operations at Richmond are controlled under TACB Regulation V Rule 115.191(9), Miscellaneous Metal Parts and Products Coating. Pursuant to Rule 115.191(9), coatings used by Richmond in the coating of railcars are classified as extreme performance coatings and are therefore subject to a VOC emission limit of 3.5 pounds per gallon of coating (less water) based on a daily (24 hour) weighted average. Rule 115.191(9) further states that all VOC emissions from solvent washings shall be considered in the 3.5 pount per gallon limit, unless directed into containers to prevent evaporation. This 3.5 lbs. of VOC/gallon of coating (minus water) is the emission limitation specified in EPA's control techniques guideline (CTG) documents for such facilities. Rule 115.193(c)(6) allows the Executive Director of the TACB to approve, for a specific facility, requirements different from those in Rule 115.191(9) based upon his determination that such alternate requirements will result in the lowest emissions rate that is technologically and economically reasonable.

Summary of Proposed SIP Revision

Pursuant to Rule 115.193(c)(6), the TACB has granted an exemption to Rule 115.191(9) for Richmond Tank Car.

In TACB's proposal, solvent content limits are specified for coatings to be used in three distinct coating categories: exterior coating of new railcars, exterior maintenance and recoating of used railcars, and interior lining of railcars (new and used). Proposed content limits are 3.5, 4.63, and 5.11 (pounds VOC/gallon of coating), respectively. These content limits apply to each individual coating used in a given category. Therefore, no coating for a given category of use will be allowed if that coating exceeds the limit specified for that category. The exemption provisions further specify that the weighted average of all coatings, including the aforementioned three extreme performance coating categories, is limited to 3.5 pounds VOC per gallon in any 30-day (monthly) period. Additionally, total daily emissions from all coatings applied shall not exceed 0.6 tons per day.

Records are required indicating the quantity and average VOC content of all coatings applied at the facility and shall be maintained for two years at the Richmond facility in Sheldon, Texas. These are to be made available to the TACB and local air pollution control agencies upon request.

Every three years beginning in January, 1990, a report is to be submitted to the TACB demonstrating that the conditions of the exemption still exist as represented. This report shall demonstrate "the nonavailability of compliant coatings, or shall describe significant changes in the company's production rate or operating conditions, coating technologies, or other relevant factors affecting VOC emissions. In response to this information TACB shall consider revision or revocation of the exemption.

Review of Deficiencies

The State's proposed SIP revision would allow relaxed emission limits for Richmond's Sheldon facility. As is previously stated, EPA is proposing to disapprove this revision because of several deficiences in the State's SIP revision submittal allowing this exemption for Richmond. Each of these deficiencies is discussed below:

1. *Nonavailability of Low Solvent Coatings:* TACB bases its adoption of an exemption for Richmond upon the nonavailability of low solvent content coatings for the railcar coating industry that meet the 3.5 lbs VOC/gallon of coating (less water) limitation when averaged over total daily usage. Richmond and TACB cite the need for extreme performance coatings capable of protecting equipment from harsh exposure to constant weathering, detergents, abrasives, solvents, corrosive atmospheres, and in some cases temperatures greater than 95°C, and capable of ensuring product purity. The State s submittal maintains that low solvent formulations are not available for certain types of exposure.

Communication with coatings manufacturers by EPA in July 1987 indicates that low solvent alternatives are available for extreme performance duties outlined in the State s submittal. Specifically, the State s submittal cites one type of extreme performance coating as having no low VOC content substitute. This coating, a phenolic formaldehyde resin produced by one particular manufacturer, is used on interiors of tank cars in sulfuric acid service. EPA, however, has found that since the time of Richmond Tank Car s exemption request, a low VOC content substitute for this coating has been introduced by the same manufacturer. Further details are outlined in the Evaluation Report. EPA's position is that suitable low solvent coating alternatives are more readily available than are presented in Richmond's request.

2. *Economic Infeasibility of Add-On Controls:* TACB also bases its exemption for Richmond upon the prohibitive cost of installing and operating add-on pollution control equipment. The Richmond facility currently is able to control (destroy) VOC emissions only from its two curing ovens by ducting these exhausts to a thermal incinerator. These ovens are only in use in the curing of certain "low temperature-bake coatings. If those ovens are to also be used in the curing of other "high temperature-bake" coatings, the increased baking temperature will require the installation of a new incinerator and the resultant annual costs will be prohibitive when compared to the incremental VOC reductions it will achieve. This exemption demonstration is unduly limited to the destruction of oven exhaust. EPA's disapproval is based upon the failure to consider other control options such as electrostatic spray equipment, capture of spray booth and tank car interior exhaust gases for

destruction in the existing or newer incinerator, increased use of "low-bake coatings, and improved process procedures.

3. Compliance Requirements: Emissions from all coatings applied are limited to 0.6 tons VOC/day as a condition of the exemption. While such a daily emission ceiling or "daily cap" is a useful tool in ensuring control of pollutant emissions, EPA feels that this daily cap is unenforceable for two reasons. First, as stated, emission reductions from add-on control devices may be considered in meeting the daily cap. However, Richmond Tank Car has provided no testing results showing the destruction efficiency of its control devices. Without such testing, the appropriate credit for add-on controls cannot be determined. Prior communication with the company indicates that it is assuming an incineration efficiency of 90%. When coupled with an unspecified capture efficiency, the company has claimed overall emission reductions of up to 80%. Therefore, to be acceptable, the daily cap should either be specified based on uncontrolled emissions (ignoring the reduction achieved by add-on controls), or the company should be required to conduct capture efficiency and incineration efficiency testing to determine exactly what add-on control credit can be claimed. Second, the recordkeeping provisions of the exemption require recording monthly quantity and average VOC content of all coatings. No requirement is made for daily recordkeeping to demonstrate compliance with a daily cap. This effectively makes the demonstration of compliance with the aforementioned daily cap an impossibility. Therefore, daily records of coating usage quantities, VOC contents of each coating used, and total VOC usage quantities should be required.

4. Demonstration of Reasonable Further Progress (RFP): The aforementioned daily cap is tied directly to the VOC emissions from Richmond as reported in the 1980 Emission Inventory that was used in devising the control strategy for the 1982 Ozone SIP Harris County. Emissions of 0.6 tons VOC per day (uncontrolled) over 250 work days per year nets 150 tons VOC per year. This value approximates the value calculated in the 1980 Emission Inventory of 157 tons VOC per year. Achievement of reasonable further progress (RFP) would dictate reductions in emissions (from the 1982 Ozone SIP baseline, 157 tons VOC) for sources controlled under a Group II CTG document such as Richmond. The objective of the Harris County Ozone SIP is to bring about reductions from the baseline emission inventory (see 50 FR 26359 as published on June 26, 1985). While Richmond appears to have operated at well below 157 tons VOC per year in emissions (estimated at less than 60 tons VOC per year in 1984), allowing, as a "cap" an increase to its previous allowable level or beyond could jeopardize the RFP plan for Harris County. Again, Harris County was demonstrated to reach attainment in 1987 but continues to show monitored violations. Based upon this concern and the previously noted lack of daily recordkeeping requirements to comply with a daily cap, EPA believes that the State's exemption granted to Richmond fails to demonstrate that it will not conflict with RFP for Harris County.

5. Long Term Averaging of Coating Solvent Content: TACB further justifies the relaxed emission limits by limiting the weighted average of the VOC content of all extreme performance coatings applied in any 30 day period to 3.5 lbs VOC/gallon of coating. VOC's are a precursor for ozone, a pollutant whose National Ambient Air Quality Standard (NAAQS) is based on hourly attainment. Thus, Section 110 of the Clean Air Act requires that VOC emission control be reasonably consistent with protecting this short term standard. Further, since VOC control plans contemplate the actual application of RACT, regulatory actions that incorporate longer term averages to circumvent the installation of overall RACT level controls cannot be allowed. Therefore, reporting and monitoring requirements of a SIP should be supportive of this short term standard. A January 20, 1984, memorandum of John R. O'Connor (then Acting Director of the Office of Air Quality Planning and Standards) explains that the use of 30 day averaging of emissions to support or justify an alternative RACT demonstration should be evaluated under certain requirements.

Briefly, these requirements for justification of long-term averaging and the evaluation of the State's submittal with respect to each are as follows:

Criteria 1: The source's operations must be such that VOC emissions cannot be determined on daily basis, or the application of RACT for each emission point is not technically feasible on a daily basis.

Response: The State's SIP revision request for Richmond Tank Car company is based on TACB's position that the application of RACT for each emission point is not technically feasible on a daily basis, but the State has not adequately demonstrated this.

Criteria 2: The area in which the facility is located must not lack an approved SIP and there must be no measured violations of the ozone standard unless the State revises the SIP to demonstrate attainment of the NAAQS and maintenance of RFP (reflecting the maximum daily emissions resulting from long-term averaging).

Response: While Harris County did have a federally approved SIP for attainment by December 31, 1987 it has had measured violations of the ozone standard since 1987 and received a SIP Call in May of 1988. This issue is further discussed in item 4 under the section of this notice titled "Review of Deficiencies"

Criteria 3: The State must demonstrate that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either attainment of the NAAQS or RFP The State may make this demonstration by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP

Response: The State has not made this assurance that the daily emission cap for the facility will not jeopardize the RFP plan. This issue is discussed in item 4 under the section of this notice titled "Review of Deficiencies"

Criteria 4: Averaging times must be as short as practicable and in no case longer than 30 days.

Response: The State has not demonstrated that 30 days is the shortest averaging period practicable.

Proposed Action

EPA is today proposing to disapprove the exemption submitted as a SIP revision for Richmond Tank Car Company in Sheldon, Harris County, Texas for the following reasons:

1. The State has not demonstrated, based on the nonavailability of low solvent coatings, that the requested exemption constitutes the lowest emission rate that is technologically and economically reasonable as is required by Rule 115.193(c)(6) of the Federally approved SIP for Texas. In fact, EPA has found that alternative coatings containing less solvent are available.

2. The State has not demonstrated, based on the economic infeasibility of installing add-on controls, that the requested exemption constitutes the lowest emission rate that is technologically and economically reasonable as is required by Rule 115.193(c)(6) of the Federally approved SIP for Texas.

3. The conditions of the exemption inappropriately allow the consideration of incineration credit in complying with the daily cap, and fail to require sufficient recordkeeping provisions to demonstrate compliance with a daily cap.

4. The State has not demonstrated that the requested exemption will not jeopardize the RFP plan for Harris County.

5. The conditions of the exemption inappropriately allow long term (30-day) averaging of coating solvent content without a demonstration that RFP will be maintained.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source beyond what is already required under the current State Implementation Plan.

Under Executive Order 12291, today's action is not "Major" It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead Nitrogen dioxide, Ozone, Pariculate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Date: February 24, 1989.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 89-13277 Filed 6-2-89;8:45am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AC 34

Grants for Nursing Post-baccalaureate Faculty Fellowships

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes regulations to govern grants to schools of nursing for post-baccalaureate fellowships for faculty, as authorized by section 830(b) of the Public Health Service Act (the Act).

DATES: Comments on the proposed regulations are invited. To be considered, comments must be received no later than August 4, 1989.

ADDRESS: Written comments should be addressed to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A-53, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mary S. Hill, PhD., Chief Nursing Education/Practice Resources Branch, Division of Nursing, BHPr, Health Resources and Services Administration, Room 5C-26, Parklawn Building, at the above address; telephone: 301 443-6193.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, proposes to add a new Subpart BB to Part 57 of Title 42 of the Code of Federal Regulations to implement section 830(b) of the Act.

Section 830(b) was added to the Act by the Nurse Education Amendments of 1985 (Pub. L. 99-92). It authorizes the Secretary to make grants to public or nonprofit private schools of nursing to cover the costs of post-baccalaureate fellowships for faculty in these schools to enable the faculty to:

(1) Investigate cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups;

(2) Examine nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, or disease prevention; or

(3) Address other areas of nursing practice considered by the Secretary to require additional study.

The following is a summary of the major items in the proposed regulations:

Section 57.2704 How will applications be reviewed?

In determining the funding of approved applications, the Secretary will consider applications which demonstrate any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

Section 57.2708 Who is eligible for financial assistance as a fellow?

This section would establish the following eligibility criteria for an individual to receive financial assistance as a fellow. An individual must:

(1) Be a member of the faculty of the grantee school and remain a faculty member during the period of the fellowship award. The continuous faculty status of the fellow in the grantee school of nursing would enable the grantee to effectively administer and monitor the fellowship in the event that the fellow would be enrolled in a different school during the period of the fellowship;

(2) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertion in pertinent areas. The curricula of such programs would provide fellows with the skills and knowledge to conduct studies of the nature required by the legislation;

(3) Expect to meet requirements for a master's degree in nursing or a doctoral degree before or by the end of the budget period to be funded. This requirement assures completion of the fellowship study (master's thesis or doctoral dissertion) within the same period; and

(4) Be currently licensed to practice as a registered professional nurse in a State. This requirement assures that these funds will go to faculty members who are nurses.

The Department specifically requests comments on criterion (3) above. Of special interest is whether an individual in a doctoral program should be required to complete all degree requirements, including the dissertion.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this proposed rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the inforrmation collections are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Grants for Nursing Post-baccalaureate Faculty Fellowships.

Description: Grant recipients need to collect and maintain information of the qualifications of individual faculty members receiving fellowships. Individuals withdrawing from a program must be notified by the grantee of the disposition of refunded tuition.

Description of Respondents: Individuals and households and nonprofit institutions.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section No.	Annual No. of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours
57.2709(a)	100	1	.5	50
57.2709(b)(i)	200	1	.25	50
57.2709(b)(ii)	200	1	.25	50
57.2709(b)(iv)	200	1	.25	50
57.2709(b)(v)	200	1	.25	50
57.2709(b)(vi)	10	1	.25	2.5
57.2711(b)	4	1	.25	1.0
Total				253.5

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 42 CFR Part 57

Educational research, Grant programs—education, Scholarships and fellowships, Student aid.

Accordingly, it is proposed to add a new Subpart BB to Part 57 of Title 42 of the *Code of Federal Regulations* as set forth below.

Date: February 1, 1989.

Robert E. Windom,

Assistant Secretary for Health.

Approved: March 27 1989.

Louis W. Sullivan,

Secretary.

(*Catalog of Federal Domestic Assistance* No. 13.147 Grants for Post-baccalaureate Faculty Fellowships)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. 42 CFR Part 57 is amended by adding a new Subpart BB, consisting of §§ 57.2701 through 57.2713, entitled, "Grants for Nursing Post-baccalaureate Faculty Fellowships" to read as follows:

Subpart BB—Grants for Nursing Post-baccalaureate Faculty Fellowships

Sec.
57.2701 To what programs do these regulations apply?
57.2702 Definitions.
57.2703 Who is eligible to apply for a grant?
57.2704 How will applications be reviewed?
57.2705 How long does grant support last?
57.2706 For what purposes may grant funds be spent?
57.2707 What financial support is available to fellows?
57.2708 Who is eligible for financial assistance as a fellow?
57.2709 What are the requirements for fellowships and the appointment of fellows?
57.2710 Duration of fellowships.
57.2711 Termination of fellowships.
57.2712 What additional Department regulations apply to grantees?
57.2713 Additional conditions.

Subpart BB—Grants for Nursing Post-baccalaureate Faculty Fellowships

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 830(b) of the Public Health service Act, 99 Stat. 396 (42 U.S.C. 297).

§ 57.2701 To what programs do these regulations apply?

These regulations apply to grants awarded to public or private nonprofit schools of nursing for the purpose of providing post-baccalaureate faculty fellowships.

§ 57.2702 Definitions.

Act" means the Public Health Service Act, as amended.

"Fellow" means a nurse faculty member who is receiving a fellowship from a grant under this subpart.

"Fiscal year" means the Federal fiscal year, beginning October 1 and ending the following September 30.

"National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States (as defined in 6 U.S.C. 1101(a)(22), the Immigration and Nationality Act).

"Nonprofit" as applied to any school, agency, organization or institution, means an entity owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Registered nurse" means a person who has graduated from a school of nursing and is licensed to practice as a registered/professional nurse in a State.

"School of Nursing" means a collegiate, associate degree or diploma school of nursing as defined in section 853 of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delgated.

"State" includes in addition to the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federal States of Micronesia.

§ 57.2703 Who is eligible to apply for a grant?

Any public or private nonprofit school of nursing which is located in a State and is currently employing faculty who would qualify for a post-baccalaureate faculty fellowship is eligible to apply for a grant. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.[1]

§ 57.2704 How will applications be reviewed?

In determining the funding of approved applications, the Secretary will consider:

(a) The degree to which the faculty member's study, thesis or dissertation addresses the criteria set forth in § 57.2708(d); and

(b) Any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

§ 57.2705 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the grant. This period, called the project period, will not exceed 1 year.

(b) Generally, the grant will be funded for 1 year, and subsequent awards will also be for 1 year at a time.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional awards with respect to any approved application or portion of an approved application.

§ 57.2706 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart for faculty fellowships according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, and these regulations.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.2707 What financial support is available to fellows?

Expenditures from grant funds are limited to:

(a) Tuitition and fees, in accordance with established rates of the institution in which the fellow is enrolled, except as limited by the Secretary. Schools which provide their employees with discounts for tuition or fees are expected to maintain this policy in their charges to the grant; and

(b) Stipends paid in accordance with established Public Health Service stipend levels for periods of full time study. A fellow may be paid a stipend only if attending the educational institution as a full-time student during an entire academic period of study, including a summer session. Stipends may only be paid to fellows in monthly installments.

§ 57.2708 Who is eligible for financial assistance as a fellow?

To be eligible for a fellowship, an individual must:

(a) Be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia (both formerly part of the TTPI);

(b) Be a member of the faculty of the applicant school and remain a faculty member during the period of the fellowship award;

(c) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation;

(d) Undertake a study, thesis or dissertation during the fellowship period, which focuses on:

(1) Cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups;

(2) Nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, or disease prevention; or

(3) Areas of nursing practice considered by the Secretary to require additional study, which will be announced in the **Federal Register** prior to a grant cycle;

(e) Expect to meet requirements for a master's degree in nursing or a doctoral degree before or by the end of the budget period for which the grant will be awarded;

(f) Be currently licensed to practice as a registered professional nurse in a State; and

(g) Not be receiving concurrent support for the same training from another Federal educational award which provides a stipend or otherwise duplicates financial provisions, except educational benefits under the Veteran's Readjustment Benefits Act and loans from Federal sources.

§ 57.2709 What are the requirements for fellowships and the appointment of fellows?

(a) The grantee must complete a statement of appointment by the beginning of the academic period or as soon thereafter as possible if the fellow receives notice of his or her fellowship appointment after the education period has begun. The statement of appointment must include information which documents the eligibility of the fellow and a statement to certify that there will be compliance with all applicable Public Health Service terms and conditions governing the appointment. The program director must sign the statement of appointment on behalf of the grantee, and the fellow must sign it certifying that the statements are true and complete. The original copy of the statement of appointment must be retained by the grantee to be available for program review and financial audit, and a copy shall be provided to the fellow.

(b) An appointed fellow must:

(1) Provide the grantee with the information required for the statement of appointment form and information related to his or her academic standing in the institution in which he or she is enrolled;

(2) Document the cost of tuition and fees for courses to be charged to the fellowship;

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[1] Applications and instructions (Form PHS 6025-1, OMB #0915-0060) may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857.

(3) Remain a member of the faculty of the grantee school during the perod of the fellowship award;

(4) Provide the grantee school with a copy of the study, thesis or dissertation produced during the period of the fellowship;

(5) Provide the grantee school with a written summary of the training undertaken during the period of the fellowship; and

(6) Return to the grantee school any funds which may be reimbursed to the fellow by the educational institution for courses charged to the fellowship account.

§ 57.2710 Duration of fellowships.

A fellow may be appointed at the beginning of any academic period, including a summer session, which falls, within the current budget period specified by the Notice of Grant Award. No appointment may exceed 12 months.

§ 57.2711 Termination of fellowships.

(a) The grantee must terminate a fellowship:

(1) Upon request of the fellow; and

(2) If the fellow withdraws from the educational program in which he or she is enrolled;

(3) If the fellow is no longer a faculty member at the grantee school; or

(4) If the fellow is not eligible or able to continue in his or her master's or doctoral program in accordance with the standards and practices of the school in which the fellow is enrolled.

(b) The Federal portion of any tuition refund given or owed to a fellow must be deposited into the grant account by the grantee and the grantee must provide written notice to the fellow regarding this deposit.

§ 57.2712 What additional Department regulations apply to grantees?

Several other regulations apply to grants. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grants appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedures for hearings under Part 80 of this Title

45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [2]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.2713 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of any award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 89-13248 Filed 6-2-89; 8:45 am]

BILLING CODE 4160-15-M

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42 CFR Part 110

Vaccine Information Materials

AGENCY: Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Availability of the administrative docket for public inspection in Rockville, Maryland.

SUMMARY: On March 3, 1989, CDC published in the **Federal Register** (54 FR 9180) a notice of proposed rulemaking (NPRM) pertaining to the development and distribution of vaccine information materials required under Title XXI, section 2126 of the PHS Act. The preamble of the NPRM invited written comments and indicated that comments received (i.e., the administrative docket) would be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) in Room 314, 1600 Tullie Circle, Atlanta, Georgia. This notice announces that a second copy of the administrative docket containing comments received will also be available for public inspection at the Park Building in Rockville, Maryland.

DATES: Effective May 30, 1989 the administrative docket is also available for public inspection in Rockville, Maryland.

ADDRESS: Yuth Nimit, Ph.D., National Vaccine Program, The Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857 telephone (301) 443-0715.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Mailstop E-05, Atlanta, Georgia 30333, telephone (404) 639-1880.

SUPPLEMENTARY INFORMATION: In addition to the administrative docket available for public inspection in Atlanta, Georgia, a second copy of the docket will be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) in Room 124, The Park Building, 12420 Parklawn Drive, Rockville, Maryland.

Dated: May 30, 1989.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-13227 Filed 6-2-89; 8:45 am]

BILLING CODE 4160-18-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-119, RM-6417]

Radio Broadcasting Services; Stamping Ground, KY

AGENCY: Federal Communcations Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James P Gray which proposes to allot Channel 256A to Stamping Ground, Kentucky, as its first local FM service, at coordinates 38-18-04 and 84-40-52.

DATES: Comments must be filed on or before July 17 1989, and reply comments on or before August 1, 1989.

ADDRESS: Federal Communcations Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James P Gray, 10 Trinity Place, Fort Thomas, KY 41075, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synoposis of the Commission's Notice of

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Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

Proposed Rule Making, MM Docket No. 89-119, adopted May 5, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communcations Commission.

Karl A. Kensinger,

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

[FR Doc. 89-13254 Filed 6-2-89; 8:45 pm]

BILLING CODE 6712-01-M

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47 CFR Part 94

[PR Docket No. 89-113, FCC 89-153]

Private Operational-Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing new technical rules for the 2450-2483.5 MHz band available to the Private Operational-Fixed Microwave Service as defined in Part 94 of the Commission's Rules. Specifically, the Commission is proposing to adopt a new channeling plan for this band that is based on 625 kilohertz wide channels. Licensees would, however, be allowed to combine adjacent channels in order to achieve more spectrum. This action is necessary because other recent decisions of the Commission have rendered the existing channeling plan an inefficient use of the radio spectrum.

DATES: Comments must be submitted on or before July 17 1989, and replies to comments on or before August 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in PR Docket No. 89-113, adopted May 10, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, 2100 M Street, NW Suite 140 Washington, DC, 20037 telephone (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. Prior to 1985, the Private Operational-Fixed Microwave Service (OFS) had access to the frequency band extending from 2450 MHz to 2500 MHz. This 50 megahertz band contained thirty channel pairs with each channel 800 kilohertz wide. The associated transmit and receive channels of a given channel pair were separated by 24.4 megahertz. In 1985, however, the upper 16.5 megahertz of this band (*i.e.*, 2483.5-2500 MHz) were reallocated to the Radio-determination Satellite Service (RDSS). This reallocation reduced the efficiency of the channeling plan for OFS users of this band. On December 10, 1987 the Harris Corporation—Farinon Division filed a *Petition for Rule Making* proposing a new channeling plan for this band.

2. In its petition, Harris states that channels in this band should be wide enough to accommodate digital transmissions and urges that we create 1250 kilohertz channels while allowing bandwidths up to 2500 kilohertz on a case-by-case basis. Harris also proposes a reduction in the separation between paired channels from the present 24.4 megahertz to 22 megahertz. Finally, Harris requests that we adopt a 10 megahertz channel in the band for emergency restoration, maintenance bypass, and other temporary fixed purposes. In reply, the Associated Petroleum Institute urged the Commission to create smaller channels so that the needs of more users may be satisfied.

3. Upon review of the record, the Commission is proposing to adopt a channeling plan that offers licensees flexibility to acquire the amount of spectrum that best suits their needs. The plan is based on 625 kilohertz channels and would allow licensees to "stack" adjacent channels upon a proper showing of need. The Commission also is proposing to adopt a standard separation of 17.25 megahertz but asks for comments on how this proposal would affect equipment costs. The Commission is also soliciting additional information on the need for a 10 MHz restoration/emergency by-pass channel in this band.

Paperwork Reduction

4. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed on the public. Rather, if adopted as proposed the licensing burden on the public could be reduced.

Ordering Clauses

5. Authority for issuance of this *Notice of Proposed Rule Making* is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on or before July 17 1989, and reply comments on or before August 1, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the report and order.

List of Subjects in 47 CFR Part 94

Radio, private operational-fixed microwave service, communications equipment.

Amendatory Text

47 CFR Part 94 is proposed to be amended as follows:

PART 94—[AMENDED]

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 94.65 is proposed to be amended by revising paragraph (e) to read as follows:

§ 94.65 Frequencies.

(e) *2450–2500 MHz:* This band is shared with base, mobile, and radiolocation stations, and is subject to no protection from interference from Industrial, Scientific and Medical devices operating on 2450 MHz.

625 kHz bandwidth.

PAIRED FREQUENCIES

Transmit (or receive)	Receive (or transmit)
2450.3125	2467.5625
2450.9375	2468.1875
2451.5625	2468.8125
2452.1875	2469.4375
2452.8125	2470.0625
2453.4375	2470.6875
2454.0625	2471.3125
2454.6875	2471.9375
2455.3125	2472.5625
2455.9375	2473.1875
2456.5625	2473.8125
2457.1875	2474.4375
2457.8125	2475.0625
2458.4375	2475.6875
2459.0625	2476.3125
2459.6875	2476.9375
2460.3125	2477.5625
2460.9375	2478.1875
2461.5625	2478.8125
2462.1875	2479.4375
2462.8125	2480.0625
2463.4375	2480.6875
2464.0625	2481.3125
2464.6875	2481.9375
2465.3125	2482.5625
2465.9375	2483.1875

Applicants may request up to four adjacent channel pairs in order to receive a maximum of 2500 kHz.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–13255 Filed 6–2–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 106
Monday, June 5, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Plenary Session; Public Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92–463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 15 and Friday, June 16, 1989 in the Amphitheatre of the Federal Home Loan Bank Board, Second Floor, 1700 G Street NW Washington, DC. The meeting on June 15 will begin at 12:45 p.m. and end at approximately 5:45 p.m., the meeting on June 16 will begin at 9:00 a.m. and end at approximately 1:00 p.m.

The Conference will consider, not necessarily in the order stated, proposed recommendations of the following subjects.

1. Peer Review and Sanctions in the Medicare Program.
2. Mass Decisionmaking Programs: The Alien Legalization Experience.
3. Asylum Adjudication Procedures.
4. Contracting Officers' Management of Disputes.
5. Judicial Acceptance of Agency Statutory Interpretations.
6. Conflict-of-Interest Requirements for Federal Advisory Committee.
7 Public Financial Disclosure by Executive Branch Officials.

Plenary sessions are to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street NW Suite 500, Washington, DC 20037 telephone (202) 254–7020.

June 1, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–13398 Filed 6–2–89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 89-018N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on Tuesday, Wednesday, Thursday, and Friday, June 20–23, 1989, at the Hyatt Regency Chicago, 151 East Wacker Drive, Chicago, IL 60601.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

The agenda for the meeting follows:

(1) Tuesday, June 20, 2:00 p.m. to 6:00 p.m.—Session of the Hazard Analysis Critical Control Point Subcommittee.
(2) Wednesday and Thursday, June 21–22, 8:30 a.m. to 5:30 p.m.—Concurrent sessions of the Meat and Poultry Subcommittee, and the Seafood Subcommittee.
(3) Friday, June 23, 8:30 a.m. to 5:30 p.m.—Full Committee Session.
  (a) Approval of Meeting Agenda
  (b) Update of Long-range Planning Initiative
  (c) Report of the Seafood Working Group
  (d) Report of the Meat and Poultry Working Group
  (e) Committee Discussion
  (f) Future Assignments
  (g) Public Comments

The Committee meeting is open to the public on a space available basis. Comments of interested persons may be filed before or after the meeting and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175, South Agriculture Building, 14th and Independence Avenue, SW Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–9150.

Done at Washington, DC on June 1, 1989.

Lester M. Crawford,

Acting Chairman.

[FR Doc. 89–13440 Filed 6–2–89; 9:20 am]

BILLING CODE 3410-DM-M

Forest Service

Six Mile Timber Sale and Whites Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to implement two commercial timber sales on the Salmon River Ranger District, Klamath National Forest, Siskiyou County, California.

DATE: Comments concerning the scope of the analysis must be received by July 15, 1989.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Michael P Lee, District Ranger, Salmon River Ranger District, P.O. Box 280, Etna, California 96027 Attn: Six Mile/Whites E.I.S.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Albert Buchter, Timber Sale Planner or Roger Siemers, Timber Sale Planning Forester, Salmon River Ranger District, P.O. Box 280, Etna, California 96027 phone (916) 467–5757

SUPPLEMENTARY INFORMATION: The two proposed sale areas are within the Russian Roadless Area as inventoried during the initial RARE II process. In the 1979 RARE II process, the Russian Roadless Area was split into two portions. One of the portions was selected as a wilderness area by the California Wilderness Act of 1984 and the remaining portion which contains the proposed timber sales was released

for multiple use management. During September and October of 1987 the Salmon River Ranger District suffered from a number of catastrophic fires that burned over 90,000 acres. The proposed sale areas are approximately six miles from the nearest fires. The environmental analysis for these two projects will determine if these areas will require further planning as roadless areas and if there would be cumulative or significant impacts to the environment by the implementation of these projects.

A range of alternatives for these project areas will be considered. One of these will include no road construction or timber harvest. Other alternatives will consider development of transportation systems, application of harvest methods and silvicultural treatments, opportunities for resources other than timber, and post timber sale silvicultural treatments.

Robert L. Rice, Forest Supervisor, Klamath National Forest is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The Forest Supervisor will hold a public scoping meeting at the Salmon River Ranger District, Klamath National Forest, Etna, California, at 7:00 p.m., Thursday, June 29, 1989.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency s notice of availability appears in the Federal Register. It is very important that those interested in the management of the area encompassed by the proposed Six Mile and Whites Timber Sales participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc.* v. *Harris*, 490 F Supp 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by February 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosures of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 217

Date: May 25, 1989.

Barbara Holder,

Deputy Forest Supervisor.

[FR Doc. 89-13209 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees on the American Indian and Alaska Native Populations for the 1990 Census, Asian and Pacific Islander Populations for the 1990 Census, Black Population for the 1990 Census, and Hispanic Population for the 1990 Census; Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, the Secretary of Commerce has determined that the reestablishment of the Census Advisory Committees on the American Indian and Alaska Native Populations for the 1990 Census, Asian and Pacific Islander Populations for the 1990 Census, Black Population for the 1990 Census, and Hispanic Population for the 1990 Census is in the public interest in connection with the performance of duties imposed on the Department by law.

These committees were originally established in 1985. The Department of Commerce last renewed each committee on May 7 1987

The committees will continue to provide advice to the Director, Bureau of the Census, during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The committees will each have a balanced representation of 12 members. The committees will continue to report and be responsible to the Director, Bureau of the Census, and will function solely as an advisory body in compliance with the Federal Advisory Committee Act.

The Department of Commerce will file copies of the committees' revised charters with appropriate committees in Congress.

You may address inquiries or comments to Mrs. Phyllis Van Tassel, Committee Liaison Officer, Bureau of the Census, Room 2423-3, Washington DC 20233, telephone (301) 763-5410, or Ms. Jan Jivatode, Committee Management Analyst, U.S. Department

of Commerce, Washington, DC 20230, telephone (202) 377-3271.

Date: May 30, 1989.

C.L. Kincannon,

Deputy Director.

[FR Doc. 89-13231 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Joint Factory Computing and Communications Subcommittee; Partially Closed Meeting

A meeting of the Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee; the Computer Peripherals, Components & Related Test Equipment Technical Advisory Committee; the Computer Systems Technical Advisory Committee and the Electronic Instrumentation Technical Advisory Committee will be held June 23, 1989, 8:30 a.m., Room 1617F Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW Washington, DC. The joint subcommittee advises the Office of Technology & Policy Analysis on overlapping issues such as: Computerized Numerical Control (CNC), Computer-Aided-Design (CAD), Computer-Aided-Manufacturing (CAM), Computer Aided-Engineering (CAE), etc.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Reports from Technical Advisory Committee Representatives.
4. Presentation and Status of Priority Projects: Lasers, Networking, CAD, Signal Processing.
5. Other Business.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Subcommittee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on 202/377-2583.

Date: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-13202 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held June 21, 1989 at 9:00 a.m., Room 1617F Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW Washington, DC. The Software Subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion on transferring Data Encription Standard from Office of Munitions Control to Commerce.
4. Discussion on the controls on open systems security.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on 202/377-2583.

Date: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Support Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13197 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee will be held June 21, 1989, 1:30 p.m., Room 1617F Herbert C. Hoover Building, 14th Street & Constitution Avenue, NW Washington, DC. The Supercomputer Subcommittee was formed with the goal of making recommendations to the Department licensing issues with respect to supercomputers.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation by the Thinking Machines Corporation on advances on supercomputer technologies.
4. Demonstration of a supercomputer by Intel.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the

Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Lee Ann Carpenter at 202/377-2583.

Dated: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13198 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held June 22, 1989, 3:00 p.m., in the Herbert C. Hoover Building, Room 1617F 14th & Constitution Avenue, NW Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on 202/377-2583.

Dated: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13199 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee, will be held June 22, 1989, 9:00 a.m., Room 1617 Herbert C. Hoover Building, 14th Street & Constitution Avenue, NW Washington, DC. The subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Election of a new chairperson.
4. Update on the implementation of the People's Republic of China Distribution License procedure.
5. Status report on the new BXA 6031P Form.
6. Update on the use of a single SED for both validated license and general license items.
7 Better procedures for filing the SED.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Lee Ann Carpenter at 202/377-2583.

Date: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13200 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held June 22, 1989, 11:00 a.m., Room 1617F Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW Washington, DC. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of the controls on array transform processors.
4. Discussion on the controls on graphics workstations.
5. Update on the Office of Foreign Availability's PC/AT finding.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377-2583.

Date: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13201 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: Application Forms Booklet, Naval Reserve Officers Training Corps Scholarship Program; NAVCRUIT 1131/8; and OMB Control 0703-0026.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 4 hours.

Frequency of Response: Situation.

Number of Respondents: 12,000.

Annual Burden Hours: 48,000.

Annual Responses: 12,000.

Needs and Uses: An assessment of an applicant's qualifications for a NROTC scholarship is necessary to ensure that the Selection Board has the information needed to select the best qualified candidates. Collection is necessary to have information from teachers and other adults on the applicant's academic and/or leadership ability and eligibility for a NROTC scholarship.

Affected Public: Individuals or households; High school administrators or teachers.

Frequency: Annually.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 30, 1989.

[FR Doc. 89-13189 Filed 6-2-89; 8:45 am]

BILLING CODE 3810-01-M

The Joint Staff; National Defense University Transition Planning Committee (Long Committee); Meeting

AGENCY: Joint Staff, Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: The Chairman, Joint Chiefs of Staff, has scheduled a meeting of the Long Committee.

DATE: The meeting will be held on June 28-29, 1989.

ADDRESS: The meeting will be held at the Center for Naval Analysis, 4401 Ford Avenue, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Colonel Tom Berta or LtCol Joe Shackelford, Executive Assistants, Long Committee, Park Center Complex, Suite 571, 4401 Ford Avenue, Alexandria, VA 22302. To reserve space, interested persons should phone (703) 756-0616.

SUPPLEMENTARY INFORMATION: The committee will be examining the desirability and feasibility of establishing a National Center for Strategic Studies. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

May 30, 1989.

[FR Doc. 89-13190 Filed 6-2-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Availability of Changes to Army Pamphlet 25-30 (DA Pam 25-30), Consolidated Index of Army Publications and Blank Forms

ACTION: Notice.

SUMMARY: This notice is to inform the public and U.S. Government Agencies other than the Department of Defense of the availability of DA PAM 25-30, Consolidated Index of Army Publications and Blank Forms. The DA Pam and its updated versions may be purchased through the following organization:

National Technical Information Service (NTIS), 5295 Port Royal Road, Springfield, Virginia 22161, Telephone—703 487-4600.

The Army Index is available in microfiche form only.

FOR FURTHER INFORMATION CONTACT: Major Peggy Patterson, Chief, Inventory Management Division, United States Army Publishing and Printing Command, Alexandria, VA 22331. Telephone 202-325-6297

John O. Roach, II,

Department of the Army Liaison Officer for the Federal Register.

[FR Doc. 89-13196 Filed 6-2-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 27-28 June 1989.

Time: 1300-1700 hours, 27 June. 0800-1500 hours, 28 June.

Place: St. Louis, Missouri.

Agenda: The Army Science Board Ad Hoc Subgroup on Total Quality Management will meet for a tour and a series of discussions with the US Army Aviation Systems Command (AVSCOM) and the McDonnell-Douglas Corporation. The Subgroup will discuss the AVSCOM and the McDonnell-Douglas corporate approach to quality. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-13228 Filed 6-2-89; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 29-30 June 1989.

Time: 0800-1700 hours each day.

Place: Fort Rucker, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its next meeting at Fort Rucker, Alabama. The meeting will be a working meeting to prepare the initial draft findings for the study, and additional briefings by selected U.S. Army Safety Center personnel may be given. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-13229 Filed 6-2-89; 8:45 am]

BILLING CODE 3710-8-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Bayou Lafourche-Lafourche Jump Waterway, Louisiana, Study

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

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: This study will investigate Federal involvement in maintaining the bar and entrance channels of Bayou Lafourche, Louisiana, at depths greater than those currently authorized.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed project can be answered by Mr. Dale

Geerdes, (504) 862-1855, and questions concerning the DEIS can be answered by Mr. Richard Boe, (504) 862-1505, U. S. Army Corps of Engineers, Planning Division (CELMN-PD), P.O. Box 60267 New Orleans, Louisiana 70160-0267

SUPPLEMENTARY INFORMATION: *1. Proposed action:* The existing Federal responsibility at Bayou Lafourche from the Gulf of Mexico to mile 13.2 is a 12 by 125-foot channel. The channel was authorized by the River and Harbors Act of 14 July 1960. By resolutions passed by the Committee on Public Works of the U.S. Senate on 21 February 1972, and the Committee on Public Works of the U.S. House of Representatives on 14 June 1972, the Corps of Engineers is authorized to conduct a study to determine the feasibility of modifying the Bayou Lafourche-Lafourche Jump Waterway, Louisiana, with particular reference to providing adequate channel dimensions to meet needs of existing and future navigation.

In 1968 the Greater Lafourche Port Commission enlarged the portion of the channel from the Gulf of Mexico to Port Fourchon to 20 by 300 feet. The bar channel and jetty reach was further enlarged by the Port Commission to 30 by 300 feet in 1980. The Port Commission has requested the Corps assume maintenance of the channel at the enlarged dimensions and investigate the feasibility of further channel enlargements.

The channel provides access to the Gulf of Mexico for vessels engaged in the offshore oil and gas industry, the Louisiana Offshore Oil Port, and a large commercial fishing industry.

Alternatives: Project alternatives will address Federal involvement in the Bayou Lafourche channel up to Port Fourchon. The feasibility of taking over responsibility of the channel at dimensions greater than those currently authorized will be investigated. The drafts and other dimensional requirements of vessels using the waterway will be used to develop alternative plans. Under the no-action plan, the Corps would continue to be responsible for maintenance of the channel at the authorized dimensions of 12 by 125 feet.

Scoping: The scoping process will include distribution of a scoping input request to local, state, and Federal agencies, elected officials, local organizations, local news media, affected businesses, and segments of the public who may have an interest in the project. The scoping input request will invite comments on project alternatives and other significant project related issues to be used in the planning process. Comments received as a result of the scoping input request will be summarized and a summary will be sent to all respondents. Discussion of significant issues in the DEIS will encompass the suggestions contained in the replies to the scoping input request. A scoping meeting will not be held unless written responses indicate a need for such action.

Significant Issues: The DEIS will analyze significant issues concerning the proposed project such as effects to the offshore oil and gas industry, the Louisiana Offshore Oil Port, commercial fishing industry, endangered and threatened species, wildlife and fishery resources, marsh lands, oyster beds, and cultural and recreational resources.

Environmental Consultation and Review: The U.S. Fish and Wildlife Service will provide a Coordination Act Report. The Corps will work with state and Federal agencies in attempts to minimize environmental impacts while using dredge material to rebuild marsh and nourish beaches.

Completion Date: The DEIS is scheduled to be available to the public in April 1990.

Dated: May 18, 1989.

Richard V Gorski,

Colonel, U.S. Army, District Engineer.

[FR Doc. 89-13232 Filed 6-2-89; 8:45 am]

BILLING CODE 3710-84-M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board; Cold Fusion Panel

Notice is hereby given of the following meeting:

Name: Cold Fusion Panel of the Energy Research Advisory Board (ERAB).

Date & Time: June 22, 1989, 8:30 a.m.-5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586-5767

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The purpose of the Panel is to review the experiments and theory of the recent work on cold fusion; identify research that should be undertaken to determine, if possible, what physical, chemical, or other processes may be involved; and identify what R&D direction DOE should pursue to fully understand these phenomena and develop the information that could lead to their practical application.

Tentative Agenda: The specific agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

Agenda

Administrative Items
Report on Los Alamos National Laboratory
Cold Fusion Workshop
Status of Cold Fusion Research
Future Panel Schedule
Discussion of Interim Draft Report
Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the Public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonble provisions will be made to include the presentation on the agenda. The Chairmen of the Panel are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on May 30, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-13285 Filed 6-2-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-1461-000 et al.]

Southern Natural Gas Co. et al., Natural Gas Certificate Filings

May 26, 1989.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP89-1461-000]

Take notice that on May 22, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP89-1461-000 a request pursuant to §§ 157.205 and 284.223 of the Commission s Regulations for authorization to transport gas on an interruptible basis for BP Gas Inc. (BP) under Southern s blanket certificate issued in Docket No. CP88-316-000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request

on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for BP a marketer, pursuant to a service agreement dated March 17 1989, under Southern's Rate Schedule IT. The service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. The service agreement provides for a maximum quantity of 50,000 MMBtu of gas on a peak day but BP anticipates requesting 41,095 MMBtu of gas on an average day, and accordingly, 15,000,000 MMBtu of gas on an annual basis. Southern proposes to receive the gas at various receipt points in Offshore Texas, Offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to a delivery point in Georgia. Southern asserts that no new facilities are required to implement the proposed service.

Southern commenced transportation of natural gas for BP on April 1, 1989, as reported in Docket No. ST89-3039 pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

2. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1433-000]

Take notice that on May 18, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern) filed in Docket No. CP89-1433-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-435-000 on behalf of Arco Oil & Gas Company (Arco), a producer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern indicates that service commenced April 11, 1989, and the volumes transported to be 75,000 MMBtu per day on a peak day, 56,250 MMBtu on an average day and 27,375,000 MMBtu on an annual basis for Arco.

Northern states that no construction of facilities will be required.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1450-000]

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1450-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the City of Bushnell (Bushnell), a shipper and local distribution company of natural gas, under its blanket authorization issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Bushnell, pursuant to a transportation service agreement dated April 1, 1989. The transportation agreement is effective for a primary term of ten years from the initial date of service and thereafter until terminated by either party upon at least six months prior notice. Panhandle proposes to transport 2,012 Dekatherms (Dth) of natural gas on a peak and average day; and on an annual basis 734,380 Dth of natural gas for Bushnell. Panhandle proposes to receive the subject gas from Arkla and Transok in Custer County, Oklahoma and Oklahoma Natural Gas Company in Dewey County, Oklahoma. Panhandle will then transport and redeliver the gas, less fuel used and unaccounted for line loss, to the City of Bushnell in Fulton County, Illinois. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3175-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-1458-000]

Take notice that on May 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1458-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Loutex Energy, Inc. (Loutex), a producer and marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Loutex from a point of receipt located in offshore Louisiana to a point of delivery located in offshore Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Loutex would be 12,360 MMBtu equivalent, 12,360 MMBtu equivalent and 4,511,400 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-3415, filed with the Commission on May 8, 1989, it reported that transportation service for Loutex had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1460-000]

Take notice that on May 19, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1460-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural GasAct for authorization to transport gas on an interruptible basis for Catamount Natural Gas Inc. (Catamount) under its blanket certificate issued in Docket No. CP-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it would receive the gas for Catamount at various existing points of receipt in Mississippi, Pennsylvania, offshore Louisiana, Louisiana, offshore Texas and Texas, and would redeliver the gas at various existing delivery points located in New York.

Transco further states that the maximum daily, average daily and annual quantities that it would transport for Catamount would be 150,000 dt equivalent of natural gas, 100,000 dt equivalent of natural gas and 36,500,000 dt equivalent of natural gas, respectively.

Transco indicates that in a filing made with the Commission in Docket No. ST89-3393, it reported that

transportation service for Catamount commenced on April 13, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1469-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1469-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Mountain Industrial Gas Company (Mountain), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 2,000 dekatherms of natural gas per day for Mountain from receipt points located in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma and Texas, to Robert W. Davis in Morton County, Kansas. Panhandle Anticipates transporting, on an average day 400 dekatherms and an annual volume of 146,000 dekatherms.

Panhandle states that the transportation of natural gas for Mountain commenced April, 1989, as reported in Docket No. ST89-3294-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP86-585-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

7 Southern Natural Gas Company

[Docket No. CP89-1472-000]

Take notice that on May 22, 1989, Southern Natural Gas Company (Southern), First National, Southern Natural Building, Birmingham, Alabama 35203, filed in Docket No. CP89-1472-000 a request pursuant to §§ 157.205 and 284.223 of the Comissions Regulations under the Natural Gas Act, for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act for Citizens Gas Supply Corporation (Citizens) all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport up to a maximum daily quantity of 35,000 MMBtu on a peak day, 34,520 MMBtu on an average day and an annual volume of 12,600,000 MMBtu for Citizens.

Southern explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3047-000.

Comment date: July 10, 1989, in accordance with Standard Pargraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1479-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1479-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the City of Clarence (Clarence), a shipper and local distribution company of natural gas, under its blanket authorization issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Clarence, pursuant to a transportation service agreement dated April 1, 1989. The transportation agreement is effective for a primary term of ten years from the initial date of service and thereafter until terminated by either party upon at least six months prior notice. Panhandle proposes to transport 262 Dekatherms (Dth) of natural gas on a peak day; 88 Dth on an average day; and on an annual basis 32,120 Dth of natural gas for Clarence. Panhandle proposes to receive the subject gas from Arkla and Transok in Custer County, Oklahoma and Oklahoma Natural Gas Company in Dewey County, Oklahoma. Panhandle will then transport and redeliver the gas, less fuel used and unaccounted for line loss, to the City of Clarence in Audrain County, Missouri. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3111-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1481-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1481-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Amgas, Inc. (Amgas or Shipper), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle requests authority to transport up to 150 dt equivalent of natural gas per day on an interruptible basis on behalf of Amgas pursuant to a transportation agreement dated March 20, 1989, between Panhandle and Amgas. It is stated that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas, and Wyoming. It is stated that Panhandle will then transport and redeliver the subject gas, less fuel used and unaccounted for line loss, to CILCO—Peoria #1 & #2 in Tazewell County, Illinois. Panhandle states that the shipper's estimated average daily and annual quantities would be 75 dt equivalent of natural gas per day and 27,375 dt equivalent of natural gas, respectively. It is stated that the transportation charge for this service is based upon Panhandle's currently effective Rate Schedule PT. Panhandle further states that service under the 120-day automatic provisions of § 284.223(a) of the Commission s Regulations commenced on April 1, 1989, as reported in Docket No. ST89-3293.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1483-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company

(Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1483-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Conoco, Inc. (Conoco) a producer and shipper of natural gas, under Panhandle's blanket transportation certificate authority issued November 20, 1987 in Docket No. CP86-585-000, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states it will receive the gas at various existing points on its system in the states of Texas, Oklahoma, Kansas, Colorado and Illinois and deliver the gas for the account of Conoco to Columbia Gas-Maumee in Lucas County, Ohio.

Panhandle proposes to transport up to 1,500 dt of gas per peak day and approximately 500 dt and 182,500 dt of gas per average day and annually, respectively, Panhandle states that the transportation service commenced under the 120-day automatic authorization of §284.223(a) of the Commission's Regulations on April 1, 1989, pursuant to a transportation agreement dated January 24, 1989. Panhandle notified the Commission of the commencement of the transportation service in Docket No. ST89-3291-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1485-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company, (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1485-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Seagull Marketing Services, Inc. (Seagull), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle would perform the proposed interruptible transportation service for Seagull, a shipper and marketer of natural gas, pursuant to a transportation agreement Rate Schedule PT dated February 13, 1989 (Contract No. P-PLT-2631). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 100,000 dekatherm equivalent; on an average day up to 50,000 dekatherm equivalent; and on an annual basis 18,250,000 dekatherm equivalent of natural gas for Seagull. Panhandle proposes to receive the subject gas from various existing points of receipt on its system. The volumes would be transported and redelivered less fuel used and unaccounted for line loss to Union Gas Limited in Wayne County, Michigan. Panhandle proposes to charge the then effective, applicable rates and charges under its PT rate schedule. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3289-000.

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1492-000]

Take notice that on May 23, 1989 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1492-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for the Village of Stonington (Stonington), a shipper and marketer of natural gas, pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 1,026 Dt. per day on an interruptible basis on behalf of Stonington pursuant to a Transportation Agreement dated April 1, 1989 between Panhandle and Stonington (Transportation Agreement). The Transportation Agreement provides for Panhandle to receive gas from Arkla and Transok in Custer County, Oklahoma and Oklahoma Natural Gas Company in Dewey County, Oklahoma. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to the Village of Stonington in Christian County, Illinois.

Shipper states that the estimated daily and estimated annual quantities would be 1,086 Dt. and 396,390 Dt., respectively. Service under § 284.223(a) commenced on April 1, 1989, as reported in Docket No. ST89-3173-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13257 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10405-006 Oregon]

Craig W. Scott; Surrender of Preliminary Permit

May 30, 1989

Take notice that Craig W Scott, Permittee for the South Fork Water Power Project No. 10405, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10405 was issued September 16, 1988, and would have expired August 31, 1991. The project would have been located on Hemaloose Creek and the South Fork of the Clackamas River within the Mt. Hood National Forest in Clackamas County, Oregon.

The Permittee filed the request on May 8, 1989, and the preliminary permit for Project No. 10405 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which

case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13258 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-44-000, et al]

El Paso Natural Gas Co., Informal Settlement Conference

May 30, 1989.

In the matter of RP85-58-017 RP88-202-000, RP88-185-000, RP88-184-000, CP88-434-000, CP88-333-000, CP88-332-000, CP88-203-000, CP87-553-000, CI87-290-000, TM89-1-33-000, TQ89-1-33-000, TA88-1-33-000, TA88-3-33-000, TA85-1-33-004, and TA85-1-33-009

Take notice that an informal settlement conference will be convened in the above-referenced proceedings on June 13, 1989 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The parties and the Commission Staff are invited to attend the informal settlement conference. Persons wishing to become parties must move to intervene pursuant to the Commission's Regulations (18 CFR 385.214 (1985)) and have their motion granted.

For additional information contact Cynthia A. Govan (202) 357-5330 or Rebecca S. Haney (202) 357-8461.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13259 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1500-000]

Transcontinental Gas Pipe Line Corp; Request Under Blanket Authorization

May 30, 1989.

Take notice that on May 24, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396,. Houston, Texas 77251, filed in Docket No. CP89-1500-000 a request pursuant to § 157.205 of the Commission s Regulations under the natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Catamount Natural Gas, Inc. (Catamount), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to service agreement dated March 1, 1989, under its Rate Schedule IT, it proposes to transport up to 3,067,600 dekatherms (dt) per day equivalent of natural gas for Catamount. Transco states that it would transport the gas from various existing receipt points in Mississippi, Pennsylvania, onshore and offshore Louisiana, and onshore and offshore Texas, and would deliver the gas at various existing delivery points in Virginia, Pennsylvania, Maryland, Georgia, New Jersey, Alabama, North Carolina, New York, onshore Texas and onshore Louisiana.

Transco advises that service under § 284.223(a) commenced April 1, 1989, as reported in docket No. ST89-3116-000. Transco further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13260 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1473-000]

Transwestern Pipeline Co., Request Under Blanket Authorization

May 30, 1989.

Take notice that on May 22, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1473-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Yates Petroleum Corporation (Yates) under the blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Transwestern states that it proposes to transport up to 100,000 MMBtu of natural gas for Yates on a peak day, 75,000 MMBtu on an average day, and 36,500,000 MMBtu annually, under Rate Schedule ITS-I. This service was reported to the Commission in Docket No. ST89-3408-000. Transwestern further states that construction of facilities will be required to provide the proposed service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to interevene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13261 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of March 31 Through April 7 1989

During the Week of March 31 through April 7 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt of an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office

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All of the above-referenced proceedings have not been consolidated for purposes of hearing or decision. Settlement discussions may, however, address issues raised in each of these proceedings.

of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 23, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 31 through Apr. 7, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 3, 1989	Farmington Gas Company, Inc., Farmington, NH	KEE-0175	Exception to the reporting requirements. If granted: Farmington Gas Co., Inc. would no longer be required to file Form E1A-782B "Reseller/Retailer's Monthly Petroleum Products Sales Report"
Do	Salomon, Inc., Washington, DC	KRD-0720	Motion for Discovery. If granted: Discovery would be granted to Salomon, Inc. in connection with the Statement of Objections submitted by the firm in response to a Proposed Remedial Order (Case No. KRO-0720).
Apr. 6, 1989	Schenectady Gazette, Washington, DC	KRA-0274	Appeal of an Information Request Denial. If granted: The March 1, 1989 Freedom of Information Request Denial issued by the Office of Naval Reactors would be rescinded and the Schenectady Gazette would receive access to 12 documents related to activites at the Knolls Atomic Power Laboratory.
Apr. 7, 1989	William G. Lloyd, Cincinnati, Ohio	KFA-0275	Appeal of an information request denial. If granted: The March 29, 1989 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and William G. Lloyd would receive access to documents relating to a recent security clearance investigation.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
03/31/89 thru 04/7/89.	Crude Oil Refund Applications Received.	RF272-75424 thru RF272-75435
03/31/89 thru 04/7/89.	Murphy Oil Refund Applications Received.	RF309-1158 thru RF309-1288
3/31/89 thru 04/7/89.	Atlantic Richfield Applications Received.	RF304-8281 thru RF304-8349
03/31/89 thru 04/7/89.	Exxon Refund Applications Received.	RF307-9726 thru RF307-9793
03/31/89 thru 04/7/89.	Shell Refund Applications Received.	RF315-5018 thru RF315-5137

Name of firm	Case No.	Received
Highway Transport, Incorporated.	RF306-4	10/19/88
Diversified Properties, Incorporated.	RF300-10771	04/03/89
Johnson's Pine Hill's Gulf.	RF300-10772	04/03/89
Florida Center Gulf	RF300-10773	04/03/89
Myers Crown	RF313-116	04/03/89
David Darrah Expy Crown S/S.	RF313-117	04/04/89
James W. Tate	RC272-42	04/04/89
Roe's Crown Service Station.	RF307-9734	04/05/89
Gibson's Crown, Inc.	RF313.-119	04/05/89
Beacon Hill Gulf	RF300-10775	04/05/89
Blair's Gulf & Repair Service.	RF300-10774	04/05/89
Gerald Zimmerman	RC272-43	04/06/89
Emmett Elliott	RC272-44	04/06/89
Omaha Transit Authority.	RC272-45	04/06/89

[FR Doc. 89-13286 Filed 6-2-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of January 30 Through February 3, 1989

During the week of January 30 through February 3, 1989, the decisions and orders summarized below were issued with respect to applications for 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.

Petition for Special Redress

Kenneth Walker, 2/2/89, KEG-0037

Kenneth Walker filed a Petition for Special Redress with the DOE in which he asked that the Office of Hearings and Appeals (OHA) be disqualified from further consideration of a Proposed Remedial Order that had been issued jointly to him and the Southwestern States Marketing Corporation. The Petition alleged bias on the part of OHA because, in an interlocutory order OHA had issued in the enforcement proceeding, it had included a reference to an irrelevant criminal conviction. The DOE noted that Petitions for Special Redress are intended to be used to obtain extraordinary relief. The regulations require that a Petition be demissed if there is a more appropriate proceeding by which the requested relief may be obtained. The DOE found that Walker could obtain review of his bias allegations in the enforcement proceeding itself and in subsequent review by the Federal Energy Reulatory Commission. The DOE also found that there was no actual evidence of bias. Accordingly, the Petition was dismissed.

Implementation of Special Refund Procedures

Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, Conoco, Inc., 2/3/89, KEF-0101, KEF-0109, KEF-0114, KEF-0115, KFX-0027

The DOE issued a final Decision and Order establishing procedures to distribute $29,300,785, plus accrued interest, obtained from Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, and Conoco, Inc. The DOE has determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). In making this determination, the DOE rejected the comments filed by Philip P Kalodner concerning the sufficiency of the 20 percent set-aside for injured claimants. As the Decision

and Order indicates, Applications for Refund may now be filed by injured purchases of refined petroleum products. The specific information required in an Application for Refund is set forth in the Decision and Order.

Lone Star Oil and Chemical Company, Holly Corporation, 1/31/89, KEF-0106, KEF-0113

The DOE issued a Decision and Order implementing a plan for the distribution of $1,950,756.18 (pous accrued interest) received pursuant to the DOE's settlement agreements with Lone Star Oil and Chemical Corporation and the Holly Corporation. The DOE determined that the consent order funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

A.N. Pierson, Inc., 2/2/89, RF272-26244

The DOE approved an Application for Refund filed in the crude oil overcharge refund proceeding by A.N. Pierson, Inc., an end-user of refined petroleum products. The refund granted to Pierson is $2,895.

Aminoil U.S.A., Inc./Avon LP Gas Co., et al., 2/3/89, RF139-13, et al.

The DOE issued a Decision and Order concerning Motions for Reconsideration filed by 29 claimants in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted information which indicated that they did not receive their full shares of accrued interest in their initial refund decisions. After examining the firms' applications and supporting documentation, the DOE concluded that the firms should receive refunds totaling $231,716 in interest.

Aminoil U.S.A., Inc./Burling Sales Association Inc., et al., 2/3/89, RF139-42, et al.

The DOE issued a Decision and Order concerning three Motions for Reconsideration filed in the *Aminoil U.S.A., Inc.* special refund proceeding. The DOE found that (i) the original applications, which had been previously denied, were filed over three years after the deadline established in the *Aminoil* proceeding, (ii) the Motions for Reconsideration failed to show good cause for reconsidering the original denials, and (iii) accepting these late claims would prejudice the status of other timely-filed, pending applications. Under these circumstances, and because the proceeding is approaching completion, the Motions were denied.

Aminoil U.S.A., Inc./King Gas Company, Inc., et al., 2/3/89, RF139-46, et al.

The DOE issued a Decision and Order concerning sixteen Motions for Reconsideration filed in the *Aminoil U.S.A., Inc.* special refund proceeding. The DOE found that (i) the original applications, which had previously been denied, were filed over three years after the deadline established in the *Aminoil* proceeding, (ii) the Motions for Reconsideration were filed by a representative with experience before the DOE who failed to show good cause for reconsideration of the original denials, and (iii) accepting these late claims would prejudice the status of other timely-filed, pending applications. Under these circumstances, and because the proceeding is approaching completion, the Motions were denied.

Aminoil U.S.A., Inc./Minnegasco, Inc., 1/31/89, RF139-205

The DOE issued a Decision and Order concerning an Application for Refund filed in the *Aminoil U.S.A., Inc.* special refund proceeding. The DOE found that (i) the application was filed over three and one-half years after the deadline established in the Aminoil proceeding, (ii) the application was filed by a representative with experience before the DOE who failed to show good cause for the late filing, and (iii) the application was incomplete upon filing. Under these circumstances, and because the proceeding is approaching completion, the application was denied.

Aminoil U.S.A., Inc./Plymouth LP Gas, 1/31/89, RF139-126

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Plymouth LP Gas (Plymouth) in the *Aminoil U.S.A., Inc. (Aminoil)* special refund proceeding. Plymouth was unable to provide material showing injury and its submission was treated in a small purchaser claim limited to $5,000 in principal. After examining the application and supporting documentation, the DOE determined that Plymouth should receive a refund of $5,000 plus accrued interest.

Aminoil U.S.A., Inc./Walter J. Mornes, 1/31/89, RF139-172

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Walter J. Mornes (Mornes) in the Aminoil U.S.A., Inc. (Aminoil) special refund proceeding. Mornes showing of injury established that it had been forced to absorb $2,933 of Aminoil's alleged overcharges. After examining the application and supporting documentation, the DOE determined that Mornes should receive a refund of $2,933 plus accrued interest.

Atlantic Richfield Company/Millers Service Center, Nuss ARCO Service, Economy Oil Company, 1/30/88, RF304-138, RF304-1730, RF304-1984

The DOE issued a Decision and Order concerning 3 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totaling $12,487 representing $9,799 in principal and $2,688 in interest.

City of Atlanta, 2/3/89, RF272-15956

The DOE issued a Decision and Order concerning an Application for Refund that the City of Atlanta (Atlanta) submitted in the Subpart V crude oil refund proceedings. On October 20, 1988, the DOE issued a Proposed Decision denying Atlanta's application because it was believed to have submitted a waiver and release in the Refiners' Escrow. This waiver would have barred Atlanta from collecting other crude oil refund monies. Although Atlanta was eligible to participate in the Refiners' Escrow, it had chosen not to do so and was therefore not barred from participating in the Subpart V crude oil proceedings. This Decision granted Atlanta a refund of $4,240 based on its purchases of 21,198,434 gallons of petroleum products.

Crown Central Petroleum Corporation/Cooper Oil Company, 1/31/89, RF313-11

The DOE issued a Decision and Order granting an Application for Refund filed by Cooper Oil Company (Cooper), a purchaser of Crown refined products, in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), Cooper was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of the refund approved in this Decision was $860, representing $749 in principal plus $111 in accrued interest.

Crown Central Petroleum Corporation/Heflin's Garage, et al., 1/31/89, RF313-9, et al.

The DOE issued a Decision and Order granting applications filed by two purchasers of Crown refined petroleum

products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $11,480, representing $10,000 in principal plus $1,480 in accrued interest.

Crown Central Petroleum Corporation/ Richards Fuel Oils, Inc., et al., 1/31/ 89, RF313-5, et al.

The DOE issued a Decision and Order granting applications filed by four purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $14,802, representing $12,893 in principal plus $1,909 in accrued interest.

Exxon Corporation/Weems Exxon, et al., 2/3/89, *RF307-2041, et al.*

The DOE issued a Decision and Order concerning 13 Applications for Refund filed in the Exxon Corporation special refund proceeding. All of the applicants purchased directly from Exxon and were resellers whose allocable share is less than $5,000. Each of the applicants relied upon gallonage figures taken from its records or a printout sent to it by Exxon to document its purchases during the consent order period. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $10,830 ($9,354 principal plus $1,476 interest).

Fuels, Inc., et al., 2/2/89, *RF272-63026, et al.*

The DOE issued a Decision and Order denying 46 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973, through January 27 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

Garnavillo Mill, Inc., et al., 2/1/89, *RF272-6679, et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five applicants based upon their respective purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. Each applicant used various actual records and/or conservative estimates to support their gallonage claims. Each applicant was an end-user of the products it had purchased and therefore was presumed injured. The sum of the refunds granted in this Decision, including accrued interest is $3,693. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Gulf Oil Corporation/Concord Oil Company, Inc., Concord Oil of Newport, Inc., 1/31/89, *RF300-1223, RF300-1224*

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Concord Oil Company and Concord Oil of Newport. Because the firms were under common ownership during the consent order period, and because their allocable share exceeds $5,000, it is appropriate to consider them together when applying the presumptions of injury. The two firms collectively purchased 72,086,646 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The sum of the refunds granted in this Decision, including both principal and interest, is $23,645.

Gulf Oil Corporation/Cunningham Butane Gas Co., Inc., 1/31/89, *RF300-2288, RF300-2289*

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Cunningham Butane Gas Co., Inc. (Cunningham). Cunningham's total allocable share exceeded $5,000. Cunningham elected not to prove injury. Therefore, it received a refund under the 40 percent presumption of injury method. The sum of the refunds granted in this Decision, which includes both principal and interest, is $6,406.

Gulf Oil Corporation/George Rice Fuel Oil Corp., Capable Utilities, Inc., 1/ 31/89, *RF300-2640, RF300-2648*

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by George Rice Fuel Oil Corp. and Capable Utilities, Inc. Because the firms were under common ownership during the consent order period, they could not be considered separately under the small claims presumption of injury. The two companies collectively purchased 17,661,168 gallons of Gulf products, and their applications were approved under the 40 percent presumption of injury. The amount of the refund granted in this Decision is $6,406.

Gulf Oil Corporation/Main Street Gulf & Carryout, et al., 1/31/89, RF300-6404, et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $42,173.

Gulf Oil Corporation/Manpower Inc. of Beaumont-Pt. Arthur, 1/31/89, RF300-1298

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Manpower, Inc. of Beaumont-Pt. Arthur (Manpower). Manpower managed 12 gas stations for Gulf but never owned any of the stations, leased any of them from Gulf, or took title to the Gulf petroleum products at any of them. Therefore, since Manpower could not have been injured by Gulf's alleged overcharges, Manpower's application for refund was denied.

Gulf Oil Corporation/Navy Resale and Services Support Office, 2/1/89, RF300-4393

The DOE issued a Decision and Order to the Navy Resale and Services Support Office (NRSSO) in the Gulf Oil Corporation special refund proceeding. The NRSSO's primary purpose is to provide discount goods and services to military personnel. Any profits generated by its sales operations are used for the benefit of the military personnel who purchase from it. Because the covered products claimed by the NRSSO were sold to and consumed by military personnel, and because any refund received by the NRSSO will be used for the benefit of military personnel, the DOE granted the NRSSO a full volumetric refund totaling $320,487 on 390,837,957 gallons of covered Gulf products.

Gulf Oil Corporation/Ram Fuel Corporation, 2/3/89, RF300-10649, RF300-10650

The DOE issued a Decision and Order denying two Applications for Refund submitted by Ram Fuel Corporation in the Gulf Oil Corporation special refund proceeding. The Applicant submitted information indicating that it purchased

9,578,041 gallons of Gulf products during the consent order period, and wished to receive a small claims refund of $6,406 ($5,000 principal + $1,406 interest) based on those purchases. However, the DOE had previously granted Ram Energy Corporation, an affiliated corporate entity, a refund of exactly this amount based on its purchases of 9,791,993 gallons. Although the two firms are owned separately, they are highly operationally related. Thus, it was appropriate to consider their claims together when applying the presumptions of injury. In this proceeding, the two firms are entitled to a refund on the combined purchase total of 19,370,034 gallons, or $6,406. Since Ram Energy had previously been granted a refund of $6,406 in this proceeding, Ram Fuel's Applications for Refund were denied.

Gulf Oil Corporation/Saveway Gas and Appliance, Inc., College Drive Gulf, 2/1/89, RF300-4118, RF300-4554

The DOE issued a Decision and Order concerning 2 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $12,812.

Gulf Oil Corporation/William J. Smith, et al., 2/2/89, RF300-6000, et al.

The DOE issued a Decision and Order concerning a number of Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury standard. The sum of the refunds granted in this Decision is $260,323.

Liquid Carbonic Industries Corp., Inc., et al., 1/31/89, RF272-13159, et al, RD272-13159, et al.

Four manufacturing companies submitted Applications for Refund from crude oil overcharge funds. A group of thirty states and Territories (the States) filed identical consolidated States, Objections and Motions for Discovery in each of the four proceedings. The States opposed receipt of any refunds and sought discovery of information in support of their opposition. The DOE determined that: (1) The four companies were presumptively entitled to refunds as industrial end-users of petroleum products outside of the petroleum industry and each applicant had certified the volume of petroleum products it had purchased during the price control period; (2) the States had failed to rebut the presumption of eligibility; and (3) the States had failed to show that discovery with regard to these applications was appropriate or that any additional information should be required of these companies. Accordingly, the Applications for Refund of the four companies were granted, and the States' Objections and Motions for Discovery were dismissed.

Louisiana Sulphur Carriers, 2/1/89, RF272-514

The DOE issued a Decision concerning an Application for Refund that Louisiana Sulphur Carriers (Louisiana) submitted in the Subpart V crude oil refund proceedings. Louisiana purchased 13,752,468 gallons of petroleum products during the period August 19, 1983, through January 27 1981. Louisiana was a shipper of sulphur products within the United States during the relevant time period. Louisiana relied on the end-user presumption of injury. The total refund approved in this Decision is $2,750.

Murphy Oil Corporation/Bi-Rite Food Stores, et al., 2/2/89, RF309-600, et al.

The DOE issued a Decision and Order granting applications filed by 49 purchasers of Murphy refined petroleum products in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Murphy The total amount of refunds approved in this Decision was $56,479, representing $49,720 in principal plus $6,759 in accrued interest.

Murphy Oil Corporation/Goenner Oil Company, et al., 2/1/89, RF309-127 et al.

The DOE issued a Decision and Order granting Applications for Refund filed by 6 applicants, all purchasers of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. Each applicant was found to be injured under the appropriate presumption of injury defined in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988). According to the procedures set forth in that decision, each applicant was found to be eligible for a refund based on the volume of product it purchased from Murphy. The total refund approved in this decision was $18,099, represented $15,933 in principal plus $2,166 in accrued interest.

Murphy Oil Corporation/Lakehead Pipe Line Co., Inc., et al., 1/31/89, *RF309-305, et al.*

The DOE issued a Decision and Order granting applications filed by seven purchasers of Murphy refined petroleum products in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund. Three applicants were found to be eligible to receive a refund at the $5,000 small claims presumption level while the other four were found to be eligible for a refund equal to their principal allocable shares. The total amount of refunds approved in this Decision was $19,740, representing $17,377 in principal plus $2,363 in accrued interest.

Plaquemines Oil Sales Corp./Buras Fuel Docks, 2/3/89, RF305-11

The DOE issued a Decision and Order denying an Application for Refund submitted by Buras Fuel Docks (Buras) in the Plaquemines Oil Sales Corp. special refund proceeding. Buras, a retailer of Plaquemines No. 2 diesel fuel, submitted an injury showing in order to receive the refund amount identified in the Decision and Order implementing the Plaquemines refund proceeding. That showing was deficient since the firm's approximated cost banks were not based upon a proper May 15, 1973 base period cost of product. Buras requested that either of two sources of information, the average market price as recorded in *Platt's Oil Price Handbook & Oil Manual* or the base period cost of a local competitor, be used as an imputed base period margin. The DOE found these suggestions unnecessary because information in the Plaquemines remedial order proceedings indicated a specific base period cost for Buras. Using this information, the DOE imputed a base period margin and determined that Buras had a negative cumulative cost bank beginning in January 1974 and throughout the remainder of the Plaquemines settlement period. Accordingly, the DOE determined that Buras was not injured and its Application for Refund was denied.

Rubbermaid Incorporated, 1/30/89, RF272-18800

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Rubbermaid Incorporated, (Rubbermaid) based on the firm's purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. Rubbermaid documented purchases of 9,069,516 gallons of petroleum products, including 1,281,300 gallons of hydraulic oil. The DOE determined that hydraulic oil is a product refined from crude oil, and thus, is an eligible product for the purposes of

the Subpart V crude oil refund proceedings. The amount of the refund granted in this Decision is $1,814. Rubbermaid will be eligible for additional refunds as additional crude oil overcharge funds become available.

Superiorgas Limited, 2/1/89, RF272-33104

The DOE issued a Decision and Order denying an Application for Refund filed by Superiorgas Limited (Superior) in the Subpart V crude oil proceedings. Superior was a retailer during the period August 19, 1973, through January 27 1981. Because Superior did not demonstrate that it was injured due to the crude oil overcharges, it was found to be ineligible for a crude oil refund.

Trent Bridge Exxon, et al., 2/2/89, RF272-63581, et al.

The DOE issued a Decision and Order denying 17 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973, through January 27 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

Total Petroleum, Inc./Schulte Oil Co. Inc., et al., 2/3/89, RF310-107 et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. (Total). The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Each of the applicants was a reseller whose allocable share is less than $5,000. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total $41,640 ($35,813 principal plus $5,827 interest).

Total Petroleum, Inc./Stan Hayes Enterprises, Inc., et al., 2/2/89, RF310-19, et al.

The DOE issued a Decision and Order concerning 24 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. (Total). The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Each of the applicants was either an end-user or a reseller whose allocable share is less than $5000. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total $37,430 ($32,210 principal plus $5,220 interest).

Vickers Energy Corporation/Coline Gasoline Corp./Perry Gas Processors, Inc./Wisconsin, 2/1/89, RQ1-470, RQ2-500, RQ183-501

The DOE issued a Decision and Order approving a second-stage refund application submitted by the State of Wisconsin in the Coline Gasoline Corp. and Perry Gas Processors, Inc. special refund proceedings and dismissing for administrative reasons, a second-stage refund application in the Vickers Energy Corp. special refund proceeding. *Coline Gasoline Corp.*, 13 DOE ¶¶ 85,048, 85,091 (1985); Vickers Energy Corp., 12 DOE ¶¶ 85,164, 85,178 (1985). The DOE adjusted the State's available second-stage monies in this Decision to account for a previous overpayment in Vickers funds of $63. The DOE also determined that Wisconsin could use $13,775 in Coline and Perry Gas funds to supplement funding for an expansion of its Waste-to-Energy Conversion program.

W.H. Johns, Inc., Colonial Motor Freight Lines, Inc., G.G. Parsons Trucking Co., 2/1/89, RF272-9835, RF272-9835, RF272-9892, RF272-9892, RF272-11290, RF272-11290

The DOE issued a Decision and Order concerning applications for refund filed by three interstate common carriers (carriers) in the Subpart V crude oil, refund proceeding. A group of States objected to the carriers' applications on two grounds: (1) That the economy generally allows the members of the trucking industry to pass through some portion of increased costs to customers via higher prices and (2) that the ICC fuel surcharges implemented during the price control period allowed the carriers to pass through increased fuel costs. The States argued that this evidence is sufficient to rebut the end/user presumption for the applicants, and, therefore, OHA should deny the applications or, in the alternative, grant the accompanying motions for discovery and requests for special report orders filed in each of the proceedings. OHA granted the refunds for all three applicants and denied the States' motions for discovery and requests for special report orders determining that the States had failed to procure evidence which would indicate that these applicants passed-through increased fuel costs equal to the amount of crude oil overcharges.

CRUDE OIL END-USERS

Name	Case number	Date	No. of applicants	Total refund
The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:				
City of Coon Rapids, *et al*	RF272-26061	1/31/89	24	$14,144
Donald C. Oesterle, *et al*	RF272-22144	1/31/89	144	57,018
Massachusetts Institute of Technology, *et al*	RF272-14360	1/31/89	26	10,109
Peterson Contractors, Inc., *et al*	RF272-30526	1/31/89	21	25,111
Pitzel Feed Yards, Inc., *et al*	RF272-12134	2/2/89	39	19,701
Trigon Associates, *et al*	RF272-20157	1/31/89	28	43,939
W.O. Bankston Enterprise, *et al*	RF272-19501	2/2/89	35	9,225
Weldon Coca Cola Bottling Works, *et al*	RF272-331	1/31/89	110	23,049

Dismissals

The following submissions were dismissed:

Name	Case No.
Atlantic Richfield Oil Co	RF304-3975
Anthony Mechanical Contractors, Inc.	KFA-0249
Arcudi's Service Station	RF265-2769
Bennett Heat Treating & Brazing Co., Inc.	RF272-64570
Davenport Oil Co.	RF272-62469
Duke and Long Distributing Co., Inc.	RF300-7691
Frank J. Overlaur	RF272-73934
GM Assembly Division, GMC General Motors Corp.	RF304-1542
Hassell Oil Co	RF304-31
Hubert H. Ingram	RF272-74492
Interstate Gulf/Quintard Gulf	RF300-10664
J.O. Barber Lumber Co., Inc	RF272-61435
Jim's Holiday Gulf	RF300-10267
Saunders Esso/R.B. Saunders Exxon.	RF307-1822
Silco Oil Co	RF265-2768
State of Hawaii, Dept. of Defense	RF272-56217
Tesoro Petroleum Corp	HRO-0196
	KRO-0670
	KRO-0680
Tom's Standard Service	RF21-12627

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 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 24, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-13287 Filed 6-2-89; 8:45 am]

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Issuance of Decisions and Orders During the Week of February 6 Through February 10, 1989

During the week of February 6 through February 10, 1989, 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.

Appeal

State of Alaska, 02/07/88, KFA-0254

The State of Alaska (Alaska) filed an Appeal from a denial by the Economic Regulatory Administration (ERA) of a request for several forms under Exemption 4 of the Freedom of Information Act. Specifically, Alaska sought the following documents that had been filed with the DOE by six companies for the period January 1, 1979, through January 27 1981: EIA-14 (Refiner's Monthly Cost Allocation Report); EIA-782A (Refiners/Gas Plant Operators Monthly Petroleum Product Sales Report); EIA-782B (Resellers/Retailers Monthly Petroleum Product Sales Report); EIA-182 (Domestic Crude Oil First Purchase Report); and ERA-49 (Entitlements Report). In considering the Appeal, the OHA noted that the ERA s determination to withhold the requested forms was clearly inadequate because ERA failed to specifically explain how the withheld forms meet the Exemption 4 standards. The OHA noted, however, that one of the requested forms, i.e., the Refiner's Monthly Cost Allocation Report, must be made available to Alaska, insolfar as that form had been previously released. As to the remaining forms, the OHA remanded the determination to the ERA for further consideration consistent with the Decision.

Refund Applications

Abington School District, et al., 2/10/89, RF272-27337 et al.

The DOE issued a Decision and Order granting Applications for Refund from crude oil overcharge funds filed by 50 Pennsylvania school districts based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. The applicants were found to be end-users that purchased a total of 95,239,008 gallons of covered products. The total refund granted in this Decision was $19,045.

Aminoil U.S.A., Inc./Minnegasco, Inc., 2/10/89, RR139-64

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Minnegasco, Inc. in the Aminoil U.S.A., Inc. special refund proceeding. The firm's initial Application for Refund was denied on the basis that (i) the application was filed more than three and one-half years after the deadline established in the Aminoil proceeding, (ii) the application was filed by a representative with experience before the DOE who failed to show good cause for the late filing, and (iii) the application was incomplete upon filing. The Motion for Reconsideration presented no information to lead the DOE to amend the prior decision and, accordingly, the motion was denied.

Atlantic Richfield Company/Miller's Arco, et al., 2/06/89, RF304-1528, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $13,945, including $3,029 in accrued interest.

Crown Central Petroleum Corporation/Consolidated Edison Corporation of New York, Inc., 2/10/89, RF313-20

The DOE issued a Decision and Order granting an Application for Refund filed by the Consolidated Edison Corporation of New York, Inc. (Con Edison), in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 ¶ 85,326 (1988), Con Edison was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of the refund approved in this Decision was $13,135, including $1,693 in accrued interest.

Crown Central Petroleum Corporation/Jones Oil Distributor, Inc., 2/10/89, RF313-19

The DOE issued a Decision and Order granting an Application for Refund filed by Jones Oil Distributor, Inc. (Jones), in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), Jones was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of the refund approved in this Decision was $1,131, representing $985 in principal plus $146 in accrued interest.

Crown Central Petroleum Corporation/Oden Enterprise Inc., et al., 2/07/89, RF313-17 et al.

The DOE issued a Decision and Order granting applications filed by two purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $14,822, representing $12,911 in principal plus $1,911 in accrued interest.

Exxon Corporation/Frederick E. Meyer, 2/08/89, RF307-8073

The DOE issued a Supplemental Order to Frederick E. Meyer (Meyer), an applicant that had been granted a refund in *Exxon Corp./National Exxon*, 18 DOE ¶ 85,207 (1988). After issuance of that refund determination, the DOE found that the claimant had also received a refund based on the same purchase volumes in connection with

another Decision and Order. Accordingly, the DOE rescinded the duplicate refund of $261 ($230 principal plus $31 interest) and informed Meyer that he must remit that amount to this Office so that it may be deposited in the Exxon escrow account established at the Department of the Treasury.

Exxon Corporation/Minit Mart & Exxon, et al., 2/09/89, RF307-802, et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller with an allocable share of less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $18,466 ($15,952 principal plus $2,514 interest).

Exxon Corporation/Thomas J. Clark, et al., 2/09/89, RF307-4812, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $10,490, including $1,493 in accrued interest).

Getty Oil Company/ Arvil E. Sims, 2/10/89, RF265-2047

Arvile E. Sims filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Sims documented the volume of motors gasoline which it purchased from Getty through the Tri-County Oil Company, a Getty jobber. The Arvil Sims refund, which was calculated based upon the procedures outlined in *Pioneer Corp./E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 85,190 (1986), totaled $9,282, representing $4,505 in principal and $4,777 in interest.

Getty Oil Company/Phillips Petroleum Company, 2/07/89, RF265-1970, RF265-1971, RF265-1972, RF265-2583

The DOE issued a Decision and Order concerning four Applications for Refund filed by the Phillips Petroleum Company (Phillips), a reseller of petroleum products covered by a Consent Order that the DOE entered into with the Getty Oil Company. Phillips submitted information documenting the volumes of its Getty NGL purchases, elected to limit its claims on the basis of the percentage of injury presumption and was eligible for the maximum refund under that presumption of $50,000.00. The sum of the refunds approved in this Decision is $103,014, representing $50,000 in principal and $53,014 in accrued interest.

Gulf Oil Corporation/American Plant Food Corp., et al., 2/09/89, RF 300-559, et al.

The DOE issued a Decision and Order concerning 87 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $135,599.

Gulf Oil Corporation/Billy A. Phillips, 2/07/89, RF300-10675

The DOE issued a Supplemental Order concerning an Application for Refund filed by Billy A. Phillips in the Gulf Oil Corporation special refund proceeding. On January 17 1989, the DOE issued a Decision granting Billy A. Phillips a refund of $813. *Gulf Oil Corporation/James P Lowe, et al., 18 DOE* ¶ _____ (Case Nos. RF300-509, *et al.*). The DOE sent Mr. Phillips a copy of the Decision but it was returned by the United States Postal Service with the comment "moved left no address" All attempts to contact Mr. Phillips have failed. Therefore, the DOE rescinded the refund granted to Billy A. Phillips in the Gulf proceeding.

Gulf Oil Corporation/Bobken's Fuel Service, et al., 2/09/89, RF300-0459, et al.

The DOE issued a Decision and Order concerning 35 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $64,236.

Gulf Oil Corporation/City of Fort Lauderdale, et al., 2/09/89, RF300-5800, et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $109,031.

Gulf Oil Corporation/Dries & Reichard, Inc., et al., 2/09/89, RF300-6200, et al.

The DOE issued a Decision and Order concerning 71 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $117,616.

Gulf Oil Corporation/Kay Bee Auto Service of Deer Park, Inc., Kay Bee Gas O Rama, Inc., et al., 2/09/89, RF300-4597 RF 300-4601, et al.

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Kay Bee Auto Service of Deer Park, Inc. and Kay Bee Gas O Rama, Inc. The firms were under common ownership during the consent order period. Therefore, in applying the presumptions of injury, the two firms were considered together. Collectively, the firms purchased 10,118,404 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is $6,484.

Gulf Oil Corporation/Peter Johnston s Gulf, et al., 2/09/89, RF300-301, et al.

The DOE issued a Decision and Order concerning 54 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $106,008.

Gulf Oil Corporation/Renegade Oil Company, Inc., et al., 2/07/89, RF300-1717 RF 300-10562

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Renegade Oil Company, Inc. (Renegade). Renegade purchased 8,813,516 gallons of Gulf refined product as a reseller (RF300-10562) and distributed 23,422,339 gallons of Gulf refined product as a consignee (RF300-1717). Renegade received a refund of $6,484 ($5,000 principal plus $1,484 interest).

Joseph H. Hill Company, et al., 2/08/89, RF272-8563, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to seven applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. Each applicant used petroleum products for various activities including farming, electricity generation and trucking, and each determined its volume either by consulting actual

purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $15,527 All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Mt. Vernon Community School Corp., et al., 2/10/89, RF272-12541, et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by 39 claimants for crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the claimants' refunds totalling $12,992 based on their purchases of 64,966,214 gallons of refined petroleum products.

Murphy Oil Corporation/Grosskopf Oil Inc., et al., 2/08/89, RF309-13, et al.

The DOE issued a Decision and Order granting 7 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was a reseller whose allocable share was more than $5,000. Each applicant elected to rely on the relevant reseller injury presumption established in the Murphy proceeding, either limiting its claim to $5,000 or receiving 40% of its allocable share, whichever was greater. The sum of the refunds granted in the Decision was $43,299 ($37,849 principal plus $5,450 interest).

Murphy Oil Corporation/Vines Gulf Station, et al., 2/07/89, RF309-34, et al.

The DOE issued a Decision and Order granting 10 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share, plus a proportionate share of the interest that has accrued in the Murphy escrow account. The sum of the refunds granted in the Decision was $5,834 ($5,099 principal plus $735 interest).

Quintana Petroleum Corp./Texas Utilities Fuel Co., 2/08/89, RF133-1

Texas Utilities Fuel Company (TUFCO) submitted an Application for Refund from a consent order fund made available by Quintana Petroleum Corporation. The application was filed in a Subpart V refund proceeding conducted by the Office of Hearings and Appeals and was based on TUFCO's purchases of crude oil from Quintana. In considering the application, the DOE found that an affiliate of TUFCO had received a refund from the escrow fund established for utilities by the Stripper Well Settlement Agreement. Accordingly, the DOE determined that TUFCO's right to a refund in the Subpart V refund proceedings had been waived and therefore denied the TUFCO refund application.

Ted Veldman, et al., 2/08/89, RF272-22322, et al.

The DOE issued a Decision and Order denying refunds to 18 applicants in the crude oil Subpart V proceeding. All 18 applicants were retailers of petroleum products during the period August 19, 1973, through January 27 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were found ineligible for crude oil refunds. Accordingly, their Applications for Refund were denied.

The Lee Co., Inc., et al., 2/10/89, RF272-30931, et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by 24 claimants for crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the claimants refunds totalling $26,774 based on their purchases of 133,865,178 gallons of refined petroleum products.

Total Petroleum, Inc./Enlow Sales Co., et al., 2/10/89, RF310-133, et al.

The DOE issued a Decision and Order concerning 20 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Each of the applicants was either a reseller or end-user whose allocable share is less than $5,000. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶85,542 (1988), the DOE granted refunds in this proceeding which total $35,861 ($30,843) principal plus $5,018 interest).

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Antioch Building Materials, *et al*	RF272-35900	2/7/89	31	$17 426
Charley W. Meyers, *et al*	RF272-27005	2/9/89	48	10,949
Herbert C. Knafla, *et al*	RF272-48400	2/8/89	137	4,160
John Rupp, Jr., *et al*	RF272-48200	2/8/89	157	4,270
Miami Trace Local School District, *et al*	RF272-26010	2/10/89	67	23,133
Oliver B. Urdahl, *et al*	RF272-48000	2/7/89	137	3,422
Tuba City Unified Dist. No. 15, *et al*	RF272-30838	2/7/89	25	8,173

Dismissals

The following submissions were dismissed:

Name	Case No.
Aksjeselskapet Virik	RF272-43833
Arthur R. Gloss	RF272-64681
Bertie County School Bus Garage	RF307-5860
Butler Manufacturing Co	RF272-53545
C&T Auto Repair, Inc	RF304-276
Ceco Buildings Division	RF272-65105
Chauency Kingery	RF272-42261
City of Pensacola	RF272-75048
Downtown Gulf	RF300-419
Elwood Sneath	RF272-44958
Frances Muz	RF272-50437
Gem Industries	RF272-53860
General Electric Lighting Systems	RF272-01806
Giles County Board of Education	RF272-65427
Montclift Servicenter, Inc	RF307-964
MPB Corporation	RF272-66070
Newman-Crosby Steel	RF272-58461

Name	Case No.
Oceanside UFSD	RF272-58576
P Wajer & Sons Express Co	RF272-67302
Paul's Arco	RF304-5374
Petrolane, Inc	RF300-2500
Plautz, Inc	RF272-68750
R. Notley Exxon	RF307-1975
Salazar Exxon Station	RF307-1817
Sam's Spring Lake Exxon	RF307-6528
Shackelford's Exxon Station	RF307-1946
Skyway Exxon Station	RF307-1814
Tipton County Schools	RF272-65086
W.H. Braum, Inc	RF272-37488
Weldon Asphalt Co	RF272-73238
William E. Wright Co	RF272-41584

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 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

May 23, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-13288 Filed 6-2-89; 8:45 am]

BILLING CODE 645-01-M

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis; Georgia-Alabama System of Projects

AGENCY: Southeastern Power Administration (Southeastern), Department of Energy.

ACTION: Notice of approval on an interim basis of the Georgia-Alabama projects rates.

SUMMARY: On May 26, 1989, the Deputy Secretary confirmed and approved, on an interim basis, eight replacement Rate Schedules, GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F ALA-3-B, MISS-1-F MISS-2-B; and established three new rate schedules, SC-3-A, CAR-3-A and SCE-2-A, for Georgia-Alabama Projects' power. Present rate schedules GAMF-2-E, SC-1-E, SC-2-E, CAR-1-F and SCE-1-A are still in effect. The rates were approved on an interim basis through September 30, 1990, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective on June 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director, Power Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

Rodney L. Adelman, WDC, Director, Washington Liaison Office, Forrestal Building, 1000 Independence Ave., SW Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued July 22, 1986, in Docket No. EF86-3011-000 confirmed and approved Wholesale Power Rate Schedules GA-1-A, GA-2-A, GU-1-A, GAMF-2-E, ALA-1-E, ALA-3-A, MISS-1-E, MISS-2-A, SC-1-E, SC-2-E, CAR-1-F and SCE-1-A through September 30, 1990. Rate Schedules GA-1-B, and GA-3-A replace GA-1-A. Rate Schedules GA-2-B, GU-1-B, ALA-1-F ALA-3-B, MISS-1-F and MISSS-2-B replace GA-2-A, GU-1-A, ALA-1-E, ALA-3-A, MISS-1-E, and MISS-2-A. Rate Schedules SC-3-A, CAR-3-A and SCE-2-A are new rate schedules for preference customers in the South Carolina Public Service Authority area, the South Carolina Electric & Gas Company area, and Duke Power Company area who agreed to the rate increase. Rate Schedules GAMF-2-E, SC-1-E, SC-2-E, CAR-1-F and SCE-1-A remain in effect.

Issued in Washington, DC, May 26, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. SEPA-25]

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 144, 16 U.S.C. 825s relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under-Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. Department of Energy regulation DOE No. 1110.29 dated October 27 1988, redelegated the authority from the Under Secretary to the Deputy Secretary. This rate order is issued pursuant to the delegation to the Deputy Secretary.

Background

Power from the Georgia-Alabama System of Projects is presently sold under Wholesale Power Rate Schedules GA-1-A, GA-2-A, GU-1-A, GAMF-2-E, ALA-1-E, ALA-3-A, MISS-1-E, MISS-2-A, SC-1-E, SC-2-E, CAR-1-F and SCE-1-A. All of these rate schedules were approved by the FERC on July 22, 1986, for a period ending September 30, 1990.

Public Notice and Comment

Opportunities for public review and comment on the Rate Schedules proposed for use during the period June 1, 1989, through September 30, 1990, were announced by notice published in the **Federal Register** on November 28, 1988, and all customers were notified by mail. Public Information and Comment Forums were held in Atlanta, Georgia, on January 5, 1989, and in Columbia, South Carolina on January 10, 1989, and written comments were invited by the notice through March 3, 1989. Oral comments were presented at the forum and written comments were received prior to March 3, 1989. There were sixteen substantive comments received. All comments were evaluated by Southeastern.

Discussion

System Repayment

An examination of Southeastern's system power repayment study, prepared in March 1989, for the Georgia-Alabama System of Projects, reveals that over the 2-year rate review period with an annual revenue increase of $12,757,000 over the current revenues shown in a March 1989 Southeastern repayment study, all system power costs are paid within their repayment life. Present contracts allow rate adjustments only on October 1, 1990, and every five successive years thereafter. Southeastern proposed a contract amendment to allow a rate increase to be effective on June 1, 1989. Some customers did not agree to the increased rates which were not allowed by the contract. Therefore, Southeastern is proposing to raise rates for those customers who will agree to the rate increase and leave existing rate schedules for those who will not agree to the rate increase. Southeastern will recoup the revenue shortfall in the October 1, 1990, rate increase. Additionally, Rate Schedules GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F ALA-3-B, MISS-1-F MISS-2-B, SC-3-A, CAR-3-A and SCE-2-A, which are premised on all customers agreeing to the rate increase, will not produce

revenue adequate to recover all system power costs on a timely basis because some customers will not agree to the rate increase. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaision Office, James Forrestal Building, 1000 Independence Avenue, SW Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning June 1, 1989, and ending no later than September 30, 1990.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective June 1, 1989, attached Wholesale Power Rate Schedules GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F ALA-3-B, MISS-1-F MISS-2-B, SC-3-A, CAR-3-A and SCE-2-A. The rate schedules shall remain in effect on an interim basis through September 30, 1990, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis. Rate scehdules GAMF-2-E, SC-1-E, SC-2-E, CAR-1-F and SCE-1-A remain in effect through September 30, 1990.

Issued in Washington, DC., this 26th day of May 1989.

W. Henson Moore,

Deputy Secretary.

United States Department of Energy Southeastern Power Administration

Wholesale Power Rate Schedule GA-1-B

Availability

This rate schedule shall be available to public bodies except Acworth and Hampton (either one of which is hereinafter called the Customer) in Georgia, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the Georgia Power Company (hereinafter called the Company), or Municipal Electric Authority of Georgia (hereinafter called MEAG) or Water, Light and Sinking Fund Commission of the City of Dalton (hereinafter called Dalton).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F George, Hartwell, Millers Ferry, West Point, Robert F Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Charter of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity charge:	
Per kilowatt of total contract demand for the period: June 1989 through September 1990	$1.74
Energy charge:	
Mills per kilowatt-hours	8.50
Other Transmission Charge:	
Per kilowatt of total contract demand	$.20
Transmission charge:	
Per kilowatt of total contract demand	$-.11

Transmission

The Government has entered into a contract with MEAG to provide transmission services to its members. The charge for this service to its members will initially be $1.29 per kilowatt of total contract demand per month. The preference customers will pay MEAG directly for these services. These charges may be adjusted from time to time in accordance with Appendix B of the Government-MEAG contract. The Government retains the right to obtain alternative transmission. In that event, the Government will charge the preference customers at the same rate the Government pays for the services.

The Government has entered into a contract with Dalton to provide transmission services to Dalton. The Government retains the right to obtain alternative transmission. In that event, the Government will charge Dalton at the same rate the Government pays for the services.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of

all such control and protective equipment shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system or on the Georgia Integrated Transmission System, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}}$$

June 1, 1989.

United States Department of Energy, Southeastern Power Administration

Wholesale Power Rate Schedule GA-3-A

Availability

This rate schedule shall be available to Acworth and Hampton (either one of which is hereinafter called the Customer) in Georgia, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the Georgia Power Company (hereinafter called the Company), or Municipal Electric Authority of Georgia (hereinafter called MEAG).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F George, Hartwell, Millers Ferry, West Point, Robert F Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity charge:	
Per kilowatt of total contract demand for the period: June 1989 through September 1990	$1.74
Energy charge:	
Mills per kilowatt-hours	8.50
Other Transmission charge:	
Per kilowatt of total contract demand	$.20
Transmission charge:	
Per kilowatt of total contract demand	$2.81

Transmission

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix C attached to the Government-Company contract, less $.11 per kilowatt for use of facilities revenues from the Southern Companies. The Government has entered into a contract with MEAG to provide transmission services to its members and may enter into a contract with MEAG to provide transmission services for Acworth and Hampton. In that event Acworth and Hampton will pay MEAG directly for these services, and these charges may be adjusted from time to time in accordance with Appendix B of the Government-MEAG contract. The Government retains the right to obtain alternative transmission. In that event, the Government will charge the preference customers at the same rate the Government pays for the services.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billling month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times K \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}}$$

June 1, 1989.

United States Department of Energy Southeastern Powwer Administration

Wholesale Power Rate Schedule GA-2-B

Availability

This rate schedule shall be available to cooperatives (any one of which is hereinafter called the Customer) in Georgia, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the Georgia Power Company (hereinafter called the Company), or Oglethorpe Power Corporation (hereinafter called OPC).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company s transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity charge:	
Per kilowatt of total contract demand for the period: June 1989 through September 1990	$1.74
Energy charge:	
Mills per kilowatt-hours	8.50
Other transmission charge:	
Per kilowatt of total contract demand	$.20
Transmission charge:	
Per kilowatt of total contract demand	$-1.11

Transmission

The Government has contracted with OPC to provide transmission services to its members. The initial rate for that service is $1.69 per kilowatt of total contract demand per month. The preference customer will pay OPC directly for the transmission service. The rate is subject to adjustment from time to time. The Government reserves the right to obtain alternative arrangements. In that event, the Government will charge the preference customer at the same rate the Government pays for the service.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system or on the Georgia Integrated Transmission System, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}}$$

June 1, 1989.

[FR Doc. 89-13289 Filed 6-2-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3578-5]

Approvals and Disapprovals of Individual Control Strategies (ICSs) Submitted Under Section 304(1) of the Clean Water Act (CWA)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the U.S. Environmental Protection Agency's (EPA) approvals and disapprovals of decisions made by the Region V States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin with regard to the lists of waters, point sources and pollutants and the individual control strategies (ICSs) submitted by the above listed States under section 304(l) of the Clean Water Act (CWA) as amended by the Water quality Act (WQA) of 1987 The approval and disapproval actions described in this notice are being taken in response to section 304(l) of the CWA The effect of the approval actions is to formally agree with the States regarding the identification of specific waters which do not meet water quality standards and the development of ICSs to control the discharge of toxic pollutants. The effect of disapproval actions is to cause the EPA to promulgate the appropriate lists or additions to the lists, and ICSs, in cooperation with the affected States, following notice and opportunity for public comment.

DATES: The approval and disapproval actions described in this notice are effective June 5, 1989. The close of the public comment period regarding the Region s decisions is October 4, 1989. A response to public comments received concerning this notice will be published in the same manner as today's notice on or about January 4, 1990.

ADDRESSES: Copies of the section 304(l) lists, ICSs and suporting documentation are available for public inspection and copying upon request at the following location: U.S. Environmental Protection Agency, Region V Library (16th Floor), 230 South Dearborn Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Noel W Kohl of the U.S. EPA Region V Monitoring and Quality Assurance Branch, 5SMQA, 230 South Dearborn Street, Chicago, IL 60604: telephone (312) 886-6224.

SUPPLEMENTARY INFORMATION:

Description of Section 304(l) of the Clean Water Act

Section 304(l), which was added to the CWA by the WQA of 1987 requires every State to develop lists of impaired waters which cannot reasonably be expected to attain or maintain water quality standards, identify certain point sources and amounts of pollutants causing toxic impacts, and to develop ICSs for these point resources. Under section 304(l), the States' submittals are generally grouped into three lists.

The first, "long list, includes all waters which do not meet water quality standards for any conventional, nonconventional, or toxic pollutant due to any point or nonpoint source of pollution; this list must also include waters which are classified for uses which do not meet the fishable or swimmable goals of the CWA. Paragraph (A)(ii) of section 304(l) requires the "long list.

The second, "medium list, includes waters which do not meet certain State numeric water quality standards (those developed under section 303(c)(20)(B) of the CWA) for the toxic pollutants listed under section 307(a) of the CWA due to any point or nonpoint source of pollution. Paragraph (A)(i) of the section 304(l) requires the "medium list."

The third, "short list," includes waters which, due entirely or substantially to discharges from point sources, do not meet numeric or narrative water quality standards for the toxic pollutants listed under section 307(a) of the CWA. Paragraph (B) of section 304(l) requires this list.

The "short list" also includes a list of facilities and their point source discharges of section 307(a) pollutants which cause or substantially contribute to the impairment which results in the waters being listed on the "short list. The list of facilities is required by paragraph (C) of section 304(l) and is also referred to as the "C list. The States must also develop and submit to EPA and ICS for each point source on the "short list. The ICS in most cases will be a draft or issued National Pollutant Discharge Elimination System (NPDES) permit with supporting documentation. These ICSs must require the permittee to meet specific effluent limits that will assure attainment or maintenance of State water quality standards. The ICS must assure that applicable water quality standards. The ICS must assure that applicable water quality standards are achieved generally within three years after the establishment of the ICS, but no later than June 4, 1992.

The deadline for submitting lists of waters, point sources, pollutants of concern and the ICSs by each State to the EPA was February 4, 1989.

The EPA must review and approve or disapprove the lists and ICSs that the States submitted. If a State failed to submit complete lists or a specific ICS, or the EPA does not approve a list or ICS submitted by a State, then the EPA, in cooperation with the State and after opportunity for public comment, must develop the list and ICSs. The EPA can also disapprove a State's decision not to include a particular waterbody or segment on the appropriate list, or develop an ICS, based upon scientific and technical information currently available to EPA. In this instance, EPA's decision, when finalized, will constitute an addition to the lists and ICSs submitted by the State. In a number of instances identified in this notice, EPA is proposing the addition of waters and ICSs to the State lists. Once EPA makes a final determination as to the contents of these lists, following review of comments and any public hearing resulting from this notice, EPA has the authority to establish an ICS for any point source added by EPA to the list or for which the EPA disapproves a State's ICS. Until EPA acts to finally establish such an ICS, the State may act to establish an acceptable ICS in lieu of EPA's action. ICSs are generally established and enforced by incorporation into NPEDES permits as specific conditions and limitations. Any action taken by EPA in establishing an ICS must be taken in cooperation with the States where possible; any similar State action is subject to EPA's normal NPDES review pursuant to sections 304(l) and 402(d) of the CWA.

Today's notice announces the availability, by State, of the lists of waters and ICSs approved by EPA. It further identifies waters and INCSs, whether submitted to EPA by the State or omitted from the State's submission, for which the EPA disapproves the State's decision. Today's notice also provides opportunity for comment and requests for public hearings on EPA's determinations.

EPA's Approvals of the States' Decisions with Respect to Lists of Waters, Point Sources, Pollutants and ICSs

The EPA has reviewed the information submitted by the States and approves the "long and medium lists submitted by the States of Illinois,

Indiana, Michigan, Minnesota, Ohio and Wisconsin. EPA finds that the waters so listed have met the criteria for being included on the lists required by section 304(1)(1)(A) (i) and (ii). A summary of the long and medium list approval actions in terms of numbers of waters is presented as follows:

EPA APPROVALS OF "LONG AND MEDIUM LIST" WATERS

State	"Long List" Waters	"Medium List" Waters
IL	1069	105
IN	527	55
MI	256	64

EPA APPROVALS OF "LONG AND MEDIUM LIST" WATERS—Continued

State	"Long List" Waters	"Medium List" Waters
MN	1140	527
OH	805	291
WI	1124	324

Copies of the long and medium lists as submitted and approved may be viewed or obtained by contacting Mr. Noel W Kohl as identified above.

The EPA approves the decisions of the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin to list the following waters on each State's respective "short list" required by paragraph (B) of section 304(1). The EPA finds that the waters so listed have met the criteria for being included on the list required by section 304(1)(1)(B) of the CWA. EPA also approves the following point sources on the "C list" because the sources on the "C list" have met the criteria for being included on the list required by section 304(1)(1)(C). The waterbodies and point sources approved by the EPA in reviewing the States' "short list" are presented as follows:

EPA Approvals of "Short List" Waters and Point Sources

State	Waterbody name	Waterbody	Point source name
	Short list	Segment No.	C list
Illinois	Lake Michigan	4040002002	N. Chicago Refiners & Smelters.
Illinois	Waukegan Harbor	4060200-NA	Outboard Marine Corp.
Illinois	Tributary to Sugar Creek	5120111011	Marathon Oil.
Illinois	Brush Creek	7130005013	Koppers Company Inc.
Illinois	Lake Braken	7130005013	Koppers Company Inc.
Illinois	Mississippi River	7140101006	Sauget Abrtf.
Illinois	Wood River	7110009002	Olin Corp.
Indiana	Trail Creek	4040001000	Michigan City Wwtp.
Indiana	Grand Calumet River East Branch	4040001010	USX Corp.
Indiana	Grand Calumet River West Branch	4040001010	Hammond Stp.
Indiana	Grand Calumet River West Branch	4040001010	East Chicago Stp.
Indiana	Grand Calumet River East Branch	4040001010	Gary Stp.
Indiana	Indiana Harbor & Ship Canal	4040001010	Inland Steel.
Indiana	Indiana Harbor & Ship Canal	4040001010	LTV Steel.
Indiana	Mather Ditch	4050001020	Syndicate Store Fixtures.
Indiana	Teutsch Ditch	4100003002	Universal Tool.
Indiana	Cedar Creek	4100003009	Stanadyne.
Indiana	Harvester Ditch	4100004001	Phelps Dodge.
Indiana	Little River	5120101018	Roanoke Stp.
Indiana	Little Mississinewa River	5120103007	Sheller Globe Corp.
Indiana	Eel River Tributary	5120104002	Laketon Refining.
Indiana	Eel River	5120104004	United Technologies.
Indiana	Wabash River	5120105009	Logansport Wwtp.
Indiana	Walnut Creek	5120106019	Warsaw Stp.
Indiana	Prairie Creek	5120107004	Frankfort Stp.
Indiana	Wildcat Creek	5120107009	Kokomo, Wwtp.
Indiana	Wabash River	5120108-NA	Landis Gyr.
Indiana	Elliot Ditch	5120108017	ALCOA Lafayette Works.
Indiana	Wabash River	5120108018	Lafayette Stp.
Indiana	Whitlock Springs	5120110001	Mid States Steel & Wire.
Indiana	Vernon Fork	5120207024	North Vernon Stp.
Indiana	Richland Creek	5120113012	Princeton Stp.
Indiana	Wilson Ditch	5120201007	Firestone.
Indiana	Eagle Creek	5120201032	General Motors.
Indiana	Eagle Creek	5120201032	Speedway Stp.
Indiana	Eagle Creek	5120201032	Bridgeport Brass.
Indiana	Big Blue River	5120204006	Allegheny Ludlum.
Indiana	Boggs Creek	5120208015	USDN Crane Ammn. Depot.
Indiana	Bailey Branch	5120208018	GMC Central Foundry.
Indiana	Patokia River	5120209010	Jasper Stp.
Indiana	Falling Run Creek	5140101001	New Albany Stp.
Indiana	Ohio River	5140202016	Evansville East-Stp.
Indiana	Travis Ditch	7120001022	Laporte Stp.
Indiana	Travis Ditch	7120001022	Roll Coater.
Michigan	Carp Creek	4020105029	Ishpeming Wwtp.
Michigan	Menominee River	4030108014	Champion-Quinnesec Mill.
Michigan	Menominee River	4030108015	Menominee Wwtp.
Michigan	Escanaba River	4030110001	Mead Paper.
Michigan	Lake Macatawa	4050002012	BASF Pigments Div.
Michigan	Grand River	4050004005	Jackson Wwtp.
Michigan	Hayworth Creek	4050005009	Federal Mogul.
Michigan	Hayworth Creek	4050005009	St. Johns Wwtp.
Michigan	Ruddiman Creek	4060101010	Sealed Power Corp.
Michigan	Boardman River	4060105007	Traverse City Wwtp
Michigan	St. Marys River	4070001019	Sault St. Marie Wwtp.
Michigan	Tittabawasee River	4080201001	Dow Chemical Midland.
Michigan	Wolf Creek Tributary	4050006025	Hitachi Magnetics Corp.
Michigan	Flint River	4080204005	Flint Wwtp.

State	Waterbody name	Waterbody	Point source name
	Short list	Segment No.	C list
Michigan	Clinton River	4090003006	Mt. Clemens Wwtp.
Michigan	Detroit River	4090004013	Trenton Wwtp.
Michigan	Detroit River	4090004013	Detroit Wwtp.
Michigan	Willow Run Creek	4090005003	Ypsilanti Com. Utilities.
Minnesota	St. Louis Bay	4010102001	Western Lake Superior SD.
Minnesota	Mississippi River	7010206001	Koch Refinery.
Minnesota	Rainy River	9030004013	Boise Cascade.
Ohio	Hemming Ditch	411000-NA	Bechtel McLaughlin-Sand.
Ohio	Mahoning River	503010-NA	Warren Consolidate Industries.
Ohio	Sixmile Creek	4100007-NA	Ohio Decorative Products.
Ohio	Sixmile Creek	4100007-NA	Harvard Industries Inc.
Ohio	Oil Ditch	4100008-NA	Cooper Tire & Rubber.
Ohio	N. Turkey Foot Creek	4100009-NA	Wauseon Wwtp.
Ohio	Racoon Creek	4100011-NA	Whirlpool Corp.-Clyde.
Ohio	Maumee River	410009001	Toledo Bay Wiew Wwtp.
Ohio	Black River	4110001004	Elyria Wwtp.
Ohio	Black River	4110001004	Stanadyne Inc.
Ohio	Ashtabula	4110003008	Vygen Corp.
Ohio	Leslie Run Tributary	5030101-NA	Roshel Industries.
Ohio	Hocking River	5030204027	Lancaster Wwtp.
Ohio	Hurford Run	5040001-NA	Ashland Petroleum Co.
Ohio	Domer Ditch	5040001-NA	Timken Co.
Ohio	Nimishillen Creek	5040001028	J&L Specialty Products.
Ohio	Nimishillen Creek	5040001028	LTV Massillon.
Ohio	Rocky Fk. Mohican	5040002004	White Consolidated Industries.
Ohio	Rocky Fk. Mohican	5040002004	Mansfield Wwtp.
Ohio	Mill Creek	5060001032	Ray Lewis & Son Inc.
Ohio	Rockswale Ditch	5060001033	Whirlpool Corp.—Marion.
Ohio	Big Darby Creek	5060001043	Ranco—Plain City.
Ohio	Scippo Creek	5060002082	PPG Ind.—Circleville.
Ohio	Paint Creek	5060003001	Mead Paper Corp.
Ohio	Turtle Creek	5090202007	Cincinnati Milacron.
Wisconsin	Lake Michigan	4040020004	Milwaukee Msd—Shore.
Wisconsin	Lake Michigan	4040030001	Milwaukee Msd—Jones Is.
Wisconsin	Wisconsin River	7070002023	Daishowa Chemicals.
Wisconsin	Wisconsin River	7070002034	Wausau Wwtp.
Wisconsin	Wisconsin River	7070003033	Nekoosa Papers Inc.
Wisconsin	Wisconsin River	7070003033	Vulcan Materials.
Wisconsin	Wisconsin River	7070003036	Consolidated Papers Inc.
Wisconsin	Davy Creek	7090001028	Oconomowoc Electroplating.
Wisconsin	Badfish Creek	7090001057	Madison Msd.
Wisconsin	Fox River (Ill)	7120006011	Waukesha Stp.

The EPA approves the following ICSs because EPA finds that these ICSs meet all applicable statutory and regulatory requirements for ICSs.

EPA APPROVALS OF ICSS

State	Permit No. (ICS No.)	Point source name	Pollutants of concern
Illinois	IL0002755	N. Chicago Refiners & Smelters	Cu, Pb, Zn, Ni.
Illinois	IL0002267	Outboard Marine Corp	PCB.
Illinois	IL0004073	Marathon	Phenol, Cr+3, Cr+6.
Illinois	IL0035688	Koppers Co. Inc	Phenol.
Illinois	IL0000230	Olin Corp	Cu, Cr, CN, Pb, Ni, Zn, Phenol.
Indiana	IN0023060	Hammond Stp	Cu, CN.
Indiana	IN0022829	East Chicago Stp	CN.
Indiana	IN0022977	Gary Stp	CN, Phenol.
Indiana	IN0000205	LTV Steel	CN, Cd.
Indiana	IN0052400	Syndicate Store Fixtures	Cu, Cr, Ni.
Indiana	IN0000639	Universal Tool	Cr, Cu, Zn.
Indiana	IN0000442	Phelps Dodge	Cu, Phenol.
Indiana	IN0003107	Sheller Globe Corp	Cu, Ni.
Indiana	IN0001244	Laketon Refining	CN.
Indiana	IN0025453	United Technologies	Cu.
Indiana	IN0023604	Logansport Wwtp	Cd, Cu, Pb, Ni, Zn.
Indiana	IN0024805	Warsaw Wwtp	Cd, Cu, Pb, Ni, Zn.
Indiana	IN0032875	Kokomo Wwtp	Pb, Ni, CN, Cu, Cd, Zn.
Indiana	IN0001074	Landis & Gyr	Cu.
Indiana	IN0002445	Mid States Steel & Wire	Cu, Pb.
Indiana	IN0001341	Firestone	PCB.
Indiana	IN0032972	Speedway Stp	Cu.
Indiana	IN0001767	Bridgeport Brass	Cu.
Indiana	IN0045284	Allegheny Ludlum	Ni.
Indiana	IN0021539	USDN Crane Ammn. Depot	Ni, CN.

EPA APPROVALS OF ICSs—Continued

State	Permit No. (ICS No.)	Point source name	Pollutants of concern
Indiana	IN0020834	Jasper Stp	Cd, Cu, CN, Pb.
Indiana	IN0025577	Laporte Stp	Cu, CN.
Indiana	IN0028172	Roll Coater	Cu, Pb, Zn.
Michigan	MI0021369	Ishpeming Wwtp	CN, Pb.
Michigan	MI0025631	Menominee Wwtp	Cu, Hg.
Michigan	MI0023256	Jackson Wwtp	Cd, Zn.
Michigan	MI0002747	Federal Mogul	Cd.
Michigan	MI0026468	St. Johns Wwtp	Hg.
Michigan	MI0004057	Sealed Power Corp	TCE.
Michigan	MI0024058	Sault St. Marie Wwtp	Cu.
Michigan	MI0000868	Dow Chemical Midland	2,3,7,8-TCDD.
Michigan	MI0027812	Hitachi Magnetics Corp	Hg.
Michigan	MI0022926	Flint Wwtp	Cd, CN, Pb, Hg, PCB.
Michigan	MI0021164	Trenton Wwtp	Hg.
Michigan	MI0042676	Ypsilanti Community Util	Cd.
Minnesota	MN0049876	Western Lake Superior SD	Hg.
Minnesota	MN0000418	Koch Refinery	Oranics, Cr.
Minnesota	MN0001643	Boise Cascade	2,3,7,8-TCDD.
Ohio	OH0002852	Ohio Decorative Products	Cu, CN.
Ohio	OH0003301	Harvard Industries Inc	Cr.
Ohio	OH0002577	Cooper Tire & Rubber	Cu, Pb, Zn, Hg, Ag.
Ohio	OH0023400	Wauseon Wwtp	Cr, Cu, Pb, Ni, Zn.
Ohio	OH0025003	Elyna Wwtp	Cd, Cu, Cr, Ni, CN, Zn.
Ohio	OH0000426	Stanadyne Inc	Cu.
Ohio	OH0002283	Vygen Corp	Cd, Cu, Hg, Zn, Bis(2-ethyl-hexyl)phthalate, 1,2-Dichloroethane.
Ohio	OH0051489	Roshel Industries	Cr, T1, CHC13, phthalates.
Ohio	OH0026026	Lancaster Wwtp	Cu, Zn.
Ohio	OH0005657	Ashland Petroleum Co	Sb, Cd, Cr, Cu, Pb, Ni, Ag, Zn.
Ohio	OH0004219	Timken Co	Cu, Ni, Zn, Pb, Cr.
Ohio	OH0007188	J&L Specialty Products	Cu, Ni, Zn, Cr.
Ohio	OH0006939	LTV Steel Co. Bar Plant	Cd, Cu.
Ohio	OH0004600	White Consolidated Industries	Ag, CN, Pb.
OH0026328	Mansfield Wwtp	Cd, Cu, Zn, Hg, CN.	
Ohio	OH0005479	Ray Lewis & Son Inc	Cd, Cu, Ni, Ag.
Ohio	OH0004251	PPG Industries	Cr, Ni, Zn.
Ohio	OH0009911	Cincinnati Milacron	Cd, Cu, Ni.
Wisconsin	WI0024775	Milwaukee Msd—S. Shore	Cr+6, CN, Bis(2-ethyl-hexyl)phthalate.
Wisonsin	WI0024767	Milwaukee Msd—Jones Is	Cu, CN, Cr+6, Bis(2-ethyl-hexyl)phthalate.
Wisconsin	WI0003450	Daishowa Chemicals	Cu, Zn.
Wisconsin	WI0025739	Wausau Wwtp	CN, Cu, Cd, Se.
Wisconsin	WI0003565	Vulcan Materials	Cu.
Wisconsin	WI0002241	Oconomowoc Electroplating	Cd, Cu, CN, Zn.
Wisconsin	WI0024597	Madison Msd	Hg, CN, Tl.
Wisconsin	WI0029971	Waukesha Wwtp	Cd, Cu, Pb, CN, Bis(2-ethyl-hexyl)Phthalate, p-Chloro-m-cresol.

EPA's Disapprovals of the State's Decisions with Respect to Lists of Waters, Point Sources, Pollutants and ICSs

The EPA disapproves those portions of the "short list" required by paragraph (B) of section 304(l) of the CWA for the waterbodies and States indicated for the reasons given below. EPA bases this action specifically on the State's failure to include these waters on the "short list" despite available information which EPA believes would support thier additions to the list.

EPA DISAPPROVALS OF "SHORT LIST" WATERS

State	Waterbody name	Waterbody segment No.	Reason for "Short List" disapproval
Indiana	Trail Creek Tributary	4040001-NA	Failed to list waterbody for Cr from Anderson Co. Inc.
Indiana	Brown Ditch	5080003014	Failed to list waterbody for Cd, Cu, CN, Pb, Zn from Dana Corp.
Indiana	Phillips Ditch	5120105-NA	Failed to list waterbody for Cr, Cu, Zn from Wm Parker Co.
Indiana	Wabash River	5120111011	Failed to list waterbody for Ag from Hamilton Glass.
Minnesota	Mississippi River	7010206001	Failed to list waterbody for PCB from Metro Wwtp.

EPA DISAPPROVALS OF "SHORT LIST" WATERS—Continued

State	Waterbody name	Waterbody segment No.	Reason for "Short List" disapproval
Ohio	Lake Erie	41202-NA	Failed to list waterbody for Cu from North Coast Brass and Copper and CN from Elkem Metals.
Ohio	Cuyahoga	4110002001	Failed to list waterbody for Cu, Cd, Zn, Phenolics from Akron Wwtp.
Ohio	Mahoning	5030103007	Failed to list waterbody for CN, Cu, Cr+6 from Thomas Steel Strip.
Ohio	Red Run Tributary	5060001035	Failed to list waterbody for Zn, Ag, Cu, CN from Sharon Steel.
Ohio	Paint Creek	5060003001	Failed to identify 2,3,7,8-TCDD impact from Mead Paper Corp.
Wisconsin	Peshtigo River	4030105002	Failed to list waterbody for 2,3,7,8-TCDD from Peshtigo Stp and Badger Paper.
Wisconsin	Lower Fox River	4030204001	Failed to list waterbody for 2,3,7,8-TCDD from Green Bay Msd and James River Corp.
Wisconsin	Lower Fox River	4030204002	Failed to list waterbody for PCB from Fort Howard Paper.
Wisconsin	Lake Michigan	4040002002	Failed to list waterbody for Cu from Anderson Brass Co.
Wisconsin	Wisconsin River	7070002023	Failed to identify 2,3,7,8-TCDD impact from Weyerhaeuser Corp.

The EPA disapproves the following ICSs because either the State failed to submit the ICS to EPA for review or because the ICS is inconsistent with applicable regulatory and statutory requirements for developing ICSs.

EPA DISAPPROVALS OF ICSS

State	Permit No. (ICS No.)	Point source name	Reason for ICS disapproval
Illinois	IL0065195	Sauget Abrtf	Inadequate limits for Chlorobenzene, Analine.
Illinois	IN0032565	Anderson Co. Inc	Failed to submit ICS for Cr.
Indiana	IN0023752	Michigan City Wwtp	Inadequate limits for Cu,Cd,Pb,Ni,Zn.
Indiana	IN0000281	USX Corp	Failed to submit ICS for Phenols, Cr.
Indiana	IN0000940	Inland Steel	Failed to submit ICS for Pb,Zn.
Indiana	IN0000582	Stanadyne	Failed to submit ICS for Cu.
Indiana	IN0001333	Dana Corp	Failed to submit ICS for Cd, Cu, CN, Pb, Zn.
Indiana	IN0021440	Roanoke Stp	Failed to submit ICS for Cd, Cu.
Indiana	IN0049743	Wm Pfaffer Co	Failed to submit ICS for CR, Cu, Zn.
Indiana	IN0022934	Frankford Stp	Failed to submit ICS for Cu.
Indiana	IN0001210	Alcoa Lafayette	Failed to include Cu limit.
Indiana	IN0032468	Lafayette Stp	Failed to submit ICS for Pb.
Indiana	IN0025861	Hamilton Glass	Failed to submit ICS for Ag.
Indiana	IN0024392	Princeton Stp	Inadequate limits for Cu, Hg.
Indiana	IN0020451	North Vernon	Failed to submit ICS for Cu.
Indiana	IN0003573	GMC Central Foundry	Failed to submit ICS for Cu, PCB.
Indiana	IN0023884	New Albany Stp	Failed to submit ICS for Cu, Pb.
Indiana	IN0033073	Evansville East-Stp	Inadequate Limits for CN, Pb.
Michigan	MI0042170	Champion Paper Quinnesec Mill	Failed to submit ICS for 2,3,7,8-TCDD.
Michigan	MI0000027	Mead Paper	Inadequate limits for 2,3,7,8-TCDD.
Michigan	MI0000761	BASF Pigments Div	ICS fails to limit 3,3'-DCB.
Michigan	MI0023647	Mt. Clemens Wwtp	Failed to submit ICS for Cd, Cr, Hg.
Michigan	MI0022802	Detroit Wwtp	Failed to submit ICS for Cd, Cu, Pb, Hg, PCB.
Minnesota	MN0029815	Metro Wwtp	Failed to submit ICS for PCBs.
Ohio	OH0000701	Bechtel McLaughlin	Inadequate limits for Be, Hg, Se, Ag, CHC13 Ni, Se, Ag.
Ohio	OH0032727	North Coast Brass & Copper	Failed to submit ICS for Cu.
Ohio	OH0000027	Elkem Metals	Failed to submit ICS for CN.
Ohio	OH0101079	Warren Consolidated Industries	Inadequate limits for Cd, Hg, Cu, Pb, Zn, Ag.
Ohio	OH0000965	Whirlpool Corp	Inadequate limits for Sb.
Ohio	OH0027740	Toledo Bay View Wwtp	Inadequate limits for Cr, Ag, Toluene.
Ohio	OH0023833	City of Akron Wwtp	Failed to submit ICS for Cu, Cd, Zn, Phenolics.
Ohio	OH0011363	Thomas Strip Steel	Failed to submit ICS for CN, Cu, Cr+6.
Ohio	OH0007358	Whirlpool Corp	Inadequate limits for Sb, Cd, Pb, T1, Zn.
Ohio	OH0083852	Sharon Steel	Failed to submit ICS for Zn, Ag, Cu, CN.
Ohio	OH0004502	Ranco—Plain City	Inadequate limits for Ag.
Ohio	OH0004481	Mead Paper Corp	Inadequate limits for 2,3,7,8-TCDD, Thallium.
Wisconsin	WI0000663	Badger Paper Mill	Failed to submit ICS for 2,3,7,8-TCDD.

EPA DISAPPROVALS OF ICSs—Continued

State	Permit No. (ICS No.)	Point source name	Reason for ICS disapproval
Wisconsin	WI0030651	Peshtigo Stp	Failed to submit ICS for 2,3,7,8-TCDD.
Wisconsin	WI0001261	James River Corp	Failed to submit ICS for 2,3,7,8-TCDD.
Wisconsin	WI0020991	Green Bay Msd	Failed to submit ICS for 2,3,7,8-TCDD.
Wisconsin	WI0001848	Fort Howard Paper	Failed to submit ICS for PCB.
Wisconsin	WI0000299	American Brass Co	Failed to submit ICS for Cu.
Wisconsin	WI0026042	Weyerhaeuser Corp	Failed to submit ICS for 2,3,7,8-TCDD.
Wisconsin	WI0003620	Nekoosa Papers Inc	Inadequate limits for 2,3,7,8-TCDD.
Wisconsin	WI0037991	Consolidated Papers	Inadequate limits for 2,3,7,8-TCDD.

Public Comment and Requests for Public Hearing

The EPA solicits comments on its proposals set forth in this notice with regard to the lists of waters, point sources, pollutants and ICSs. Comments should address the appropriateness of listing either waters or facilities or both and the adequacy of the ICSs. To the extent possible, comments should be supported by technical or scientific information that relates specifically to the waters or facilities in question. Comments should address all issues and cover all available arguments and supporting material, and be submitted by no later than October 4, 1989 to Mr. Noel W Kohl, Chief, Ambient Monitoring Section, 5SMQA, U.S. EPA, Region V 230 S. Dearborn Street, Chicago, IL 60604. In addition, any person may make a request for a public hearing to consider these lists and ICSs. Such requests should be made in writing to Mr. Noel W Kohl prior to the above date, and should state the nature of the issues proposed to be raised in the hearing. The EPA may choose to hold one or more public hearings after review of the comments and requests. Notification of any such public hearing will be made at least 30 days prior to the scheduled hearing date.

Petitions to Add Waters and Dischargers

Section 304(1) allows any person to submit to the EPA a petition to add waters to one or more of the three lists of waters submitted by a State and/or add point sources to the "short list. Petitions are due October 4, 1989, and should be addressed to Mr. Valdas V Adamkus, Regional Administrator, Attention: Noel W Kohl, 5SMQA, U.S. EPA, Region V 230 S. Dearborn Street, Chicago, IL 60604. The petition should identify and describe the waters and dischargers in sufficient detail so that the EPA is able to determine the location of the dischargers and the boundaries of the waters subject to the petition. The petitioner must also identify the lists or lists for which the petitioner believes the water and dischargers qualify, and the petition must explain why the water satisfies the criteria for the list or lists.

EPA's Response to Comments

Following the close of the comment and petition period and after a public hearing, if such hearing is held, the Regional Administrator will issue a response to the comments and petitions that have been received. The Regional Administrator will consider all petitions and comments received and anticipates providing a response to the comments and petitions on or about January 4, 1990. This response and its availability will be announced to the public in the same manner as today's notice.

Additional Information About the EPA's Decisions of Approval and Disapproval Under Section 304(1)

The administrative record containing the EPA's documentation on its decisions on approval and disapproval is on file and may be inspected at the EPA, Region V Library, 16th Floor, 230 S. Dearborn St., Chicago, IL 60604, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except holidays. To make arrangements to examine or make copies of the administrative record, contact the person named above. Copies of the administrative record including the section 304(1) lists, ICSs and supporting documents, or portions thereof, will be made available at fifteen (15) cents per page. No fee will be charged if the total cost is under twenty-five (25) dollars.

For additional information about section 304(1), see EPA's publication of "Final Guidance for Implementation of Requirements Under section 304(1) of the CWA as Amended" (March 1988), and proposed regulations under section 304(1) published in the **Federal Register** January 12, 1989, beginning on page 1300.

Valdas V Adamkus,

Regional Administrator.

[FR Doc. 89-13352 Filed 6-2-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-828-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: May 25, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Cooke, Fannin, Harris, Kaufman, Johnson, McLennan, Montague, Nacogdoches, Parker, Smith, Rusk, and Williamson for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-13247 Filed 6-2-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

SMALL BUSINESS ADMINISTRATION

Individual and Family Grant Program

AGENCY: Federal Emergency Management Agency and Small Business Administration.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is charged with coordinating Federal assistance under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act when the President has declared a major disaster. The Small Business Administration (SBA) disaster loan program and the State-administered Individual and Family Grant (IFG) program are major sources of Federal disaster assistance.

These two programs are the principal sources of funds to repair or replace real or personal property damaged in disasters. However, persons can qualify for IFG funds only if no other assistance is available. This is interpreted as meaning that those whose needs can be met by way of the SBA loan are not eligible for IFG assistance. Prior to this time, FEMA policy required that approval of IFG assistance be based, in part, upon receipt of written documentation from the SBA that the applicant had been summarily declined for a loan from that agency.

Realizing that many persons who failed to qualify for loan assistance did so because their income was not sufficient to permit them to assume any additional debt, the SBA provided IFG program administrators with tables outlining minimum income levels necessary to establish a "reasonable assurance of ability to repay" the loan. These tables had been used as a prescreening device; persons whose income fell below these levels were directed to the SBA where they would be interviewed further to assure there was no loan repayment ability. Where this was the case, the individual would then be given a document to take to the IFG program administrators to prove they were ineligible for SBA assistance.

After several years' experience with this procedure, it became apparent that the interview process at SBA was not productive as few of these low income individuals qualified for loan assistance subsequent to the SBA interview. Therefore, in the interest of expediting the delivery of disaster assistance and relieving the burden of unnecessary questioning of the applicant, FEMA has revised its policy regarding the establishment of IFG eligibility. As of the date of this notice, State IFG program administrators need require only their own or FEMA's documentation that the applicant's income did not meet the minimums noted on an SBA-provided income table in order to determine that SBA loan assistance is not available to that applicant.

Although this requires only changes in implementation procedures and not a regulation revision, FEMA and SBA want to provide notice of the change to the public.

FOR FURTHER INFORMATION CONTACT: Glenn Carcelon, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616 or Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, Washington, DC 20416, (202) 653-6879.

Date: May 23, 1989.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

Bernard Kulik,

Deputy Associate Administrator, Disaster Assistance, Small Business Administration.

[FR Doc. 89-13245 Filed 6-2-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-1479]

Thrift Financial Report

Date: May 18, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a request for a revision of an information collection entitled "Thrift Financial Report, to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information collected will enable the Bank Board to monitor the on-going financial condition of insured institutions and to make initial determinations with respect to their compliance with regulatory requirements. We estimate it will take approximately 257 hours per year per respondent to complete the information collection.

DATES: Comments on the information collection request are welcome and should be received on or before June 20, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW Washington, DC 20552. Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: Blake Elliott, Office of Regulatory Activities, (202) 785-5466, Federal Home Loan Bank Board, 1700 G Street, NW Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F Ghizzoni,

Assistant Secretary.

[FR Doc. 89-13203 Filed 6-2-89; 8:45 am]

BILLING CODE 6720-01-M

Lincoln Savings and Loan Association, Los Angeles, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), as amended, the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Lincoln Savings and Loan Association, Los Angeles, California, on April 14, 1989.

Dated: May 30, 1989.

By the Federal Home Loan Bank Board.

John F Ghizzoni,

Assistant Secretary.

[FR Doc. 89-13205 Filed 6-2-89; 8:45 am]

BILLING CODE 6720-01-M

[No. 89-1516]

April Calculation of the Median Return on Assets of All Insured Institutions by the Federal Savings and Loan Insurance Corp.

Date: May 22, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is hereby publishing its April calculation of the 1988 median return on assets of all institutions the accounts of which are insured by the FSLIC ("insured institutions"). This April calculation and notice are required by the regulatory capital regulation ("capital regulation") adopted on August 15, 1986, Board Res. No. 86-857 12 CFR 563.13(b)(2)(iv), as amended by Board Res. No. 88-222, adopted on March 30, 1988, 53 FR 11243 (April 6, 1988) ("amended April calculation provision").

EFFECTIVE DATE: May 22, 1989.

FOR FURTHER INFORMATION CONTACT: Donald J. Bisenius, Director, Financial Analysis Division, Office of Policy and Economic Research, (202) 906-6759, Federal Home Loan Bank Board, 1700 G Street, NW Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The amended April calculation provision of the capital regulation requires the Board to compute and publish in April of each year the median return on assets of all insured institutions for the prior calendar year, as well as the revised liability factors for institutions with initial liability factors of 3 percent ("standard group") or less than 3 percent ("lower group"). In general, an insured institution's liability factor is the percentage rate applied at the end of each quarter to its January 1, 1987 total liabilities to determine the capital required for such liabilities.

The median return on assets earned by all insured institutions during calendar year 1988 was 0.41 percent. Accordingly, insured institutions in the standard group must increase their liability factors by 75 percent of this rate (0.31 percentage point). The regulation requires one-half of this increase (0.16 percentage point after rounding) on July 1, 1989, and the other half (0.15 percentage point), on January 1, 1990. The standard group's liability factor will be 3.60 percent on July 1, 1989 and 3.75 on January 1, 1990.

Institutions in the lower group must increase their liability factors by the greater of: (1) 90 percent of 0.41 of one percent (0.37 percentage point) or (2) 90 percent of the institution s own return on assets. Accordingly, lower group institutions that had a return on assets in 1988 of less than or equal to 0.41 percent would increase their liability factors by 0.19 percentage points on July 1, 1989 and 0.18 percentage points on January 1, 1990, provided that this does not bring a firm's requirement above that for the standard group.

By the Federal Home Loan Bank Board.

John F Ghizzoni,

Assistant Secretary.

[FR Doc. 89-13204 Filed 6-2-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 30, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, without revision, of the following report:

Report title: Report of Brokers Carrying Margin Accounts.

Agency form number: FR 2240.

OMB Docket number: 7100-0001.

Frequency: Annually.

Reporters: Brokers and dealers.

Annual reporting hours: 351.

Estimated average hours per response: 2.7

Number of respondents: 130.

Small businesses are affected.

General Description of Report

This information collection is mandatory [15 U.S.C. 78q(g)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report is used to insure compliance of brokers and dealers with the Federal Reserve Margin Regulations and Security Credit as authorized by section 17 of the Securities and Exchange Act of 1934. This report collects certain balance sheet information from securities brokers and dealers carrying margin accounts and is used by the Federal Reserve to regulate securities credit extended by brokers.

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

1. *Report title:* Monthly Survey of Selected Deposits and the Annual Supplement to the Survey of Selected Deposits.

Agency form number: FR 2042 and FR 2042a.

OMB Docket number: 7100-0066.

Frequency: Monthly and annually.

Reporters: Commercial banks and FDIC-insured savings banks.

Annual reporting hours: 22943.

Estimated average hours per response: .9 to 3.25.

Number of respondents: 575.

Small businesses are affected.

General Description of Report

This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This survey collects data monthly on amounts and offering rates paid on savings and retail time deposits, NOW accounts and MMDAs from a stratified sample of commercial and FDIC-insured savings banks. This survey also collects information annually on the fee and rate structure of NOW accounts and personal MMDAs; and collects data annually on the number of accounts. The information collected is used for the construction of the monetary aggregates and analysis of current monetary developments.

2. *Report title:* Survey of Terms of Bank Lending.

Agency form number: FR 2028A, A-s and B.

OMB Docket number: 7100-0061.

Frequency: Quarterly.

Reporters: Commercial banks.

Annual reporting hours: 5896.

Estimated average hours per response: .1 to 3.5.

Number of respondents: 340.

Small businesses are affected.

General Description of Report

This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This survey collects information on the price and certain non-price terms of loans made to businesses and farmers by commercial banks. The information is used for analysis of developments in bank loan markets.

Board of Governors of the Federal Reserve System, May 30, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13225 Filed 6-2-89; 8:45 am]

BILLING CODE 6210-01-M

First Union Corp. Charlotte, NC; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent, Conduct Private Placements as Agent of All Types of Securities and Engage in Other Securities Related Activities

First Union Corporation, Charlotte, North Carolina ("First Union"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, First Union Securities, Inc., Charlotte, North Carolina ("Company"), in the activities of underwriting and dealing in, to a limited extent, commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but are not eligible for banks to underwrite and deal in.

First Union has also applied to: (1) Underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("bank-eligible securities") pursuant to § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)); (2) conduct foreign exchange advisory activities pursuant to 12 C.F.R. 225.25(b)(17); (3) act as a futures commission merchant pursuant to 12 CFR 225.25(b)(18); (4) purchase and sell silver and gold for the account of customers within the limitations contained in *United Virginia Bankshares, Inc.*, 73 Federal Reserve Bulletin 309 (1987); and (5) provide financial advisory services as approved in *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987) and *Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988). Company would conduct the proposed activities on a nationwide basis.

In addition, First Union proposes to provide investment advisory and brokerage activities separately and on a combined basis subject to all of the conditions of 12 CFR 225.25 (b)(4), (b)(15), and *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988), except that Company would broker and recommend to institutional customers securities in which Company has a principal's position as permitted in *Bankers Trust New York Corporation*, 74 Federal Reserve Bulletin 695 (1988). First Union has also proposed that Company be permitted to broker and recommend to institutional customers shares of investment companies for which First Union or its affiliates serve as investment advisor. First Union contends that any possible adverse effects stemming from conflicts of interest would be mitigated by the institutional nature of Company's customers. Moreover, in First Union's view, the disclosure and other requirements set forth in the *Bankers Trust* Order as well as federal securities law and common law fiduciary requirements would further mitigate the potential for any adverse effects.

First Union has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation, and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987).

First Union also seeks independent approval to privately place all types of securities as a separate activity from Company's underwriting and dealing in ineligible securities. The Board has previously authorized a bank holding company subsidiary to privately place third-party commercial paper as agent subject to certain limitations. *Bank of Montreal*, 74 Federal Reserve Bulletin 500 (1988). First Union has proposed to engage in the placement activity subject to the limitations contained in *Bank of Montreal*.

The Board has not previously determined that the proposed placement activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto. First Union maintains that the proposed activities are closely related to banking because banks are currently active participants in the private placement market.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. First Union contends that permitting bank holding companies to engage in the proposed activities would result in increased competition, gains in efficiency, and maintenance of the competitiveness of U.S. banking organizations.

First Union contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as First Union National Bank of North Carolina, with a firm that is "engaged principally" in the "underwriting, public sale or distribution of securities. With regard to the proposed ineligible securities underwriting and dealing activity, First Union states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board. First Union contends that the proposed placement activities do not raise an issue under section 20, relying on *Securities Industry Ass'n v. Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct 3228 (1987).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 30, 1989.

Board of Governors of the Federal Reserve System, May 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13224 Filed 6-2-89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Proposed Framework for Establishing Federal Government Accounting Standards

AGENCY: General Accounting Office.

ACTION: Public notice.

SUMMARY: The Comptroller General proposes to establish a new process by which he will prescribe accounting principles, standards and requirements for federal executive agencies. The Comptroller General invites interested parties to review and comment on his proposed process.

DATE: Interested parties should provide their comments by July 15, 1989.

ADDRESS: Interested parties may obtain copies of the proposed process by writing the Director, Accounting Principles and Standards, Accounting and Financial Management Division, General Accounting Office, Room 6023, 441 G Street, NW Washington, DC 20548. The Director, also, will receive written comments from interested parties.

FOR FURTHER INFORMATION CONTACT: Ronald Young, Director, Accounting Principles and Standards, Accounting and Financial Management Division, (202) 275-9578.

SUPPLEMENTARY INFORMATION: The Budget and Accounting Procedures Act of 1950, as amended, authorizes the Comptroller General to prescribe accounting principles, standards and requirements for federal executive agencies. The Comptroller General proposes to establish a new procedure for prescribing such principles, standards and requirements. The new process will provide interested and affected parties an opportunity to participate in the process.

The Comptroller General invites all interested parties to review and comment on the proposed procedure. An exposure draft, entitled "Proposed Framework for Establishing Federal Government Accounting Standards, GAO/AFMD-89-56, May 1989, may be obtained by writing or phoning the Director, Accounting Principles and Standards, Accounting and Financial Management Division. The Comptroller General will consider and evaluate all written comments received by the Director postmarked or hand delivered on or before July 15, 1989.

Brian P Crowley,

Acting Assistant Comptroller General, Accounting and Financial Management.

[FR Doc. 89-13210 Filed 6-2-89; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notices.

SUMMARY: Public notice was given in the **Federal Register** on May 15, 1989, Volume 54, No. 92, on page 20922 that the Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee would meet on June 1-2. This meeting has been cancelled.

Also, in this same **Federal Register** issue, page 20923, it was announced that the Epidemiology Research Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH, would meet at the Key Bridge Marriott, Arlington, VA. This meeting place has been changed to the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: May 30, 1989.

[FR Doc. 89-13177 Filed 6-2-89; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

[OIS-005-N]

Quarterly Listing of Program Issuances

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, interpretative rules, and statements of policy that were published during January, February and March 1989 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our issuances in the **Federal Register** every three months.

FOR FURTHER INFORMATION CONTACT:
Allen Savadkin (301) 966-5265. (For Issuance Information Only)
Matt Plonski (301) 966-4662 (For All Other Information)

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 33 million Medicare beneficiaries. Administration of the program involves effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the program efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** no less frequently than every three months a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability. This is the fifth listing of issuances. As in prior notices, although both substantive and interpretive regulations published in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements we are including regulations (proposed and final) published.

A. How to Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, or regulations published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review Table I of our first three notices (53 FR 21731, 53 FR 36892, and 53 FR 50579), and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice (53 FR 21736). We have divided this current listing into three tables.

Table I describes where interested individuals can get an extensive description of all previously published HCFA manuals and memoranda. Also, Table I gives a brief description of HCFA Rulings as an issuance.

Table II of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and a brief statement of its subject matter. The subject matter in a transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Table III lists all Medicare and Medicaid regulations and general notices published in the **Federal Register** during this period. For each item, we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changes.

B. How to Obtain Listed Material

Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4630.

In addition, individual manual transmittals listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publications they sell. Program Memoranda will soon be available for sale through NTIS. (See subsection C.)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register.** Interested individuals may purchase individual copies or may subscribe to the **Federal Register** by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 783-3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA regional office or review them at the nearest regional depository library.

C. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the closest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Table II, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual Part 3—Claims Process (HCFA-Pub. 13-3) transmittal containing "Covered Inpatient Hospital Services" and "Outpatient Observation Services" use the Superintendent of Documents number HE 22.8/6 and the HCFA transmittal number 1416.

D. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact person. Individuals are expected to procure copies or arrange to review them as noted above.

Questions concerning items in Table II may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207· Telephone (301) 966-5265.

Questions concerning all other information in Tables I or III may be addressed to Matt Plonski, Regulations Staff, Health Care Financing Administration, Room 132, East High Rise, 6325 Security Blvd., Baltimore, MD 21207 Telephone (301) 966-4662.

Table I—Description of Manuals, Memoranda and HCFA Rulings

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21731 and supplemented at 53 FR 36892 and 53 FR 50579. An HCFA Ruling was issued January 26, 1989 and a description of this issuance follows.

HCFA Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous statutory or regulatory provisions relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, and related matters.

HCFA Rulings are binding on all HCFA components, the Provider Reimbursement Review Board and Administrative Law Judges, who hear Medicare appeals. They are distributed to HCFA components, intermediaries, carriers, staff of the DHHS Office of the General Counsel, and to the Social Security Administration's Administrative Law Judges. Copies also are sent to the 50 regional Federal Depository Libraries. Due to the small number of HCFA Rulings, they are not available by subscription.

Table II—Medicare Manual Instructions, January-March 1989

Trans. No.	Manual/Subject/Publication No.
	Intermediary Manual
	Part 2—Audits, Reimbursement Program Administration (HCFA-Pub. 13-2) (Superintendent of Documents No. HE 22.8/6.2)
367	Provider-Based HHA and Provider-Based Hospice Transfer Requirements
	Regional Intermediary Delineation of Responsibility
	Audit Intermediary Delineation of Responsibility
	Data Exchange Requirements
	Time Period for the Exchange of Operational Data
	Responsible Party/Function and Time Requirements
	Media of Exchange
	Intermediary Manual
	Part 3—Claims Process (HCFA-Pub. 13-3) (Superintendent of Documents No. HE 22.8/6)
1416	Covered Inpatient Hospital Services, Outpatient Observation Services
1417	Billing for Durable Medical Equipment (DME) and Orthotic/Prosthetic Devices
1418	Provider's Right to Appeal Initial Determination, Beneficiary Representation by Provider
1419	Claims Processing Timeliness
IM-89-1	Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services
IM-89-2	New Part A Provisions Under Catastrophic Insurance
	Medicare Carriers Manual
	Part 3—Claims Process (HCFA-Pub. 14-3) (Superintendent of Documents No. HE 22.8/7)
1285	Incentive Payments to Physicians for Services Rendered in Health Manpower Shortage Area
1286	Capped Rental Items 15-Month Ceiling

Trans. No.	Manual/Subject/Publication No.
1287	Payment for Services Furnished by Qualified Anesthetists
	Conditions for Payment of Charges—Anesthesiology Services
	Payment for Physician Anesthesia Services
	Determining Reasonable Charges for Medically Directed Anesthesia Services
1288	Explanatory and Denial Messages
	Monitoring Potential Violation of Laboratory Assignment
1289	Processing of Claims for the Services of Certified Registered Nurse Anesthetists
	Questionable Business Arrangements
1290	Prepayment Review Personnel and Procedures
1291	Glossary of Terms
	Reporting of Inquiries and other Actions on the Carrier Appeal Report
	Elements of a Review
	Combining Claims to Meet the $100 Limitation
	On the Record Decision
	Reopening and Revision of Claims Determinations and Decisions
	Budgeting Allocation and Workload Reporting
	Development of Appeals Definitions
1292	Fraud and Abuse
1293	Disposition Codes
1294	Special Travel Allowance for Clinical Diagnostic Laboratory Services
1295	Coordination of Part A Denials from Intermediaries (A/B) Link
	Payment for Physicians' Services Furnished to Dialysis Inpatients
1296	Presentation of the Data on the EOMB Form, Illustration D
	Statements for Unassigned Claims
	Conditions for Data Area I of the EOMB
	Conditions for Data Area IV of the EOMB
	Prohibition Against Billing for Unassigned Physician Services Which Are Determined to be Not Reasonable and Necessary
1297	Use of Relative Value Scale and Conversion Factors for Reasonable Charge Gap-filling
	Determining Fee Schedule Reimbursement for Radiology Services Rendered or Supervised by Radiologists
	Program Memorandum Intermediaries (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6-5)
A-89-1	Direct Medicare Billing by Certified Registered Nurse Anesthetists (CRNAs)
A-89-2	Extension of Due Date for Filing Provider Cost Reports on Form HCFA-2552-85
	Program Memorandum Carriers (HCFA-Pub. 60B) (Superintendent of Documents No. HE 22.8/6-5)
B-89-1	Carrier Quality Assurance System (CQAS) Implementation Schedule
B-89-2	Collection and Submission of Data for the Physician Identification Effort
B-89-3	Implementation of Carrier Manual Transmittal No. 1237 (Payment for Home Dialysis Supplies and Equipment)
B-89-4	Notice of New Interest Rate Applicable on Clean Claims
B-89-5	Counting Physicians, Limited License Practitioners, and Suppliers Who Have Elected to Participate in the Medicare Program Effective January 1, 1989
	Program Memorandum Intermediaries/Carriers (HCFA-Pub. 60 A/B) (Superintendent of Documents No. HE 22.8/6-5)
AB-88-14	HMOs Terminating Their Medicare Contracts
AB-89-1	HMO Directory
	State Operations Manual Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)
217	SNFs Which Perform Their Own Diagnostic Services
	Interpretive Guidelines—Hospitals
	Interpretive Guidelines—Home Health Agencies
	Interpretive Guidelines—Independent Laboratories
218	ESRD Facility Survey Report Crucial Data Extract (Form HCFA-3427E)
	End Stage Renal Disease Facility Survey Report (Form HCFA-3427A)
	Survey Procedures for End Stage Renal Disease Facilities
219	Criteria for Psychiatric and Rehabilitation Units
220	Identifying Eligible Providers and Suppliers
	Establishing Separate Cost Entities in Multiple Component Hospitals
	Distinct Part Skilled Nursing Facilities
	Conducting Initial Surveys and Scheduled Resurveys
	Conducting Unscheduled Surveys
	Exit Conference
	Limitations on Technical Assistance Afforded by Surveyors
	Basis for Terminating Provider Participation-Citations and Discussion
	Denial of Payments in Lieu of Termination of Long-Term Care Facility (Medicare and Medicaid)
	Termination Procedures-Noncompliance With One or More Conditions of Participation or Coverage and Cited Deficiencies Limit Capacity of Provider/Supplier to Furnish Adequate Level or Quality of Care-Excluding SNFs
	Procedures for Terminating SNFs and Denying Payments for New Admissions
	Change of Ownership of Currently Participating Provider
	Model Letter Notifying Skilled Nursing Facility of Noncompliance
	Exceptings to State Agency Certification
	Prioritizing Survey Workload
	Ascertaining Compliance with Civil Rights Requirement
	Readmission to the Medicare or Medicaid Program After Termination
	Interviewing Key Personnel
	Summary of Certification Actions Performed After Survey
	Statement of Deficiencies and Plan of Correction
	Evaluation of Compliance
	Adverse Actions-General
	Initial Denials of Medicare Provider/Supplier Requests for Program Participation
	Termination Procedures-Immediate and Serious Threat to Patient Health and Safety (Medicare)
	Change in Size or Location of Distinct Part Skilled Nursing Facility
	Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
558	Billing for Durable Medical Equipment (DME) and Orthotic/Prosthetic Devices
559	Covered Inpatient Hospital Services
	Outpatient Observation Services
	Health Care Associated with Pregnancy
	Outpatient Defined
560	Claims Processing Timeliness
IM-89-1	Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services
IM-89-2	Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services (This instruction corrects IM-89-1.)
	Christian Science Sanatorium Hospital Manual Supplement (HCFA-Pub. 32) (Superintendent of Documents No. HE 22.8/2.2)
23	•Claims Processing Timeliness
	Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)
219	Billing for Durable Medical Equipment (DME) and Orthotic/Prosthetic Devices
220	HHA's Right to Appeal Initial Determination Under the Limitation of Liability Provision
	Beneficiary Representation by Home Health Agency
221	Claims Processing Timeliness
	Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)
276	Billing for Durable Medical Equipment (DME) and Orthotic/Prosthetic Devices
277	Claims Processing Timeliness
	Rural Health Clinic Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)

Trans No.	Manual/Subject/Publication Number
33	Claims Processing Timeliness
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22:8/13)
338	Claims Processing Timeliness
	Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.8/18)
21	Claims Processing Timeliness
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)
84	Billing for durable Medical Equipment (DME) and Orthotic/Prosthetic Devices
85	Claims Processing Timeliness
	Provider Reimbursement Manual Part II Provider Cost Reporting Forms and Instructions (General) (HCFA-Pub. 15IIS) (Superintendent of Documents No. HE 22.8/4)
10	•Reclassification and Adjustment of Trial Balance of Expenses
	Computation of Ratio of Cost or Charges
	Cost Apportionment
	Apportionment of Inpatient Routine Service Pass Through Costs
	Apportionment of Inpatient Ancillary Service Pass Through Costs
	Apportionment of Medical and Other Health Services Costs
	Apportionment of Medicare Share of Risk Portion of Premium and Directly Assigned Malpractice Costs
	Computation of Hospital-Based Skilled Nursing Facility Adjusted Cost
	Calculation of Medicare Settlement
	Inpatient Hospital Services Under PPS
	Outpatient Ambulatory Surgery
	Outpatient Radiology Services
	Other Outpatient Diagnostic Procedures
	Apportionment of Cost for the Services of Teaching Physicians
	Calculation of Reimbursement Settlement—Swing Beds
	Calculation of Reimbursement Settlement
	Medicare Part A Services—Cost Reimbursement
	All Other Health Services
	Computation of Recovery of Unreimbursed Cost
	Balance Sheet for Computation of Return of Equity Capital of Proprietary Providers
	Computation of Difference Between Total Interim Payments and Net Cost of Covered Services
	Apportionment of Allowable Return of Equity Capital of Proprietary Providers
	Apportionment of Allowable Return on Equity Capital
	Provider Reimbursement Manual Part II Provider Cost Reporting Forms and Instructions (General) (HCFA-Pub. 15IIV) (Superintendent of Documents No. HE 22.8/4)
1	Principles
	HCFA Rulings (HCFA-Pub. 10009)
HCFAR 89-1	This ruling establishes, effective January 26, 1989, that two recent Court decisions, one by the U.S. Supreme Court and the other by the United States Court of Appeals for the District of Columbia Circuit, control and, therefore, render moot for lack of an actual case or controversy various claims and appeals challenging certain Medicare reimbursement regulations that are now pending before fiscal intermediaries, the Provider Reimbursement Review Board, HCFA, and the Federal courts. It also explains how HCFA and its fiscal intermediaries will make payment in pending administrative and judicial appeals that are controlled by these two Court decisions. The regulations in question concern the wage index component of the 1981 cost limits and the retroactive 1984 Medicare wage index rule, in addition to the 1979 and 1986 rules on malpractice costs for cost reporting periods beginning before May 1, 1986. The regulations dealing with the hospital-specific rate under the Prospective Payment System is also affected in that all four transition period payments will be adjusted to refect additional base period costs.

Table III.—Regulations and Notices Published, January—March, 1989

Publication date/cite	42 CFR Part	Title
		Final Rules
01/27/89 (54 FR 4023)	409, 410, 416, 421, 424, 441, 489	Miscellaneous Medicare and Medicaid Amendments.
02/02/89 (51 FR 5316)	405, 442, 447 483, 488, 489, 498	Medicare and Medicaid Program; Requirements for Long Term Care Facilities (Correction was published on 02/27/89 (54 FR 8261)).
02/03/89 (54 FR 5452)	433	Medicaid Program; Refunding of Federal Share of Overpayments Made to Medicare Providers (Correction was published on 02/28/89 (54 FR 8439)).
02/06/89 (54 FR 5619)	405	Medicare Program Payment for Kidneys Sent to Foreign Countries or Transplanted in Patients Other Than Medicare Beneficiaries.
03/02/89 (54 FR 8738)	433, 435	Medicare Program; Targeting Information for Income and Eligibility Verification Systems
03/02/89 (54 FR 8994)	405	Medicare Program; Fee Schedules for Radiologist Services (Correction was published on 03/31/89 (54 FR 13294)).
		Proposed Rules
01/18/89 (54 FR 1956)	405, 424, 462, 466, 473, 477 489	Medicare and Medicaid Programs; Denial of Payment for Substandard Quality Care and Review of Beneficiary Complaints.
01/26/89 (54 FR 3794)	405	Medicare Program; Uniform Relative Value Guide for Anesthesia Services Furnished by Physicians.
01/26/89 (54 FR 3803)	405, 410, 412, 413, 482	Medicare Program; Fee Schedules for the Services of Certified Registered Nurse Anesthetists.
01/26/89 (54 FR 3818)	413	Medicare Program; Payment for Outpatient Surgery at Eye and Ear Specialty Hospitals.
01/30/89 (54 FR 4302)	400, 405	Medicare Program Criteria and Procedures for Making Medical Services Coverage Decisions that Relate to Health Care Technology.
02/07/89 (54 FR 5946)	405, 415	Medicare Program; Payment for Physician Services Furnished in Teaching Settings; Payment to Providers for Compensation Paid to Physicians Who Furnish Services to Providers; and Payment for Consultative Pathology Services Furnished to Patients in Providers.

Publication date/cite	42 CFR Part	Title
02/23/89 (54 FR 7798)	431, 433, 435, 436, 440, 447	Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes Under OBRA' 87, COBRA, and TEFRA.
		Notices
01/03/89 (54 FR 67)		Medicare Program; Meeting of the Advisory Committee on Home Health Claims.
01/12/89 (54 FR 1244)		Medicare Program; Inherent Reasonableness for Home Dialysis Supplies and Equipment.
01/25/89 (54 FR 3685)		Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1988 (Corrects notice published 10/18/88).
02/01/89 (54 FR 5142)		Medicare and Medicaid Programs; Health Care Financing Research and Demonstration; Availability of Funds for Cooperative Agreements and Grants.
02/07/89 (54 FR 6032)		Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s).
03/01/89 (54 FR 8599)		Medicare Program; Peer Review Organizations: Revised Scopes of work for Maryland; New Jersey; The Virgin Islands; and Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.
03/17/89 (54 FR 11293)		Medicare and Medicaid Program; ICD-9-CM Coordination and Maintenance Committee Meeting.
03/17/89 (54 FR 11361)		Medicare Program; Meeting of the Supplemental Health Insurance Panel.
03/23/89 (54 FR 12017)	Quarterly Listing of Program Issuances.	
03/30/89 (54 FR 13116)		Medicare Program; Data Users Conference Notification.

(Catalog of Federal Domestic Assistance Program No. 13.773, Hospital Insurance; and Program No. 13.774, Medicare-Supplement Medical Insurance Program)

Dated: May 11, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-13183 Filed 6-2-89; 8:45 am]

BILLING CODE 4120-01-M

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Arizona Health Care Cost Containment and Long Term Care Systems Demonstration, HHS/HCFA/ORD No. 09-70-0045. We have provided background information about the proposed system in the "Supplementary Information section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice.

DATES: HCFA filed a New System Report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 1, 1989. The new system of records will become effective on or before August 4, 1989, unless HCFA receives comments which would necessitate alterations to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G-M-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207 Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: William L. England, Ph.D., Division of Health Systems and Special Studies, Office of Research and Demonstrations, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207 telephone (301) 966-6630.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records for data collected under the Arizona Health Care Cost Containment System (AHCCCS) demonstration project, which includes both acute care and the Arizona Long Term Care System (ALTCS). (Both programs will be referred to as the AHCCCS program.) The AHCCCS program is conducted under the authority of Section 1115 of the Social Security Act. Section 1115 gives the Secretary authority to waive certain requirements of Title XIX (Medicaid) for demonstration projects. The purpose of the proposed system of records is to acquire and maintain data necessary to evaluate the AHCCCS project. The AHCCCS project began in 1982 and in November, 1988 was granted a 5 year annually renewable extension through 1993.

The AHCCCS concept involves payment of a capitated rate for acute and long term care for indigent persons in Arizona, in lieu of a traditional Medicaid fee-for-service system. Because the AHCCCS program is capitated, Arizona does not receive claims data directly from Medicaid billings generated by the program, as is the case with traditional fee-for-service programs. The proposed system of records will include encounter data collected by AHCCCS provider organizations, and beneficiary surveys conducted by the evaluator contracted by HCFA to evaluate the AHCCCS program.

One objective of the AHCCCS demonstration project is preparation of a study comparing the AHCCCS system with a traditional fee-for-service Medicaid system. In order to fulfill this objective and complete the tasks of this project, HCFA and the evaluation contractor must have individually-identified records. We are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act. We do not anticipate that establishment of the proposed system of records will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose individually identifiable information without the consent of the individual under an exception for "routine uses" Under the "routine uses" exception, disclosure is permitted for purposes that are compatible with the purpose for which HCFA collected the information. The proposed routine uses of the proposed system meet the compatibility criteria because the information in the system is collected for evaluating the

AHCCCS program, a demonstration program of the Federal Government. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

In addition to the above, we are also changing the Retention and Disposal Section in the "Evaluation of Medicare Competition Demonstrations, from an expiration date of December 31, 1988, to an expiration date of December 31, 1993. This system, No. 09-70-0029, was last published at 48 FR 56645; December 22, 1983. This extension is needed to allow the data gathered in the evaluation of the demonstrations to be used in conjunction with another system of records, the "Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) Program" HHS/HCFA/ORD, No. 09-70-0038, last published at 53 FR 182; January 5, 1988.

Dated: May 26, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

09-70-0045

SYSTEM NAME:

Evaluation of the Arizona Health Care Cost Containment and Long Term Care Systems Demonstration.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Contact system manager for location of contractor. See "System Manager(s) and Address" for system manager location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons residing in Arizona who qualify for medical assistance under the Aid to Families with Dependent Children (AFDC), or the Supplemental Security Income (SSI) programs, and a sample of persons in these programs in another state(s) chosen for comparison with Arizona.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will contain information taken from the preadmission screening instrument, including beneficiary name, address, age, social security and Medicare numbers, demographic data, social worker assessment, available social supports and services, medical conditions, history and treatments, and a cost-effectiveness analysis of proposed treatment. The system will also include information on past encounters with AHCCCS facilities, visit types (inpatient or outpatient), the type of facility visited, and the nature of the health resources utilized. During this project, approval for a beneficiary survey may be requested, in accordance with the Paperwork Reduction Act and 5 CFR Part 1320. Data from such a survey would be included in the proposed system of records. In additon, data from a previous beneficiary survey approved by the Office of Management and Budget (OMB), "Evaluation of Arizona Health Care Cost Containment System" HCFA-386, OMB Number 0938-0281, may be included in the proposed system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1115 Waiver authority of Title XIX (Medicaid) requirements under which the AHCCCS program is operated.

PURPOSE OF THE SYSTEM:

The primary objective of the AHCCCS demonstration is to assess the merits of providing medical care to indigent persons on a capitated basis, compared to a traditional fee-for-service system. This system of records will be used to study and evaluate the performance of the AHCCCS demonstration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

Disclosure may be made:

1. To contractor(s) for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in the system or for developing, modifying, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance of an ADP or telecommunications system containing or supporting records in the system.

2. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purposes for which the records were collected.

4. To an individual or organization for research, demonstration, evaluation, or epidemiological study related to the prevention of disease or disability, the restoration or maintenance of health, or the efficacy or efficiency of HCFA programs if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained, including such limitations as may be imposed or provided under the Privayc Act;

b. Determines that the purpose for which the proposed use is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in a format that identifies individuals;

(2) Is of sufficient importance to warrant the effect on or risk to the privacy or the individual by such limited additonal exposure that unauthorized disclosure of the record might bring; and

(3) There is a reasonable probability that the objective of the use will be accomplished;

c. Requires the recipient of the information to:

(1) Establish appropirate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information; and

(3) Makes no further use of the record except:

(a) For use in emergency circumstances affecting the health or safety of any individual following written authorization of HCFA;

(b) For disclosure to a person, identified in advance by HCFA, for the purpose of conducting an audit of the research project, providing information which would identify research subjects is destroyed by the person authorized to conduct the audit at the earliest

opportunity consistent with the purpose of the audit; or

(c) when further approved by HCFA.

d. Secures a written, legally binding statement from the recipient of the information attesting that the recipient understands the provisions of paragraph 4(c) and all terms and conditions of the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name, health insurance claim, or social security number.

SAFEGUARDS:

Employees who maintain records in this system will be instructed to grant access only to authorized users. Data stored in computers will be accessed through the use of passwords, keywords, numbers, or some combination thereof known only to the authorized personnel. These passwords, keywords or numbers will be changed as needed.

Contractors who maintain records in this system will be instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. (See title and business address of responsible agency official under "System Manager(s) and Address .) Privacy Act requirements will be specifically included in contracts related to this system. The project officer and contract officer will oversee compliance with these requirements. The particular safeguards implemented will be developed in accordance with the HHS Information Resource Manual (IRM), Part 6, "Systems Security Policies" (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers will be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers by December 2003, ten years after project completion. Hardcopy records will also be destroyed by that time.

SYSTEM MANAGER(S) AND ADDRESS:

The responsible agency official (System Manager) is the Director, Office of Research and Demonstrations. The address is the Health Care Financing Administration, Room 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above, specifying name, address, and health insurance claim or social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting the record (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Information contained in these records will be obtained from encounter records provided by the AHCCCS administrator, from AHCCCS beneficiary surveys conducted by HCFA's evaluation contractor, and from existing HCFA Medicare record systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 13226 Filed 6-2-89; 8:45 am]

BILLING CODE 4120-03

National Institutes of Health

Meeting; National Cancer Institute

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 19-20, 1989, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on June 19 from 9 a.m. to 10 a.m. to discuss administrative matters. 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.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 19 from 10 a.m. to recess; and on June 20 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7030) will furnish substantive program information.

Dated: May 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13178 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; National Advisory Council for Nursing Research; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Steering Committee for the National Nursing Research Agenda (NNRA), National Advisory Council for Nursing Research, National Center for Nursing Research, June 26, 1989, from 6:30 p.m. to 9:00 p.m. at the Hyatt Regency Hotel, Bethesda, MD. The specific meeting room will be noted on the reader board in the hotel lobby.

This meeting will be open to the public. The agenda will include discussion of issues concerning the National Nursing Research Agenda.

Attendance by the public will be limited to space available.

Dr. Doris Bloch, Executive Secretary, Steering Committee, NNRA, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5B23, Bethesda, Maryland 20892, (301) 496-0207 will provide a summary of the meeting, roster of steering committee members, and substantive program information upon request.

Dated: May 25, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13179 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; National Advisory Council for Nursing Research; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, June 27-28, 1989, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on June 27 from 9 a.m. to 2 30 p.m. and on June 28 from approximately 10:00 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, report of the meeting of the Advisory Committee to the Director, NIH, update on the National Nursing Research Agenda, report on the Nursing Task Force on Nursing Research, and a review of the Acute and Chronic Illness Branch.

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.Code and Section 10(d)) of Pub. L. 92-463, the meeting will be closed to the public on June 27 from 2:30 p.m. to recess and on June 28 from 8:30 a.m. to completion of 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.

Mrs. Ruth K. Aladj, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5B23, Bethesda, Maryland 20892, (301) 496-0207 will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: May 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13180 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; National Deafness Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Deafness Advisory Board, on June 26, 1989. The meeting will take place from 8:30 a.m. to 4:30 p.m. in the Stone House, National Institutes of Health, Bethesda, Maryland 20892. The meeting will be open to the public. Attendance will be limited to available space.

The meeting will be devoted to discussions of programs and issues concerning the National Institute on Deafness and Other Communication Disorders.

The Acting Executive Officer, Geoffrey E. Grant, National Institute on Deafness and Other Communication Disorders, Building 31, Room 1B62, Bethesda, Maryland 20892, (301) 496-7243, will furnish the meeting agenda, rosters of committee members and substantive program information upon request.

Date: May 30, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13283 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 29, 1989, in Building 31, Conference Room 7 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. 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 Pub. L. 92-463, the meeting will be closed to the public from approximately 10 a.m. until adjournment 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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837 Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13181 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on June 21, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to 5 p.m. The Subcommittee will discuss electronic imaging technologies and the role of the National Library of Medicine in relation to these technologies. Attendance by the public will be limited to space available.

Ms. Susan Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301-496-2311, will provide a summary of the meeting, roster of subcommittee members, and substantive program information upon request.

Date: May 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13284 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

Alcohol Drug Abuse and Mental Health Administration, NIH/ADAMHA-Industry Collaboration Forum

With the passage of the Federal Technology Transfer Act of 1986 (FTTA), incentives have been provided that encourage collaboration between government scientists and industry. It is anticipated that a number of such endeavors will lead, through mutually advantageous patent and license agreements to the beneficial commercial application of laboratory research findings.

As part of a government-wide effort to implement the FTTA, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) will sponsor an NIH/ADAMHA-Industry Collaboration Forum, to be held on Tuesday, October 3, 1989 at the Lipsett Auditorium of the Warren G. Magnuson Clinical Center at NIH. A directory containing information gathered from participants on capabilities and resources available in interested government and industrial laboratories will be distributed at the forum. Although eligibility for registration is unrestricted, the forum will be most useful to those for-profit organizations with capabilities and resources to conduct research with biomedical or behavioral applications.

The forum will begin at 8:30 a.m. with a brief plenary session, followed by a poster session displaying the goals and research capabilities of various NIH and ADAMHA laboratories. Early registration is strongly encouraged. Deadline for registration is September 1, 1989. There will be a registration fee of $100.00. Applications for registration after this date may not be honored. To obtain registration information, call (301) 986-4886 or write to: Judy Gale, Social and Scientific Systems, Inc., 7101 Wisconsin Avenue, Suite 610, Bethesda, MD 20814-4805, (301) 986-4886.

Dated: May 23, 1989.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89-13182 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-09-4333-13]

Road Closure Order, Whiskey Flat Area, Mariposa County, CA; Folsom Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Order to close road in the Whiskey Flat area within Mariposa County in the Folsom Resource Area, Bakersfield District, California.

SUMMARY: This action closes to vehicular use a road on BLM-administered public land in the Whiskey Flat area in Mariposa County, California. The reasons for the closure of this unauthorized road relate to: (1) Its improper design having led to a degradation of surface resources on public land and (2) the unsatisfactory condition of the road making it unsafe for public use. This order will close the road to all vehicle use, except for administrative and rehabilitative purposes. Persons allowed to use the road for these purposes will be designated by the authorized officer. This closure will take effect immediately and will be permanent. The specific public lands affected by this closure are located in T. 4 S., R. 18 E., MDM, section 20, NE¼SW¼, NW¼SE¼, and Lot 1. The specific road to be closed enters public land near corner 3 of MS5982 and exits public land near the northwest corner of NE¼SW¼, section 20. Authority for this closure order is contained in CFR Title 43, Subtitle B, Chapter II, Subchapter H, Part 8000, Subpart 8364.1.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Folsom Resource Area Manager, Folsom Resource Area, Bureau of Land Management, Natoma Street, Folsom, California 95630; (916) 985-4474.

Dated: May 19, 1989.

David N. Harris,

Acting Area Manager.

[FR Doc. 89-13195 Filed 6-2-89; 8:45 am]

BILLING CODE 4310-40-M

[UT-040-4320-02]

Availability of Environmental Assessment on Predator Control Work on Public Lands in the Cedar City District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Environmental Assessment (EA) and finding of no significant impact on a districtwide predator control program.

SUMMARY: This environmental assessment evaluates Animal Damage Control (ADC) work by Animal and Plant Health Inspections Service (APHIS) employees on public lands in the Cedar City District. The area includes 35 Wilderness Study Areas (WSAs) and two Wilderness Areas (WAs). Control methods allowed in WSAs/WAs will be confined to traps, snares, shooting, dogs, and aerial hunting when livestock losses are confirmed and upon written approval by the authorized officer. The use of M44s in WSAs/WAs will not be allowed.

ADDRESS: To obtain a copy of the EA contact District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84720.

Dated: May 26, 1989.

G. Von Swain,

Acting District Manager.

[FR Doc. 89-13193 Filed 6-2-89; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-920-09-4111-15; WYW94581]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 26, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW94581 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW94581 effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89-13194 Filed 6-2-89; 8:45 am]

BILLING CODE 4310-02-M

[OR-010-09-4212-21: GP-9-227]

Realty Action; Noncompetitive Lease of Public Land in Lake County, OR

The following described parcel of public land is being considered for lease under section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), at not less than fair market value:

T. 28 S., R. 14 E., W.M., Oregon
Sec. 7: NE¼NW¼SE¼.
(approx. 3.9 acres within)

The purpose of the lease would be to authorize the existing irrigation and harvest of meadow-grass hay from the above described public land. The current use was initiated in trespass

when the adjacent landowner mistakenly assumed the lands to be their own. Since the proposed lessee is the only practical user of the subject property, the land will not be offered for lease through competitive bidding.

The subject property is being considered for authorization by lease to Schumacher Ranch of P.O. Box 8, Silver Lake, Oregon 97638. The lease would be issued for a thirty (30) year term and would be renewable upon request by the lessee at the discretion of the Bureau of Land Management. The Bureau will review the lease proposal in accordance with the National Environmental Policy Act to assess impacts and determine compatibility with land use plans for the area.

Information regarding this proposal can be reviewed at the Bureau of Land Management, Lakeview District Office, 1000 South 9th St., P.O. Box 151, Lakeview, Oregon 97630, telephone (503) 947-2177

For a period of forty-five (45) days from the date of publication interested parties may submit comments to the District Manager, Bureau of Land Management at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this notice of realty action accordingly.

Date: May 25, 1989.

Judy Ellen Nelson,

District Manager.

[FR Doc. 89-13192 Filed 6-2-89; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31433]

Consolidated Rail Corp.—Trackage Rights Exemption—CSX Transportation Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant local trackage rights to Consolidated Rail Corporation (Conrail) between milepost 124.5 at Cuyahoga Falls and milepost 143.8 near Warwick in Summit County, OH.[1] The trackage rights were to become effective on May 23, 1989, or such later date as the parties may agree.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19103.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 30, 1989.

By the Commission, Jane F Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13263 Filed 6-2-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub. 308X)]

CSX Transportation, Inc.—Abandonment and Discontinuance of Trackage Rights Exemption—In Wise County, VA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonment and Discontinuances of Service and Trackage Rights* to: (1) Abandon its 12.0-mile line of railroad between milepost CV-277.3, at Big Stone Gap, VA, and milepost CV-289.3, at Norton, VA; and (2) discontinue its trackage rights over a 22.5-mile line of the Norfolk Southern Railway between milepost 465.36 at Norton and milepost 442.90 at St. Paul, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affect by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 5, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 15, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 26, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to

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A portion of the line between Akron Junction and Warwick is jointly owned by CSXT and Conrail. Concurrently with the filing of this notice, these carriers jointly filed petition for exemption in Finance Docket No. 31432 for CSXT's acquisition of Conrail's interest in the line. The purpose of these trackage rights is to preserve Conrail's local service to industries and interchange facilities on the line and will be used only if and when the exemption in Finance Docket No. 31432 is granted and becomes effective.

A stay will be routinely issued by the Commission in those proceedings where an informal decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept late-filed trail use statement so long as it retains jurisdiction to do so.

applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 9, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 24, 1989.

By the Commission, Jane F Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13264 Filed 6-2-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 86X)]

Missouri Pacific Railroad Co.—Abandonment Exemption—in Buchanan County, MO

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.91-mile line of railroad between milepost 353.3 and the end of the line at milepost 354.21, near St. Joseph, in Buchanan County, MO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petiton for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 5, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 15, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 26, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Jeanna L. Regier, Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 9, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 22, 1989.

By the Commission, Jane F Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13265 Filed 6-2-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

May 30, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 *and* to the Department of Justice s Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer *and* the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collections

(1) Long-Term Offender Update Study.

(2) No form number. Prisons division, National Institute of Corrections.

(3) One time.

(4) State or local governments, Federal agencies or employees. This nationwide study of the fifty State departments of corrections, the District of Columbia Department of Corrections, and the Federal Bureau of Prisons will obtain selected information with which to update the 1984 study of long-term offenders.

(5) 52 respondents at 16 hours per response.

(6) 832 estimated annual burden hours.

(7) Not applicable under 3504(h).

Revision of a Currently Approved Collection

(1) Victims of Crime Act, Crime Victims Assistance Grant Program, Program Performance Report (Revised).

(2) OJP 7390/4. Office for Victims of Crime, Office of Justice Programs.

(3) 90 days after completion of grant.

(4) State or local governments. The information requested is necessary to generate and submit a statutorily required report to the President and the Congress on the effectiveness of the Victims of Crime Act, as amended, and to ensure grantees' compliance with statutory criteria.

(5) 560 estimated annual respondents at 22 hours per response plus one recordkeeping burden hour per response.

(6) 1,288 estimated annual public burden hours.

(7) Not applicable under 3504(h).

(1) Crime Victim Assistance Grant Program, Subgrant Award Report (Revised).

(2) OJP 7390/2a. Office for Victims of Crime, Office of Justice Programs.

(3) 30 days after an award is made.

(4) State or local governments. This information is necessary to generate and submit a statutorily required report to the President and the Congress on the effectiveness of the Victims of Crime Act.

(5) 56 respondents averaging 27 responses each, per year, at one hour per response plus 27 annual recordkeeping burden hours per respondent.

(6) 3,024 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Victims of Crime Act, Crime Victim Compensation Grant Program, Program Performance Report (Revised).

(2) OJP 7390/2. Office for Victims of Crime, Office of Justice Programs.

(3) 90 days after completion of the grant.

(4) State or local governments. Information necessary to generate and submit a statutorily required report to the President and the Congress.

(5) 56 annual respondents at one per response plus 3 hours each recordkeeping burden.

(6) 448 estimated annual burden hours.

(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) National Prisoner Statistics—Prison Population Report (1A—Midyear Population Counts; 1B—Advance Yearend Population Counts).

(2) NPS 1A, NPS 1B.

(3) Annually.

(4) State or local governments, Federal agencies or employees. Data provides midyear and advance yearend measures on the number of persons incarcerated and the degree of overcrowding in correctional institutions.

(5) 55 respondents for each form for 110 annual responses at 2.5 hours per response.

(6) 275 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Application for permit to import controlled substances for domestic and/or scientific purposes pursuant to 21 USC 952.

(2) DEA 357 Drug Enforcement Administration.

(3) On occasion.

(4) Businesses or other for-profit. Title 21, CFR 1312.12 requires any registrant who desires to import certain controlled substances into the United States to apply to do so on the DEA 357 Information is needed to determine suitability for issuance of an import permit, ensure that import quotas are not exceeded, and provide the United Nations with data on the legitimate traffic on narcotics.

(5) 57 respondents at approximately 4.68 responses each per annun, at .25 hours per response.

(6) 67 estimated annual respondents.

(7) Not applicable under 3504(h).

(1) Application for registration, application for registration renewal.

(2) DEA 225 (Registration), DEA 225a (Renewal). Drug Enforcement Administration.

(3) DEA 225 on occasion (new applicant), DEA 225a annually.

(4) State or local governments, businesses or other for-profit, non-profit institution. The Controlled Substances Act requires all firms or individuals who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with the Drug Enforcement Administration. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(5) 10,000 respondents at .5 hours each.

(6) 5,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 89-13191 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-10-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is a notice that on April 6, 1989, Abbott Laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug—	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical somers (1100).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II
Fentanyl (9801)	II
Hydromorphone (9150)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice,

1405 I Street NW Washington, DC 20537 Attention: DEA Federal Register Representative (Room 1112), and must be filed on or before July 5, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 26, 1989.

[FR Doc. 89-13266 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-106]

Devendranathan Chanmugram, M.D., Inez, KY· Hearing

Notice is hereby given that on October 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Devendranathan Chanmugram, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BC0880371, and deny any pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 27 1989, commencing at 12:30 p.m., at the Fiscal Courtroom, Room 402, 101 Jefferson County Courhouse, 527 West Jefferson Street, Louisville, Kentucky.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13267 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-121]

Bradley Harbin, M.D. Stamps, AK, Hearing

Notice is hereby given than on December 16, 1988, the Drug Enforcement Administration, Department of Justice, issued to Bradley Harbin, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 6, 1989, commencing at 9:30 a.m., at the Federal District Court, U.S. Post Office and Courthouse Building, 500 State Line Avenue, 3rd Floor, Texarkana, Arkansas.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13268 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No.89-1]

Chester James Hurd, M.D., San Jose, CA; Hearing

Notice is hereby given than on December 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Chester James Hurd, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 15, 1989, commencing at 9:30 a.m., at the United States Tax Court, Courtroom 2041, Federal Building and Courthouse, 450 Golden Gate Avenue, San Francisco, California.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13269 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-101]

Roy Nachman, M.D., Los Angeles, CA; Hearing

Notice is hereby given that on September 2, 1988, the Drug Enforcement Administration, Department of Justice, issued to Roy Nachman, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your Certificate of Registration, AN8380367 and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 15, 1989, commencing at 9:00 a.m., at the United States Tax Court, Courtroom 2041, Federal Building and Courthouse, 450 Golden Gate Avenue, San Francisco, California.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13270 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-107]

Ekambaram Parameswaran, M.D., Inez, KY· Hearing

Notice is hereby given that on October 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Ekambaram Parameswaran, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificates of Registration, AP7136369 and AP2551667 and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 27 1989, commencing at 12:30 p.m., at the Fiscal Courtroom Room 402, 101 Jefferson County Courthouse, 527 West Jefferson Street, Louisville, Kentucky.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13271 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Radian Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 20, 1989, Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug—	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with

DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW Washington, DC 20537 Attention: DEA Federal Register Representative (Room 1112), and must be filed on or before July 5, 1989.

Dated: May 26, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-13272 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-104]

Dean A. Steinberg, M.D., Doylestown, PA, Hearing

Notice is hereby given that on October 24, 1988, the Drug Enforcement Administration, Department of Justice, issued to Dean A. Steinberg, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS2190471, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 21, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place NW Courtroom 1, second floor, Washington, DC.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13273 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

Ranzy S. Weston, M.D., Denial of Application

On March 3, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ranzy Weston, M.D. of Augusta, Georgia. The Order proposed to deny his application for registration executed on October 22, 1988, and filed with the DEA pursuant to 21 U.S.C. 823(f). By letter dated March 27 1989, Dr. Weston waived a hearing in this matter relying instead on statements in support of his application contained in the letter.

Title 21 CFR 1301.54(c), (e) authorizes the Administrator to issue a final order based on the investigative file together with any statements submitted by the applicant. The Administrator therefore issues this final order considering such statements in the light of the lack of opportunity for cross examination in determining the weight to be given to matters of fact asserted therein.

In April 1987 State of Georgia agents went to Dr. Weston's office to discuss prescriptions for Dilaudid written by him. Dr. Weston was warned that many of his patients were known drug abusers. He was also warned that many of these same patients were receiving hydrocodone cough syrup prescriptions. Between October and December 1987 the agents conducted three undercover visits to Dr. Weston's office. On each occasion the agent never informed Dr. Weston that there was anything physically wrong with her. On the contrary, she insisted she was fine but wanted something to relax. Dr. Weston prescribed the controlled substances Tussionex and Terpin Hydrate with Codeine. The Administrator finds that these prescriptions were not issued for a legitimate medical purpose.

During the course of this investigation, it was learned that Dr. Weston did not have a valid DEA Certificate of Registration. Dr. Weston's previous registration had expired on May 31, 1978, and had not been renewed. Dr. Weston has had no authority since that time to possess, prescribe or dispense controlled substances. On September 30, 1988, a letter informing Dr. Weston of the status of his DEA registration was sent by certified mail. The return receipt was received by the DEA on October 14, 1988, signed by Dr. Weston. This was followed by a telephone call informing Dr. Weston of his lack of registration. In spite of these notices, Dr. Weston continued to issue prescriptions for controlled substances using the expired DEA registration. On November 5, 1988, he issued a prescription for Tussend Expectorant, a Schedule II controlled substance. On November 21 and 28, 1988, he issued prescriptions for Darvocet, a Schedule IV controlled substance. On December 1, 5, and 26, he issued prescriptions for Darvocet. In January 1989, he issued two prescriptions for Tega-Tussin Cough Expectorant and two prescriptions for Darvocet.

In his March 27 1989, letter in response to the Order to Show Cause, Dr. Weston indicates that he has been practicing medicine part-time, and plans to retire soon. He also indicates that after receiving the Order to Show Cause, he studied his records and concluded that he was over-prescribing, but he was only doing so to help his patients. In addition, Dr. Weston states that he had a busy practice and that some patients took advantage of him. In response to the statement that he prescribed controlled substances without a valid DEA registration, Dr. Weston stated that he thought he couldn't write prescriptions for "narcotics" as opposed to "controlled substances" Dr. Weston concluded his letter and waiver of hearing by stating that he did have "legitimate intentions, and that he cannot practice good medicine without a DEA number.

The Administrator finds that Dr. Weston has violated the Federal laws relating to controlled substances in that he wrote prescriptions for controlled substances for other than a legitimate medical purpose and that he knowingly used an expired DEA number to write prescriptions for controlled substances. He did so after receiving specific warnings concerning his prescribing practices and concerning his use of an expired registration. He ignored these warnings. This doctor cannot be trusted to handle controlled substances in a responsible manner. The statements in Dr. Weston's letter do not offer any valid reasons for, or mitigation of, the doctor's past conduct in handling controlled substances. The Administrator finds that the registration of Dr. Weston would be inconsistent with the public interest.

Accordingly, having concluded that there is a lawful basis for the denial of Dr. Weston's application, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Dr. Weston's application for registration with DEA, dated October 22, 1988, be, and it hereby is, denied.

This order is effective on or before July 5, 1989.

John C. Lawn,

Administrator.

Dated: May 26, 1989.

[FR Doc. 89-13274 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-13]

Neveille H. Williams III, D.D.S. Wichita Falls, TX; Hearing

Notice is hereby given that on December 19, 1988, the Drug Enforcement Administration, Department of Justice, issued to Neveille Williams III, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, August 17 1989, commencing at 10:00 a.m., at the United States Tax Court, Room 505, Pacific Building, 1900 Pacific Avenue, Dallas, Texas.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13275 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-42]

Government-owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP Washington, DC 20546, Telephone (202) 453-2430, Fax (202) 755-2371.

Patent Application 07/292,121: Docking System for Spacecraft; filed December 30, 1988.

Patent Application 07/292,123: Docking Mechanism for Spacecraft; filed December 30, 1988.

Patent Application 07/292,124: Dynamic Resource Allocation Scheme for Distributed Heterogeneous Computer System; filed December 30, 1988.

Patent Application 07/292,130: Method and Apparatus for Sensor Fusion; filed December 30, 1988.

Patent Application 07/292,131: Smart Tunnel-Docking Mechanism; filed December 30, 1988.

Patent Application 07/292,141: Oxidation of Semiconductors and Superconductors; filed December 30, 1988.

Patent Application 07/292,146: High Temperature Flexible Steel; filed December 30, 1988.

Patent Application 07/279,630: Computer Access Security Code System; filed December 5, 1988.

Patent Application 07/279,676: Integrated Circuit Reliability Testing; filed December 5, 1988.

Patent Application 07/283,443: Long Wavelength Infrared Detector; filed December 12, 1988.

Patent Application 07/292,047: Distributed Proximity Sensor System; filed December 30, 1988.

Patent Application 07/301,925: Semi-Interpenetrating Polymer Network for Tougher and More Microcracking Resistant High Temperature Polymers; filed January 26, 1989.

Patent Application 07/304,149: Two-Stage Sorption Type Cryogenic Refrigerator Including Heat Regeneration System; filed January 31, 1989.

Patent Application 07/304,154: Vibration Analyzer; filed January 31, 1989.

Date: May 25, 1989.

Edward A. Frankle,

General Counsel.

[FR Doc. 89-13116 Filed 6-2-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before July 20, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions

requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Forest Service, Fiscal and Public Safety Staff (N1-95-89-1). General correspondence related to arrangements for external and internal meetings, including staff, information, and task force meetings.

2. Department of Commerce, Bureau of the Census (N1-29-89-1). Miscellaneous maps of the Geography Division not used in connection with the 1950 census or other data collections.

3. Department of Health and Human Services, Health Care Finance Administration (N1-440-89-2). Records documenting the cost and delivery of acute health care in Arizona Health Care Cost Containment System facilities.

4. Department of Health and Human Services, Health Care Finance Administration (N1-440-89-3). Records of the Health Care Finance Administration's Regulatory Reform Task Force.

5. Department of Labor, Bureau of Labor Statistics (N1-257-88-7). Miscellaneous printouts, data collection forms, and related records of the Employment, Hours, and Earnings Program.

6. National Archives and Records Administration, Office of Records Administration (N1-GRS-89-1). General Records Schedule item covering committee management files.

7 National Archives and Records Administration, Office of Records Administration (N1-GRS-89-2). General Records Schedule item covering files relating to the erroneous release of privileged information.

8. U.S. Postal Service (N1-28-89-1). Procurement related records found among permanent records scheduled for transfer to the National Archives.

9. U.S. Postal Service (N1-28-89-2). Drawings of elevator installations in various Federal buildings, and other drawings too badly deteriorated for preservation found among permanent architectural records to be transferred to the National Archives.

10. Department of State, Bureau of Politico-Military Affairs, Office of Munitions Control (N1-59-88-32). Routine, facilitative, and duplicate records relating to munitions control matters. Policy materials are scheduled for permanent retention.

11. Department of State, Deputy Under Secretary for Economic Affairs, Mutual Security Coordinator (N1-59-89-2). Facilitative subject files and extra copies of transcripts of hearings.

12. Department of State, Under Secretary of State, Special Assistant for Mutual Security Coordination (N1-59-89-4). Extra copies of program books.

13. Department of State, Office of International Conferences (N1-59-89-10). Documents of the UN conference on Food and Agriculture, UN Interim Commission for Food and Agriculture, and the Food and Agricultural Organization of the UN. Policy documentation is scheduled for permanent retention.

14. Tennessee Valley Authority, Office of Governmental and Public Affairs (N1-142-88-15). Audio tapes of Board meetings held after 1979 in Knoxville. Video tapes of these meetings are designated for permanent retention by the National Archives.

Dated: May 28, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-13208 Filed 6-2-89; 8:45 am]

BILLING CODE 7515-01-M

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of selected subject categories and staff member files from the Nixon White House Central Files (WHCF). Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning July 17 1989. Any person who believes it necessary to file a claim or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before July 7 1989.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarance F Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703-756-6498.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 68.5 cubic feet. This is the fourth of a series of openings of Central Files; the previous openings were on December 1, 1986; March 22, 1988; and December 9, 1988.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials designated for opening on July 17 were selected for the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are the primary subject categories of the Subject Files that will be made available to the public on July 17

Subject Category	Volume (cubic feet)
Federal Government (FG):	
Department of Defense (FG-13)	3.0
Post Office (FG-18)	2.0
Department of Labor (FG-22)	2.3
Department of Housing and Urban Development (FG-24)	2.3
Department of Transportation (FG-25)	3.0
Commission on Civil Rights (FG-90)	0.3
Equal Employment Commission (FG-109)	0.3
Cabinet Committee on Opportunity for Spanish Speaking People (FG-145)	0.3
National Council on Indian Opportunity (FG-173)	0.3
Selective Service System (FG-216)	1.0
USIA (FG-230)	0.6
Cabinet Committee on Voluntary Action (FG-252)	0.3
National Center for Voluntary Action (FG-259)	0.3
Commission on Campus Unrest (FG-288)	0.3
Action (FG-325)	0.6
National Security—Defense (ND 1 thru ND 8-1-2)	23.0

In addition to the subject categories, three file groups from the Staff Member and Office Files will be made available to the public. These consist of materials that were transferred to Central Files but were not incorporated into the Subject Files. Listed below are the Staff

Member and Office Files that will be made available to the public on July 17

File Group	Volume (cubic feet)
Glenn R. Schleede	20.0
Bradley Patterson (Late accretion)	2.0
Gwen King	6.6

Public access to some of the items in the file segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: May 30, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-13353 Filed 6-2-89; 8:45 am]

BILLING CODE 7515-01-M

Privacy Act of 1974; Systems of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of revised systems of records; correction.

SUMMARY: On May 9, 1989, NARA published its notice of revised systems of records which are subject to the Privacy Act of 1974 (54 FR 19970). In this correction notice NARA is clarifying the reason for deleting the Personnel Information Resources System (PIRS) from NARA-14, Payroll and Time and Attendance Reporting System. No changes are being made to the systems of records described in the May 9, 1989, notice.

The discussion of NARA-14 in the Supplementary Information section of the May 9, 1989, notice should have stated that PIRS was being deleted from NARA-14 because PIRS does not contain payroll and attendance information which is covered by the NARA-14 system. PIRS contains personnel information which is covered by the Governmentwide system OPM/GOVT-1.

FOR FURTHER INFORMATION CONTACT: John A. Constance or Nancy Allard, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408. Telephone (202) 523-3214 or (FTS) 523-3214.

Dated: May 26, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-13207 Filed 6-2-89; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270 and 50-287]

Duke Power Co., Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-38, DPR-47 and DPR-55 issued to Duke Power Company, (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action: The amendments would add limiting conditions for operation and surveillance requirements to the Oconee Technical Specifications (TSs) in accordance with NRC Generic Letter (GL) 83-37 providing guidance on the scope of TSs for NUREG-0737 "Clarification of TMI Action Plan Requirements. Specifically, TSs are added for the following TMI action items: (1) Containment High-Range Radiation Monitor (TMI Action Item II.F.1.3), (2) Containment Pressure Monitor (II.F.1.4), (3) Containment Water Level Monitor (II.F.1.5), (4) Containment Hydrogen Monitor (II.F.1.6), (5) Instrumentation for Detection of Inadequate Core Cooling (II.F.2), and (6) Control Room Habitability Requirements (III.D.3.4).

The proposed action is in accordance with the licensee's applications for amendments dated October 8, 1984 and January 6 and March 15, 1988, as supplemented or revised August 27 1985; January 30, June 27 August 13 and September 19, 1986; January 18, May 13, September 16 and December 29, 1988; and May 17 1989.

The Need for the Proposed Action: The need for TSs for certain post-TMI instrumentation and systems has been established by the Commission in NUREG-0737 "Clarification of TMI Action Plan Requirements. The Commission noted, in part, that TSs are required to provide assurance that facility operation is maintained within the limits determined acceptable following implementation at each facility. Accordingly, on November 1, 1983 and by GL 83-37 the Commission provided guidance for format and content of TSs for those NUREG-0737 items which were scheduled for implementation after December 31, 1981, and requested licensees to submit applications for amendments using this guidance.

Environmental Impacts of the Proposed Action: The scope and type of specification requested by GL 83-37 and requested by the licensee include appropriate actions if limiting conditions for operation can not be met. The instrumentation addressed by GL 83-37 is used for post-accident monitoring, including detection of inadequate core cooling and maintaining control room habitability conditions. The actions typically limit the allowed period for operation above hot shutdown and/or require reporting to the NRC if part of the redundant system or actuation logic (e.g., one of two channels) is inoperable and can not be restored within a specified period, and require the plant to be placed in hot shutdown if the required minimum number of channels (e.g., two of two channels) should be inoperable for a specific period. The specification changes also add relevant surveillance and testing requirements for installed equipment to ensure that it is maintained in a reliable condition.

The Oconee control rooms are provided with pressurization and ventilation filtering systems to provide additional protection of the control room (CR) operators from the effects of accidental release of radioactive effluents and toxic gases in the turbine buildings and the auxiliary buildings enclosing the CRs. Oconee 1 and 2 have a shared CR while Unit 3 has a separate CR. The CR pressurization and filtering system would be manually activated in the event of such a release. Each system is comprised of two separate outside air booster fans with prefilter/HEPA/carbon adsorber filter trains, two redundant control room air handling unit fans, associated ductwork, and a radiation monitor. One activated, the system maintains a slightly positive pressure in the CR to prevent in-leakage. The proposed changes to the TS would specify limiting conditions for operation and periodic surveillance and testing requirements for the pressurization and filtering system to provide increased assurance of system availability, and hence, a habitable CR after an accident. The Oconee TS does not presently contain such requirements. Thus, the TS change provides for reduction in occupational radiological exposure or exposure to potential in-plant toxic releases. No adverse environmental impacts result from system operation.

The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational

radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action: Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation, but would adversely affect safety by permitting extended operation without the needed assurance that post-TMI instrumentation and systems are being maintained so as to be available if needed after an accident.

Alternative Use of Resources: This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of Oconee Nuclear Station, Units 1, 2 and 3, dated March 1972.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

The Notices of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action were published in the **Federal Register** on April 20, 1988 (53 FR 13037) and June 3, 1988 (53 FR 20394). No request for hearing or petition for leave to intervene was filed following these notices.

For further details with respect to this action, see the requests for the amendments dated October 8, 1984, and January 6 and March 15, 1988, as supplemented or revised August 27 1985, January 30, June 27 August 13, and September 19, 1986, January 18, May 13, September 16, and December 29, 1988, and May 17 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 30th day of May 1989.

For the Nuclear Regulatory Commission.

Lawrence P Crocker,

Acting Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13235 Filed 6-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-325 and 50-324]

Carolina Power & Light Co., et al., Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Carolina Power & Light Company, (the licensee) for an amendment to Facility Operating License Nos. DPR-71 and DPR-62, issued to the licensee for operation of the Brunswick Steam Electric Plan, Units 1 and 2, located in Brunswick County, North Carolina. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on September 9, 1987 (52 FR 33999).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to increase surveillance testing and calibration intervals for Rosemount analog trip unit systems.

The NRC staff has concluded that the licensee's request cannot be granted at this time. The licensee was notified of the Commission's denial of the proposed change by letter dated May 25, 1989. A Safety Evaluation accompanied the letter.

By July 5, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Docketing and Services Branch, or may be delivered to the Commission s Public Document Room, the Gelman Building, 2120 L Street, NW Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 1, 1987 as supplemented June 22, 1987 July 7 1987 and March 16, 1989, and (2) the Commission's letter to the licensee dated May 25, 1989.

These documents are available for public inspection at the Commission s Public Document Room, the Gelman Building, 2120 L Street, NW Washington, DC and at the William Madison Randall Library, University of North Carolina at Wilmington, 601 S. College Road, Wilmington, North Carolina 28403-3297 A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 25th day of May, 1989.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13236 Filed 6-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Denial of Amendment to Facility Operating License NPF-21 and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Washington Public Power Supply System, (licensee) for an amendment to Facility Operating License No. NPF-21 issued to the licensee for operation of the Nuclear Project No. 2, located in Richland, Washington. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 8, 1987 (52 FR 11377).

The licensee's amendment request was to revise technical specification Tables 3.3.7.5-1, Accident Monitoring Instrumentation, and 4.3.7.5-1, Accident Monitoring Surveillance Requirements" to include wide range

neutron flux monitoring instrumentation. This request was submitted in anticipation of satisfying License Condition 16, Attachment 2, Item 3b to the WNP-2 Operating License. This license condition requires that the licensee "* shall implement (installation or upgrade) requirements of Regulatory Guide 1.97 Revision 2, for flux monitoring *" by a specified time. At the time of the amendment application the licensee was in the process of procuring equipment to meet the specified schedule and satisfy the license condition.

By letter dated March 10, 1987 the licensee advised that they were unsuccessful in qualifying the neutron monitoring system environmentally. By letter dated March 31, 1987 they asked NRC to hold the November 18, 1986 amendment request in abeyance.

The NRC staff has advised the licensee that the proposed amendment is denied since the licensee has still not been successful in demonstrating that the instrumentation is environmentally qualified.

The licensee was notified of the Commission's denial of the proposed change by a letter dated May 17 1989.

By July 5, 1989 the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC., 20555, and to Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW Washington, DC 20005-3502 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 18, 1986 and supplemental letters dated March 10, 1987 and March 31, 1987 and (2) the Commission's letter to the licensee dated

These documents are available for public inspection at the Commission s Public Document Room, the Gelman Building, 2120 L Street, NW Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 17th day of May, 1989.

For The Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V Division of Reactor Projects—III, IV V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13237 Filed 6-2-89; 8:45]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix A to 10 CFR Part 50 to the Florida Power Corporation (the licensee), for the Crystal River Unit 3 Nuclear Generating Plant, located in Crystal River, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow temporary relief from the requirements of General Design Criterion-4 (GDC-4) for the Crystal River Unit 3 Nuclear Generating Plant with regard to high energy line breaks.

The Need for the Proposed Action

The proposed exemption is needed in order to permit plant operation until the end of next scheduled refueling outage (Refuel 7).

Environmental Impacts of the Proposed Action

The proposed exemption does not involve any measurable environmental impacts during normal operation since plant configuration and operation are not changed. The likelihood of a high energy line break which would affect equipment required to operate to avoid radiological impact is low. Thus, the proposed exemption will not significantly affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption. Alternatives to the Proposed Action

Since the Commission concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require literal compliance with GDC-4. Such action would not enhance the protection of the environment, and would result in very high costs to the licensee as the plant could not restart from its current outage or continue to operate. Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Crystal River Unit 3 Nuclear Generating Plant. Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with any other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption dated December 16, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW Washington, DC and at the Crystal River Public Library, 668 NW First Avenue, Crystal River, Flordia 32629.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2. Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13387 Filed 6-2-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 26871; File No. S7-15-89]

Options Market Structure

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission is releasing a concept release, prepared by the staff of the Commission's Division of Market Regulation, which discusses the market structure issues associated with options multiple trading and outlines several possible market structure enhancements. The Commission seeks comment on the measures identified by the Staff.

DATE: Comments must be received by September 18, 1989.

ADDRESS: Persons wishing to submit comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, (Mail Stop 6-9), 450 Fifth Street NW Washington, DC 20549. All comments should refer to File No. S7-15-89 and will be available for public inspection and copying at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Thomas R. Gira, Branch of National Market System Regulation, 202/272-2827 Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5-1), 450 Fifth Street NW Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In a separate release issued today, the Securities and Exchange Commission ("Commission" or "SEC") adopted Rule 19c-5 under the Securities Exchange Act of 1934.[1] Rule 19c-5 permits a gradual, phased-in expansion of multiple trading of options on exchange-listed stocks. The expansion of options multiple trading will provide opportunities for the options self-regulatory organizations to develop a national market system for options.

The staff of the Commission s Division of Market Regulation has prepared a release that discusses the market structure issues involved with options multiple trading and discusses a number of possible enhancements for the options markets to consider. The views expressed in the release are those of the staff of the Division of Market Regulation and not of the Commission. The Commission, nonetheless, believes that the staff proposals merit serious consideration by the options self-regulatory organizations. Accordingly, the Commission asks that the options markets and other interested parties comment on the release by September 18, 1989. The text of the staff's release is organized as follows.

Options Market Structure

I. Introduction
  A. Background
  B. Multiple Trading and Options Market Structure
II. Quotation Information in the Options Markets
III. Market Integration Facilities
  A. Intermarket Order Routing Linkages
  B. Small Order Switching Facilities
  C. Central Limit Order File
IV Market Openings
V Conclusion

I. Introduction

In adopting Rule 19c-5, the Commission found that multiple market trading ("multiple trading") [2] of standardized options on exchange-listed securities is consistent with the purposes of the Securities Exchange Act of 1934 ("Act").[3] In particular, the Commission found that permitting the options exchanges to compete in a multiple trading environment will bring substantial benefits to investors, both in the form of improved prices and better services. The staff of the Division of Market Regulation ("Staff") believes that it may be possible for the options markets to extend further the overall beneficial effects of multiple trading by developing certain market structure enhancements.

This statement will discuss the market structure issues traditionally associated with options multiple trading and some of the possible ways of enhancing the benefits of a multiple trading environment. The Staff believes that the options self-regulatory organizations ("SROs") should give careful consideration to at least three possible measures to further integrate the nation's options markets: an intermarket order routing linkage, a mechanism for order-by-order routing to the market with the best price, and a central limit order file.

A. Background

The trading of standardized options on securities exchanges began in 1973, with the organization as a national securities exchange of the Chicago Board Options Exchange ("CBOE"), and the Commission's approval of the CBOE's options pilot program.[4] This pilot initially was limited to call options on only 16 underlying stocks. Listed options trading expanded rapidly from 1973 until July 1977 when the options exchanges, at the Commission's behest, agreed to a moratorium on any further listings. In addition to the CBOE's program, the Commission approved options pilot programs at four other exchanges: the American ("Amex"),[5] Philadelphia ("Phlx"),[6] Pacific ("PSE"),[7] and Midwest ("MSE") [8] Stock Exchanges. Applications by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD") to trade options also were pending. By mid-1977 the number of call options classes traded on exchanges had grown from 16 to 219, and put options trading also had been approved.

The development of options trading programs by the exchanges that followed the CBOE raised the question of whether, and under what conditions, multiple trading [9] should occur. In February 1976, the CBOE initiated trading of an option class that already was being traded on the Phlx, and in March of that year, the Commission approved the PSE options program, which included listings of options classes already traded on other exchanges. Other exchanges quickly followed and also began to engage in multiple trading. Between February 1976 and July 1977 22 classes of call options were traded on more than one exchange.

In July 1977 in response to concerns over the rapid growth in listed options trading and possible trading and sales

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17 CFR 240.19c-5, Securities Exchange Act Rel. No. 26870 (May 26, 1989) ("Rule 19c-5 Adoption Release") (published elsewhere in this edition of the Federal Register).

Multiple trading—the trading of the same options in more than one marketplace—is sometimes also referred to as "dual trading.

15 U.S.C. 78a *et seq.*, as amended.

Securities Exchange Act Release No. 9985 (February 1, 1973), 1 S.E.C. Doc. 11.

[5] Securities Exchange Act Release No. 11144 (December 19, 1974), 40 FR 3258.

[6] Securities Exchange Act Release No. 11423 (May 15, 1975), 6 S.E.C. Doc. 894.

Securities Exchange Act Release No. 12283 (March 30, 1976), 41 FR 14454.

Securities Exchange Act Release No. 13045 (December 8, 1976), 41 FR 54783. The MSE's options program was merged into the CBOE's in 1979.

[9] The NYSE did not begin to trade options on listed stocks until 1985. *See* Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250. The Commission has approved in principle proposal by the NASD to trade standardized options. Indeed, the NASD commenced on September 13, 1985, and subsequently terminated on July 18, 1986, program to trade standardized options on certain over-the-counter ("OTC") stock indexes. *See* Securities Exchange Act Rel. No. 22404 (September 13, 1985) 50 FR at 38235. Nevertheless, the part of the NASD's proposal that would have integrated the trading of options with their underlying stock was deferred pending further developments in the OTC market. *See* Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310.

practice abuses, the Commission requested that the options exchanges refrain from listing any options classes beyond those already listed as of July 15, 1977 In October 1977 the Commission announced that it would undertake a comprehensive investigation and study of the standardized options markets ("Options Study").[10] In announcing this Study, the Commission expressed concern over, among other things: (1) The adequacy of the SROs' surveillance systems; (2) the adequacy of Commission and SRO rules to prevent fraudulent, deceptive and manipulative practices in connection with options trading; (3) the development of the standardized options markets in a manner consistent with the public interest and the perfection of the mechanisms of a national market system; and (4) the development of appropriate standards for evaluating particular programs which would have the effect of expanding or altering existing pilot options trading programs.

The Options Study was completed and a report was released on December 22, 1978.[11] The Options Study Report examined some of the major issues of market structure in the standardized options markets, including multiple trading,[12] and steps the Commission should consider to assure evolution of the standardized options markets in a manner consistent with establishment of a national market system.[13] By examining certain indicia of market quality, such as continuity [14] and liquidity,[15] the Options Study found that multiple trading may improve the quality of markets for multiply traded options classes, at least in the short run.[16] In addition to market quality factors, the Report described how multiple trading could promote competition among market centers, leading to greater operational efficiencies, improved services and new technological developments. The Report also noted that the statutory goal of competition "among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets" [17] hardly could be pursued if multiple trading were not permitted.

As discussed in greater detail below, the Options Study recognized that multiple trading could result in some degree of market fragmentation, in that pricing in the various markets might not always accurately reflect the aggregate buying and selling interest for a particular security. The Study also recognized that, even in a multiple trading environment, concerns over fair competition among markets might remain.

In March 1980, after implementing a number of the Options Study recommendations, the Commission ended the voluntary moratorium on expansion of the standardized options markets.[18] Although the Commission, in ending the moratorium, resolved to permit the expansion by the options exchanges of put and call option trading, it deferred a decision to expand multiple trading. After noting the potential benefits, on the one hand, and the fragmentation and fair competition concerns, on the other hand, the Commission concluded that "under appropriate circumstances, the benefits of expansion of multiple trading appear to outweigh any adverse consequences. [19] The Commission decided, however, to defer the general expansion of multiple trading "in order to afford the [SROs] an opportunity to consider whether, and to what extent, the development of market integration facilities would minimize concerns regarding market fragmentation and maximize competitive opportunities in the options markets. [20]

The options markets were asked to consider jointly whether market integration facilities should be built, and if so, how these facilities should be designed. To provide some guidance, the Commission outlined three possible (complementary or alternative) approaches: (1) A market linkage system similar to the Intermarket Trading System ("ITS"); [21] (2) a requirement that brokerage firms handling retail orders individually route each order to the market center showing the best quotation accompanied by a quotation size (*i.e.*, number of contracts) equalling or exceeding that of the order; and (3) an order exposure system for options public limit orders. The Commission suggested that the third approach, a limit order exposure system, might be the most fruitful course for the options exchanges to pursue, and that the prospects for the other two integration measures might be limited insofar as a firm quote rule could not be applied, at that time, to options trading.[22] A market linkage system or individualized routing of retail orders would depend, to a large extent, on the quality and reliability (*i.e.*, firmness) of quotation information.

The options exchanges formed an inter-exchange task force to respond to the Commission's request in the Moratorium Termination Release that they study the feasibility of market integration measures. The task force issued two reports, in January and September of 1981,[23] in which it

[10] Securities Exchange Act Release No. 14056 (October 17, 1977), 42 FR 56706.

[11] Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96-IFC3, December 22, 1978) ("Options Study Report").

[12] The other market structure issues that were discussed included: (1) The integration of trading of standardized options and their underlying securities (so called "side-by-side" trading), (2) whether standardized options should be traded in the OTC market, and (3) whether standardized options trading should be permitted on the NYSE.

[13] The Securities Acts Amendments of 1975 directed the Commission "to facilitate the establishment of national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics). Section 11A(a)(1)(D)(2) of the Act [15 U.S.C. 78k-1(a)(1)(D)(2)(1982)]. Congress did not define the term "national market system. Congress specifically indicated, however, that such system could include options. Senate Comm. on Banking, Housing & Urban Affairs, *Report to Accompany S. 249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 7, *reprinted in* 1975 U.S. Code Cong. & Ad. News 179 ("Senate Report").

[14] A "continuous market is one in which "a series of consecutive separate transactions, even though involving price changes, will involve minimum price variations or deviations. Part 2 of Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. 16 (1963).

[15] A "liquid" market is one in which "a willing seller can readily (or perhaps immediately) find a buyer, or vice versa, at a mutually agreeable price. *Id.*

[16] The data that was examined by the Options Study did not provide basis for an assessment of the long-term effects on market quality of multiple trading.

[17] *See* Senate Report, *supra* note 13, at 8.

[18] Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 ("Moratorium Termination Release").

[19] *Id.* at 21431.

[20] *Id.*

[21] The ITS is an inter-market order and message routing facility among the nation's securities markets. *See* discussion *infra* at notes 59-63 and accompanying text.

[22] The options exchanges had argued that firm quote rule would not work in the options environment. Due to the derivative nature of options and the need to update multiple series whenever there is a change in the price of the underlying stock, it was thought that quotes could not be updated quickly enough to accommodate firm quote rule. Further, the CBOE maintained that such rule would be difficult to administer in the competing market maker trading systems used by the CBOE, MSE and PSE. Letter from Joseph W. Sullivan, President, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated August 1, 1977

[23] Interim Report of the American, Pacific, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange in response to Release No. 34-16701, dated January 8, 1981; and Supplementary Report of the American, Pacific and Philadelphia Stock Exchanges and the Chicago Board Options Exchange in response to Release No. 34-16701, dated September 1, 1981. The CBOE also submitted separate presentations on some of the market structure issues raised in the Moratorium Termination Release. *See* Letters from Walter E.

Continued

concluded that a limit order exposure system was not likely to reduce substantially the adverse effects of multiple trading. The task force did not explore any other possibilities for addressing market structure concerns in a multiple trading environment.

In the meantime, in view of the Commission's deferral of an expansion of multiple trading, and the limited number of attractive new options available for listing, the Commission asked the options exchanges to develop a fair method for allocating among themselves new options. In response, the exchanges proposed and the Commission approved the lottery system for allocating new options ("the Allocation Plan").[24] This system has remained in place with little modification since its adoption in 1980.

The Commission has, however, declined to restrict multiple trading in other products. For example, in approving the CBOE's proposal to trade options on Government National Mortgage Association securities, in February 1981, the Commission stated that it did not believe that its decision to defer multiple trading in equity options should apply to non-equity options.[25] This was followed, on December 2, 1981, by a policy statement in which the Commission announced its view that "competitive forces should be permitted to define the structure of the non-equity options markets to the maximum extent possible, and that it would not designate any single exchange as the exclusive market place for non-equity options.[26] In adopting this policy, the Commission rejected the arguments of many industry commentators, who maintained that the same concerns raised in the equity options context—market fragmentation and unfair competition between markets—would apply in the non-equity options context. The Commission found that these concerns were outweighed by the benefits of multiple trading and by the difficulties that would be involved in allocating non-equity instruments.

In 1985, the Commission approved proposals by the options exchanges to trade options on certain OTC equity securities.[27] In doing so, the Commission again considered the multiple trading question and concluded that the benefits of allowing multiple trading would outweigh any adverse effects. Among other things, the Commission found that, even if actual competition among exchanges for a given option is short-lived and a primary market for the option emerges, it is better that this should occur as the result of market forces than through the lottery allocation system. The Commission again urged options market participants to consider the development of market integration facilities, and voiced the belief that the approval of multiple trading for options on OTC stocks might provide the necessary impetus for the options exchanges to develop such facilities.

In November 1986, the Commission released two staff studies on the effects of options multiple trading.[28] These studies found that multiple trading led to improved quality of markets, as measured by bid-ask spreads, and that these benefits outweighed the detrimental effects of any pricing disparities between markets. These studies concluded that multiple trading would produce substantial savings to investors.[29]

B. Multiple Trading and Options Market Structure

Sections 6(b)(8), 11A, and 23(a)(2) of the Act express Congress' intent that the securities markets be free from competitive restraints to the furthest extent possible consistent with the other goals of the Act. It has long been the Commission's policy to foster competition among the nation's securities markets and encourage multiple trading of securities. In particular, the Commission has supported the trading of NYSE-listed securities on regional exchanges, and has acted to remove barriers to regional exchanges competing with the Amex and NYSE. Against this background, the Commission's deferral, since 1980, of an expansion of multiple trading in equity options, and the continued dearth of potential competition in equity options trading, are an anomaly. In view of the development of the options markets since 1980 and the recognition that multiple trading is likely to bring benefits to investors, the Commission determined that restrictions on options multiple trading impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Accordingly, in 1989, the Commission adopted Rule 19c-5 which amends the rules of national securities exchanges governing the listing and trading of standardized options to prohibit (after a specified phase-in period) any exchange from limiting by any means its ability to list any stock option class because that option class is listed on another exchange.[30] The Commission also designed the Rule to provide a substantial phase-in period to reduce market structure and operational concerns. Specifically, commencing January 22, 1990, no options exchange may limit its ability to list up to ten standardized stock option classes overlying exchange-listed stocks that were also listed on another options exchange on or before January 22, 1990. Further, as of January 22, 1990, no options exchange can limit its ability to list any standardized options class first listed on another options exchange on or after January 22, 1990, because that options class is listed on another options exchange. Finally, as of January 21, 1991, no options exchange may limit by any means its ability to list any stock options class because that class is listed on another exchange.

Any consideration of market structure issues associated with options multiple trading must be guided by Congress' findings regarding the essential "goals and objectives of a national market system for qualified securities" expressed in Section 11A of the Act.[31] Section 11A encourages "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets" and "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In section 11A, Congress also made the finding that "[t]he linking of all markets through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

As the Commission observed in an early statement on the development of a national market system: "[t]he major

Auch, Chairman and Chief Executive Officer, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated September 22, 1980, and January 8, 1981.

[24] Securities Exchange Act Release No. 16663 (May 30, 1980), 45 FR 37928.

[25] Securities Exchange Act Release No. 17577 (February 26, 1981), 46 FR 15242.

[26] Securities Exchange Act Release No. 18297 (December 2, 1981), 46 FR 60376.

[27] Securities Exchange Act Release No. 22020 (May 6, 1985), 50 FR 20310.

[28] Directorate of Economic and Policy Analysis, "The Effects of Multiple Trading on the Market for OTC Options" (November 1986), and Office of the Chief Economist, "Potential Competition and Actual Competition in the Options Market" (November 1986).

[29] The CBOE, Phlx and PSE challenged the findings of the studies. *See* Rule 19c-5 Adoption Release, *supra* note 1, at notes 25-26 and accompanying text.

[30] *See* Rule 19c-5 Adoption Release, *supra* note 1.

[31] *See* Senate Report, *supra* note 73, at 7.

problems to which the idea of a national market system is addressed are those arising from 'market fragmentation, or the existence of multiple, geographically separated forums in which trading in the same security occurs [32] This dispersion of trading activity in fragmented markets could, under certain circumstances, result in pricing disparities between markets, that is, prices which do not reflect a complete assessment of the aggregate buying and selling interest for a particular security.

In addition to the inefficiencies inherent in such disparate pricing, multiple trading also may raise so-called "best execution" concerns. Regardless of whether there are significant pricing disparities or merely marginal price differences between markets, orders may not be routed to the marketplace where they would be executed at the best available price. This so-called "best execution concern is of particular significance for retail orders. A brokerage firm typically does not make retail order routing decisions on an order-by-order basis; instead it designates one market as "primary" [33] and automatically routes all retail orders to that market unless and until it designates another market as primary. Institutional and other large or complex orders, on the other hand, are normally provided individualized attention by the firm's options trading desk, or "special handling.

Multiple trading need not, however, lead to significant pricing and best execution problems. The Options Study Report concluded that:

dispersion of order flow among market centers need not result in pricing inefficiencies [because] public dissemination of quotation and transaction information may to a large extent assure that professional and nonprofessional market participants are apprised, on a current and continuous basis, of those markets offering the most favorable execution opportunities (at least for orders of modest size) so that they have the opportunity to direct orders appropriately.* In addition, competition among market makers on the floors of exchanges multiply trading an option class and, in many circumstances, the trading activities of professional traders and arbitrageurs may discipline option pricing among market centers to a substantial degree.[34]

Moreover, in adopting Rule 19c-5, after reviewing the recent experience with multiple trading, the Commission found that the market fragmentation problems from OTC options have been minimal, and little evidence exists that full-scale multiple trading would significantly increase these problems.[35]

Market openings present a special situation regarding inter-market pricing disparities and best execution concerns. While public dissemination of quotation and transaction information (and, perhaps, an inter-market linkage) may serve to limit adverse fragmentation effects from arising during the trading day, it is more difficult to disseminate and absorb quotation information from another market when both exchanges are trying to open the same option class simultaneously. This is particularly the case because the opening price of each option series will be dependent on the price at which the underlying stock opens. Pricing disparities are most likely to occur where two or more markets open trading in the same security more or less simultaneously without the benefit of price and order imbalance information from all markets trading the security. For example, the Options Study Report described one particularly dramatic instance in 1978, where the same Bally option opened at $5 on one exchange and at $10 on another exchange twenty minutes later, without there having been an appreciable change in the price of the underlying stock in that interval.[36] More recent experience with multiple trading, however, has not produced significant pricing problems. In adopting Rule 19c-5, the Commission noted that the exchanges have been able to mitigate pricing problems at the opening, even if this has meant allowing the primary market to open and establish a price first.[37]

In addition to market fragmentation, concern also has been expressed that multiple trading may not fully facilitate "fair competition" among marketplaces. Specifically, commentators have argued that even with multiple trading "fair competition" may be impeded by brokerage order routing practices.[38] As indicated above, brokerage firms tend not to route retail orders on an order-by-order basis to the market displaying the best quotation. Instead, for each option the firms will designate one market as "primary" and direct all retail order flow to that market. In the past, the Commission has been concerned that primary market designation decisions have been guided almost exclusively by the volume of trading in a security already occurring on a particular exchange.[39] Accordingly, the designation decisions of a few large brokerage firms could cause the bulk of all retail order flow in an option to be routed to a single exchange. In the Moratorium Termination Release, the Commission expressed its concern that, because of this so-called primary market phenomenon, meaningful competition for order flow in any given option may be no more than a transitory phenomenon.

It appears, however, that brokerage firms now consider a broader range of factors than merely volume in making market designation decisions. For example, one major firm, Merrill Lynch, described in its comments in the Rule 19c-5 proceedings the process by which it designates a primary market for multiple traded options.[40] Designation decisions are made by a standing committee composed of individuals from various areas of the firm experienced in options-related functions. Among the factors considered by this committee, according to the firm's comments, are "the quality of the markets made by the assigned specialist or market makers, the depth and liquidity of the market, and the operational facilities and responsiveness of the exchanges to complaints and suggestions for improving their facilities. Recent experience with multiple trading of OTC options suggests that firms also may be more willing to review periodically their order routing decisions.[41] Furthermore,

[32] Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354, 4356.

[33] The Options Study Report observed that "[a]lthough the bases that large retail firms use for designating an exchange as "primary" vary from firm to firm, principal factor that the firms consider is the volume of public orders that are [sic] executed on each exchange. Options Study Report, *supra* note 11, at 831. As explained below in the discussion of "fair competition among marketplaces, there are now indications that brokerage firms rely increasingly on market quality considerations in determining where to route retail orders. *See infra* notes 40–41 and accompanying text.

[34] Options Study Report, *supra* note 11, at 842–43.

[35] *See* Rule 19c-5 Adoption Release, *supra* note 1, at note 117 and accompanying text.

[36] Options Study Report, *supra* note 11, at 840.

[37] *See* Rule 19c-5 Adoption Release, *supra* note 1, at note 112 and accompanying text.

[38] *See, e.g.*, Statement of the Chicago Board Options Exchange, Inc. in Response to Release No. 34-24613, dated February 1, 1988 ("CBOE response") at 11.

[39] Firms have responded to criticism of these mechanical routing practices by arguing that, in routing orders to the market with the most business, they are more likely to receive an execution at price between the bid and offer and less likely to "miss the market.

[40] Letter from Daniel P Tully, President and Chief Operating Officer, Merrill Lynch & Co., Inc. to Jonathan G. Katz, Secretary, SEC, dated September 10, 1987.

[41] See Rule 19c-5 Adoption Release, *supra* note 1, at note 124 and accompanying text. Indeed, the Commission has taken the position that "a broker routing retail orders in particular security to single market (whether by automated or other means) must at least make periodic assessments of the quality of competing markets to assure that it is

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as the release adopting Rule 19c-5 explains, recent experience with multiple traded options on OTC stocks suggests that the competition between and among exchanges for order flow may not be as short-lived as once thought. Nor has one exchange emerged as the only winner in competition for order flow in multiple traded OTC options.[42]

The Staff believes that it is important to recognize that when the market structure concerns outlined above were raised in 1978 by the Options Study there had only been a brief and limited experience with multiple trading. These concerns have been reiterated on numerous occasions since 1978, and have, to a certain extent, taken on a life of their own. The experience with multiple trading of options on OTC stocks since 1985 has shown, however, that, even in the absence of market integration facilities, some of these concerns may have been exaggerated. Particularly with respect to market fragmentation concerns, the experience with multiple trading of OTC issues has failed to produce anything like the dramatic pricing disparities discussed in the Options Study Report.[43]

Nevertheless, the Staff believes that an exploration of market integration facilities which might further reduce pricing inefficiencies, enhance best execution opportunities and increase competitive alternatives is valuable. The Staff emphasizes, however, that the purpose of this discussion is not to dictate, at this time, changes in the trading environment for options but to facilitate analysis by the options markets and the securities industry.

II. Quotation Information in the Options Markets

The availability and reliability of comprehensive quotation information for options is an important element in considering the concerns traditionally associated with multiple trading. Current and reliable quotation information enhances the ability of market participants to direct orders to markets offering the most favorable execution. The dissemination of such quotation information also furthers the ability of markets to compete for order flow and to facilitate the activities of market professionals who ensure that pricing among markets remains in line.

To understand the existing quote and trade reporting regime for options, and to consider whether modifications would enhance a multiple trading environment, it may be helpful to outline the rules governing the collection and dissemination of quotations for stocks.

Pursuant to section 11A(a)(1)[44] and other provisions of the Act, the Commission has adopted rules governing the collection, display, and reliability of stock quotes. Pursuant to the Quote Rule (Rule 11Acl-1 under the Act)[45] all exchanges are required, at all times that they are open for trading, to make available to securities information vendors the highest bid and lowest offer for certain equity securities that they trade. Subject to certain exceptions, the rule also requires exchange members to honor their quotes, *i.e.*, the rule requires "firm" quotes. In addition, to ensure that all markets have an equal opportunity to advertise their prices, the Vendor Display Rule (Rule 11Acl-2 under the Act)[46] provides that, in displaying quotations, securities information vendors must include either: (1) The best bid and best offer from among all markets (with identifiers indicating the reporting market center(s) making available these best bids and offers), or (2) a montage showing quotations from all reporting markets. Many securities information vendors do, in fact, elect the second display mode and show a montage of quotations from all reporting markets.

By their terms, neither the Quote Rule nor the Vendor Display Rule apply to quotations for options. Nonetheless, a system for the collection and dissemination of quotation and transaction information for options has developed that is in many ways similar to that for stocks. All of the options exchanges are participants in a national market system plan for the collection and dissemination of quotation and last sale information. The plan is administered by the Options Price Reporting Authority ("OPRA"). Each exchange collects[47] and transmits to the OPRA system "bids and offers at stated prices or limits with respect to [options] in which it provides a market, sufficient in number and timeliness to reflect the current state of the market in such [options].[48] OPRA in turn makes this quotation information available to securities information vendors, which disseminate it to their subscribers.

A significant issue in considering whether the existing quote and trade reporting regime for options needs to be adapted for multiple trading is the extent to which equity options quotes are firm, or otherwise reliable. In the past, many commentators have argued that firm quotes are not possible in the options environment, and that this lack of firm quotes precludes building market linkage systems. Because of the derivative nature of options, and the need to adjust quotes in numerous series in response to a single price change in the underlying security, it was thought to be impractical or even impossible to require options market professionals always to honor their quotes. A firm quote requirement also was thought to pose special problems for the exchanges using multiple market maker systems; for example, it was argued that there would be difficulties in identifying the member of a trading crowd responsible for a quote, and in providing a mechanism for quotes to be modified or withdrawn.

There have been two developments in recent years which suggest that the arguments that firm options quotes are not possible should be reexamined. First, the development and use by the options exchanges of sophisticated automated systems, known as Autoquote" systems, has made it possible for market professionals to update their quotes in numerous options series simultaneously.[49]

Second, and more importantly, most options markets have developed systems or trading policies to provide what are, in effect, firm quotes for public customer orders of up to ten contracts in certain options. The CBOE and Amex have developed automated execution systems (known as Retail Automatic Execution System or "RAES" and the automatic execution system or AUTO-EX" respectively) which provide

taking all reasonable steps under the circumstances to seek out best execution of customers orders. Securities Exchange Act Rel. No. 15671 (March 22, 1979), 44 FR 20360, 20366. *See also* Rule 19c-5 Adoption Release, *supra* note 1, at note 127 and accompanying text.

[42] *See* Rule 19c-5 Adoption Release, *supra* note 1, at notes 32-35 and note 125 and accompanying text.

[43] *Id.* at note 112 and accompanying text.

[44] 15 U.S.C. 78k-1(a)(1) (1982)

[45] 17 CFR 240.11Acl-1 (1988).

[46] 17 CFR 240.11Acl-2 (1988).

[47] The mechanics of this process differ according to whether the exchange uses unitary specialist system or competing market maker system. At the Amex, NYSE and Phlx, the specialist is responsible for quotations. At the CBOE and PSE, which use competing market maker systems, an exchange employee is responsible for monitoring and publishing quotations as they are made from among competing market makers, floor brokers, and the Order Book Official (an exchange official who holds the book of agency limit orders).

[48] *See* Plan for Reporting of Consolidated Options Reports and Quotation Information, section V(b) (available on file at the Commission's home office in Washington, DC).

[49] We recognize that while use of Autoquote systems may assist in market-making activity, it also may contribute to strains on the capacity of market data systems by generating more quotations, in more condensed periods of time, than would be possible if quotes were entered only manually.

executions of such orders at the best bid or offer available on each exchange at the time of order entry.[50] Market makers on the CBOE, and specialists and Registered Options Traders on the Amex who participate in these systems are required to accept executions, on a rotation basis, by the systems at the applicable inside quote. Although these systems do not currently include all equity options listed on the two exchanges, the Commission recently approved proposals by the exchanges that would allow all such options eventually to be included.[51]

The availability of what are, in effect, firm quotes for certain orders is not limited to the CBOE and Amex. The Phlx and PSE, which currently do not use automated execution systems, have adopted trading policies to ensure that for certain series of options (generally, the most active ones) public customer orders are filled at the best bid or offer prevailing on the exchange. In particular, the trading policies, termed ten-up requirements, require that when specialists/market-makers are responsible for the best bid and/or offer in certain specified option classes, customer orders are to be filled to a minimum depth of ten contracts by the specialist/market-makers in the trading crowd.[52]

These developments show that firm quotes in options are, at least to a limited extent, possible. In particular, the development by the options exchanges of systems and trading policies which provide firm quotes for public customers demonstrates the fallacy of the argument that firm quotes are inherently incompatible with options trading. While firm quotes may be possible in retail options trading, however, the involvement of professional traders presents special problems. If required to honor their quotes for professional traders, options market makers and specialists are vulnerable to being "picked off" by professional traders whenever they have not adjusted their quotes quickly enough.[53] This could impose substantial costs and risks on market makers, which could cause market makers to reduce the number of securities in which they make a market. If this were to occur it might effect options market liquidity.[54]

The Staff does not believe that it is now necessary or appropriate to extend the firmness requirement of the Quote Rule to options. It is important to recognize that the options markets generally provide accurate quotes, even where the quotes are not expressly firm. Moreover, firm quotes for small customer orders are now generally available. It appears that options quotes are sufficiently reliable to support an intermarket linkage or an order routing switch.

Furthermore, the Staff believes that the OPRA infrastructure and the standards and procedures for collecting and disseminating market information are fundamentally adequate to support multiple trading. Clearly, the adoption of multiple trading may require a review of existing procedures and enhancements of data storage and processing capacity.[55] The Staff is confident, however, that the options exchanges and OPRA will be able to address these tasks.

In adopting the Vendor Display Rule for stocks (described above), the Commission recognized that the manner in which securities information vendors display market information can have implications for competition among markets. In requiring that vendors display either the best bid and offer from among all markets or a montage showing quotations from all markets, the Commission sought to ensure that all markets would be able to engage in price competition on an equal basis. The Staff has considered whether it may be necessary to adopt vendor display requirements for options in a multiple trading environment, and, to this end, has conducted a review of the current practices of a group of vendors [56] regarding multiply traded options on OTC stocks. The Staff found that many of these vendors provide a montage showing the quotes of competing exchanges for each series of these OTC options, although in some cases the montage is not part of the vendor's basic service. All carry, in one form or another, quotation information from all markets trading a particular options class. In other words, for multiply-traded options on OTC stocks, vendors currently carry the data that is necessary to make order routing choices among markets. We note, however, that none of the vendors contacted provides this data in the form of the best bid and offer from among all markets. We anticipate that as multiple trading evolves, pursuant to the terms of Rule 19c-5, vendors might wish to offer quotation information for the more active multiply traded series in the abbreviated form of a best bid and offer.

The Staff preliminarily has concluded that it is not necessary to impose vendor display requirements for options. The staff does believe, however, that vendor practices should be consistent with the notion of fair competition. Accordingly, we will continue to monitor vendor practices closely as multiple trading is phased in pursuant to the terms of Rule 19c-5.[57] In particular, the Commission would be concerned by, and would not permit, vendor practices that do not provide competing exchanges an adequate opportunity to disseminate their quotes, as would be the case, for example, were a vendor discriminatorily to eliminate information from competing markets.[58]

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[50] The Phlx also has filed a proposed rule change, SR-Phlx89-03, with the Commission to adapt its automated order routing and confirmation system, known as "AUTOM, to include an automated execution function for certain eligible market and marketable limit orders.

[51] Securities Exchange Act Rel. No. 25995 (August 15, 1988), 53 FR 31781 (relating to CBOE's RAES); Securities Exchange Act Rel. No. 25996 (August 15, 1988), 53 FR 31779 (relating to Amex s AUTO-EX system).

[52] *See* PSE Rule VI, Sections 48 and 79, and PSE Options Floor Procedure Advice B-12; Phlx Rule 1033(A). The PHLX recently expanded its ten-up requirement to all options series traded on the PHLX and to instances where floor traders are not quoting the best bid or offer. Securities Exchange Act Release No. 26669 (March 27, 1989), 54 FR 13282. In addition, the CBOE has filed proposed rule change with the Commission to create pilot program to require firm quotes for up to ten contracts for public customer orders. Securities Exchange Act Rel. No. 26570 (February 24, 1989), 54 FR 8857

[53] In other words, although market makers may be willing to honor disseminated quotes for public customers' orders, which reflect the relatively random flux of buy and sell orders, they may be less willing to make those quotes available to other professional traders where there is greater likelihood that such traders may be acting on information generally not known to public customers.

[54] *See also* Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (order approving NASD proposed rule change limiting access to the Small Order Execution System for professional traders).

[55] *See infra* note 58.

[56] The Staff surveyed Automated Data Processing, Bridge Information Systems, Quotron, Track Data, and Wang Financial Information Service Corp.

[57] The Commission has explicit authority under the Act to prescribe rules and regulations to "assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities and the fairness and usefulness of the form and content of such information. Section 11A(c)(1)(B) of the Act [15 U.S.C. 78k-1(c)(1)(B)(1982)].

[58] The Staff recognizes that vendors may be constrained by data capacity management considerations. A number of commentators in the Rule 19c-5 proceeding, including the Information Industry Association ("IIA") and Automated Data Processing, expressed concern that multiple trading could lead to proliferation of options market data and place increasing strains on the operational capabilities of vendors. The IIA suggested several specific measures to address vendor capacity concerns in multiple trading environment. It recommended that: (1) Procedures be considered to permit quotation reporting to begin before the market opening, to reduce the information reporting "peak that typically occurs at the opening; (2)

Continued

III. Market Integration Facilities

The discussion of means to alleviate the market fragmentation concerns traditionally associated with options multiple trading has focused on three measures: (1) An intermarket linkage to allow orders to be sent among markets; (2) a mechanism to route small customer orders to the "best" market and to guarantee an execution at the best bid or offer of the competing markets; and (3) a central limit order file. The Staff believes that each of these measures has merit and should be given serious consideration by the options exchanges.

A. Intermarket Order Routing Linkage

There is currently one major intermarket linkage system in operation. This system, known as the "Intermarket Trading System" ("ITS"), was developed jointly by several of the stock exchanges, and authorized by the Commission as a national market system facility, pursuant to section 11A(a)(3)(B) of the Act.[59] The ITS is a computer-communications linkage among the major stock exchanges and certain NASD market makers that provides facilities and procedures for: (1) The display of composite quotation information at each of the participant markets so that brokers are able to determine readily the best bid and offer available from any participant for a multiply-traded security; (2) efficient routing of orders and administrative messages between market participants; and (3) participation, under certain circumstances, by members of all participating markets in opening transactions in those markets.

Trading through ITS occurs in the following manner. When a floor broker receives an order to buy or sell stock,[60] he will compare the quotations in his market with the ITS display of quotations from other markets. If the ITS display shows that another market has a superior quote, the broker may send the order through the ITS to that market.[61] To do so, he will send a "commitment to trade, good for a specified amount of time (either one or two minutes), through the ITS to that exchange. If the bid or offer is still good at the receiving market when the commitment arrives, the receiving member will send a response through the ITS accepting the commitment. The ITS also is available for routing proprietary orders between markets. Indeed, the System is often used by specialists on regional exchanges to "lay off" inventory positions in the New York market.

The ITS has helped to prevent pricing disparities among the participating exchanges and has helped to ensure that orders are not executed at an inferior price on one exchange while a superior price is available at another exchange. To this end, the ITS participants have adopted "trade-through" rules, which generally prohibit executing orders on one exchange if a superior price is available at a linked exchange,[62] and a block trade policy.[63]

An intermarket linkage system similar to the ITS was one of the market integration approaches suggested by the Commission in the Moratorium Termination Release. At that time, the Commission questioned whether such a system would work in the options environment because of the lack of firm quotes. According to the Commission: "[t]he successful implementation of a market linkage system is virtually entirely dependent upon the quality and reliability of quotation information disseminated by each market center. However, the Commission has received significant commentary that a firm quote rule could not be applied to options."[64] At the same time, the Commission recognized that, even in the absence of firm quotes, an intermarket linkage might help to reduce pricing disparities between markets by facilitating arbitrage activity from the floors of the exchanges, and that it could provide a prompt and efficient means for options market makers to "lay-off" their order imbalances.[65]

It appears that the lack of firm quotations is no longer the impediment it once was to the development of an options intermarket linkage. The nature of quotation information has changed since the Commission considered the prospects for an inter-market linkage in the Moratorium Termination Release. As explained in the preceding section, the development by three options markets of automated small order execution systems, and the adoption by two options exchanges of trading policies requiring firm quotes, has shown that the options markets now believe that options quotations provide a sufficient basis for pricing orders of up to ten contracts.

The Staff has examined sample equity options trading data to determine what proportion of all orders are for ten or fewer contracts. Data for a sample one week period, January 18–22, 1988, showed that approximately 82% of all trades executed on the five options exchanges were for ten or fewer contracts. This data shows that a large proportion of equity options orders falls within the size range in which reliable quotations have been shown to be possible.[66]

Although the absence of reliable quotes has been the principal conceptual impediment to an intermarket linkage system for options, other objections also have been raised. Critics have argued that such a linkage would be too slow for the fast pace of options trading, and that it would prove too costly to route individual orders from one market to another in pursuit of the best price.[67] Also, it has been argued that an intermarket linkage would not lend itself to the kind of multiple component transactions, such as spreads and straddles, that are common in options trading.[68]

The Staff believes that these objections are, to a large extent, based on erroneous assumptions regarding the

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quotation reporting for inactive option series be deferred from the opening until less active periods of the day; (3) use of Autoquote be discouraged. Letter from Kenneth B. Allen, Senior Vice President, IIA to Jonathan Katz, Secretary, SEC, dated February 12, 1988. The Staff believes that the options exchanges should consider the capacity enhancements recommended by IIA. It is to address concerns over market data capacity, in part, that the Commission has determined to "phase-in" multiple trading according to the terms of Rule 19c–5. The Staff plans to work with the IIA, OPRA and options SROs during the phase-in period to address these issues.

[59] 15 U.S.C. 78k–1(a)(3)(B) (1982).

[60] Essentially all listed reported stocks which are multiply traded are eligible for trading in the ITS.

[61] The ITS Plan does not require that the order be routed to the market with the better quote. The order may be executed in the market in which it is received, with that market often matching the better quote.

[62] The rule is enforced by requiring an exchange member who has initiated trade-through to: (1) Satisfy the superior bid or offer in a separate transaction with the exchange member whose quote has been traded through; (2) to adjust the price of the transaction that constituted the tradethrough; or (3) to cancel the transaction. *See* Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage, Exhibit B. The ITS trade-through rule was approved in Securities Exchange Act Release No. 17703 (April 9, 1981), 22 S.E.C. Doc. 707

[63] A block trade, for purposes of the policy, is trade involving 10,000 or more shares, or market value of $200,000 or more, that is effected at price outside the bid or offer displayed from another ITS market. The ITS trade-through policy requires (subject to number of exceptions) that member representing block-size order send, at the time of execution of a block trade, to each ITS market displaying bid (offer) superior to the execution price commitment to trade at the execution price for the number of shares displayed with the superior quote. *Id.*

[64] Moratorium Termination Release, *supra* note 18, 45 FR at 21431. (footnote omitted)

[65] *Id.* at 21432 n.58.

[66] We recognize that the automated execution systems and the trading policies described above provide firm pricing only for public customer orders.

[67] *See, e.g.*, Statement of the Pacific Stock Exchange Incorporated in Response to Securities and Exchange Commission Release No. 34–24613 (January 27, 1988), at 1 and Appendix A.

[68] *See, e.g.*, CBOE response, *supra* note 38, at 26.

necessary scope and trading capacity of such an intermarket linkage. For example, one of the exchanges responding to proposed Rule 19c-5 observed that, while approximately 1,400 stocks are traded in the ITS today, a linkage for options might have to accommodate as much as all of the 21,000 individual options series traded on exchanges today. Clearly, it is an exaggeration to expect that all—or even most—listed equity options will be multiply traded.[69] Indeed, of the 449 OTC stocks eligible for options trading, only 103 (23%) have options overlying them, of which only 10 (9.7%) are multiply traded. Moreover, even with respect to those that are multiply traded, not all series would need to be eligible to be traded through the linkage; participation in the linkage could be limited to the more active near-term at-the-money series which are multiply-traded.[70] Nor need the linkage necessarily support heavy trading to fulfill its purpose of preventing the adverse effects of market fragmentation.[71] We recognize that such an intermarket linkage for options would not be able to accommodate multiple component transactions unless it could be designed to allow for customized multiple component quotations. We believe, however, that the mere creation of an intermarket order routing channel will be likely to prevent significant intermarket pricing disparities.

The cornerstone of such a system would be an undertaking among the exchanges to formalize and extend their current practices and guarantee executions of agency orders routed through the system at each exchanges current quotes. For example, the exchanges might agree to guarantee executions of up to ten contracts for more actively traded options series and up to a lesser size, perhaps five contracts, for thinly traded series.

The exchanges may wish to consider whether the linkage also should be available for routing larger agency orders, professional orders and even limit spread orders, albeit without firm quotes. Such a system, like the ITS, would need to provide for the display of composite quotation information at each of the participating markets. It also should be designed for fast and efficient input of orders, particularly in those markets with multiple market makers. In light of the fast pace of options trading, and the need to respond quickly to price changes in the underlying stocks, an options linkage should, perhaps, require that orders sent through the system be accepted or rejected more quickly than is the case in the ITS. The options SROs also may wish to adopt default procedures to provide that an execution automatically occur when an order has not been accepted or rejected within the applicable time period.[72] An intermarket linkage for options need not, in the Staff's view, be as elaborate as the ITS to achieve its desired effect. For example, the application of a trade-through rule may not be necessary at the inception of an options linkage.[73] Also, for reasons that are discussed in the following section, it may not be practical to use such a linkage to coordinate market openings. Finally, an options linkage should be designed to be flexible so that options can quickly be added and deleted, in view of the fact that certain options may be multiply traded for only a short time before a dominant market emerges and other markets delist.

In sum, the Staff believes that it would be possible to develop a workable intermarket options order routing system that would, by enhancing best execution opportunities and providing a second level of competition among the exchanges, help to augment the beneficial effects of multiple trading. The Staff recommends that the options markets review the feasibility of implementing an intermarket order routing linkage for multiply-traded options.

B. Small Order Switching Facility

The second market integration measure that has been considered is a mechanism to route orders, on an order-by-order basis, to the "best" market. This could be accomplished either by requiring brokerage firms to make order-by-order routing decisions, or by developing a switching facility to which all orders would be sent for routing to the best market. In either event, this approach would, like an inter-market linkage, also depend on the quality and reliability of quotation information.

Implementation of an order-by-order routing approach would require a fundamental change in behavior on the part of brokerage firms, particularly large, retail-oriented firms, which generally select one primary market for the receipt of most order flow. Absent a switch, requiring firms to route all orders one-by-one would be costly Moreover, in accepting customer orders, brokerage firms assume certain fiduciary obligations to their customers, including the duty of "best execution."[74] Critics of the order-by-order routing approach have argued that an order routing switch or rule would be too inflexible, and that it would fail to take into account the fact that the quoted price alone is not necessarily the only factor in determining where to obtain the best execution. For example, the market with the best quote at any particular moment is not necessarily the one with the most depth and liquidity or the most reliable execution and clearing services.

Nevertheless, it may be possible to proceed with a market integration approach that is based on limited order-by-order routing for small customer orders, that does not require development of a central switching facility or individual order routing decisions by firms, and that is based on modification and expansion of existing exchange facilities. As explained above in connection with the nature of quotation information, the CBOE and Amex have developed automated execution systems which provide executions of retail orders at the best bid or offer available on each exchange at the time of order entry. If the markets that do not currently have automated execution capabilities build such systems, these systems could be linked and modified to include a message switch on each. Incoming orders in options that are traded on both exchanges would be automatically retained for execution or routed to the other exchange's system, depending on which exchange was then offering the

[69] The American Stock Exchange has suggested that the current lottery system encourages the continued listing of lightly traded options, which, in competitive environment, would tend to be "pruned" away by the exchanges. Statement of The American Stock Exchange regarding Multiple Trading of Options, dated February 1, 1988.

[70] Equity option trading tends to be concentrated, with the most activity occurring in relatively small group of series. For example, data from August 15, 1988, (a randomly selected date) shows that trading in the 100 most active series accounted for 39.6% of the total contract volume of that day, and trading in the 450 most active series accounted for 70% of total contract volume.

[71] We note that in 1987, daily average volume on the ITS was relatively modest 7,069 trades and 7,625,926 shares.

[72] *Cf.* Division of Market Regulation, *The October 1987 Market Break* (Feb. 1988) at 7-48 (suggesting that ITS participants consider adopting default procedures).

[73] A block trade policy, such as the ITS policy (described *supra* note 63), may not be appropriate in the options context. The requirement that market participants who execute block trades "take out" superior quotes in other markets is premised on those quotes being firm. As noted above, however, the "firmness of options quotes is changing, and if an options linkage facility were to be developed, the options markets may wish to consider developing special policies for handling large-sized orders.

[74] *See* Section 11A(a)(1)(C)(iv) of the Act [15 U.S.C. 78k1(a)(1)(C)(iV) (1982)].

best price.[75] The Staff believes that this type of linkage would reduce further the possibility of pricing disparities between markets. While such a system would remove the firm s opportunity to use its best judgement as to how to achieve best execution of its customers' orders, the system may provide greater benefits than are available through the exercise of such judgment. For example, firms employing options automatic execution systems already have determined that the advantages of an assured quote-based execution of its customers' orders exceed the potential benefits of achieving a superior execution between the quotation spread. A switching facility would provide execution of customer orders at the best disseminated quote in a multiply traded environment. Moreover, because orders automatically would be directed to the market with the best price (where they would be guaranteed an execution), this type of linkage would greatly enhance opportunities for competition among markets.

Accordingly, the Staff recommends that the options markets review the feasibility of developing a procedure to route customer market and marketable limit orders of up to ten contracts to the market disseminating the best bid or offer (as the case may be) and provide a guarantee of execution for agency orders at that price. The system need not be mandatory, but could be offered as a voluntary alternative to firms who wished both to ensure their customer's order an execution at the best disseminated quotation and, at the same time, encourage quote competition among options markets.

C. Central Limit Order File

The third market integration measure that has been considered in connection with multiple trading is a central limit order exposure system—an electronic facility for collecting, displaying, and providing automatic execution of, limit orders in multiply traded options. If successfully implemented, a central limit order system would have the potential to enhance fair competition among brokers and dealers and among markets, to provide inter-market order interaction and thereby reduce market fragmentation, and to ensure that public customer limit orders are protected and are not bypassed by professional or institutional orders executed on other markets.

As already mentioned, the Commission asked the options exchanges to consider such a facility when the Moratorium was lifted in 1980. The Commission envisioned an electronic facility which would (1) allow brokers to enter and retrieve public limit orders directly; [76] (2) queue orders for execution on the basis of price/time priority; (3) provide on each options exchange a display summary of orders in the system; (4) provide floor members on each options exchange an equal opportunity to execute automatically against orders in the system; and (5) provide the floor member executing against the limit order and the broker entering the order an immediate execution report.[77]

The task force formed by the exchanges reasoned that the effectiveness of a limit order exposure system in addressing the concerns associated with multiple trading would depend on the extent to which the system was used, *i.e.*, on the proportion of order flow affected by the system. In an attempt to predict this, the task force examined the extent to which limit orders were then used in options trading and the extent to which these limit orders were in fact "booked" with the specialist or order book official. The task force found that while limit orders were widely used in options trading, they often were not "booked. The task force explained that limit orders were used in different ways and for different reasons in options trading than they traditionally had been in the equity markets. An equity investor typically would use a limit order when he wished to buy at a price below, or sell at a price above, the prevailing market price, and the order generally would be "booked. An options investor, on the other hand, would often use a limit order even when willing to trade at the current market price, to protect against an unfavorable execution. Such orders typically would not be "booked" for the same reason that they were placed to begin with—because of the danger of receiving an unfavorable execution before being able to retrieve an order from the book. In sum, the task force concluded that, because of the manner and extent to which limit orders were used in options trading, a central limit order exposure system would not be likely to address fair competition and market fragmentation concerns.[78]

The Staff believes that the options SROs should reexamine the prospects for a central limit order exposure system. The circumstances under which options are traded have changed considerably since the options exchanges examined this issue in 1980/81.[79] Technological developments such as the implementation of electronic limit order books at the NYSE, and the development by the NASD of a limit order processing and execution capability for SOES,[80] have shown that a central limit order system is now operationally feasible. While the Staff is unable to estimate the actual percentage of limit orders which would be entered into such a system, the ability to participate in trades in other markets would appear to provide a powerful incentive for routing orders to the system. In addition, such a system would permit participants in each competing market to have access to all booked limit orders. Accordingly, a limit order system potentially could increase opportunities for market-maker competition and provide nationwide price protection for all limit orders.

Consideration of a central limit order system would raise a number of policy and technical considerations. A threshold question is which limit orders should be included in the system; that is, whether only public orders should be eligible, and whether there ought to be a limitation on the size of orders (public or other) that could be entered. The Staff is inclined to believe that the system, at least initially, should be limited to public customer orders because of the heightened concerns regarding the execution of public customer orders in a multiple trading environment. In addition, the Staff believes that limiting the availability of the system to public customers will reduce concerns over the impact of any such file on the structure of the existing trading markets and therefore will enable the exchanges to more easily design and implement such a system.

A closely related issue is what rules of protection or priority should apply to

[75] The NASD's Small Order Execution System ("SOES") operates in manner similar to this. Orders entered into SOES are automatically executed against either the market maker displaying the best bid or offer, or the market maker designated by the firm entering the order.

[76] Although the Commission suggested that only public limit orders be included in the system, it invited the SROs to consider whether all limit orders should be included. Moratorium Termination Release, *supra* note 18, 45 FR at 21432 n.59.

[77] *Id.*

[78] Having reached this conclusion, the task force did not proceed to what was to have been the second phase of its effort—consideration of technological and cost factors associated with limit order exposure system.

[79] We note that the advent of guaranteed executions of retail orders up to certain size at an exchange s best price (either through automated execution systems or exchange trading policies) may have changed the way in which limit orders are used in options trading.

[80] *See* Securities Exchange Act Release No. 26476 (January 19, 1989), 54 FR 3681.

orders entered into the system in relation to other orders. For example, limit orders entered into the system could be given priority over any options order elsewhere at the same price; in other words, all proposed options transactions would be required to clear the limit order system before or upon being executed.[81] In the alternative, limit orders entered into the system could be provided price protection so that orders outside the system could not be executed at inferior prices unless limit orders at superior prices in the system were satisfied.[82] The Staff believes that any system that may be developed should provide, at a minimum, price protection for public limit orders.[83]

Priority rules with respect to orders in the system also would have to be established. The most likely alternative would be for orders to be queued on the basis of price first, and then time of entry into the system. The content of these intra-system priority rules also would depend, however, on what type of limit orders are eligible to be entered into the system. For example, if proprietary orders of brokers and dealers could be entered into the system, it may be desirable to afford priority to public customer limit orders.

Among the more technical considerations would be how to design the system to provide maximum flexibility and speed in functions such as entering, retrieving or updating orders, and generation of execution reports to all parties to a transaction.

The Staff believes that a central limit order system has the potential to alleviate the concerns associated with multiple trading, and recommends that the options markets review the feasibility of implementing such a system.

IV Market Openings

Concern over pricing disparities in a multiple trading environment has often been focused on market openings.[84] It is at that point in the trading day, in theory, that differing mixes of buy and sell orders among markets are most likely to produce significant pricing disparities. Indeed, the early experience with multiple trading, before the imposition of the Moratorium, produced several dramatic instances of disparate pricing at the opening.[85] Despite the potential for pricing disparities at the opening, however, the Commission staff studies of multiple trading of options on OTC stocks failed to reveal any significant pricing problems at the opening.

To ascertain how much of daily trading potentially could be affected by whatever pricing problems that do occur, the Staff has sought to determine what proportion of daily trading takes place at the opening. Data for two sample weeks, the weeks of September 28 to October 2, 1987 and January 18 to 22, 1988, showed that trades executed before 10 a.m.[86] accounted for 8.2% and 9.2% respectively of the daily number of trades, and for 7.6% and 6.4% respectively of daily contract volume.

The Staff has considered, but does not currently recommend, a number of possible measures to coordinate market openings in options. For example, an inter-market order and message routing linkage, as discussed in the preceding section, could include a pre-opening application to share order imbalance information and to allow markets to participate in each other's openings. ITS, for example, provides such an application for stocks. In light of the derivative nature of options, however, the number of different series involved, and the differences between unitary specialist and multiple market maker trading systems, the Staff recognizes that such an arrangement might prove too cumbersome and time-consuming in the options context.

Another possibility considered by the Staff would be to designate one market to open trading, with the designation perhaps rotating among competing markets. The drawback with this solution is that it would provide the market chosen to do the opening an unwarranted competitive advantage. If the designation were to be changed frequently, it could result in public investor confusion and costly operational changes for member firms. Moreover, if the designation were rotated, nonprimary markets might not have sufficient order flow or capital to properly price each option series.

Multiple trading of options on OTC stock has not produced significant pricing disparities at the opening. The Staff believes that coordination at the opening among markets trading the same option may only be necessary when there are unusual market conditions. For these instances, the options exchanges should establish means of assured communications, such as dedicated telephone lines or electronic mail facilities between trading posts in the competing markets.

V Conclusion

The Commission has found that multiple trading of options is likely to bring benefits to investors that will substantially outweigh any adverse consequences of market fragmentation, even in the absence of integration facilities among markets. The Staff believes that it would be possible to devise integration measures that would address the concerns associated with market fragmentation.

The Staff believes that the options markets should avail themselves of the advance notice provided and the Commission's policy of phased-in implementation of Rule 19c-5 to consider developing market integration facilities. The Staff is committed to working closely with the options markets in their evaluation of the feasibility of such facilities.

By the Commission.

Jonathan G. Katz,

Secretary.

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[81] The rules of the CBOE (which allows only public customer limit orders to be entered into the exchange's limit order books) provide for such preferential treatment of public limit orders. CBOE Rules 6.45 and 7.4.

[82] The rules of the Amex (which allows both public and professional orders to be entered into the exchange's limit order books) provide for such protection of "booked" limit orders. Amex Rule 155.

[83] We understand, however, that it may be desirable to provide exceptions from price protection or priority rules for spread transactions, to the same extent that exchange rules currently exempt such transactions. *See* CBOE Rule 6.45(d) and Amex Rule 950(d), Commentary .01.

[84] Options market openings differ from openings in stocks. The various series in given options class are opened in set sequence, in practice known as the "opening rotation. Options openings do not begin until the underlying stock has been opened.

[85] *See supra* note 36 and accompanying text.

[86] The period of up to 10 a.m. is, perhaps, over-inclusive as a measure of trading that occurs at the opening.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2354]

Louisiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 20, 1989, I find that Ouachita Parish, in the State of Louisiana, constitutes a disaster loan area due to damages from severe storms and flooding beginning on May 5, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on July 18, 1989, and for economic injury until the close of business on February 20, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie,

Texas 75051, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous parishes of Caldwell, Jackson, Lincoln, Morehouse, Richland, and Union, in the State of Louisiana, may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 235406 and for economic injury the number is 676700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 23,1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13216 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2349]

Minnesota, Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 22390) is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated May 12 and May 16, 1989, to include Kittson County, in the State of Minnesota, as a result of damages from severe storms and flooding, and to establish the incident period as between March 29 and May 8, 1989.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 10, 1989, and for economic injury until the close of business on February 9, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 18, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13217 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2351]

North Carolina; (and Contiguous Counties in the States of South Carolina and Virginia) Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 17 1989, I find that the counties of Catawba, Cleveland, Davidson, Davie, Durham, Forsythe, Granville, Guilford, Iredell, Lincoln, and Union, in the State of North Carolina, constitute a disaster loan area due to damages from tornadoes which occurred on May 5 and 6, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on July 17 1989, and for economic injury until the close of business on February 20, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Caswell, Chatham, Franklin, Gaston, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Rutherford, Stanley, Stokes, Surry, Vance, Wake, Wilkes, and Yadkin, in the State of North Carolina; Cherokee, Chesterfield, Lancaster, and York Counties, in the State of South Carolina; and Halifax and Mecklenburg Counties, in the State of Virginia, may be filed until the specified date at the above location.

The interest rates are:	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations) with Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 235112, and for economic injury the numbers are 676200 for the State of North Carolina, 676300 for the State of Carolina, and 676400 for the State of Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 22, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13218 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2353]

Texas (and Contiguous Counties in the State of Oklahoma) Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated May 25, 1989, to include Cooke, Fannin, Harris, Johnson, Kaufman, McLennan, Montague, Nacogdoches, Parker, Rusk, Smith, and Williamson Counties, in the State of Texas, as a result of damages from severe storms, tornadoes, and flooding beginning on May 4, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Angelina, Bastrop, Bell, Bosque, Brazoria, Burnet, Chambers, Cherokee, Clay, Coryell, Delta, Falls, Fort Bend, Galveston, Grayson, Gregg, Harrison, Henderson, Hill, Hunt, Lamar, Lee, Liberty, Limestone, Milam, Montgomery, Panola, San Augustine, Shelby, Travis, Upshur, Van Zandt, Waller, and Wood, in the State of Texas, and Bryan, Choctaw, Jefferson, and Love Counties, in the State of Oklahoma, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 17 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 26, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13219 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2353]

Declaration of Disaster Loan Area; Texas

As a result of the President's major disaster declaration on May 19, 1989, I find that Dallas, Hood, Palo Pinto, and Tarrant Counties, in the State of Texas, constitute a disaster loan area due to damages from severe storms, tornadoes, and flooding beginning on May 4, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on July 17 1989, and for economic injury until the close of business on February 20, 1990, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous countries of Collin, Denton, Eastland, Ellis, Erath, Jack, Johnson, Kaufman, Parker, Rockwall, Somervell, Stephens, Wise, and Young, in the State of Texas, may be filed until the specified date at the above location.

	Percent
The interest rates are:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 235312 and for economic injury the number is 676600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 23, 1989

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13220 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:00 a.m. on Monday, June 19, 1989, at the Yale Inn, 900 East Main Street, Meriden, Connecticut to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, phone (203) 240-4670.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 23, 1989.

[FR Doc. 89-13123 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 8:30 a.m. on Tuesday, June 13, 1989, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mount Pleasant Avenue, Livingston, New Jersey to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, phone (201) 645-3580.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 26, 1989.

[FR Doc. 89-13215 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of New York City, will hold a public meeting at 9:30 a.m. on Tuesday, June 20, 1989, in the 4th floor conference room of the American Institute of Certified Public Accountants, 1211 Avenue of the Americas (between 47th and 48th Streets), New York, New York to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bert X. Haggerty, District Director, U.S. Small Business Administration, 26 Federal Plaza, Room 3100 New York, New York 10278, phone (212) 264-1318.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 26, 1989.

[FR Doc. 89-13214 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Filed Under Subpart Q During the Week Ended May 26, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.. 46308.

Date Filed: May 22, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 19, 1989.

Description: Application of Aeroejecutivos, C.A. pursuant to section 402 of the Act and Subpart Q of the Rules of Practice applies for a foreign air carrier permit to engage in scheduled foreign air transportation of property and mail as follows:

From a point or points in Venezuela, on the one hand, to Miami, Florida, on the other. Applicant also requests on and off-route charter authority as appropriate under Part 212 of the Economic Regulations.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-13185 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-62-M

Implementation of the Small Business Competitiveness Demonstration Program

AGENCY: Office of the Secretary (DOT).

ACTION: Notice and request for information.

SUMMARY: As required by the December 22, 1988 joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim

policy directive and test plan implementing Title VII of the "Business Opportunity Development Reform Act of 1988" Pub. L. 100-656 (53 FR 52889), the DOT is announcing its ten targeted industry categories selected for enhanced small business participation and requesting information from firms who wish to participate in the Small Business Competitiveness Demonstration Program.

ADDRESS: For information requested therein, interested parties should submit a written request to Will Terry Moore, Chief, Direct Contracting and Financial Assistance Division, S-42, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW Room 9410, Washington, DC 20590.

I. Supplementary Information

A. Background

The Small Business Competitiveness Demonstration Program was established by Title VII of the "Business Opportunity Development Reform Act of 1988" Pub. L. 100-656. The purpose of the demonstration program is to:

(1) Test the ability of small businesses to compete successfully in four designated industry groups without competition being restricted by the use of small business set-asides.

(2) Measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB's), and to provide for certain acquisitions to be reserved for ESB participation only.

(3) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.

II. Small Business Competitiveness Demonstration Program

A. Four Designated Industry Groups (DIG's)

The following industry groups have been designated to demonstrate whether the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts:

(1) *Construction* under standard industrial classification (SIC) code that comprise Major Groups 15, 16, and 17 (excluding dredging—Federal Procurement Date System (FPDS) service codes Y216 and Z216).

(2) *Refuse systems and related services* under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) *Architectural and engineering services* (including surveying and mapping) under SIC code 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C219, T002, T004, T008, T009, T014, and R404).

(4) *Nonnuclear ship repair* under SIC code 3731 (limited to FPDS service codes J998 and J999).

Acquisitions in the four DIG's with an estimated value of $25,000 or less shall be set aside for emerging small business (ESB) concerns provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality and delivery. If no such reasonable expectation exists, the contracting officer shall proceeded in accordance with FAR Subpart 19.5, "Set-Asides for Small Business" or FAR Subpart 19.8, "Contracting with the Small Business Administration (The 8(a) Program)"

ESB means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

Acquisitions in the four DIG's with an estimated value of $25,000 or more are to be suspended from small business set-asides under FAR Subpart 19.5 unless otherwise directed. However, acquisitions in the four DIG's shall continue to be considered for placement under the 8(a) set-aside program (see FAR Subpart 19.8). After periodic review of DOT Operating Administration s performance, and a determination that the small business share in a particular test industry falls below 40 percent, DOT may direct reinstatement of the use of small business.

B. Ten Targeted Industry Categories (TIC's)

The DOT is fully committed to implementing all of the requirements of the demonstration program and for purposes of the expansive portion, DOT has identified ten targeted industry categories (TIC's) as follows:

Industry name	FPDS codes
(1) Lease/Rental General Purposes Automatic Data Processing (ADP).	W070
(2) System Engineering Services Only	R414
(3) Maintenance Engine/Turbine and Maintenance, Repair Rebuilding of Weapons.	J028 J010
(4) Radar Equipment and Navigation & Navigational Aids R&D.	5840 AT30
(5) Radio/TV Communication Equipment (Except Airborne).	5820
(6) Automatic Data Processing, Central Processing Unit (ADP CPU), Analog.	7020
(7) Rescue Vessels	3732
(8) Automatic Data Processing (ADP) Accessorial Equipment.	7035
(9) Automatic Data Processing (ADP) Teleprocessing and System Development & Programming Service.	D305 D302
(10) Lease/Rental Facilities	X119

The ten TIC's were selected using: (1) Historical data from the Federal Procurement Data System (FPDS) on past small business participation in each of the ten TIC's, (2) anticipated future levels of DOT purchases, and (3) availability of small businesses. DOT's level of small business participation in the ten TIC's ranged from zero to a maximum of 9.3 percent, although the services are purchased in substantial quantities. A survey of source lists, the SBA Procurement Automated Source System (PASS) and other data identifying small businesses revealed that there is a significant amount of small business capacity to perform such services and supplies.

The DOT's goal is to increase small business participation at a minimum rate of one or two percent in each TIC per year. In order to reach this goal, each DOT procurement office has been directed to carefully evaluate every proposed procurement over $25,000, in each of the ten TIC FPDS codes for possible designation as an 8(a) or small business set-aside before considering it for full and open competition.

III. Notice of the DOT'S Intention of Identifying: (1) Emerging Small Businesses (ESB's) in the Four Designated Industry Groups (DIG's) (2) Small Businesses in the Ten Targeted Industry Categories (TIC's) and (3) Small Businesses Interested in Joint Ventures Related to the TIC's

The DOT is committed to assisting all interested small businesses, including ESB's to participate fully in the "Small Business Competitiveness Demonstration Program" To help accomplish this, the DOT is compiling lists of: (1) ESB's with capability in the four DIG's, (2) Small businesses that have capability in the ten TIC's, and (3) Small businesses interested in a joint venture in order to participate in the ten TIC expansion program.

If any small business desires to be included on any of these lists, please submit a written request to the address shown in the second paragraph of this notice.

Dated: May 26, 1989.

Alicia L. Casanova,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 89-13186 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-044]

Commercial Fishing Industry Vessel Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; U.S.C. App. I) notice is hereby given of a meeting of the Commercial Fishing Industry Vessel Advisory Committee. The meeting will begin at 9:00 a.m. on July 6 and 7 1989, at the Department of Transportation, 400 7th Street, SW., Washington, DC, in Room 2330. The agenda is as follows:

—Call to order and opening remarks.
—Review of 19 April 1989 meeting and minutes.
—Discussion of 1989 CFIVAC and Subcommittees
—Discussion of Torremolinos Convention.
—Inspection and licensing studies.
—Meeting of Subcommittees:

A. General Regulation Review and Assessment

B. Safety Equipment Regulation Review and Assessment

C. Crew Qualifications, Education and Training

—Subcommittee reports and recommendations
—Future meeting dates and agendas.
—Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Norman W Lemley, Executive Director, Commercial Fishing Industry Advisory Committee; Marine Technical and Hazardous Materials Division (G-MTH), Room 1218, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001; or telephone (202) 267-0001.

Dated: May 25, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-13187 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

Discretionary Grant To Support the Coordination of Community Traffic Safety Program Activities

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of a discretionary grant to support the coordination of information concerning Community Traffic Safety Program activities.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availablility of a FY 1989 discretionary grant to support the coordination and dissemination of technical information to and for community traffic safety programs through State Highway Safety Offices. This notice solicits applications from national non-profit organizations that are interested in developing and implementing this project.

DATE: Applications must be received at the office designated below on or before July 6, 1989.

ADDRESS: Applications must be submitted to the National Highway Trafic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Rose Watson, 400 7th Street, SW Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Project No. DTNH22-89-Z-5203. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Ms. Rose Watson, Office of Contracts and Procurements, at (202) 366-9557 Programmatic questions relating to this grant project should be directed to Ms. Marilena Amoni, Policy Advisor for Traffic Safety Programs (NTS-01), NHTSA, 400 7th Street, SW., Room 5125, Washington, DC 20590 at (202) 366-1755.

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, Community Traffic Safety Programs began to evolve as an outgrowth of a single issue as a drunk driving, safety belt or engineering improvement effort. Many of these projects combined resources and focused on a more comprehensive approach to traffic safety. City, county and State leaders, elected officials, and governmental agencies saw potential for applying combined, coordinated programs to other areas of traffic safety as well. Community Traffic Safety Programs began to include a variety of traffic safety issues including pedestrians, bicycles, motorcycles, speed enforcement, and emergency medical services. Each year, more programs are merging as a natural evolution from existing single issue projects.

In 1988, NHTSA and the U.S. Conference of Mayors hosted a meeting for Community Traffic Safety Program Coordinators from large cities. In addition, NHTSA extended participation to programs in counties and small cities, as well as the National Association of Governors' Highway Safety Representatives. As an outcome of that meeting, participants identified several needs. Program coordinators felt fragmented from the rest of the highway safety system and identified a need for a formal communication network to provide for the coordinated exchange of technical information among like programs.

NHTSA provides national leadership and support to State governments that manage funds allocated to them by Congress, and works with other private and public groups. NHTSA administers funds for State and Community Programs and research and development projects in order to assist key groups with highway safety programs and development projects in order to assist key groups with highway safety programs and evaluation. The Agency has ten Regional Offices that approve State Highway Safety Plans, and a central staff that administers the research and demonstration projects. As a result of joint efforts with the States and other groups, Community Traffic Safety Programs are the state-of-the-art in highway safety programs.

Objectives

In FY 1989, NHTSA intends to award one grant to a national non-profit organization to promote information exchange among communities with traffic safety programs, coordinate the exchange of information among States supporting Community Traffic Safety Programs, provide information assistance to those communities wanting to establish a Community Traffic Safety Program, disseminate evaluations of the impact of these programs, share information with other national organizations to publicize the Community Traffic Safety Program approach, and promote the gathering of information to identify emerging safety issues of concern to communities.

In order to achieve these objectives, the grantee shall:

1. Establish a community traffic safety program information clearinghouse. As facets of this activity, the types of information needed by the community traffic safety program coordinators will be identified; the traffic safety issues of greatest concern will be determined; and information addressing the identified needs and issues will be gathered and disseminated to communities, States and interested national organizations. Such activities shall be coordinated with the respective State Highway Safety Offices.

2. Plan and conduct a national workshop of participants involved or interested in the development, administration, implementation and evaluation of Community Traffic Safety Programs. The purpose of the national workshop is to share technical information among State Highway Safety Offices, Community Traffic Safety Program Coordinators and NHTSA representatives. It is anticipated that this two-day national workshop will be conducted in early November, 1989, in Boston, Massachusetts.

3. Promote Special Awareness events through the dissemination of information. Such events shall include national traffic safety awareness weeks, such as, Drunk and Drugged Driving Awareness Week, Buckle Up American Week. The promotion includes distribution of Idea Samplers printed by NHTSA and other appropriate materials to the community traffic safety coordinators as well as preparing appropriate articles for publication preceding the event.

4. Encourage public, governmental, and organizational understanding and appreciation of the Community Traffic Safety Programs (CTSP) approach. As a facet of this activity, informational assistance will be provided to communities to facilitate the enhancement of the intergovernmental aspect of community traffic safety programs to strengthen the communities' capacity to develop and sustain CTSPs. In addition, informational resources and assistance will be provided to State and local government agencies interested in establishing CTSPs as well as other national organizations interested in publicizing the CTSP approach.

5. Assessement of collected information. Considering information collected as a result of the other activities identified above as well as internal organizational insight, emerging traffic safety issues will be identified and potential solutions will be provided to community leaders who are attempting to address identified problems. Based upon available information resources, the long range effect of local traffic safety programs which have evolved into CSTPs will be analyzed and the findings disseminated to the traffic safety "community" and other interested national organizations.

Period of Support

The grant project described in this notice will be supported through the award of one grant agreement with an anticipated project period of eight months. The application for funding assistance should address what is proposed and can be accomplished during this period. The anticipated funding level shall not exceed $85,000. Federal funds should be viewed as seed money to assist the organization in the development of information transfer regarding Community Traffic Safety Programs. Monies allocated for this grant are not intended to cover all the costs that will be incurred in this project. Applicants should demonstrate a commitment of in-kind resources in support of the proposed project activities.

Eligibility Requirements

In order to be eligible to participate in this grant project, an organization must be on a non-profit group with a national membership composed of State/local chapters and/or affiliates and a demonstrated organizational interest and capability to support traffic safety programs.

Application Procedure

Applications must be submitted from the national office level of the organization, not from State or local affiliate levels, or individual members. All applications submitted must include a reference to NHTSA Grant Project No. DTNH22-89-Z-5203. Only complete applications received on or before July 6, 1989, shall be considered.

Each applicant must submit one original and two copies of their application to: National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Rose Watson, 400 7th Street, SW Room 5301, Washington, DC 20590.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4-88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included.

2. Applications shall include a project narrative statement which addresses the following:

(a) Identifies the proposed organizational approach for achieving the objectives of the grant project.

(b) Identifies the proposed plan of action for conducting the activities of the grant project, including a schedule of milestones and their target dates, and assessing the project accomplishments.

(c) Identifies the anticipated results and benefits to be derived.

(d) Identifies key organizational personnel who will participate in the grant project, including a description of their qualifications and respective organizational responsibilities, as well as the proposed role of other participating organizations or individuals.

Evaluation Criteria and Review Process

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents of this notice.

Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. The applications will be evaluated using the following criteria which are listed in descending order of importance:

1. The applicant's demonstrated organizational understanding and awareness of the current issues involving traffic safety and the unique aspects of Community Traffic Safety Programs as evidenced in the description of their proposed approach and plan of action. Consideration will be given to the demonstrated experience and commitment of the applicant organization to work with other national organizations that have related missions and that could provide additional support to Community Traffic Safety Programs.

2. The technical merit of the proposed grant project effort, including the feasibility of the approach, plan of action and project assessment, and anticipated results.

3. The adequacy of the organizational resources for accomplishing the proposed grant project effort, including the qualifications and experience of proposed personnel and their proposed level of effort, as well as the proposed participation of other organizations or individuals.

4. The "cost/benefit" potential of the proposed grant project effort, including consideration of contributed organizational resources, and other proposed sources of financial support.

Terms and Conditions of the Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR Part 29—Department of Transportation

Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. Performance Reporting Requirements: (a) Quarterly Progress Reports in a format and schedule to be determined after the award.

(b) A final summary report which describes the conduct of the grant project, details the outcomes, and provides recommendations.

3. During the effective period of the grant awarded as a result of this notice, the grant shall be subject to the general administrative requirements of OMB Circular A-110 (or the "common rule, if effected prior to award), the cost principles of OMB Circular A-122, and the requirements of 49 CFR Part 29.

Issued on: May 31, 1989.

George L. Reagle,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 89-13281 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the private sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities, announced in the **Federal Register** February 9, 1989.

Private Sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Role of the University in Development

The Office of Private Sector Programs will assist in supporting a three-week multi-site program for eight to ten African higher education officials. The program will strive to expose the delegation to the variety of alternatives present in the American higher education system, and demonstrate how universities work in coordination with government and private enterprise to fulfill specific national and community development needs. The project will include an introductory seminar familiarizing the participants with the structure of American higher education, meetings with U.S. government officials to discuss the governmental role in promoting university-led development, sessions with private sector organizations or businesses which lend support and guidance to American universities, meetings with American university officials to discuss issues to mutual concern such as: the relationship of the university to business and other constituencies, admissions and tuition practices with positive development results, tailoring or curricula to meet development needs, employment and placement services for university graduates.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than twenty-one days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest: Office of Private Sector Program, Bureau of Educational and Cultural Affairs, (Attn: Michael Ringler) United States Information Agency, 301 4th Street SW., Washington, DC 20547

Dated: May 26, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89-13282 Filed 6-2-89; 8:45 am]

BILLING CODE 8230-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed temporary, emergency amendments to the Sentencing Guidelines and official commentary. Request for public comment.

SUMMARY: Pursuant to its emergency authority under section 21(a) of the Sentencing Act of 1987 the Sentencing Commission proposes for public comment the amendments to the sentencing guidelines and commentary set forth below. The Commission invites comment on these proposals.

DATES: Comments should be received by the Commission no later than July 5, 1989.

ADDRESS: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Emergency Amendments Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone: (202) 662-8800.

SUPPLEMENTARY INFORMATION: Section 21(a) of the Sentencing Act of 1987 (Pub. L. 100-182, Dec. 7 1987), authorizes the U.S. Sentencing Commission, an independent agency in the Judicial branch of government, to promulgate temporary, emergency guidelines or temporarily amend existing guidelines in certain circumstances, including "(2) the creation of a new offense or amendment of an existing offense. Unlike regular amendments issued pursuant to 28 U.S.C. 994(p), amendments promulgated by the Commission under this authority are not required to be submitted to Congress for 180 days' review prior to their taking effect. However, Section 21 emergency amendments are temporary; i.e., unless submitted to Congress as regular amendments in the next regular amendments report, they expire upon the disposition of that report.

The proposed temporary amendments set forth below pertain to two types of criminal offenses—(1) Illegal possession and/or trafficking in cocaine base ("crack"); and (2) distribution of obscene materials. In general, the proposed amendments are designed to implement provisions of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, Nov. 18, 1988), that either amended the statutes providing for these offenses or, in the case of obscenity distribution, created new offenses in that category. In both cases, however, the Commission proposes to go somewhat beyond the promulgation of temporary guideline corresponding solely to the offenses created or amended by the Anti-Drug Abuse Act. The Commission's preliminary view, as expressed by these proposed amendments, is that the

statutory changes call for some modification of existing sentencing guidelines for closely related offenses in order to carry out the overall intent of Congress and to most effectively further the purposes of sentencing. Those expressing comment may, if they wish, address the Commission's authority vis-a-vis section 21 of the Sentencing Act of 1987 to issue these proposed amendments.

Comment is also requested on the following broader policy questions associated with these proposals:

1. Do the proposed amendments appropriately reflect Congressional intent regarding sentencing for the specific offenses created or amended by the Anti-Drug Abuse Act of 1988 and for closely related offenses?

(a) With respect to cocaine base, does the amendment to 21 U.S.C. 844 contained in section 6371 of the Anti-Drug Abuse Act of 1988 provide a policy basis for changing the cocaine base equivalencies in the Drug Quantity Table for Guideline § 2D1.1, covering cocaine trafficking offenses, in order to treat such offenses more severely?

(b) With respect to child pornography and obscenity offenses, does Subtitle N of the Anti-Drug Abuse Act of 1988 (cited as the Child Protection and Obscenity Enforcement Act of 1988) provide a policy basis for amending Guideline § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter) or Guideline § 2G2.2 (Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor) or both in the manner proposed?

2. Do the proposed amendments reflect sound public policy with respect to sentencing for these offenses?

Authority: 28 U.S.C. 994(a), section 21(a) of the Sentencing Act of 1987 (Pub. L. 100-182, Dec. 7 1987).

William W. Wilkins, Jr.,

Chairman.

The proposed temporary, emergency amendments to guidelines and commentary are as follows:

1. Amendment: Section 2D2.1 is amended by inserting the following additional subsection:

"(b) Cross Reference

(1) If the defendant is convicted under 21 U.S.C. 844(a) of possession of (A) more than 5 grams of a mixture or substance containing cocaine base; (B) more than 3 grams of a mixture or substance containing cocaine base after a previous conviction under 21 U.S.C. 844(a) for possession of such a mixture or substance has become final; or (C) more than 1 gram of a mixture or substance containing cocaine base after two or more previous convictions under 21 U.S.C. 844(a) for possession of such a mixture or substance have become final, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) as if the defendant had been convicted of possession of a mixture or substance containing cocaine base with intent to distribute.

The Commentary to § 2D2.1 captioned "Background" is deleted in its entirety and the following inserted in lieu thereof:

"Background: Mandatory minimum penalties for several categories of cases are set forth in 21 U.S.C. 844(a). When a mandatory minimum penalty exceeds the guideline range, the mandatory minimum becomes the guideline sentence. § 5G1.1(b).

Subsection (b) applies to defendants subject to the enhanced penalties created by Section 6371 of the Anti-Drug Abuse Act of 1988 (i.e., defendants subject to the penalties for possession of cocaine base set forth in the third sentence of 21 U.S.C. 844(a), as amended).

Reason for Amendment: This amendment provides that convictions for possession of cocaine base ("crack") subject to the enhanced penalties created by Section 6371 of the Anti-Drug Abuse Act of 1988 are to be treated as if the conduct constituted possession of the controlled substance with intent to distribute.

2. Amendment: Section 2D2.1(a)(1) is amended by deleting "or an analogue of these" and inserting in lieu thereof "an analogue of the above, or cocaine base"

Reason for Amendment: This amendment specifies the appropriate offense level for possession of cocaine base ("crack") in cases not covered by the enhanced penalties created by section 6371 of the Anti-Drug Abuse Act of 1988.

3. Amendment: The Drug Quantity Table in § 2D1.1, in effect on May 1, 1989, is amended by:

(1) Deleting "500 G Cocaine Base" and inserting in lieu thereof "250 G Cocaine Base";

(2) Deleting "150–499 G Cocaine Base" and inserting in lieu thereof "75–249.9 G Cocaine Base";

(3) Deleting "50–149 G Cocaine Base" and inserting in lieu thereof "25–74.9 G Cocaine Base";

(4) Deleting "35–49 G Cocaine Base" and inserting in lieu thereof "17.5–24.9 G Cocaine Base";

(5) Deleting "20–34.9 G Cocaine Base" and inserting in lieu thereof "10–17.4 G Cocaine Base";

(6) Deleting "5–19 G Cocaine Base" and inserting in lieu thereof "2.5–9.9 G Cocaine Base"

(7) Deleting "4–4.9 G Cocaine Base" and inserting in lieu thereof "2–2.4 G Cocaine Base";

(8) Deleting "3–3.9 G Cocaine Base" and inserting in lieu thereof 1.5–1.9 G Cocaine Base

(9) Deleting "2–2.9 G Cocaine Base" and inserting in lieu thereof "1–1.4 G Cocaine Base";

(10) Deleting "1–1.9 G Cocaine Base" and inserting in lieu thereof "500–999 MG Cocaine Base";

(11) Deleting "500–999 MG Cocaine Base" and inserting in lieu thereof "250–499 MG Cocaine Base";

(12) Deleting "250–499 MG Cocaine Base" and inserting in lieu thereof "125–249 MG Cocaine Base"; and

(13) Deleting "250 MG Cocaine Base" and inserting in lieu thereof "125 MG Cocaine Base"

The Drug Quantity Table in § 2D1.1, set forth in the Commission's guideline amendments submitted to Congress May 1, 1989 (proposed effective date November 1, 1989) at amendment 59, is further amended by:

(1) Deleting "15 KG or more of Cocaine Base" and inserting in lieu thereof "7.5 KG or more of Cocaine Base";

(2) Deleting At least 5 KG but less than 15 KG of Cocaine Base" and inserting in lieu thereof At least 2.5 KG but less than 7.5 KG of Cocaine Base

(3) Deleting "At least 1.5 KG but less than 5 KG of Cocaine Base" and inserting in lieu thereof At least 750 G but less than 1.5 KG of Cocaine Base";

(4) Deleting At least 500 G but less than 1.5 KG of Cocaine Base" and inserting in lieu thereof At least 250 G but less than 750 G of Cocaine Base";

(5) Deleting At least 150 G but less than 500 G of Cocaine Base" and inserting in lieu thereof "At least 75 G but less than 250 G of Cocaine Base";

(6) Deleting At least 50 G but less than 150 G of Cocaine Base" and inserting in lieu thereof At least 25 G but less than 75 G of Cocaine Base"

(7) Deleting At least 35 G but less than 50 G of Cocaine Base" and inserting in lieu thereof At least 17.5 G but less than 25 G of Cocaine Base";

(8) Deleting At least 20 G but less than 35 G of Cocaine Base" and inserting in lieu thereof At least 10 G but less than 17.5 G of Cocaine Base"

(9) Deleting At least 5 G but less than 20 G of Cocaine Base" and inserting in lieu thereof At least 2.5 G but less than 10 G of Cocaine Base";

(10) Deleting At least 4 G but less than 5 G of Cocaine Base" and inserting in lieu thereof At least 2 G but less than 2.5 G of Cocaine Base";

(11) Deleting At least 3 G but less than 4 G of Cocaine Base" and inserting in lieu thereof At least 1.5 G but less than 2 G of Cocaine Base";

(12) Deleting At least 2 G but less than 3 G of Cocaine Base" and inserting in lieu thereof At least 1 G but less than 1.5 G of Cocaine Base"; and

(13) Deleting At least 1 G but less than 2 G of Cocaine Base and inserting in lieu thereof At least 500 MG but less than 1 G of Cocaine Base";

(14) Deleting At least 500 MG but less than 1 G of Cocaine Base" and inserting in lieu thereof At least 250 MG but less than 500 MG of Cocaine Base";

(15) Deleting At least 250 MG but less than 500 MG of Cocaine Base" and inserting in lieu thereof "At least 125 MG but less than 250 MG of Cocaine Base"; and

(16) Deleting "Less than 250 MG of Cocaine Base" and inserting in lieu thereof "Less than 125 MG of Cocaine Base"

The Commentary to § 2D1.1 captioned Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Cocaine and other Schedule I and II stimulants" by deleting "1 gm of Cocaine Base ("Crack")= 100 gm of cocaine/20 gm of heroin" and inserting in lieu thereof "1 gm of Cocaine Base ("Crack")=200 gm of cocaine/40 gm of heroin.

Reason for Amendment: This amendment revises the ratio of cocaine base ("crack") to other controlled substances to more appropriately reflect the seriousness of offenses involving this substance as indicated by the enhanced penalties for possession of cocaine base contained in Section 6371 of the Anti-Drug Abuse Act of 1988.

Additional Explanatory Statement: The portion of this amendment affecting the Drug Quantity Table in § 2D1.1 is set forth in relation to the guidelines currently in effect as well as in relation to the amended guidelines submitted to the Congress on May 1, 1989, that have a proposed effective date of November 1, 1989.

4. Amendment: Section 2G3.1 and accompanying commentary is deleted in its entirety and the following inserted in lieu thereof:

"§ 2G3.1 Offenses Involving Obscene Matter

(a) Base Offense Level:

(1) [12][13][14][15][16], if the offense involved distribution for pecuniary gain;

(2) [6][8], otherwise.

(b) Specific Offense Characteristics [(Apply the greater):]

(1) If the base offense level is determined under subsection (a)(1), increase by the number of levels from the table at § 2F1.1(b)(1) corresponding to the retail value of the obscene matter.

(2) If the base offense level is determined under subsection (a)(1), and the offense involved the defendant engaging in a pattern of distributing the obscene matter to persons under eighteen years of age, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved the visual depiction of a person under eighteen years engaging in or assisting another person to engage in sexually explicit conduct, apply § 2G2.2 (Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor) as if the offense had involved transporting, receiving, or trafficking in material involving the sexual exploitation of a minor.

Commentary

Statutory Provisions: 18 U.S.C. 1460–1463, 1465–1466.

Application Note:

1. 'Distribution' as used in this guideline, includes production, transportation, and possession with intent to distribute, and shall be broadly construed.

2. Subsection (c)(1) includes circumstances in which a person under eighteen years, or a person pretending to be under eighteen years of age, is visually depicted engaging in or assisting another to engage in sexually explicit conduct.

[Section 2G2.2 is amended by inserting at the end the following additional specific offense characteristic:

"3. If the offense involved the defendant engaging in a pattern of distributing the material to persons under 18 years of age, increase by 4 levels. .]

Reason for Amendment: This amendment establishes a guideline to cover two offenses created by Sections 7521 and 7526 of the Omnibus Anti-Drug Abuse Act of 1988. The existing guideline at § 2G3.1 covering related offenses is deleted and the offenses covered by the existing guideline are included in the revised guideline.

Additional Explanatory Statement: Public comment is sought as to the appropriate base offense levels for this offense and whether proposed specific offense characteristics (b) (1) and (2) should be additive or in the alternative. If specific offense characteristics (b) (1) and (2) are additive, a conforming revision to § 2G2.2 is required for consistency.

[FR Doc. 89–13223 Filed 6–2–89; 8:45 am]

BILLING CODE 2210–40–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 106
Monday, June 5, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 2, 1989.

PLACE: 2033 K St., NW Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–13373 Filed 6–1–89; 12:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 9, 1989.

PLACE: 2033 K St., NW Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–13374 Filed 6–1–89; 12:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 16, 1989.

PLACE: 2033 K St., NW Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–13375 Filed 6–1–89; 12:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 23, 1989.

PLACE: 2033 K St., NW Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–13376 Filed 6–1–89; 12:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 30, 1989.

PLACE: 2033 K St., NW Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–13377 Filed 6–1–89; 12:37 pm]
BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, May 30, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the possible closing of certain insured banks; (2) a recommendation regarding administrative enforcement proceedings against an insured bank; and (3) matters relating to the Corporation's assistance agreements, pursuant to section 13(c) of the Federal Deposit Insurance Act, with certain insured banks.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10)).

Dated: May 31, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89–13337 Filed 6–1–89; 11:33 am]
BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION

Committee on the Provision for the Delivery of Legal Services Meeting

TIME AND DATE: The meeting will take place on Monday, June 12, 1989, from 9:00 a.m. until 5:00 p.m. and continue on Tuesday, June 13, 1989, from 10:30 a.m. until 12:00 p.m.

PLACE: Hyatt Regency Woodfield Hotel, Regency Ballroom, 1800 E. Golf Road, Schaumburg, Illinois 60173.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —March 24, 1988
3. Consideration of the Competitive Award System of LSC Grants

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: June 1, 1989.

Maureen R. Bozell,
Corporation Secretary.
[FR Doc. 89–13423 Filed 6–1–89; 3:28 p.m.]
BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Board of Directors meeting will be held on June 13, 1989. An Executive Session will be held from 12:00 p.m. until 1:30 p.m. The open portion of the meeting will commence at 1:30 p.m. or immediately following the previous meeting and continue until 3:30 p.m. or until all official business is completed.

PLACE: The Hyatt Regency Woodfield, Regency Ballroom, 1800 E. Golf Road, Schaumburg, Illinois 60173.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (7), (9), (B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

Executive Session (closed)

1. Personnel and Personal Matters
2. Litigation and Investigation Matters

Board of Directors (open)

1. Approval of Agenda
2. Approval of Minutes —April 14, 1989
3. Report from the Committee on the Provision for the Delivery of Legal Services

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: June 1, 1989.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 89–13424 Filed 6–1–89; 3:28 p.m.]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Task Force on Client Board Member Training Meeting

TIME AND DATE: The Task Force on Client Board Member Training will meet on Tuesday, June 13, 1989, from 9:00 a.m. until 10:30 a.m.

PLACE: The Hyatt Regency Woodfield Hotel, Regency Ballroom, 1800 E. Golf Road, Schaumburg, Illinois 60173.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Public Comment on Client Issues.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: June 1, 1989.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 89–13425 Filed 6–1–89; 3:28 p.m.]

BILLING CODE 7050-01-M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, June 8, 1989.

TIME: Thursday 9:15 a.m. 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW ground floor (conference room).

STATUS: Open session—Thursday 9:15 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

AGENDA TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the Thirty-second meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457–1700.

Date: May 31, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89–13347 Filed 6–1–89; 11:36 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 54, No. 106
Monday, June 5, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31465]

Kansas City Southern Railway Co., Acquisition and Operation of Trackage Rights Exemption—Arkansas Central Railway Co.

Correction

In notice document 89-12646 beginning on page 22817 in the issue of Friday, May 26, 1989, in the heading, the finance docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 89-014]

RIN 2115-AD23

Implementation of the Shore Protection Act of 1988

Correction

In rule document 89-12396 beginning on page 22546 in the issue of Wednesday, May 24, 1989, make the following corrections:

1. On page 22546, in the 3rd column, under *II. Regulatory Approach*, in the first paragraph, in the 15th line, "hearings" should read "headings"

2. On page 22547 in the 1st column, in the 1st paragraph, in the 20th line, "in" should read "is"

§ 151.1009 [Corrected]

3. On page 22549, in the first column, in § 151.1009(b), in the second line, "§ 151.104" should read "§ 151.1024"

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1988—Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds: Termination of Authority AEGON Reinsurance Company of America

Correction

In notice document 89-11646 appearing on page 21158 in the issue of Tuesday, May 16, 1989, make the following correction:

In the second column, in the second paragraph of the document, in the third line "25033" should read "25053"

BILLING CODE 1505-01-D

federal register

Monday
June 5, 1989

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Permit Required Confined Spaces; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-019]

RIN 1218-AA51

Permit Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSHA proposes to establish safety requirements, including a permit system, for entry into those confined spaces which OSHA has identified as posing special dangers for entrants due to their configuration or other features. The proposed standard provides a comprehensive regulatory framework within which the employer can more effectively apply the existing 29 CFR Part 1910 standards to protect employees who work in such confined spaces. The proposed standard introduces the term "permit required confined space" to cover the particular confined spaces which are to be regulated.

Few OSHA standards address confined space hazards in general industry, and these provide only limited protection. OSHA has determined, based on its review of the Agency's fatality and injury data, enforcement experience and other information, that the existing standards do not adequately protect workers in confined spaces from atmospheric, mechanical and other hazards. The Agency has further determined that the ongoing need for monitoring, testing and communication at workplaces which contain entry permit confined spaces can be satisfied only through the implementation of a comprehensive confined space entry program. OSHA anticipates that compliance with the provisions of this proposed standard would effectively protect from injury and death employees who work in permit required confined spaces.

DATES: Written comments, objections and requests for a hearing on the proposal must be postmarked by August 4, 1989.

ADDRESS: All written submissions should be sent, in quadruplicate, to the Docket Office, Docket No. S-019, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2634, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647 Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

There are confined spaces in many U.S. industrial workplaces. OSHA is concerned that many of these confined spaces, which for the purposes of this rulemaking OSHA considers to be permit required confined spaces (permit spaces), pose unique problems due to their contents and/or configuration. Some permit spaces, for example, pose entrapment hazards for entrants, while others restrict air circulation so that hazardous atmospheres may accumulate quickly. Confinement itself can increase the risk of injury or death by making employees work closer to hazards than they would otherwise. Accident investigators and OSHA compliance personnel have long recognized and directed employer and employee attention to the special dangers of permit space work.

The hazards encountered in permit spaces, such as exposure to electrical shock and contact with chemicals and machinery, are also encountered elsewhere in the workplace and are, in general, addressed by existing OSHA standards. OSHA's review of investigation reports covering confined space fatalities (Exs. 10 through 13 and 16), however, indicates that many employers do not seem to appreciate either that these hazards are exacerbated by conditions of confined space work, or that the current OSHA standards apply to hazards wherever they are found, including confined spaces. This proposed standard will help correct these problems by clearly stating employer responsibilities when employees are to work inside confined spaces.

OSHA has reviewed state safety and health regulations and has found that most of the states do not have standards which cover permit spaces. The Agency has further determined that those states which have addressed permit spaces in general, have, like OSHA, neither adequately identified the potential hazards nor required the precautions or procedures necessary to protect entrants. The state regulations reviewed also differ regarding the percentage of a substances's lower flammable limit (LFL) at which entry into a potentially flammable atmosphere would be barred. For example, New Jersey, California and Kentucky set their limits at 14 percent, 20 percent and 24 percent, respectively. Florida, in turn, simply requires that "* the atmosphere shall be tested first to determine that it is not explosive or flammable. As noted in proposed paragraph (b), OSHA has determined, based on NFPA guidelines, that employees should be forbidden to enter a permit space when the atmosphere contains 10 percent or more of the LFL for a flammable gas, vapor or mist. Therefore, OSHA has determined that federal regulatory action is necessary to protect employees from permit space hazards.

On July 24, 1975, OSHA issued an Advance Notice of Proposed Rulemaking (ANPR), "Standard for Work in Confined Spaces, to obtain data and information to develop a confined spaces standard (40 FR 30980). This ANPR sought comments on 14 issues, including problems with existing regulations, confined space injuries or deaths, and control of hazards.

The respondents agreed that confined spaces posed significant hazards for workers, and that the existing OSHA standards addressed the problems inadequately. The commenters generally recommended that OSHA issue a standard which specifically addressed confined space hazards. Some commenters suggested that OSHA issue a comprehensive standard which would regulate work in all confined spaces. Other commenters stated that confined space operations which were found not to pose hazards should be excluded from the scope of a confined space standard.

Many commenters stated that OSHA should very specifically define the term "confined space, so that the range of conditions confronted would be defined. Commenters suggested a wide range of definitions.

Several commenters suggested that OSHA base any proposed rule on the draft American National Standards Institute (ANSI) standard "Safety Requirements for Working in Tanks and Other Confined Spaces, which was then under consideration by the ANSI Z117.1 Committee and was subsequently adopted as an ANSI Standard in 1977

OSHA notes that ANSI Z117.1-1977 was withdrawn in May 1988, because the Z117 Committee had not completed action to renew or revise the standard within the period allotted for such action. OSHA believes that the ANSI standard provides useful guidance for the protection of employees from permit space hazards. Therefore, the Agency has based parts of its proposed rule on ANSI Z117.1-1977

Citing both "the complexity of the issues and the period of time since the previous Advance Notice, OSHA issued another ANPR, "Entry and Work

in Confined Spaces" (44 FR 60334), on October 19, 1979. The 24 questions raised in the 1979 ANPR were similar to, but more detailed than the 14 issues raised in the 1975 ANPR. The 1979 ANPR again requested suggestions for a definition of "confined space, as well as information regarding the appropriate procedures for addressing confined space hazards, and the cost of those procedures. OSHA received 68 comments in response to the 1979 ANPR. These comments were similar to those received in response to the 1975 ANPR. However, they provided a broader base of information on which to support a standard for confined spaces.

The comments focused on the choice between a performance-oriented and a specification-oriented standard. Most commenters suggested that OSHA develop a performance-oriented standard similar to OSHA's "fire protection standard" (29 CFR Part 1910, Subparts E, H, and L), which was then being revised and which was subsequently published as a final rule on September 12, 1980 (45 FR 60704). Also, many commenters suggested that defining the hazards confronted in confined spaces was more important than defining the term "confined space.

On March 25, 1980, OSHA issued an Advance Notice of Proposed Rulemaking (Construction ANPR) "Entry and Work in Confined Spaces" (45 FR 19266), to obtain information which could be used "to revise its existing standards in order to effectively cover hazards connected with these (confined space) activities in construction. The Agency stated its belief that "the hazards of work in confined spaces are also significant in the construction industry. The Construction ANPR posed 31 questions, similar to those presented in the 1979 General Industry ANPR, regarding the appropriate precautions and procedures for controlling confined space hazards which construction workers may confront. The Agency received 75 comments, most of which related to general industry concerns. OSHA has not proceeded with rulemaking for the construction industry and has not included construction within the scope of the proposed rule. The Agency has, however, asked, in Issue 6 of this proposal, for comments and information related to the adequacy of the existing Part 1926 regulatory language.

On April 4, 1980, OSHA scheduled public meetings (45 FR 22978) where interested parties could make oral presentations regarding confined space hazards. Those meetings were held during May 1980 in Houston, Texas; Denver, Colorado; and Washington, DC. There were approximately 30 participants at these meetings.

In the course of drafting this proposal, OSHA has studied the confined space regulations generated by states and other countries (see References 2, 3, 7 8, 17 and 18); the 1979 NIOSH criteria document (see Reference 9); the ANSI Z117.1–1977 standard (see Reference 5); and the guidelines of other organizations (see References 1, 4, 6, and 14). While the Agency has gained some valuable insights from the documents reviewed, OSHA believes that a number of them are focused too narrowly on atmospheric hazards. As a result, mechanical and physical hazards have received insufficient attention.

OSHA notes that NIOSH has focused a substantial effort on investigating permit space incidents and on developing guidelines for safe work in permit spaces. In particular, NIOSH produced a Criteria Document for confined space work in 1979, an Alert" in 1986, a "Guide to Safety in Confined Spaces" in 1987 and a number of incident reports up through 1987 The proposed rule is based, in part, on the materials generated by NIOSH.

NIOSH, in its 1979 Criteria Document, raised a number of access and ventilation considerations, noted the seriousness of mechanical hazards, and accounted for different levels of risk and the need to modify work procedures by distinguishing three "classes" of confined spaces.

In January 1986, NIOSH, in further recognition that confined spaces continued to pose serious hazards, issued a "Request for Assistance in Preventing Occupational Fatalities in Confined Spaces" (see Reference 16), which described 16 confined space fatalities. The Alert" also recommended that employers increase their efforts to recognize and evaluate hazards, and to take necessary precautions for work in or rescue from confined spaces. Fourteen of the 16 victims included in the NIOSH report died of asphyxiation due to atmospheric hazards.

The materials upon which OSHA has relied in drafting this Notice of Proposed Rulemaking, including accident reports, existing regulatory language, responses to the 1975 and 1979 ANPRs, transcripts of the 1980 public meetings and the sources listed in the "References" section below, are available for review and copying in the OSHA Docket Office.

II. Agency Action

OSHA has determined, based on consideration of the factors discussed above, that a comprehensive, federal standard for protection of employees who work in permit spaces is necessary. In this section of the proposal, OSHA describes the hazards which confront permit space workers, incidents involving those hazards and the chronology of OSHA's efforts to develop a proposed rule. In this way, the Agency seeks to underscore the need for comprehensive regulation of permit spaces, and to document the significance of the risks to which employees working in permit spaces are exposed.

A. Hazards

OSHA has determined, based on its review of accident data, that asphyxiation is the leading cause of death in confined spaces, and that atmospheric hazards cause most confined space asphyxiation fatalities. However, atmospheric hazards are not the only causes of asphyxiation fatalities in confined spaces. For example, employees working in water towers and bulk material hoppers have slipped or fallen into narrow, tapering, discharge pipes where death resulted from asphyxiation by constriction of the torso.

In addition, OSHA has determined that there have been confined space injuries and fatalities which did not involve asphyxiation. The Agency has, for example, documented confined space incidents in which victims were burned, ground-up by auger type conveyers, or crushed by rotating or moving parts inside mixers. OSHA observes that, in those cases, the victims were unable either to avoid the hazards, or to escape from the work area because the configuration of the space restricted them to the danger zone. Failure to lock out power to equipment inside the space was also a factor in those accidents. OSHA has addressed some failures to lock out power to equipment in its proposed rule The Control of Hazardous Energy Sources (Lockout/Tagout) published April 29, 1988 (53 FR 15496).

OSHA proposes to use the term "permit required confined space" when referring to those spaces where serious hazards such as atmospheric or mechanical hazards are or may be present. The selection of this term reflects OSHA's determination that employers must implement comprehensive permit programs in order to authorize employee entry where confined spaces contain or could contain serious hazards. Under the permit program, employers would first identify their entry permit spaces; restrict access so that only authorized personnel may enter; control the

hazards in those spaces through engineering or work practices; and test, monitor or inspect the entry permit spaces to ensure that the hazards remain under control. OSHA believes that compliance with the proposed requirements will protect employees from the risk of death and injury due to confined space hazards.

1. Incident Data and Confined Space Hazards Analysis

The 1979 NIOSH Criteria document, "Working in Confined Spaces" (Reference 9), cites a study by the Safety Sciences Division of WSA, Inc., San Diego, California, which was titled "Search of Fatality and Injury Records for Cases Related to Confined Spaces" (Reference 17). The Safety Sciences study reviewed approximately 20,000 reports covering industrial accidents nationally in 1974–1977 Even with this limited sample, 276 confined space accidents which resulted in 234 deaths and 193 injuries were identified for the period 1974–1977 Safety Sciences conducted its study to determine if regulatory action was needed to control confined space hazards, not to identify the exact causes of death and injury. OSHA, in turn, has been unable to connect the 234 fatalities and 193 injuries to specific industry segments or work activities.

More recently, OSHA examined its records of accident investigations for fatal confined space incidents. In particular, OSHA sought to identify the specific hazards and work activities involved. OSHA determined during this review that, where multiple deaths occurred, the majority of the victims in each event died while trying to rescue the original entrant from a confined space. This determination is consistent with the finding by NIOSH in its 1986 Alert" (Reference 16) that "rescuers" accounted for more than 60 percent of confined space fatalities. This evidence indicates that untrained or poorly trained rescuers constitute an especially important "group at risk. This group would be protected from permit space hazards under the terms of the proposed rule.

OSHA has also gathered incident data from a number of other sources, such as the Fatal Accidents Circumstances and Epidemiology (FACE) reports produced by NIOSH, and reports produced by the states. That information has been very useful to OSHA, even though in some cases there was not enough detail for OSHA to evaluate the circumstances of the incidents. OSHA requests that commenters submit information on permit space incidents in order to further document the hazards to which employees have been exposed.

The OSHA-investigated cases which OSHA analyzed to determine the cause of death in confined spaces have been compiled in four reports prepared by OSHA's Office of Statistical Studies and Analyses. These are: "Selected Occupational Fatalities Related to Fire and/or Explosion in Confined Work Spaces as Found in Reports of OSHA Fatality/Catastrophe Investigations" (April 1982) (Reference 10); "Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations" (August 1982) (Reference 11); "Selected Occupational Fatalities Related to Grain Handling as Found in Reports of OSHA Fatality/Catastrophe Investigations" (January 1983) (Reference 12); and "Selected Occupational Fatalities Related to Toxic and Asphyxiating Atmospheres in Confined Work Spaces As Found in Reports of OSHA Fatality/Catastrophe Investigations" (July 1985) (Reference 15).

These four reports focused on fatalities because OSHA found that the reporting of injuries from permit space incidents was frequently incomplete. OSHA observes that injuries are most likely to be reported when they occur as part of an incident where fatalities occur. The Agency anticipates that this rulemaking will lead to improved data collection regarding injuries because employers and employees are being clearly alerted to OSHA's concern about permit space hazards.

OSHA has analyzed the studies to determine the underlying causes of the conditions which existed when confined space related accidents occurred. From this information, OSHA developed proposed measures which would have prevented most of the accidents in the studies, and used those measures as the basis of its proposed standard. OSHA notes that many of the reports did not fully document the circumstances of the accidents covered. The Agency has determined, however, that the available accident data, despite its limitations, provides the necessary basis for characterizing permit space hazards and for proposing protective measures. OSHA will continue to collect accident data in the course of this rulemaking. The Agency requests that commenters, especially the states and other governmental entities, submit accident data.

OSHA has determined that a variety of confined space hazards have caused death and injury. The Agency notes that some of the incidents used as examples in this proposal date from several years ago. In general, OSHA has documented those hazards with summaries which the Agency feels characterize the problems confronted by employees who enter permit spaces. OSHA has determined, based on its review of information in the record and on its enforcement experience, that confined space workers confront significant risks of death, injury, or impairment of health or functional capacity.

Atmospheric Hazards. OSHA's review of accident data indicates that most confined space deaths and injuries are caused by atmospheric hazards. OSHA has classified those hazards into three categories: toxic; asphyxiating; and flammable or explosive atmospheres, in order to account for their differing effects.

Some chemical substances present multiple atmospheric hazards, depending on their concentration. Methane, for example, is an odorless substance that is non-toxic and is harmless at some concentrations. Methane, however, can displace all or part of the atmosphere in a confined space. With only 10 percent displacement, methane produces an atmosphere which, while adequate for respiration, can explode violently. With 90 percent displacement, methane will not burn or explode, but it will asphyxiate an unprotected worker in about five minutes.

OSHA is concerned that employees may be exposed to atmospheric hazards because the employer has not properly evaluated the work operations. Problems could arise, for example, where an employer has not selected the necessary atmospheric test instruments or has not ensured their proper use. Problems have arisen because most of the instruments used to test the flammability of a permit space atmosphere do not identify specific gases or vapors, nor do they identify oxygen deficient atmospheres.

For example, some test instruments would indicate the absence of an explosion hazard simply because the atmosphere did not contain sufficient oxygen for combustion, but would not indicate that the oxygen deficiency also posed an asphyxiation risk. On the other hand, a test performed only to determine the oxygen level might indicate that conditions are acceptable for entry without respiratory protection, despite the presence of 10 percent methane, an explosive level, in the atmosphere. Therefore, OSHA proposes to require that employers test and monitor their entry spaces with instruments which will detect hazardous atmospheres.

OSHA presents the following examples regarding atmospheric hazards to illustrate how a relatively uncomplicated series of events can lead to workplace deaths and injuries. In each case, OSHA believes that death and injury would have been prevented if the procedures and safeguards required in this proposed rule had been used. OSHA notes that the hazards confronted could only have been controlled effectively through the use of mechanical ventilation. OSHA recognizes that many confined space workplaces present situations which are more complex than those described below.

a. *Fatalities in asphyxiating atmospheres.* In its analysis of these confined space incidents, OSHA uses the term "asphyxiating atmosphere" when referring to an atmosphere which contains less than 19.5 percent oxygen because that is not enough oxygen to supply an entrant's respiratory needs when performing physical work. These atmospheres need to contain no toxic materials—such toxic atmospheres are discussed later. For example, the oxygen in a space may have been absorbed by materials, such as activated charcoal, or consumed by a chemical reaction, such as the rusting of a vessel or container. In another situation, the original atmosphere may intentionally have been wholly or partly inerted using such gases as helium, nitrogen, methane, argon, or carbon dioxide. Victims often are unaware of their predicament until they are incapable of saving themselves or even calling for help.

Example #1. A worker in Oklahoma prepared to enter a molasses tank. The atmosphere had not been tested and no respirators, retrieval lines or harnesses were provided. Following a longstanding practice at the company involved, employees removed the tank lid and allowed the tank to "ventilate naturally" for several hours before entering. No testing of the tank's atmosphere was undertaken. The first entrant reported feeling ill as soon as he entered, and collapsed almost immediately. Two "standby" workers, required by the plant's "procedure, entered to rescue him. Each of them collapsed after saying they felt dizzy. All three employees died.

Example #2. During the same year three workers died in a molasses tank at a Kansas feed mill in circumstances almost identical to example #1. OSHA has determined that these fatalities occurred because the oxygen level in each tank was too low to support life.

Example #3. In Oklahoma, a three-man work crew ruptured a water line while boring through a street to prepare the way for extended water service. The workers were instructed to close off three valves in order to cut off water flow to the damaged pipe. The workmen had no personal protective equipment or training for confined space entry. They were aware of a company policy which required atmospheric testing before entry, but they decided that shutting off the water was more important. They had no trouble with the first valve pit. However, the employee who entered the second pit, which had not been opened in three years, soon called for help. The crew leader entered the pit to assist the initial entrant but was overcome. The third crewman realized that entering the pit was unsafe and went for help. Firemen equipped with self-contained breathing apparatus were on the scene within a few minutes. They entered the second valve pit, discharged oxygen from cylinders to increase the oxygen level and retrieved the victims. Both victims died shortly afterward, asphyxiated due to oxygen deprivation. The accident report noted that the oxygen level at a valve pit two miles downstream from the scene of the accident was only three percent.

The entry permit program (§ 1910.146(c)) required by the proposed standard is a systems approach which would have prevented all eight of the deaths in these three examples.

The proposal requires, prior to actual entry, that the person authorizing or in charge of entry determine that the atmosphere in the space is safe. This would include determining that the atmosphere is not oxygen deficient (§ 1910.146(g)(1)).

Such determinations prior to entry would have shown that the "natural ventilation" had not made the tank safe for entry, and the person in charge would not have allowed entry (§ 1910.146 (c)(2) and (g)(1)(ii)) until the atmosphere was made safe.

Had there been the need for a rescue at a later time, the rescuers would have been notified in advance of the hazards and been available to perform rescue (§ 1910.146(h)). The attendants themselves would have been trained not to enter the tank to perform rescue (§ 1910.146(f)(3)). The entrants would have been ordered to evacuate as soon as they complained about feeling "dizzy" (§ 1910.146(f)(2)(ii)) and exit would likely have been completed before anyone even lost consciousness.

b. *Fatalities in toxic atmospheres.* The term "toxic atmospheres" refers to atmospheres containing gases, vapors or fumes known to have poisonous physiological effects. The toxic effect is independent of the oxygen concentration, which may in fact be greater than 20 percent. The most commonly encountered toxic gases are carbon monoxide and hydrogen sulfide.

Some toxic atmospheres may have severe harmful effects which may not manifest until years after exposure, while others may kill quickly. Some can produce both immediate and delayed effects. For example, while carbon disulfide at low concentrations may exhibit no immediate sign of exposure, it can cause permanent and cumulative brain damage as a result of repeated "harmless" exposures. At higher concentrations, it can kill quickly.

Example #1. A foreman and a worker entered an unventilated sewer in Arizona to refuel a gasoline-powered pump. The sewer atmosphere was not tested, and the employer provided no procedures or equipment for rescue. The worker was overcome by carbon monoxide and died. The foreman managed to escape from the sewer and call the fire department for help. A "passerby" tried to rescue the worker, and was also fatally overcome. Thirty firefighters and eight co-workers were treated for carbon monoxide poisoning resulting from this single incident.

Example #2. An employee (also in Arizona) entered a solvent storage tank to remove toluene residues. The tank was 20 feet tall and 10 feet in diameter. The employer had rented a self-contained breathing apparatus (SCBA) for this entry and showed the employee how to use it, but again the tank atmosphere had not been tested, nor had any provisions for rescue been made. The employee was provided with a length of rope for his descent into the tank. The employee could not fit through the tank's opening while wearing the SCBA, so the employer decided that the SCBA would be lowered to him, using the same rope, after the employee reached the bottom of the tank. After entry, the employer lowered the SCBA, but the worker collapsed before he could put it on. A call for help was sent to the city fire department.

Because of the small opening, the firemen who responded to the rescue call could also not enter the tank while wearing SCBA. They decided that only by cutting open the tank could they possibly rescue the victim. Despite the precautions taken by the firemen during the cutting of the tank, the toluene vapor in the tank ignited. The explosion killed one fireman and injured 16 others. It was later determined that the entrant was already dead due to the toxic effects of toluene and lack of oxygen before the explosion occurred.

Both of these incidents occurred because the hazard was not fully appreciated by entrants and would-be

rescuers, and proper procedures were not followed. The permit program (§ 1910.146(c)) and the permit system (§ 1910.146(d)) would have prevented the deaths and injuries cited in these two examples.

In the first example, if the worker's employer had made appropriate rescue provisions (§ 1910.146(c)(8)), the worker could have been rescued by the foreman. The worker's injuries would most likely have been limited to abrasions from being dragged through the sewer line. Again, hazard control and verification of safe conditions as required by this standard (§ 1910.146 (c)(2) and (g)(1)(ii)) would have prevented the unsafe entry in the first place.

In the second example, the standard would require the employer to identify all of the serious hazards prior to entry (§ 1910.146(c)(1)) and train his employees in proper entry procedures (§ 1910.146(e)). By so doing, the unsafe entry would not have been authorized (§ 1910.146(g)(1)). Also, if appropriate rescue provisions had been made (§ 1910.146(c)(8)), the worker could have been rescued without help by the fire department.

c. *Fatalities due to flammable or explosive atmospheres.* OSHA defines the term "flammable or explosive atmosphere" as an atmosphere which poses a hazard because flammable gases, vapors or dusts are present at a concentration greater than 10 percent of their lower flammable limit. This last subcategory of hazardous atmospheres includes atmospheres containing gases such as methane or acetylene; vapors of solvents or fuels such as carbon disulfide, gasoline, kerosine or toluene; or dusts of combustible materials.

Example #1. Workers at a refinery in Puerto Rico were cleaning a large storage tank. Since it had last been cleaned, the tank had been used at various times to store gasoline, gas oil, and light and heavy crude oils. The employer expected that the tank would contain residues from these liquids.

The procedures, tools, and all other equipment to be used for entry were prescribed by an entry permit prepared by the parent company, not by the refinery. Under the terms of the entry permit, workers were required to use air-supplying respirators, lifelines, explosion-proof lighting, and were also required to test the atmosphere for flammable conditions before and during entry. However, no one at the refinery had been made accountable for compliance with the permit.

Employee accounts indicate that the refinery management had originally followed permit procedures, but that permit requirements were generally ignored the day of the incident. For example, even though it was known that the work could generate a flammable atmosphere and that only explosion-proof lighting was allowed where a flammable atmosphere could exist, only two of the twelve lamps illuminating the inside of the tank were explosion-proof; no lifelines were available; and no atmospheric monitoring was done.

Five employees were in the tank when it exploded and burned briefly. The workers outside the tank were unable to help them. The fire burned out in just seconds, but by then four of the workers were dead. The fifth entrant died of massive respiratory injuries several days later.

Compliance with the proposed standard would have prevented this incident. The hazard was not controlled (§ 1910.146(c)(2)). Prescribed equipment was not used, inappropriate equipment was used and proper entry procedures were not followed (§ 1910.146(g)(1)(ii)). Atmospheric testing and monitoring were not performed (§ 1910.146 (g)(1)(ii) and (g)(1)(iii)). There was no clear chain of command or responsibility (§ 1910.146 (c), (d) and (g)(1)). The refinery personnel were not adequately trained (§ 1910.146(c)(6)) and supervised in the appropriate entry procedures (§ 1910.146(g)).

Fatalities from engulfment. "Engulfment" refers to situations where a confined space entrant is trapped or enveloped, usually by dry bulk materials. The engulfed entrant is in danger of asphyxiation, either through filling of the victim's respiratory system as the engulfing material is inhaled, or through compression of the torso by the engulfing material. In some cases, the engulfing materials may be so hot or corrosive that the victims sustain fatal chemical or thermal burns, but are never buried below a point at which they can breathe.

Example #1. A group of employees of a Nebraska sawmill entered a 40 foot high storage tank, thought to be nearly full of sawdust. Entry was made through a small opening near the top. One of these workers suddenly disappeared. He had fallen into an air pocket in the sawdust. Rescue operations began immediately, but the worker died of asphyxiation by the time his body was recovered.

Two years earlier, this same employee had narrowly escaped death in a similar incident only because his foreman had seen him sinking into the sawdust and managed to grab his hand and pull him out.

OSHA's report on the fatal incident quotes the sawmill's report of its own investigation of the earlier, non-fatal incident, which concluded that the company "decided for bin workers to use a safety rope The only "rope" on hand at the time of the fatal incident was a cord formed by knotted-together pieces of rotted sash cord. The employees did not use this rope because they recognized that it was useless and also, in the words of the employees, "because it was too much trouble.

Example #2. A truck driver was draining sawdust from a 22-foot high bin in Pennsylvania when he noticed that the flow had prematurely slowed to a trickle, indicating that the sawdust had probably stuck to the walls of the bin. Following the usual practice, he took a pipe, climbed to the top of the bin and climbed inside to knock the sawdust loose. The owner of the bin and the entrant had previously discussed the hazards involved in entering the bin. While no formal procedures had been set, the owner had provided a safety line for use when entering the bin. The entrant did not use the safety line on this occasion. As he was banging the walls, the sawdust beneath him gave way and he was engulfed in sawdust. About two hours later, the owner noticed that the man was missing and checked the bin. The victim's body was discovered and removed. It was determined that the entrant had died of asphyxiation.

In the first example the employer did not appreciate how severe the hazard was. As a result his employees did not know there was a serious hazard, what the hazard was, nor how to protect themselves from it. Compliance with the proposed standard would have prevented this incident because the employer would have ensured that the proper procedures and equipment were used (§ 1910.146(c)) before allowing entry (§ 1910.146(g)(1)).

In the second example, if the employer had followed the entry permit program and the permit system required by the proposed standard (§ 1910.146(c) and (d)), the need to dislodge the bridged sawdust from outside the tank, and the need to make appropriate provision for rescue would have been recognized.

Fatalities due to mechanical hazards. OSHA has determined that accidents have resulted in confined spaces when employers failed to isolate equipment from sources of mechanical or electrical energy. In each case reviewed, death resulted from mechanical force injury, such as the crushing of the victim. OSHA has determined from its review of accidents involving mechanical hazards that the correct preventive

action is to secure the machinery or equipment so that it will not be inadvertently activated while employees are in the confined space. This procedure is commonly called "lockout.

Example. A workman entered the bag house in the dust collection system of an Ohio basic-oxygen steelmaking furnace to check the condition of the bags. He stepped onto the dust conveyer, which was not supposed to be operating at the time, and was caught in the machinery. The employee died before rescuers could remove him from the auger pipe conveyer.

As required by the standard, the hazards would have been identified (§ 1910.146(c)(1)) and entry could not have been authorized (§§ 1910.146 (d) and (g)(1)) until both the conveyor had been locked out, and the environmental conditions were acceptable for entry.

Fatalities among untrained rescuers. As noted above, OSHA has determined that a high percentage of confined space accident victims have been untrained rescuers. Indeed, in some cases the unsuccessful rescuers die, while the initial entrant recovers. The likelihood that good intentions and poor preparation will lead to tragedy has led the Agency to establish criteria for rescue which would protect co-workers or volunteers from accidental injury or death. The following summaries illustrate how would-be rescuers have created problems for themselves and for the initial victims they sought to rescue.

Example #1. A Connecticut fuel company owner sent an employee into a large underground vault. The vault's only means of access and ventilation was straight down through six feet of 30-inch steel culvert pipe. The employer reportedly told police that "he heard a clunk" soon after his employee descended into the vault. Concerned because he had lost contact with this employee, he sent in a second employee. This rescuer collapsed at the foot of the ladder. The employer then directed a third employee to go in and help the others. The second rescuer collapsed before he got to the bottom of the ladder, with one leg caught between two ladder rungs. This hung the employee upside-down, interfering with rescue efforts by the firemen who were summoned to the scene.

Both "rescuers" were pronounced dead at the scene. The initial entrant died two days later from massive brain damage caused by prolonged oxygen deprivation.

OSHA subsequently learned from police department records that about six years earlier, two employees were overcome by lack of oxygen in a similar vault operated by the same employer. In that case, the entrants were rescued without loss of life. Unfortunately, the employer had not taken advantage of the close call warning by implementing procedures which would have prevented subsequent incidents.

Because the proposed standard embodies a systems safety approach, trained rescuers would have been available and would have been equipped with proper respiratory protection (§§ 1910.146 (c)(8), (d)(2)(Vi) and (h)(1)). In addition, the proposed standard requires verification that the vault atmosphere is safe prior to entry (§ 1910.146(g)(1)(ii)).

Example #2. An employee of a septic tank cleaning company in Georgia entered a waste tank at a chicken hatchery to remove sludge. Three other employees were on hand during the job. None of the four had training or equipment for dealing with confined space hazards. There was no atmospheric testing of the space. The septic tank clean-out procedure had been used for five years without mishap, so it is unlikely that the employees expected to face an uncontrolled hazard. Unfortunately, unknown to the contractor, the chicken hatchery had just changed its chlorine compounds used for cleaning the hatchery, creating a hazard from exposure to chlorine gas. The first entrant was overcome by toxic gases almost as soon as he entered the tank. Two of his co-workers tried to rescue him, but were themselves overcome. The fourth worker ran for help, then returned to the tank and attempted rescue. He, too, was overcome. Firemen wearing protective gear and self-contained breathing apparatus retrieved the victims. The initial entrant and the first two would-be rescuers died from chlorine exposure. The fourth employee sustained permanent severe brain damage.

The firm that hired the septic tank cleaning company had a written confined space entry program which specified atmospheric testing, ventilation, special equipment and training for any of its own employees who would enter these spaces. Included in the firm's program was a total ban on confined space entry by its own employees.

The septic tank cleaning firm had no program. The proposed standard could have prevented this incident by requiring the employer to inform the contractor of the confined space hazards (§ 1910.146(c)(10)). In addition, the proposed standard makes it clear that the contractor, like any other employer whose employees may be exposed to confined space hazards, must implement a confined space entry program (§ 1910.146(c)).

B. Need for Proposed Standard

Based on its investigations and studies of confined space incidents, its review of the published literature, and its accumulated knowledge of confined space hazards, OSHA has determined that employees who are required to work in confined spaces face a significant risk of injury or death.

The Agency believes that many employers have not adequately protected their employees from confined space hazards, despite warnings and accidents they may have experienced, and that employee protection will not improve sufficiently in the absence of comprehensive OSHA regulation. As discussed in Section VI of the Preamble, below, there is a sizable worker population exposed to permit space hazards, and a significant annual injury and death toll. Therefore, OSHA has decided to initiate rulemaking by issuing this proposed standard, which includes provisions for procedures, training and safeguards to minimize the potential for confined space injuries and deaths. The Agency invites comments and information regarding confined space hazards, injuries and accidents.

OSHA believes that only through the implementation of comprehensive entry permit programs will employees receive the necessary protection from permit space hazards. The Agency anticipates that compliance with the proposed standard will compel employers to think through and implement entry precautions and procedures which ensure that any entry to a permit space can be performed safely. Furthermore, OSHA believes that the implementation of an entry permit program which includes written procedures will enable employers and employees to review their entry procedures critically so that unsafe practices can be recognized and corrected before an incident occurs. Also, if an incident does occur, the permit and written procedures will provide management with appropriate tools for rescuing entrants and for determining both what caused the incident, and how to prevent a recurrence.

On August 1, 1983, OSHA began distributing a first draft of this proposed standard to all the parties who had submitted comments in response to either of the ANPR's or who had testified at the public meetings, as well as to the OSHA Regional Offices, the State Plan States, and parties who requested a copy of the 1983 draft. The 1983 draft was extensively revised

based on comments from the more than 120 reviewers and, on February 1, 1984, OSHA began distributing a second draft to interested parties, requesting comments and suggestions. These responses were also considered in the preparation of this proposed standard.

In summary, OSHA has obtained a wide range of inputs from interested parties for developing this proposal and its appendices. OSHA believes that employees who work in entry permit confined spaces face significant risks from safety and health hazards, and that this proposal is required to better control or eliminate these hazards. OSHA believes strongly that compliance with these proposed requirements would greatly reduce the number of deaths or injuries in permit required confined spaces.

III. Issues

In drafting this standard, OSHA has identified several areas of concern which are not presently addressed in this proposed standard, but which merit additional consideration. In addition, there are several subjects covered by the standard for which OSHA requests more information to develop a more complete rulemaking record. Therefore, OSHA has developed the following issues for which it requests comments.

Please support your comments with information identifying industries, spaces, and the nature of the work requiring entry into these spaces and any available accident data.

1. In this proposed rule, OSHA has established training requirements for entrants, attendants, and also for those persons to whom the employer would delegate authority to be in charge of an entry or to authorize entry(ies). OSHA has not specified or suggested the experience or training necessary for the individual who would initially evaluate spaces, identify their hazards, and formulate the requirements (including means of isolation to be used, acceptable environmental conditions, types of environmental testing and frequency of testing) and the procedures that must be used for safe entry into those spaces identified as permit spaces. Likewise, OSHA has not specified what experience or training would be necessary to qualify a person to perform pre-entry testing and verification of permit conditions that would allow entry to commence.

Should OSHA set experience, proficiency, or other criteria to qualify individuals who are expected to initially evaluate spaces and develop appropriate entry procedures? If so, what should these criteria be? Should persons with the training and experience equivalent of a certified safety professional, a registered professional safety engineer, an industrial hygienist, or a marine chemist qualify? What should small employers do that do not have such professionals? Should OSHA specify experience and training requirements for persons who perform the pre-entry tests and monitor conditions during entry? If so, what would persons performing these tests need to know and understand? Is it essential that they know field calibration procedures, and should they be trained to interpret the results of the testing?

2. OSHA based the proposed standard on its analysis of hundreds of confined space fatality incidents. Most of these are in the public record. The proposed rule takes a performance oriented "systems" approach, and for this reason contains redundancies to protect confined space workers.

Based on the redundancies of the "systems" approach, OSHA estimates the proposal to be 80 percent to 90 percent effective in reducing fatalities, assuming compliance with these requirements. Is the assumption of 80 percent to 90 percent effectiveness valid? Should it be higher or lower? If so, why should the estimated level of effectiveness be changed? Does the proposal contain enough safeguards for permit space entrants, or are there redundancies which should be eliminated? If so, which requirements are considered redundant and why? Please support your comments with injury information or other relevant documentation.

3. OSHA has proposed a definition for "permit required confined space" (permit space) (§ 1910.146(b)(10)) in order to state clearly the criteria by which employers must evaluate their workplaces to determine if they contain permit spaces. Is the definition clear? Are there circumstances where the application of the proposed definition would either include work areas that should be excluded, or exclude work areas that should be included within the scope of this proposal? OSHA requests input on the adequacy of the proposed definition, including suggestions, accompanied by supporting information, for additional or alternative definitional language. (Please also see issue 17.)

4. OSHA is aware from sources such as its Fatality and Catastrophe Reports that a significant number of deaths and injuries occur in spaces which the Agency proposes to regulate as permit required confined spaces. "Minor injuries, often called "near misses" in the confined space context, are usually not reported or otherwise available to OSHA. (These "events" generally involve entrants recognizing their unsafe situation while they are still capable of unassisted escape, or can escape with help from others. Often they recover without hospitalization or seeking medical attention.)

In order to assist the Agency in estimating the benefits of implementing this proposal, OSHA requests that information and available documentation on all confined space incidents be submitted, including those incidents with non-fatal and noncatastrophic consequences. Please identify the space involved and the industry or type of workplace in which it is located.

5. OSHA proposes (§ 1910.146(d)(3)), to require that, unless the person who authorizes the entry assumes direct charge of the entry for its duration, employers prepare a permit which specifies the place, time, purpose, personnel assigned for the entry and ensure that the signature, together with the legibly marked name, of the authorizing person is placed on the permit.

Is it appropriate for employers to supervise entry operations in lieu of putting this additional information on a permit? Would the combination of a permit which satisfies proposed paragraph (d)(2) and the employers direct supervision provide adequate employee protection? How useful would it be to allow such an approach? To what extent would allowing an employer to supervise entry instead of issuing a more complete permit be cost-effective? OSHA requests that commenters submit information on any projected cost savings, any workplace experience which would indicate the extent to which the proposed provision would be appropriate, and examples of procedures and permits which have been used.

6. OSHA proposes (§ 1910.146(f)) certain duties for an individual who would serve as an attendant outside a permit required confined space. Should OSHA add a requirement that such individuals perform no other work when they are working as attendants? Should activities directly related to the entry, such as passing tools or other materials to entrants be allowed to be performed by attendants? How much attention, if any, should an attendant be permitted to spare for other activities? In its cost analysis, OSHA has assumed employers would use less experienced (and thus lower paid) workers as attendants. Is this realistic? Please support your comments with information on

experiences of attendants who have or have not been assigned other duties.

7 The proposed standard emphasizes that both equipment and procedures are necessary to protect employees from atmospheric hazards. What additional provisions or revisions would be appropriate to protect employees from hazards such as nipping or crushing? Please submit information on equipment and procedures used to control physical and mechanical hazards.

8. OSHA has proposed to exclude the agriculture, construction and maritime industries from the scope of this rulemaking, based on the determination that "permit space" entrants in those industries are protected by existing regulatory language. Do these regulations provide adequate protection? Please submit information on injury and fatality data and workplace experience with the "permit space" standards for those industries.

9. The proposed standard uses performance-oriented language, except in a few cases where OSHA would set the permissible levels for certain substances in the workplace atmosphere. OSHA has chosen this approach in order to provide employers with maximum flexibility in determining how to protect their employees. Is this approach appropriate? Are there proposed provisions using performance-oriented language which should be revised to use specification language? Are there provisions using specification language where the specified levels should be changed or where performance-oriented language should be substituted? OSHA requests supporting information for suggestions and that information be submitted on the impact that any such revisions would have on the anticipated costs and benefits of the proposed rule.

10. OSHA anticipates that the cost of employee training will contribute most of the initial cost burden for the proposed standard. The Agency expects that a one hour training session will be adequate for all employees who have duties under the entry permit program. Would this amount of time be adequate to train the employees properly? What features should be added to or removed from the proposed training requirements? Please submit information on existing programs.

11. OSHA has determined that there are permit spaces which, while subject to the proposed standard, either pose such a low level of risk or have had their hazards so controlled that they could be safely entered without an attendant on hand under a permit which could last as long as a year (proposed paragraph (i)). To what extent should OSHA differentiate permit requirements based on level of risk? Should OSHA limit an employer's ability to qualify for use of a special permit once he or she has had a special permit revoked? What criteria should an employer use to determine if the use of a special permit is appropriate?

12. OSHA anticipates that many employers will use retrieval lines for rescue of entrants, but also understands that employers might use other rescue methods, particularly when retrieval lines would pose an entanglement hazard. OSHA is interested in receiving information on the various nonentry rescue methods, particularly regarding their costs and any experience using them.

13. OSHA is considering adding a non-mandatory appendix as a source of general guidance for employers in understanding and complying with the proposed standard. Are there subjects, such as classification of permit spaces, rescue procedures, and the selection, maintenance and use of personal protective equipment, which should be added to such an appendix? Specific recommendations for material to include in an appendix are requested.

14. In addition, the Agency would be interested to learn if there are any industries or employees within industries covered by this proposed standard which, due to their size, would lack the resources to develop their own entry permit programs. OSHA is considering adding additional material to a nonmandatory appendix which would provide examples of specific procedures to aid employers in complying with the proposed standard. Please submit any sample procedures which it is felt would be appropriate for consideration as guidelines in a non-mandatory appendix.

15. In this proposal (and in conjunction with current OSHA Standards) OSHA would require employees to wear atmosphere supplying respirators when working in atmospheres containing less than 19.5 percent oxygen when employees must enter spaces with reduced oxygen content. Please submit information on: (1) The estimated number of employees who work in such atmospheres; (2) the actual oxygen content of the atmospheres in which they work; and (3) any effects this reduced oxygen content has been shown to have on unprotected employees (who may have entered the spaces without realizing that the space contained a reduced oxygen content).

16. OSHA requests information, based on actual recorded atmospheric measurements, on any physical or physiological effects caused by rapid transition from breathing normal air (21 percent oxygen content) to breathing atmospheres containing less than normal oxygen content (such as the transition of any employee inhaling air outside a permit space and then inhaling air from inside the space) particularly when vertical entry is made into a space containing such an atmosphere.

17 OSHA recognizes that the hazards associated with particular permit spaces will differ in nature and degree according to the type of space being entered. In this rulemaking, the Agency has proposed to allow employers the flexibility to tailor their entry permit programs so that the particular conditions encountered are taken into account. In addition, OSHA has proposed somewhat different requirements for the two categories of spaces (permit required confined spaces and permit required low-hazard permit spaces) identified by the Agency. Are there permit space areas or operations, which have unique worker protection needs not addressed by the proposed standard? Are there, on the other hand, work areas which, while considered permit spaces under the definition proposed (See Issue 3) would not need to have all of the protective measures which are required by the proposed standard in order to ensure safe entry? For example, OSHA has no accident or fatality data, related to confined space work, for several industries (see Average Annual Fatality table). Is this lack of injury data due to data collection problems or does it indicate that permit spaces in those industries are inherently safer than spaces for which OSHA has accident or fatality data? Or does the data indicate that proper confined space entry procedures, such as those proposed by OSHA, are being followed in those industries?

The Average Annual Fatality table shows the relative cost-effectiveness of the rule in the various SIC classifications. This table shows tremendous variation in the "cost per fatality prevented" from SIC to SIC. If this analysis is correct, this rule, as proposed, would be much more cost-effective in some industries than in other industries.

AVERAGE ANNUAL FATALITY TABLE

[Average Annual Fatalities in Permit Spaces and Annualized Compliance Costs of the Proposed Standard, and Cost per Fatality Prevented, by Industry [1]]

Industry	(a) Average annual fatalities	(b) Annualized compliance costs	(c) Cost per fatality prevented ((a)/(b))	(d) Annual cost limit per fatality prevented
Elec, Gas, Sanitary Services	6.8	53,084,362	6,978,058	6,978,058
Wholesale Trade/Nondurable	1.3	16,819,521	11,957,629	11,957,629
Electric/Electronic Equipment	0.3	16,241,658	55,424,659	16,241,658
Food and Kindred Products	4.7	14,098,949	2,696,898	2,696,898
Transportation Equipment	2.0	11,064,207	4,865,542	4,865,542
Agricultural Services	0.0	7,488,232		
Fabricated Metal Products	0.7	6,578,192	9,051,645	6,578,192
Primary Metals Industry	2.3	5,804,593	2,256,056	2,256,056
Stone, Clay, Glass & Concrete	0.3	5,148,490	17,569,221	5,148,490
Rubber Products	0.7	4,646,280	6,393,318	4,646,280
Paper Products	1.9	4,358,625	2,094,902	2,094,902
Health Services	0.0	4,023,918		
Motor Freight Transportation	1.1	3,598,841	2,966,436	2,966,436
Machinery, Except Electrical	0.5	2,058,862	3,860,365	2,058,862
Petrm Ref & Related Industry	0.7	1,615,992	2,088,853	1,615,992
Furniture and Fixtures	0.0	1,509,409		
Chemicals & Allied Products	5.3	1,382,040	234,171	234,171
Wood Products (Less Furniture)	0.2	1,140,080	5,894,734	1,140,080
Misc. Manufacturing Ind	0.0	1,071,193		
Textile Mill Products	0.0	828,023		
Hotels and Other Lodging	0.3	736,021	1,902,781	736,021
Oil & Gas Extraction	2.9	585,000	179,848	179,848
Misc. Retail	0.0	300,685		
Personal Services	0.0	88,644		
Tobacco Manufacturers	0.0	48,248		
Leather and Leather Products	0.8	18,909	20,550	18,909
Printing and Publishing	0.0	932		
Instruments & Related Prdts	0.2	637	3,293	637
Museums, Botanical, Zoo	0.0	334		
Motion Pictures	0.0	0		
Industry undetermined	6.1	0	0	0

For further discussion of fatality and cost estimates, see Section VI.

Because about 15% (6.1 annual fatalities show in the final line of this table) of the fatalities could not be attributed to a specific industry, individual industry sector values may be substantially overstated.

[3] This column reflects the fact that the actual industry sector cost will not exceed this annual limit.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

The extreme variations in cost-effectiveness suggest that (since the cost for each confined space was held constant for all SICs) the risk of dying in a confined space is much lower in some industries than in others, despite the equal treatment of the industries in the rule. In other words, it suggests that OSHA has not adequately distinguished between low-risk confined spaces and high-risk confined spaces.

Such variations in cost-effectiveness could also mean that more intensive regulation in some SICs (where the rule is more cost-effective) and less intensive regulation in other SICs (where the rule is less cost-effective) would increase the number of fatalities prevented and reduce the overall cost of the rule. How can the definition of "confined space" be improved or the rule's provisions modified to increase the overall cost-effectiveness of the final rule?

Should OSHA expand proposed paragraph (i) or add a new paragraph to deal with specific circumstances where compliance with the basic program, as set out by proposed paragraphs (c) and (d), either would provide inadequate protection or would impose an excessive burden? Please specify any permit space areas, operations or special conditions which OSHA should consider when it reviews this issue and determines what regulatory action, if any, would be appropriate. Insofar as commenters are suggesting additional requirements, please submit information on the anticipated costs and benefits of those provisions.

16. In proposed paragraph (c)(10), OSHA requires employers who control a workplace which contains permit spaces to inform contractors who would have employees enter those spaces of any existing or potential hazards and of any measures taken to protect entrants. The Agency would like to know if the term "contractor" is sufficiently inclusive to ensure that all employers who have permit space operations in workplaces they do not control benefit from the proposed paragraph. Are there employers who, while neither contractors nor in control of the workplace, would have employees enter permit spaces? Please describe any circumstances, arrangements and procedures under which such employers have operated in permit spaces.

IV Summary and Explanation of the Proposal

OSHA proposes to add a new § 1910.146 to Subpart J of 29 CFR Part 1910 which addresses the hazards confronting employees who enter "permit required confined spaces (permit spaces). The proposed standard provides a comprehensive regulatory framework within which employers can apply the existing 29 CFR Part 1910 standards to protect employees who work in confined spaces. The Agency has proposed a definition for the term "permit required confined space" to state clearly which work spaces OSHA would consider subject to the proposed standard.

Paragraph (a) sets forth the scope and application of the proposed standard. OSHA has specifically excluded the agriculture, construction and maritime industries from the scope of this standard. As noted above in Issue 5, while OSHA believes that those industries are appropriately covered

under the existing industry-specific regulations, the Agency is interested in public input on the need for additional employee protection in those areas.

OSHA notes that the existing regulations for welding (§ 1910.251); pulp, paper and paperboard mills (§ 1910.261); and grain handling facilities (§ 1910.272) contain provisions which require employers to protect employees from hazards which the Agency proposes, in this rulemaking, to regulate as permit space hazards. OSHA s approach to such situations is to have the industry-specific provisions take precedence over the proposed generic permit space provisions, insofar as the two cover the same subject matters (with the same level of detail). In a case where the generic standard provides the only coverage for a particular subject matter, OSHA would apply the generic standard. OSHA believes that this approach strikes the appropriate balance between crediting efforts to develop a standard which meets the needs of a particular industry and ensuring that all employers protect their employees from workplace hazards, wherever those dangers arise.

In paragraph (b), OSHA is proposing a number of definitions which clearly state the meaning, for the purposes of this standard, of certain terms. OSHA has included this paragraph in the proposal because the Agency recognizes that some of the terms used in the proposed rule may be unfamiliar, or may have meanings which differ from their meaning in this proposal.

While most of the proposed definitions are self-explanatory, OSHA believes that an expanded discussion would be appropriate for several of them. For example, OSHA has proposed a definition for the term "entry" in order to indicate exactly when OSHA considers a person to have entered a permit space. Under the proposed definition, entry has begun as soon as an entrant's face breaks the plane of the permit space's opening and the entrant is breathing the atmosphere of that permit space.

The Agency has proposed this definition in recognition of the atmospheric hazards to which an entrant could be exposed even before the employee had completely entered and begun work in the permit space. Indeed, OSHA anticipates that, in the absence of the proposed standard, an employee could stick his or her head inside the permit space, be overcome by an atmospheric hazard and suffer death or injury due either to the direct effects of the atmospheric hazard or to falling into or near the permit space.

In proposed paragraph (b)(10) OSHA introduces and defines the term "permit required confined space" (permit space). Under the proposed definition, a permit space is: (1) Difficult to enter and leave; (2) not intended for employee occupancy except to perform repair or maintenance type tasks; and (3) presents or potentially presents serious hazards, including atmospheric hazards, and serious recognized hazards to any occupants. OSHA notes that, for the purposes of proposed paragraph (b)(10)(ii), doorways and other portals through which a person can walk are not considered to be limited means for entry or exit. The Agency emphasizes that this proposed standard is directed towards work areas, such as those with hatches and narrow passageways, whose configurations exacerbate employee risk by slowing evacuations and rescues.

In addition, OSHA proposes paragraph (b)(10)(iii) to make it clear that the work areas covered by this standard are unsuitable, by nature for continuous employee occupancy, because those spaces were created to contain such things as degreasers, sawdust and sewage, not to accommodate people. Indeed, under the proposed standard, an employer is required to ensure that a permit space is safe for entry only at the time that the entry could occur. OSHA anticipates that few, if any, employers whose workplaces contain permit spaces could both maintain those spaces safe for entry and use the permit spaces for their intended purposes.

OSHA considers the hazardous atmosphere element of the permit space definition to be so important that the five conditions that make a "hazardous atmosphere" are specifically enumerated in paragraph (b)(13). Two of the conditions listed in the definition of "hazardous atmosphere" are discussed here.

Under the proposed definition, a "hazardous atmosphere" may occur due to a concentration of airborne combustible dust that obscures vision at a distance of five feet (1.52 m) or less. This proposed language is based on eyewitness observations gathered during OSHA investigations of dust explosions. A statement found in almost every report describes the situation preceding the initial blast is "* the dust was so thick you could not see your hand in front of your face. OSHA specified the distance as five feet or less in order to provide employers with clear guidance as to the point at which a ... combustibility hazard might be present, given that there are no recognized explosibility ratings for combustible dusts and there is no reliable equipment available to measure all combustible dust concentrations. The proposed language is readily understood and can be applied with minimal training and with no equipment required.

Proposed paragraph (b)(13)(iv), describes another hazardous atmosphere condition as an atmospheric concentration of any toxic, corrosive, or asphyxiant substance which exceeds, or could reasonably exceed, the permissible exposure limit for that substance specified in Subpart Z of 29 CFR Part 1910. In addition, if the substance does not have a permissible exposure limit specified in Subpart Z, then OSHA recommends the use of the exposure limits set for that substance in the "NIOSH Recommendations for Occupational Health Standards dated 1986, the limits set for that substance as specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1986–87" dated 1986, or other references such as material safety data sheets.

The term "low hazard permit space" means a permit space where there is an extremely low likelihood that an IDLH or engulfment hazard could be present, and where all other serious hazards have been controlled. OSHA proposes this definition in order to provide clear guidance for employers who may decide that compliance with proposed paragraph (i) is an appropriate alternative to providing an attendant throughout an entry. The Agency has proposed paragraph (i) in recognition that there may be spaces, which qualify only marginally as permit spaces and which have virtually no potential to pose IDLH or engulfment hazards, where the employer could ensure safe entry without an attendant on duty. OSHA distinguishes between IDLH and engulfment hazards on the one hand, and other serious hazards, requiring that the former be extremely unlikely, while requiring that the other hazards be controlled before an employer could choose to comply with paragraph (i) instead of paragraph (f). OSHA believes that permit spaces should be most closely scrutinized to determine if IDLH and engulfment hazards are or may be present, because those hazards can kill quickly and without notice.

Once IDLH and engulfment hazards have been identified as occurring in a space, proposed paragraph (i) would be inapplicable. OSHA recognizes that it is impossible to completely rule out the possibility that an IDLH condition will

arise, but requires that employers seeking to follow paragraph (i) make every reasonable effort to determine if IDLH hazards may arise in the permit space. Other hazards, once detected, can usually be reliably controlled. Therefore, the employer who can virtually rule out the possibility of IDLH or engulfment hazards and control any other serious hazards would be able to follow proposed paragraph (i). OSHA solicits comments on how best to define or explain this term.

The term "retrieval line, which appears in paragraph (b)(25), is defined as a line attached to a lifting device or an anchorage, with the other end attached to a worker, which can be used to pull the worker from a permit space. Retrieval lines often differ from lifelines in several respects. The retrieval line is used for retrieving an entrant to whom it is attached from a permit space, whereas a lifeline is used for fall arrest. Because the retrieval line needs only to be strong enough for that purpose, it may be handier to use, thinner, and a less expensive line than that used for lifelines. Unless the permit space contains the potential for a serious fall, the retrieval line would not need to withstand the impact loading associated with fall arrest, nor would the elasticity of a lifeline, which is desirable in arresting falls, be necessary. However, a lifeline may be used as a retrieval line if desired. The primary purpose of the retrieval line, as defined, is that the line is attached to the entrant and can be used for immediate rescue without exposing anyone else to conditions that disabled the entrant. Using the retrieval line with a powered winch is recommended and makes a much quicker rescue possible.

Proposed paragraph (c) requires employers to ensure that any permit spaces in their workplaces are identified, and that appropriate measures are taken to protect workers from permit space hazards. If an employer finds, upon completion of his or her initial investigation, that the workplace contains no permit spaces, the proposed standard imposes no further responsibility, except to ensure that any change in the workplace which creates potential for permit space hazards is detected in time for the appropriate measures to be taken.

On the other hand, if the employer determines that permit spaces are present in the workplace, then he or she has additional responsibilities depending upon the potential actions of his or her employees with regard to the permit spaces. If the employer determines that no one will ever enter the permit spaces, the employer could satisfy the proposed standard by permanently shutting off the space in question and ensuring that no one could enter. If an employer finds that the workplace contains permit spaces, but determines that those spaces will not be entered by his or her employees, the employer could satisfy the proposed standard by taking whatever measures are necessary to ensure that his or her employees do not enter the spaces, such as by posting signs or by closing off the spaces; and by providing other employers, such as contractors who plan to have employees perform work in that permit space, with the information specified in proposed paragraph (c)(10), below.

Finally, where the employer determines that the workplace contains permit spaces, and that his or her employees will enter those spaces, the employer would ensure that any work in a permit space be performed in compliance with an appropriately protective entry permit program. The elements of such a program are discussed below. In recognition of the diversity of permit spaces, OSHA has drafted the proposed provisions in performance-oriented language so that employers can implement effective programs which are compatible with their operations. The Agency has arranged the provisions so they fit the logical sequence employers would follow in implementing the program.

Proposed paragraph (c)(1) requires employers to identify the potential permit space hazards that their employees could confront. OSHA is concerned that employees who do not know what hazards may appear in their permit spaces will be unable to protect their employees adequately. Indeed, OSHA notes that failure to identify potential hazards was a factor in several of the incidents reported in the Hazards section, above. Therefore, the Agency believes that compliance with the proposed paragraph will ensure that employers obtain the information needed to implement an effective entry permit program.

Proposed paragraph (c)(2) requires employers to establish and implement means, procedures and practices for control of the identified permit space hazards. OSHA notes, based on the incident reports, that employees do not benefit from the identification of permit spaces and the hazards associated with them unless employers follow through systematically to implement hazard controls. OSHA believes that authorized entrants are particularly dependent upon hazard controls for their protection because the nature of permit space work, especially the way permit space configurations exacerbate hazards, tends to rule out reliance on personal protective equipment. OSHA requests information on the engineering and work practice controls which have been used to protect employees who enter permit spaces.

In implementing proposed paragraph (c)(2), the employer must ensure that employees are not exposed to substances whose concentrations exceed the permissible exposure limits (PELs) listed in § 1910.1000. OSHA recognizes that the "Z Tables" allow exposure to concentrations exceeding the numerical value of the time weighted average (TWA) listed, provided their ceiling values and their short term exposure limits (STELs) (for substances with a "C" notation in Table Z-1-A, or listed in Table Z-2) are not exceeded, and provided the duration of such exposure is short enough that the exposure during an eight hour period does not exceed the TWA for that substance.

For example, if a substance regulated in Subpart Z has an 8-hour TWA of one part per million (ppm), it would be permissible for an employee to be exposed to two ppm for up to four hours, or four ppm for two hours, etc., provided the employee has no other exposures and the ceiling and STEL values are not exceeded.

However, OSHA is concerned about the procedures that employers will use to comply with the PELs during confined space entry. Specifically, the Agency feels that, in many cases, employers should not characterize concentrations of a substance in a confined space on the basis of a single sample, and then calculate the duration that workers would be permitted to remain in the space without any protection other than by controlling the duration of exposure only, so that (at least theoretically) the PEL would not be exceeded. The Agency believes, in many cases, that there are too many uncertain variables in entering confined spaces which would make such a procedure unwise. For example, the restricted air circulation and non-homogenous atmosphere that characterize so many confined spaces might not be properly characterized by one, or perhaps even several, samplings of the atmosphere in the area where the entry work will be performed. Also, either the entry task or even the entry itself may "stir up" contaminants so that the ambient air concentration may rise and the PELs exceeded. In addition, exit from a confined space in many cases is very difficult which may result in

unanticipated delays in workers leaving the space causing them to be exposed above the PEL. Lastly, the cause (e.g., a leaking valve gland) of the initial low to moderate reading may suddenly and unexpectedly deteriorate further (e.g., leak becomes a blowout), causing a sudden, very high exposure.

For these reasons OSHA generally recommends, as a procedure, that where conditions would tend to higher or unexpected exposures, employers need to take precautions, such as mechanical ventilation, personal protective equipment, or other measures, when employees enter confined spaces where the readings exceed the values listed for the 8-hour TWAs in § 1910.1000.

OSHA requests comments on this recommended procedure.

Proposed paragraph (c)(3) requires employers to establish a written permit system under which entry permits would be properly prepared, issued and implemented. The Agency believes that compliance with the proposed requirement would ensure that permit space entry took place only after all actions and conditions necessary for the protection of authorized entrants have been performed. In particular, OSHA believes that requiring a written system would provide the best assurance that an employer systematically addressed permit space concerns while implementing the entry permit program and while reviewing the program in light of entry experience. The provisions of the permit system appear in proposed paragraph (d). OSHA requests that commenters submit examples of permit systems for permit space entry.

Proposed paragraph (c)(4) requires employers to post signs near the permit spaces to notify employees what hazards may be present and that only authorized entrants may enter the permit spaces. The Agency believes that employees need this information to understand the seriousness of potential hazards in the workplace. The Agency anticipates that compliance with this requirement would ensure that employees who are not involved in permit space operations would be sufficiently informed so that they would not attempt to enter permit spaces. OSHA notes that only personnel who work with permit spaces would need to know more about the potential hazards.

Proposed paragraph (c)(5) requires employers to prevent unauthorized permit space entry. In addition, the proposed paragraph mentions training and the posting of signs and barriers as examples of means by which employers could comply with this provision. OSHA is concerned that personnel who are not authorized to enter a permit space are unlikely to know of or to take the necessary precautions for safe entry. Therefore, the Agency believes that it is essential for employers to prevent unauthorized entry. OSHA requests that commenters submit information on methods used to prevent unauthorized entry and the effectiveness of those methods.

Proposed paragraph (c)(6) requires employers to train employees so they can safely perform their entry permit program duties. OSHA notes that inadequate training was an important factor in virtually all of the incidents reported in the Hazards section, above. The Agency has proposed this general requirement, in addition to the specific training requirements in proposed paragraphs (e) through (i), in order to emphasize that proper training is essential for safe permit space operations. OSHA requests that commenters submit information on training provided to employees working in permit space operations, including information on provisions for retraining.

Proposed paragraph (c)(7) requires employers to provide, maintain and ensure the proper use of the equipment necessary for safe entry, such as testing, monitoring, communication and personal protective equipment. This provision covers equipment which detects hazards before or during entry; which enables attendants to contact authorized entrants or rescue services; and which protects authorized entrants from any permit space hazards which may arise. OSHA believes, even though the proposal places primary reliance on hazard controls, that it is appropriate to require additional equipment and procedures to ensure employee protection in case hazard controls are inadequate. The Agency requests that commenters submit information on the equipment and procedures they have used.

Proposed paragraph (c)(8) requires employers to implement the equipment and procedures necessary to rescue entrants from permit spaces. OSHA notes that in most of the permit space incidents reported the entrants would not have been harmed if the proper rescue equipment and procedures had been available and used. Indeed, the incident reports indicate that many employers have made no provision for the rescue of entrants; and that this has resulted in fatalities among the would-be rescuers. Therefore, OSHA believes that this proposed paragraph is needed to ensure that employers make the necessary rescue equipment, such as retrieval lines, available and establish appropriate rescue procedures. OSHA requests information from commenters on the equipment and procedures which have been used for rescue.

Proposed paragraph (c)(9) requires employers to ensure that all barriers necessary to protect authorized entrants from external hazards, such as vehicles or unauthorized entrants, are provided. OSHA is concerned that authorized entrants are extremely vulnerable to hazards, due to the nature of the spaces where they work, and that those hazards originate both inside and outside the permit space. The Agency notes that often protection has focused too strongly on hazards which arise inside the space. OSHA, therefore, believes that a specific requirement to prevent external hazards from endangering entrants would be appropriate to reflect the importance which OSHA attaches to effective control of all potential permit space hazards. OSHA requests information on barriers or other means which have been used to protect authorized entrants from external hazards.

Proposed (c)(10) requires individuals who control permit spaces (host employer) to provide contractors (or similar employers) who plan to have employees enter these permit spaces with all available information on permit space hazards; on efforts to comply with the standard; and on any other hazards, safety rules or emergency procedures. OSHA believes that contractors would need that information in order to comply with the proposed standard. As indicated by the preface to proposed paragraph (c), OSHA anticipates that compliance with the proposed provision would be particularly important where an employer identifies permit spaces, and then decides to have a contractor instead of his or her own employees perform permit space work.

OSHA notes that a contractor whose employees enter permit spaces would be under the same obligation as any other employer to comply with this standard. However, OSHA believes that a contractor who is unfamiliar with a particular workplace may be seriously hampered in his or her efforts to identify and control potential hazards. Indeed, that difficulty could be exacerbated where the party retaining a contractor assumes that the contractor knows how to operate safely in a particular space because the contractor has a particular professional expertise. In addition, as described above in the incident reports, contractor employees have been endangered where the host employer makes changes in workplace operations which create hazards, but does not inform the contractor. Further, once a contractor's employees have confronted

a hazard, employees of the host employer and members of an emergency rescue team could be killed or injured trying to save the initial entrants. Therefore, OSHA has determined that proposed paragraph (c)(10) is needed to ensure that contractors offset any disadvantage they might otherwise face in complying with this standard.

Proposed paragraph (d) requires employers who plan to have employees enter permit spaces to establish a system under which entry will be authorized, supervised and terminated, as necessary, to ensure protection of employees. In particular, the proposed paragraph requires employees to document certain critical elements of their compliance with the proposed standard. OSHA recognizes that the employers covered by this proposed standard are diverse in their activities, resources and safety concerns. Accordingly, the Agency has determined that this proposed paragraph should allow employers some flexibility in deciding how to comply with the proposed documentation requirements. The three compliance approaches which OSHA would consider appropriate are, as follows:

Preparation of a written permit at the time entry is authorized which contains all of the information needed to document compliance with the proposed standard;

Preparation of a written permit at the time entry is authorized which identifies the place, date and time of the entry and the personnel who are involved in the entry, along with a checklist portion of the permit (which may be pre-printed) which specifies the hazards potentially present and the precautions which have been taken to protect entrants;

Direct supervision of the entry by the person authorizing entry using a checklist-type permit, in lieu of a more complete written permit, which specifies the hazards potentially present and the precautions which have been taken to protect entrants.

In addition, OSHA would not require employers to prepare a permit when the personnel entering a space are members of a rescue team summoned in compliance with this standard.

Proposed paragraph (d)(1) requires employers to provide a permit(s) through which the employers identify all conditions which must be evaluated to ensure safe entry. OSHA is concerned, based on the incidents reported, that employers have not been sufficiently careful about authorizing permit space entry, and believes that only a systematic approach will ensure that entrants receive the necessary protection. The Agency has not specified a format for employers to use in complying with the proposed paragraph, because OSHA anticipates that individual companies or industries would have approaches which are attuned to their particular circumstances. The Agency has included sample permit system format(s) as a non-mandatory appendix to this rule. OSHA requests that commenters submit other samples of permit system formats which have already been in use.

Proposed paragraph (d)(2) specifies the required information on permit space hazards and entry precautions which the employer must include as part of a permit. OSHA recognizes that much of the information generated by employers planning permit space entries is unchanged from one entry to the next. In particular, this is the case with the identification of the potential hazard(s) and with the description of the measures that are necessary to protect entrants. Therefore, the Agency would accept the use of a pre-printed permit containing the required information in order to spare employers an unnecessarily repetitive burden. OSHA notes that allowing the use of a pre-printed permit would not reduce the employer's responsibility to ensure that the recorded information is accurate.

Proposed paragraph (d)(3) specifies the additional minimum information OSHA would require in an entry permit for entries not directly supervised by the individual authorizing the permit. OSHA believes that preparing a contemporaneous record of the entry place, purpose, time, date and personnel would ensure that the person authorizing an entry gave appropriate consideration to the precautions needed for that entry. OSHA notes that the requirement to identify the attendant does not apply when entry is performed without an attendant, pursuant to proposed paragraph (i), below.

Proposed paragraph (d)(4) requires that an employer who plans to have hot work, such as welding, done in a permit space detail that ventilation or other measures have been taken to ensure that authorized entrants would be protected from potential hot work hazards, such as fire or asphyxiation. This information could appear either in a permit or in a separate hot work permit which is attached to the permit. OSHA is not concerned about how the information is presented, as long as it is readily available. The Agency recognizes that requiring employers to copy hot work permit information onto a separate entry permit would impose an unnecessary burden on employers.

Proposed paragraph (d)(5) requires that, after all actions and conditions necessary for safe entry into a permit space have been performed, the person authorizing entry shall sign or initial the permit as applicable, and then allow entry to begin. OSHA has proposed this common sense requirement here, as well as in paragraph (g), in order to impress on employers that compliance with the proposed entry permit program requirements, and verification of that compliance in the permit, are prerequisites for entry. The Agency wants employers to take their responsibilities under the proposed standard very seriously, so that they sign off on an entry permit only if they are certain that the standard has been followed.

Proposed paragraph (d)(6) requires that, upon completion of the work for which the entry was required and after all authorized entrants have exited the permit space, the person who authorized the entry shall cancel the permit. Again, OSHA has proposed a common sense requirement, which also appears in paragraph (g). In this case, the Agency simply intends to provide clear guidance on what to do with a permit after the authorized work has been completed. OSHA notes that permits can remain valid for up to one year so long as the conditions under which the permit was issued are maintained. In addition, this proposed provision underscores the Agency's view that the authorization of entry is one part of a larger ongoing process by which employers ensure that their employees are protected from permit space hazards. OSHA anticipates that compliance with this paragraph would help to ensure that employers give due attention to all phases of the entry permit program.

OSHA anticipates that the information generated in complying with proposed paragraph (d) would be useful in ensuring the safety of particular entries, and also when employers review their entry procedures in light of their entry experiences, especially where employers are investigating incidents.

Proposed paragraph (e) requires employers to train and supervise the employees they assign to work as authorized entrants so that the entrants perform their work safely. OSHA notes that the provisions covering authorized entrants and attendants are very similar. This reflects the Agency's perception that authorized entrants and attendants have complementary responsibilities. OSHA believes that employers who cultivate a spirit of mutual trust and cooperation between entrants and

attendants will maximize safety and work efficiency.

In addition, OSHA observes that a given employee could be assigned to perform any of the duties set out in the proposed rule, as long as that employee has the requisite training. Many employers may elect to alternate workers between entrant and attendant duties. As a result, employees can develop a clear understanding of how the attendant's vigilance and the entrant's responsiveness combine to ensure workplace safety.

Proposed paragraph (e)(1) requires employers to ensure that authorized entrants know and can recognize the effects of the hazards they may confront, and that they understand the consequences of hazard exposure. As indicated by the injury and fatality data, permit space hazards often give very little warning before entrants are endangered. Therefore, OSHA believes that familiarizing authorized entrants with potential hazards will significantly increase the likelihood that an entrant would detect a hazard in time for successful escape or rescue.

Proposed paragraph (e)(2) requires that employers ensure that authorized entrants use the means furnished for communicating with attendants. In many cases, attendants will depend on information from entrants in determining whether it is safe to continue the entry. Indeed, OSHA anticipates that an entrant's failure to maintain contact, or that behavioral changes detected in communications from entrants, will indicate to the attendant that an entry should be terminated immediately.

The proposed paragraph also requires entrants to notify the attendant if they initiate evacuation. In this way, the attendant would be alerted to perform any assigned rescue-related duties, such as using a winch to haul entrants out or summoning a rescue team. OSHA believes that signaling the attendant would greatly improve the entrant's chances of exiting the space safely.

Proposed paragraph (e)(3) requires that employers provide and ensure the proper use of the personal protective equipment (PPE) necessary for safe entry. OSHA notes that the failure to provide and ensure the proper use of the appropriate personal protective equipment was a major factor in many of the incidents reported in the Hazards section, above. The Agency believes, therefore, that compliance with this proposed paragraph would prevent the recurrence of these reported incidents.

Proposed paragraph (e)(4) requires employers to ensure that their employees who work as authorized entrants exit a permit space without assistance (self-rescue), insofar as it is physically possible, in the appropriate circumstances. OSHA believes that self-rescue will often provide the entrant's best chance of escaping a space when a hazard is present. The time lost waiting for the attendant to summon rescuers, waiting for the rescue team to arrive, or waiting for the attendant to perform any other rescue duties can be the difference between life and death. Also, the Agency notes that the narrowly configured openings of many confined spaces can make it very difficult for rescuers to pull or to carry out victims of permit space hazards. Therefore, while OSHA recognizes that self-rescue will sometimes be impossible, the Agency stresses the importance of self-rescue as a means of saving lives and minimizing injuries.

(f) *Training and duties of the attendant.* Proposed paragraph (f) requires employers to train and supervise attendants so they perform their work properly. As noted above, the provisions covering attendants and authorized entrants are designed to complement each other. The attendant's role in this relationship is particularly important where one attendant is assigned to monitor more than one entrant working in one or more permit spaces. The Agency observes that, in a setting where employees may be called upon to make split-second decisions, the employer who conscientiously trains and supervises attendants significantly reduces the likelihood that hazards, employee errors, or confusion will endanger authorized entrants.

Proposed paragraph (f) focuses the attendant's attention on detecting and responding to hazards. OSHA has not, however, proposed to prohibit the attendant from performing other assigned duties. The Agency believes that attendants could perform other duties as long as those other duties do not interfere with the requirements of proposed paragraph (f). OSHA envisions circumstances, for example, where attendants pass or receive equipment and materials to and from authorized entrants. OSHA has specifically requested public input on this matter in Issue 3 of this proposal.

Proposed paragraph (f)(1) requires employers to ensure that the attendant knows, at all times during the entry, how many persons are in the permit space so that no one is accidentally left in the space when it is returned to service. In event of an emergency in the space, the attendant also needs to know the number of entrants so that there are neither any entrants needing help left in the space, nor are there any useless search and rescue entries conducted for persons who have already left the space.

Proposed paragraph (f)(2) requires employers to ensure that attendants know and can recognize the effects of the hazards entrants may confront in a space. The attendants would be required to monitor the permit space to ensure that any hazard was detected. In this way, authorized entrants, whose efficiency might suffer if they were preoccupied by efforts to detect hazards, could work carefully with the confidence that the attendant would detect any hazard which eluded their attention. OSHA also proposes to have attendants watch out for any entry space hazards which might originate outside the permit space.

Proposed paragraph (f)(3) requires employers to ensure that attendants maintain contact with authorized entrants. In addition, the attendant would, when necessary, order evacuation, deal with unauthorized persons in or near the space, and summon rescue and other emergency services. OSHA notes that establishing a routine for maintaining contact between attendants and entrants would help attendants detect problems within a space, because an entrant when first affected by a permit space hazard might signal the attendant erratically. The Agency has not prescribed any particular means or procedure for communication, because OSHA anticipates that the approaches chosen will have to vary according to the circumstances of the particular workplaces. The Agency's sole concern is that the means of communication chosen enable the attendants and the entrants to maintain effective and continuous contact.

Proposed paragraph (f)(4) requires employers to ensure that attendants properly perform any assigned rescue duties. OSHA is particularly concerned that employers prohibit attendants from entering a permit space to attempt rescue. There are numerous reports of attendants who died as would-be rescuers because they were unprepared for the hazards within the spaces. The Agency believes that the attendant does the most good for entrants by working from the outside, such as by attempting rescue through the use of retrieval lines or by contacting trained rescuers, and by being on hand to inform the rescuers of what has happened in the space. Furthermore, OSHA believes that the training of attendants should include simulated rescues, so that attendants can develop a systematic approach for summoning and dealing with rescuers,

and for performing any assigned rescue duties.

Proposed paragraph (g) prescribes the training and duties of individuals who authorize entry or who are in charge of an entry. Individuals who may authorize an entry may also assume the duty of either attendant or entrant if they have the proper training. OSHA believes that the successful performance of these roles is crucial to the success of the employer's efforts to ensure safe entry.

Proposed paragraph (g)(1) requires employers to ensure that individuals who authorize or take charge of entry operations make the necessary determination that acceptable entry conditions are present, that the entry permit or checklist is prepared correctly, and that entry authorization is terminated if acceptable entry conditions are not present.

OSHA believes that the proposed requirements are needed to ensure that entries take place only after certain findings have been made and after certain actions have been taken. The Agency notes that failure to follow through with entry procedures contributed to some of the incidents reported in the Hazards section, above. The proposed provisions clearly assign responsibility for verifying compliance to the individual who authorizes or is in charge of entry. OSHA observes that a single individual might both authorize and take charge of an entry. Indeed, that individual might also serve as the attendant.

Proposed paragraph (g)(2) requires employers to ensure that individuals authorizing or in charge of entry take the necessary measures to remove unauthorized individuals who are in or near entry permit spaces. OSHA is concerned that unauthorized individuals who get in or near a permit space may endanger themselves, as well as authorized entrants and personnel who may be needed to rescue the unauthorized individuals from entry space hazards. The Agency believes that the person authorizing or in charge of entry is in the best position to take the necessary action to deal with unauthorized individuals.

Proposed paragraph (h) sets out the requirements for in-house and outside rescue teams. The employer would choose whichever type of rescue team best suits his or her circumstances. The Agency is aware that, while prompt action by an in-plant rescue team may make the difference between a successful and a failed rescue, many employers may not have the resources to maintain a rescue team.

Proposed paragraph (h)(1) lists the minimum requirements for an in-house rescue team. The standard would require that employers provide the rescue team with the equipment for rescue, and train the team in proper rescue techniques, as well as in entry procedures. At least one member of the team would be required to maintain certification in basic first aid and cardiopulmonary resuscitation (CPR).

Proposed paragraph (h)(2) requires employers who choose to use outside rescue services to ensure that the outside rescuers are informed of the hazards they may confront so they can equip and conduct themselves appropriately. Given that the employer has no control over outside rescuers, OSHA believes it is very important that employers keep designated rescuers informed of potential rescue needs.

Proposed paragraph (i) contains provisions under which employers could issue "special permits" which would authorize employees to enter low-hazard permit spaces without an attendant. Low-hazard permit spaces, as defined in proposed paragraph (b), pose an extremely low risk of posing IDLH or engulfment hazards and have had all other serious hazards controlled. OSHA believes that this divergence from the proposed paragraph (f) requirement for an attendant is justified where entrants routinely enter permit spaces to perform checking and inspecting, minor maintenance work and diked area work, because authorized entrants would be adequately protected from any possible atmospheric hazards through the proposed testing, monitoring and ventilation requirements and through the other proposed provisions. The Agency notes that employers who assign employees to enter permit spaces, which qualify only marginally as permit spaces, could find proposed paragraph (i) a reasonable alternative to complying with proposed paragraph (f).

OSHA proposes to limit the effective life of a special permit to one year. OSHA has not limited the effective life of entry permits when entry is to be performed with an attendant on hand. The Agency believes that an employer who complies with the requirements of the proposed standard, including the requirements for attendants, has provided sufficient assurance that entrants would be protected to justify permitting the employer to set the duration of the permit at the length appropriate to complete the pertinent work. On the other hand, OSHA believes that the authorization of entry without an attendant may provide less assurance that the necessary conditions for safe entry would be maintained. Therefore, the Agency would require employers who follow proposed paragraph (i) to reevaluate and reissue their entry permits at least once a year to ensure that employers authorize non-attendant entry only when the necessary conditions and actions have been performed.

Proposed paragraph (i) covers situations in which employers who authorize entry with special permits, and who then revoke those permits because unacceptable entry conditions have arisen. These employers cannot allow entry into those spaces by special permit until the conditions of that space which allowed for special permit entry have been restored and the employer reevaluates the space and makes a new determination that the space may again be treated as a special permit (low hazard) space. This requirement reflects OSHA's concern that employees would be endangered if the employer was again allowed to authorize entry without an attendant and unacceptable entry conditions again arose. The Agency has serious doubts as to the likelihood that an employer could establish that a permit space for which a special permit has been revoked should continue to be treated as a low-hazard permit space. This provision also reflects OSHA's view that proposed paragraph (i) should only be available where employers can provide clear assurance that employee protection will not be compromised by absence of an attendant.

Proposed paragraph (i)(1) presents the additional requirements which employers must satisfy if they decide to have employees perform checking or inspecting duties inside a low-hazard permit space without having an attendant stationed outside. OSHA believes that there are situations where an employer could appropriately decide that an entry performed simply to check or inspect equipment did not require the stationing of an attendant, based on:

The circumstances of the permit space, such as the nature of the identified hazards and the likelihood that authorized entrants would generate or confront hazards;

The employer's and authorized entrant's experience with entry to that permit space;

The routine, repetitive and nondisruptive nature of the entry; and

The ability to comply with the special provisions of proposed paragraph (i)(1).

OSHA remains sufficiently concerned that an IDLH atmosphere could arise in a "low-hazard permit space that the Agency would require employers to ensure that the permit space atmosphere is tested immediately prior to entry and that authorized entrants who would

move beyond the area which could be tested from outside the space be- appropriately equipped, trained and supervised to ensure that they test the atmosphere, as necessary, to ensure that conditions are acceptable for continued entry.

Proposed paragraph (i)(2) presents the additional requirements which employers must satisfy if they decide to have employees perform minor maintenance duties inside a low-hazard permit space without having an attendant stationed outside. OSHA believes that there are situations where an employer could appropriately decide, based on the factors discussed above under proposed paragraph (i)(1), that minor maintenance work on equipment within the permit space could be performed safely without having an attendant on hand.

The key difference between proposed paragraphs (i)(1) and (i)(2) is that entrants performing minor maintenance would bring materials into the permit space and perform work in the permit space which could change the conditions in the space. Under the proposal, the employer must ensure that any such change in the permit space would not generate a serious hazard. OSHA stresses that, where the employer cannot ensure that maintenance work would proceed without generating a serious hazard in a permit space, the employer would be required to comply with the requirements for attendants in proposed paragraph (f).

OSHA also notes that, as discussed above under proposed paragraph (i)(1), proposed paragraph (i)(2) requires employers to ensure that any potential IDLH hazard is controlled or detected prior to entry. Again this provision indicates the Agency's concern that however low the probability, authorized entrants in a low-hazard permit space may be exposed to atmospheric hazards due, for example, to changes in the space. Therefore, the Agency proposes that employers ensure the safety of authorized entrants by testing, monitoring or ventilating, as appropriate under the given circumstances.

Proposed paragraph (i)(3) presents the additional requirements which employers must satisfy if they decide to have employees perform work in diked areas which are six feet or more in height and are regulated as permit spaces without having an attendant stationed outside. OSHA believes that there are situations where the employer could appropriately decide, based again on the factors discussed above under proposed paragraph (i)(1), that work in a diked area could be performed safely without an attendant on hand.

The work contemplated under proposed paragraph (i)(3) could be similar to that which would be authorized under proposed paragraph (i)(1) and (i)(2), and could also include regular maintenance or repair work. In any case, OSHA would require that entry could proceed without an attendant only if the employer ensured that the necessary procedures to prevent generation of a hazard were in effect before and throughout the entry. OSHA specifically noted linebreaking as an activity performed in diked areas for which appropriate procedures, including the preparation of a permit to authorize linebreaking, would be required to protect authorized entrants. OSHA solicits comments on the appropriateness of allowing employers to authorize entry without providing an attendant. In addition, as noted in Issue 8, OSHA requests that commenters submit suggested criteria through which employers could assess the applicability of proposed paragraph (i) to their operations and could determine how best to comply with proposed paragraph (i).

Costs vs. Risk Reduction

The U.S. Supreme Court, in *American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981), determined that for standards dealing with toxic substances or harmful physical agents ("section 6(b)(5) standards"), once OSHA determines that there is a "significant risk" to employees, the standards may not be based on a balancing of costs and benefits; rather, the standards must reduce the risk "to the extent feasible. The decision in *American Textile* did not reach the issue of whether cost-benefit analysis is either required or permitted in the issuance of other types of standards under the OSH Act.

In a recent decision on OSHA s grain handling standard, *National Grain and Feed Association* v. *OSHA*, 866 F.2d 717 (5th Cir., 1989), the U.S. Court of Appeals for the Fifth Circuit held that the grain standard did not deal with a toxic substance or harmful physical agent within the contemplation of section 6(b)(5), and that it was not subject to the "feasibility mandate under the *American Textiles* decision. In *National grain*, the Fifth Circuit found that standards other than section 6(b)(5) standards must be "reasonably necessary or appropriate" to protect employee safety, and that, in contrast to 6(b)(5) standards, "[t]his determination encompasses a specie of cost-benefit justification. 866 F.2d at 733. Citing its previous decision in *Texas Independent Ginners* v. *Marshall*, 630 F.2d 398 (1980), the Court determined that "[t]he reasonably necessary requirement only demands that the expected costs of OSHA regulations be reasonably related to the expected benefits, leaving considerable discretion for the agency as long as it is exercised on substantial evidence and with an adequate statement of reasons. 630 F.2d [398] at 411 n. 44[.]" 866 F.2d at 733. OSHA believes that its proposed rule on confined spaces readily meets the test set forth by the Fifth Circuit in *National Grain*, insofar as that test is applicable and requests public comment on the requirements in its proposed rule.

Appendices

OSHA would propose to include three non-mandatory appendices (Appendix A, Appendix B and Appendix C) with the standard. The purpose of these appendices is to provide information useful to the employer in complying with the standard. Subjects of these appendices would be:

Appendix A—Decision logic flowchart.

Appendix B—References.

Appendix C—Permit and associated checklist examples.

OSHA would welcome examples of confined space entry procedures and permits as well as other useful information which could be included in these appendices to serve as guidelines for employers.

V. References

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VI. Summary of the Preliminary Regulatory Impact and Regulatory Flexibility Analysis and the Environmental Impact Assessment

A. Preliminary Regulatory Impact Analysis

This analysis has been performed in accordance with the requirements of Executive Order 12291 and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). The following paragraphs summarize the economic and other impacts of the proposed rule on the sectors most likely to be affected. The complete PRIA is available in the public docket.

1. Background

Based largely on an industry report prepared by the CONSAD Research Corporation (CONSAD), OSHA estimates that the proposed confined space standard will have a cost impact on at least 30 two-digit Standard Industrial Classification (SIC) industry groups covered by the proposal.

In manufacturing industries, examples of permit spaces include storage vessels, furnaces, railroad tank cars and aircraft sections being manufactured. In non-manufacturing industries, permit spaces include manholes serviced in the Utilities Industry (SIC 49) and autoclaves cleaned and maintained in hospitals (SIC 806). OSHA estimates that about 224,000 establishments have permit spaces, that about 7.2 million production workers are employed at these establishments, and about 2.1 million workers enter permit spaces annually. Table I presents the number of establishments with permit spaces and the number of production workers and permit space entrants by major industry group.

TABLE 1.—NUMBER OF ESTABLISHMENTS WITH PERMIT SPACES AND NUMBER OF WORKERS AND SCHEDULED ENTRANTS AT THOSE PLANTS

SIC	Industry/Category	Number of establishments with permit spaces	Total production workers	Number of entrants (annual)
07	Agricultural Services	10,656	60,966	25,361
13	Oil & Gas Extraction	681	13,620	681
20	Food and Kindred Products	8,148	399,487	81,887
21	Tobacco Manufacturers	88	34,803	2,468
22	Textile Mill Products	1,585	162,230	29,133
24	Wood Products (Less Furniture)	6,298	118,228	26,640
25	Furniture and Fixtures	5,256	186,102	36,212
26	Paper Products	4,404	318,030	45,930
27	Printing and Publishing	41	530	82
28	Chemicals & Allied Products	8,015	342,829	72,935
29	Petrlm Ref & Related Industry	1,741	92,800	18,368
30	Rubber Products	5,991	232,818	132,287
31	Leather and Leather Products	110	5,650	767
32	Stone, Clay, Glass & Concrete	13,610	333,587	147,802
33	Primary Metals Industry	3,210	305,527	59,481
34	Fabricated Metal Products	7,058	193,018	36,983
35	Machinery, Except Electrical	4,317	233,430	120,105
36	Electric/Electronic Equipment	8,612	673,856	137,195
37	Transportation Equipment	3,514	609,118	44,908
38	Instruments & Related Prdts	35	2,824	285
39	Misc. Manufacturing Ind	709	14,134	4,675
42	Motor Freight Transportation	14,583	145,830	29,166
49	Elec., Gas, Sanitary Services	19,961	1,049,481	636,742
51	Wholesale Trade/Nondurable	25,375	246,966	178,135
59	Misc. Retail	9,003	71,214	12,874
70	Hotels and Other Lodging	4,961	163,523	68,813
72	Personal Services	3,577	37,427	7,154
78	Motion Pictures	11	204	66
80	Health Services	7,465	1,197,219	26,801
84	Museums, Botanical, Zoo	123	2,162	738

TABLE 1.—NUMBER OF ESTABLISHMENTS WITH PERMIT SPACES AND NUMBER OF WORKERS AND SCHEDULED ENTRANTS AT THOSE PLANTS—Continued

SIC Industry/Category	Number of establishments with permit spaces	Total production workers	Number of entrants (annual)
Boilers in Commercial Bldgs	45,190	NA	186,636
Total	224,329	7,247,634	2,171,309

Represents total employees.
[2] Includes contractors.
Source: CONSAD; U.S. Department of Labor, BLS, Office of Employment and Unemployment Statistics; DOL, OSHA, Office of Regulatory Analysis.

Employees who enter permit spaces may encounter a variety of hazards. OSHA has determined that most employee injuries and deaths occur in toxic or asphyxiating atmospheres. The Agency has found that confined space entrants are also injured and killed due to engulfment by fine particulate matter, fire, explosion and mechanical hazards. In addition, when personnel outside a confined space become aware that an entrant is experiencing difficulties, those personnel often attempt to rescue the entrant. Often these would-be rescuers are unaware of or not equipped for the hazard encountered and are overcome along with the initial entrant.

Most permit spaces are entered infrequently. Periodic entries may be made into those spaces to inspect, clean or repair equipment. Some products are considered permit spaces while they are being built, and entries by workers are required as part of the manufacturing process. Entry into these permit spaces is often frequent.

2. Nonregulatory Alternatives

The objective of OSHA s proposed standard for confined spaces is to reduce the number of employee injuries resulting from unsafe entry into confined spaces. OSHA believes that the present risk to employees is excessive and that compliance with the proposed standard will prevent nearly all of the work-related accidents. OSHA examined the nonregulatory approaches for promoting adequate levels of workplace safety for promoting adequate levels of workplace safety in confined spaces, including (1) economic forces generated by the private market system, (2) incentives created by Workers' Compensation programs or the threat of private suits, and (3) related activities of other private or government agencies. As a result of this review, OSHA has determined that the need for government regulation arises from the significant risk of job-related injury or death caused by the inadequate rate of optional private hazard-abatement expenditure in establishments with confined spaces.

Private markets fail to provide enough safety and health resources due to the imperfect distribution of risk information, the immobility of labor, and the externalization of some of the social costs of worker injuries and deaths. Workers' Compensation systems do not offer an adequate remedy because the premiums do not reflect workplace risk, and liability claims are restricted by state statutes preventing employees from suing their employers. While there are some voluntary industry-generated standards and some state regulation, OSHA believes that these measures, because they tend to be incomplete, inconsistent and lacking in guidance for employers, do not provide adequate protection for all workers. In addition, OSHA has repeatedly cited employers under the general duty clause, section 5(a)(1) of the OSH Act, for confined space workplace conditions which the Agency determined violated the basic requirement that employers provide their employees with workplaces free from recognized hazards. This indicates to OSHA that employees working in confined spaces confront significant safety and health hazards frequently enough to justify the issuance of a standard specifically designed to address those hazards. Therefore, OSHA has determined that a comprehensive federal standard is necessary to protect confined space workers.

3. Technological Feasibility

OSHA has determined that it is technologically feasible to implement the proposed standard. The technology that would be required by the provisions in the proposed standard is now used by some employers in all industries covered by the proposal. Based on the current use of atmospheric testing instruments, ventilation equipment, respirators, and retrieval devices, OSHA believes that all employers would be able to implement existing technology to comply with the proposal. No new technological developments would be needed for firms to reach compliance with the proposed standard.

4. Benefits

While there are limitations to available data, OSHA estimates that 80 to 90 percent of the accidents in confined spaces would be avoided by compliance with the proposed standard. OSHA estimates that 31 to 35 fatalities, 2,220 to 2,497 lost workday injuries, and 2,532 to 2,849 non-lost workday injuries would be prevented. However, given the uncertainty over the precise number of injuries occurring annually in confined spaces, a sensitivity analysis of benefits, based on varying assumptions, is provided in Tables II-A and II-B. The accident reports indicate that most fatalities and injuries occur because employees are unaware of the hazards in the permit spaces and are inadequately equipped to manage the hazardous situations. The objective of the proposed standard is to correct both of these situations. By lowering the accident rate of employees who make work-related entries, the standard will also reduce the number of emergency situations where injured workers are incapacitated inside permit spaces. Rescuers would make fewer entries, thereby reducing their exposure to confined spaces and preventing additional injuries and deaths.

TABLE II-A.—SENSITIVITY ANALYSIS OF ESTIMATED PREVENTED FATALITIES

Sector	Current	Prevented	
		80%	90%
Oil & Gas Extraction	2.9	2.3	2.6
Manufacturing	20.6	16.5	18.5
Transportation & Public Utilities	7.9	6.3	7.1
Wholesale And Retail Trade	1.3	1.0	1.2
Services	0.3	0.2	0.3
Host Employer Unidentified	6.1	4.9	5.5
Total	39.1	31.3	35.2

Includes 4 average annual fatalities in Lockout/tagout situations.
Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE II-B.—LOST WORKDAY INJURIES

Lost Workday Injuries

Sector	Number of injuries at 5, 10, and 20 percent of BLS ratio of injuries to fatalities and estimated injuries prevented at 80 and 90 percent effectiveness level								
	Current			Prevented (80%)			Prevented (90%)		
	5%	10%	20%	5%	10%	20%	5%	10%	20%
Oil & Gas Extraction	103	206	412	82	165	329	93	185	371
Manufacturing	731	1,462	2,924	585	1,170	2,339	658	1,316	2,632
Transportation & Public Utilities	280	561	1,122	224	449	897	252	505	1,010
Wholesale and Retail Trade	46	92	185	37	74	148	42	83	166
Services	10	20	40	8	16	32	9	18	36
Host Employer Unidentified	217	433	866	173	346	693	195	390	780
Total	1,387	2,774	5,549	1,110	2,220	4,439	1,248	2,497	4,994

TABLE II-C.—NON-LOST WORKDAY INJURIES

Sector	Number of injuries at 5, 10, and 20 percent of BLS ratio of injuries to fatalities [1] and estimated injuries prevented at 80 and 90 percent effectiveness level								
	Current			Prevented (80%)			Prevented (90%)		
	5%	10%	20%	5%	10%	20%	5%	10%	20%
Oil & Gas Extraction	117	235	470	94	188	376	106	211	423
Manufacturing	834	1,668	3,336	667	1,334	2,669	751	1,501	3,003
Transportation & Public Utilities	320	640	1,280	256	512	1,024	288	576	1,152
Wholesale and Retail Trade	53	105	211	42	84	168	47	95	190
Services	11	23	46	9	18	37	10	21	41
Host Employer Unidentified	247	494	988	198	395	791	222	445	889
Total	1,583	3,165	6,330	1,266	2,532	5,064	1,424	2,849	5,697

To estimate injuries, OSHA employed the ratio of BLS estimated injuries to fatalities in manufacturing and utilities. However, because confined space accidents are typically more catastrophic in nature, a lower ratio would be expected. For this reason, OSHA has estimated the number of injuries at 5, 10 and 20 percent of the BLS ratio. OSHA has employed 10 percent for its calculation of benefits. This modified ratio was then multiplied by the number of fatalities recorded in confined spaces in OHSA data (as represented in Table II-A).

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

In addition, OSHA expects the rules to save productive time that would be lost due to these accidents and administrative time spent filing accident reports and replacing injured workers. Based upon an estimated value of $4,000 per lost-workday injury avoided, and $350 per non-lost workday injury avoided, employer benefits (cost savings) are estimated to have a monetized value of $9.9 to $11.1 million. Further, based upon willingness to pay estimates of $33,000 per lost-workday injury and $320 per non-lost-workday injury, the total value of reduced non-fatal accidents to society is estimated to be approximately $85 to $94 million.

5. Estimated Costs of the Proposed Standard

OSHA estimates that compliance with the proposed permit required confined space standard will impose start-up costs of $36.9 million and recurring annualized costs of $160.0 million. Annualizing the start-up costs produces a total annualized cost of $166.0 million. Factoring in the non-fatality benefits to society noted above, OSHA estimates the net cost per fatality avoided is between $2.0 and $2.5 million.

OSHA also calculated the costs of compliance by provision for each affected industry. As shown in Table III, the highest initial cost of any provision, $25.8 million, is for training. This cost is due to the large number of production workers to be trained. The highest annual cost, to provide an attendant during entries, is $54.7 million a year. There are also significant annual costs to provide respiratory protection and to perform atmospheric testing.

As shown in Table IV the industry group with the highest estimated initial

cost, $8.0 million, is the utilities industry (SIC 49). The utilities industry also has the highest estimated annual cost, $52 million, mainly due to the large number of confined space entries made each year.

TABLE III.—SUMMARY OF INITIAL AND TOTAL COMPLIANCE COSTS BY PROVISION ($)

Provision	Total initial costs	Total annual costs
Establish Permit Entry Program/System	9,162,226	39,000
Issue Permits	0	11,744,418
Training	25,828,964	3,099,436
Inform Non-Entrants	6,357	2,701,120
Atmospheric Testing	0	36,506,187
Mechanical Ventilation	0	13,128,908
Respiratory Protection	0	29,177 494
Retrieval Devices	1,882,242	2,224,340
Isolation Procedures	0	3,144,304
Protective Clothing	0	3,338,158
Vehicle & Pedestrian Guards	0	126,244
Attendant	0	54,747 406
Total	36,879,788	159,977,015

Includes $1 million for control of hazardous energy sources that will be required under a separate rule, once final.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE IV —SUMMARY OF INITIAL AND TOTAL COMPLIANCE COSTS OF THE CONFINED SPACES STANDARD BY INDUSTRY (4)

SIC	Industry	Total initial costs	Total annual costs
07	Agricultural Services	2,743,417	7,127,545
13	Oil & Gas Extraction	0	585,000
20	Food and Kindred Products	2,368,152	13,787,599
21	Tobacco Manufacturers	33,294	43,870
22	Textile Mill Products	387,187	777,118
24	Wood Products (less Furniture)	1,511,643	941,339
25	Furniture and Fixtures	901,605	1,390,871
26	Paper Products	1,525,518	4,158,059
27	Printing and Publishing	760	832
28	Chemicals & Allied Products	1,476,496	1,187,919
29	Petrlm Ref & Related Industry	132,641	1,598,553
30	Rubber Products	596,747	4,567,823
31	Leather and Leather Products	19,412	16,357
32	Stone, Clay, Glass & Concrete	1,992,046	4,886,588
33	Primary Metals Industry	1,011,200	5,671,647
34	Fabricated Metal Products	2,247,886	6,282,654
35	Machinery, Except Electrical	543,968	1,987,344
36	Electric/Electronic Equipment	2,808,893	15,872,363
37	Transportation Equipment	1,157,633	10,912,009
38	Instruments & Related Products	2,274	338
39	Miscellaneous Manufacturing Industry	100,473	1,057,983
42	Motor Freight Transportation	2,330,464	3,219,569
49	Elec, Gas, Sanitary Services	8,025,120	52,029,269
51	Wholesale Trade/Nondurable	3,602,372	16,345,904
59	Miscellaneous Retail	322,123	258,334
70	Hotels and Other Lodging	72,880	726,439
72	Personal Services	423,383	32,980
78	Motion Pictures	0	0
80	Health Services	263,251	3,989,307
84	Museums, Botanical, Zoo	877	219
	Boilers in Commercial Buildings	291,693	532,845
	Total	36,879,788	159,977,015

Numbers may not total precisely due to rounding.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Various other proposed OSHA standards would overlap with certain provisions and industries covered by this standard. In this analysis, as noted in Tables IIA and III, OSHA has assumed costs and benefits attributable to control of hazardous power sources in confined spaces. Similarly, costs and benefits related to mitigating hazards in confined spaces in electrical power generating facilities have also been included. When these rules become final, these costs and benefits will no longer apply to this rule.

6. Economic and Other Impacts

OSHA believes that none of the 30 industry groups having costs imposed by the proposal would experience significant economic impacts because the compliance costs can be passed through to consumers or absorbed from profits. OSHA estimates that the average price increase needed to maintain profits in the affected industries would be less than one hundredth of a percent (ratio of compliance costs to the value of shipments). The maximum price increase in any one of the 30 industries was estimated to be less than 0.2 percent. OSHA also estimated the economic consequences of the

assumption that all of the costs would be absorbed from industry profits and not passed on to consumers. By comparing the estimated compliance costs to estimated profits for each industry, OSHA estimated that the overall profit reduction for the 30 affected industries was less than 0.1 percent. Therefore, OSHA expects that the proposed standard will not have a significant economic impact. Table V shows the estimated maximum price increase or profit reduction for each major industry group.

TABLE V.—MAXIMUM PRICE INCREASE OR PROFIT REDUCTION FOR MAJOR INDUSTRY GROUPS ($)

SIC	Industry	Maximum price increase (percent)	Maximum profit reduction (percent)
07	Agricultural Services	N/A	N/A
13	Oil & Gas Extraction	0.00028	0.01228
20	Food and Kindred Products	.00421	.05974
21	Tobacco Manufacturers	.00026	.00083
22	Textile Mill Products	.00146	.02410
24	Wood Products (less Furniture)	.00411	.03912
25	Furniture and Fixtures	.00401	.07247
26	Paper Products	.00367	.03987
27	Printing and Publishing	.00000	.00001
28	Chemicals & Allied Products	.00064	.00561
29	Petrlm Ref & Related Industry	.00124	.02145
30	Rubber Products	.00589	.07852
31	Leather and Leather Products	.00002	.00319
32	Stone, Clay, Glass & Concrete	.00844	.10621
33	Primary Metals Industry	.00521	.12780
34	Fabricated Metal Products	.00490	.08909
35	Machinery, Except Electrical	.00097	.01373
36	Electric/Electronic Equipment	.00725	.10902
37	Transportation Equipment	.00342	.05243
38	Instruments & Related Prdts	.00000	.00001
39	Misc. Manufacturing Ind	.00518	.04057
42	Motor Freight Transportation	.00489	N/A
49	Elec, Gas, Sanitary Services	.12678	.17110
51	Wholesale Trade/Nondurable	.00424	.66005
59	Misc. Retail	.01355	N/A
70	Hotels and Other Lodging	.00110	N/A
72	Personal Services	.00165	.00339
78	Motion Pictures	.00000	.00000
80	Health Services	.00485	.03491
84	Museums, Botanical, Zoo	.00004	N/A
	Total	.00504	.07183

Source. U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (*5 U.S.C. et seq.*), OSHA has assessed the expected impact of the proposed standard on small entities in each of the affected industries. OSHA has concluded that the proposed standard will not significantly burden small businesses. This assessment was based on a comparison of estimated compliance costs and value of shipments for those small plants where data were available. In no industry would the small business segment have to increase prices by more than two-tenths of one percent to offset the costs. The majority of the industry increases are below one hundredth of a percent (see Table VI). The highest estimated price increase would be 0.12 percent in Stone, Clay, and Glass Products (SIC 32). In addition, the use of performance language in the proposed standard would facilitate compliance by small firms. The flexibility in meeting requirements allows smaller plants to have lower compliance costs for some provisions.

TABLE VI.-MAXIMUM PRICE INCREASE FOR SMALL ENTITIES

SIC	Industry	Maximum price increase (percent)
07	Agricultural Services	NA
13	Oil & Gas Extraction	NA
20	Food and Kindred Products	0.0022
21	Tobacco Manufacturers	.0276
22	Textile Mill Products	.0007
24	Lumber and Wood Products	.0182
25	Furniture and Fixtures	.0044
26	Paper and Allied Products	.0057
27	Printing and Publishing	(1)
28	Chemicals and Allied Products	.0003
29	Petroleum and Coal Products	.0049
30	Rubber and Misc. Plastic Products	.0001
31	Leather and Leather Products	NA
32	Stone, Clay, and Glass Products	.1231
33	Primary Metal Industries	.0006
34	Fabricated Metal Products	.0176
35	Machinery, Except Electrical	.0021
36	Electric/Electronic Equipment	.0441
37	Transportation Equipment	.0076
38	Instruments & Related Products	NA

TABLE VI.-MAXIMUM PRICE INCREASE FOR SMALL ENTITIES—Continued

SIC	Industry	Maximum price increase (percent)
39	Misc. Manufacturing Ind	(1)
42	Motor Freight Transportation	NA
49	Electric, Gas, and Sanitary Services	NA
51	Wholesale Trade	.0014
59	Misc. Retail	.0081
70	Hotels and Other Lodging	NA
72	Personal Services	.0000
78	Motion Pictures	.0000
80	Health Services	NA
84	Museums, Botanical, Zoo	NA

Negligible.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

C. Environmental Impact Assessment

The proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act

(NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Parts 1500–1577), and the Department of Labor's (DOL) NEPA procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed standard is designed to reduce employee accidents and injuries by such means as work practices, engineering controls, training, atmospheric testing, personal protective equipment, and the implementation of rescue procedures. Such procedures and applications do not impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment. Therefore, this proposed standard is categorized as an excluded action according to Subpart B, § 11.10 of the DOL NEPA regulations.

VII. Recordkeeping

The proposed standard contains "collection of information" (recordkeeping) requirements pertaining to establishing permits, the employer-specified entry conditions, and conditions that actually existed at the time of entry. OSHA estimates that these documents, the entry permit and entry permit system would be required to be maintained by the employer. The Agency believes that the entry permit would not be retained by employers for more than 30 days after completion of the entry if no deaths, injuries or serious, adverse health effects resulted from that entry.

We estimate that for the "worst case scenario" an employer with no existing program, it will take an average of 9 hours per establishment per year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (1218–AA51), Washington, DC 20503, and to the Docket Office, Docket No. S–019, Occupational Safety and Health Administration, Room N2634, U.S. Department of Labor, 200 Constitution Avenue NW Washington, DC 20210, for inclusion in the record for this rulemaking.

VIII. Federalism

This proposed regulation has been reviewed in accordance with Executive Order 12612, regarding Federalism. The regulation is drafted so that employees entering confined spaces in every state would be protected by general, performance oriented standards. To the extent that there are state or regional peculiarities caused by the types of spaces to be entered, the terrain, the climate or other factors, states would be able, under the OSH Act, to develop their own state standards to address any special problems. And, under the Act, if a state develops its own, approved state program, it could impose additional requirements in its standards. Moreover, the performance nature of this proposed standard, of and by itself, allows for flexibility by states and employers to provide as much safety as possible using varying methods consonant with conditions in each state.

In short, there is a clear national problem related to occupational safety and health in entering confined spaces. While the individual states, if all acted, collectively might be able to address the safety problems involved, most have not elected to do so in the 17 years since the enactment of the OSH Act. Those states which have elected to participate under the statute would not be preempted by this proposed regulation, and would be able to address special, local conditions within the framework provided by this performance oriented standard.

IX. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. These comments must be postmarked by August 4, 1989, and submitted in quadruplicate to the Docket Office, Docket S–019, Room N2634, U.S. Department of Labor, Washington, DC 20210. Written submissions must clearly identify the issues or specific provisions of the proposal which are addressed and the position taken with respect to each issue or provision.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The preliminary regulatory assessment and the exhibits cited in this document will be available for public inspection and copying at the above address. OSHA invites comments concerning the conclusions reached in the regulatory impact assessment.

Additionally, under section 6(b)(3) of the OSHA Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following condition:

1. The objections and hearing requests must include the name and address of the objector;

2. The objections and hearing requests must be postmarked on or before August 4, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issue involved.

X. State Plan Standards

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These 25 states are: Alaska, Arizona, California, Connecticut, New York (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

XI. List of Subjects in 29 CFR Part 1910

Attendant, Confined spaces, Hazardous atmospheres, Hazardous materials, Monitoring, Occupational safety and health, Entry permit system, Incorporation by reference, Permits, Personal protective equipment, Rescue equipment, Respiratory protection, Retrieval lines, Safety, Signs, Tags, Tools, Welding.

Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84) Stat. 1593, 1597 1599; 29 U.S.C. 653, 655, 657 Secretary of Labor's Order No. 9–83 (48 FR 35736)), and 29 CFR Part 1911, OSHA proposes to add a new § 1910.146 to 29 CFR as set forth below.

Signed at Washington, DC this 25th day of May 1989.

Alan C. McMillan,

Acting Assistant Secretary.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart J of Part 1910 would be revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970, 29 USC 653, 655, 657· Secretary of Labor's Order No. 12–71 (36 FR 8754, 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Section 1910.146 is also issued under 29 CFR Part 1911.

2. Part 1910 of Title 29 of the Code of Federal Regulations would be amended by adding a new § 1910.146 and Appendices A, B, and C to Subpart J to read as follows:

§ 1910.146 Permit required confined spaces.

(a) *Scope and application.* This section contains requirements for practices and procedures to protect employees from those hazards of entry into and work within permit required confined spaces in General Industry which can be identified by an employer exercising reasonable care. This section does not apply to agriculture or construction, or to purely maritime (i.e., afloat) industry activities, nor does this section apply to confined spaces in electric generation and transmission industries, grain handling facilities, or onshore operations of the maritime industries wherever these confined spaces are regulated by a more specific confined space entry standard.

(b) *Definitions.* (1) Acceptable environmental conditions" means confined space workplace conditions in which uncontrolled hazardous atmospheres are not present, and which include any additional environmental criteria the employer may require for employee entry into a permit required confined space.

(2) Attendant" means an individual stationed outside the permit required confined space who is trained as required by this standard and who monitors the authorized entrants inside the permit required confined space. An attendant may monitor not more entrants nor more permit spaces than the entry permit specifically authorizes.

(3) Authorized entrant" means an employee who is authorized by the employer to enter an permit required confined space. Authorized entrants may rotate duties, serving as attendants if the permit program and the entry permit so state. Any properly trained person with the authority to authorize entry by other persons may enter the permit space during the term of the permit provided the attendant is informed of that entry.

(4) "Blanking" or "blinding" means the absolute closure of a pipe, line or duct, by fastening across its bore a solid plate or "cap" which completely covers the bore; which extends at least to the outer edge of the flange at which it is attached; and which is capable of withstanding the maximum upstream pressure.

(5) "Double block and bleed" means the closure of a line, duct or pipe by locking and tagging a drain or vent which is open to the atmosphere in the line between two locked-closed valves.

(6) "Emergency" means any occurrence (including any failure of hazard control or monitoring equipment) or event(s) internal or external to the confined space which could endanger entrants.

(7) "Engulfment" means the surrounding and effective capture of a person by a liquid or finely divided solid substance.

(8) "Entry" means the act by which a person intentionally passes through an opening into an permit required confined space, and includes ensuing work activities in that space. The entrant is considered to have entered as soon as any part of the entrant's face breaks the plane of an opening into the space.

(9) "Entry permit" means the written or printed document established by the employer, the content of which is based on the employer's hazard identification and evaluation for that confined space (or class or family of confined spaces if a number of spaces may contain similar hazards) and is the instrument by which the employer authorizes his or her employees to enter that permit required confined space. The entry permit: Defines the conditions under which the permit space may be entered; states the reason(s) for entering the space; the anticipated hazards of the entry; for entries where the individual authorizing the entry does not assume direct charge of the entry, lists the eligible attendants, entrants, and the individuals who may be in charge of the entry; and establishes the length of time (not to exceed one year) for which the permit may remain valid.

(10) "Entry permit system" means the employer's written procedures for preparing and issuing permits for entry and returning the permit space to service following termination of entry, and designates by name or title the individuals who may authorize entry.

(11) "Hazardous atmosphere" means an atmosphere which exposes employees to a risk of death, incapacitation, injury or acute illness from one or more of the following causes:

(i) A flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);

(ii) An airborne combustible dust at a concentration that obscures vision at a distance of five feet (1.52 m) or less;

(iii) An atmospheric oxygen concentration below 19.5 percent or above 22 percent;

(iv) An atmospheric concentration of any substance for which a permissible exposure limit is published in Subpart Z of 29 CFR Part 1910 and could result in employee exposure in excess of its permissible limit(s). [When an air contaminant for which OSHA has not determined a permissible exposure limit may be present in the permit space atmosphere, OSHA recommends employers consult other sources of information, such as Material Safety Data Sheets which comply with the Hazard Communication Standard, § 1910.1200, for guidance in establishing the acceptable environmental conditions for entry by their employees.]

(v) Any atmospheric condition recognized as immediately dangerous to life or health.

(12) "Hot work permit" means the employer's written authorization to perform operations which could provide a source of ignition, such as riveting, welding, cutting, burning or heating.

(13) "Immediately dangerous to life or health (IDLH)" means any condition which poses an immediate threat of loss of life; may result in irreversible or immediate-severe health effects; may result in eye damage; irritation or other conditions which could impair escape from the permit space.

(14) "Immediate-severe health effects means any acute clinical sign(s) of a serious, exposure-related reaction manifested within 72 hours after exposure.

(15) "Inerting" means rendering the atmosphere of a permit space non-flammable, non-explosive or otherwise chemically non-reactive by such means as displacing or diluting the original atmosphere with steam or a gas that is non-reactive with respect to that space.

(16) "In-plant rescue team" means a group of two or more employees designated and trained to perform rescues in permit spaces in their plant.

(17) "Isolation" means the separation of a permit space from unwanted forms of energy which could be a serious hazard to permit space entrants. Isolation is usually accomplished by such means as blanking or blinding; removal or misalignment of pipe sections or spool pieces; double block and bleed; or lockout and/or tagout.

(18) "Line breaking" means the intentional opening of a pipe, line or duct that is or has been carrying flammable, corrosive or toxic material, an inert gas, or any fluid at a pressure or temperature capable of causing injury.

(19) "Low-hazard permit space" means a permit space where there is an extremely low likelihood that an IDLH or engulfment hazard could be present, and where all other serious hazards have been controlled.

(20) "Not-permitted condition" means any condition or set of conditions whose hazard potential exceeds the limits stated in the entry permit.

(21) "Oxygen deficient atmosphere" means an atmosphere containing less than 19.5 percent oxygen by volume.

(22) "Oxygen enriched atmosphere" means an atmosphere containing more than 22 percent oxygen by volume.

(23) "Permit required confined space" (permit space), means an enclosed space which:

(i) Is large enough and so configured that an employee can bodily enter and perform assigned work;

(ii) Has limited or restricted means for entry or exit (some examples are tanks, vessels, silos, storage bins, hoppers, vaults, pits and diked areas);

(iii) Is not designed for continuous employee occupancy; and,

(iv) Has one or more of the following characteristics:

(A) Contains or has a known potential to contain a hazardous atmosphere;

(B) Contains a material with the potential for engulfment of an entrant;

(C) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls, or a floor which slopes downward and tapers to a smaller cross-section; or,

(D) Contains any other recognized serious safety or health hazard.

(24) "Permit required confined space program" means the employer's program for preventing unauthorized employee entry and for ensuring safe entry into and work within permit spaces by authorized employees.

(25) "Retrieval line" means a line or rope secured at one end to the worker by a chest-waist or full-body harness, or wristlets, and with its other end secured to either a lifting (or other retrieval) device, or to an anchor point located outside the entry portal.

(c) *Permit required confined space program (entry permit program).* The employer shall determine if the workplace contains permit confined spaces. If there are changes in a confined space which previously was not a permit space, the employer shall reevaluate that space to determine if it has become a permit space. If the employer has permit spaces and decides that his or her employees will not enter those spaces, the employer shall take appropriate measures to ensure that the spaces are not entered by his or her employees, and shall comply with paragraph (c)(10), as applicable. Any employer who decides to have employees enter a permit space, whether or not that space is under that employer's direct control (contractors may be examples of such employers), shall establish an entry permit program to ensure that entrants are protected from permit space hazards. Under the entry permit program, the employer shall:

(1) *Hazard identification.* Identify and evaluate each hazard of the permit spaces, including determination of severity;

(2) *Hazard control.* Establish and implement the means, procedures and practices by which the permit spaces can be entered safely;

(3) *Permit system.* Establish a written permit system for the proper preparation, issuance and implementation of entry permits.

(4) *Employee information.* Signs shall be posted near permit spaces to notify employees what hazards may be present and that only authorized entrants may enter the permit spaces;

(5) *Prevention of unauthorized entry.* Prevent unauthorized employee entry through such measures as training or by posting signs and barriers, as necessary;

(6) *Employee training.* Train employees, as provided by this standard, so that attendants, authorized entrants and personnel authorizing or in charge of entry can work safely in and around the permit space;

(7) *Equipment.* Provide, maintain and ensure the proper use of the equipment necessary for safe entry, including testing, monitoring, communication and personal protective equipment;

(8) *Rescue.* Ensure that the procedures and equipment necessary to rescue entrants from permit spaces are implemented and provided;

(9) *Protection from external hazards.* Ensure that all pedestrian, vehicle or other barriers necessary to protect entrants from external hazards are provided;

(10) *Duty to other employers.* Ensure that, when an employer, such as a contractor, plans to send employees into a permit space which is under the control of another employer (host employer), the host employer provides the contractor with all available information on permit space hazards; on efforts to comply with this standard; and on any other workplace hazards, safety rules and emergency procedures of which the contractor needs to be aware in order to comply with this standard.

(d) *Permit system.* (1) Where required under this standard, the employer shall prepare a permit(s) in a standardized format (or preprinted), through which the employer identifies all conditions which must be evaluated to ensure safe entry. (For examples of permits, see Appendix C. The Appendix is non-mandatory.)

(2) Employers who intend to authorize entry into a permit space shall include the following information in the checklist portion of a permit:

(i) The hazards of the permit space;

(ii) The measures for isolation of the permit space;

(iii) The measures, such as lockout/tagout, equipment and procedures for purging, inerting, ventilating and flushing, used to remove or control potential hazards;

(iv) Acceptable environmental conditions, quantified with regard to the hazards identified in the permit space, which must be maintained during entry;

(v) Testing and monitoring equipment and procedures by which the employer will verify that acceptable environmental conditions are being maintained during entry;

(vi) The rescue and other services which would be summoned in case of emergency and the means of communication with those services;

(vii) Rescue equipment to be provided on-site, if necessary;

(viii) The communication procedures and equipment used by authorized entrants and attendants to maintain contact;

(ix) The personal protective equipment, such as respirators, clothing and retrieval lines, provided in order to ensure employee safety; and

(x) Any other information whose inclusion is necessary, given the

circumstances of the particular permit space, in order to ensure employee safety.

(3) Unless the individual who authorizes an entry assumes direct charge of the entry for its duration, employers who intend to authorize entry in a permit space shall, in addition to the checklist items required in paragraph (d)(2), above, include in the permit, at a minimum, the following information:

(i) The identity of the permit space;

(ii) The purpose of the entry;

(iii) The date of the entry and the authorized duration; (A permit may be valid for up to one year, so long as all conditions under which the permit was issued are maintained.)

(iv) A list of the authorized entrants;

(v) A list of eligible attendants;

(vi) A list of individuals eligible to be in charge of the entry and;

(vii) The signature, together with the name printed or otherwise legible, of the individual authorizing the entry, verifying that all actions and conditions necessary for safe entry have been performed.

(4) Employers who intend to authorize hot work in a permit space, such as welding, shall note that intention prominently on either the entry permit or on a separate hot work permit which is attached to the permit.

(5) The individual authorizing the entry shall sign or initial the permit before the entry begins, but not until all actions and conditions necessary for safe entry into the permit space have been performed.

(6) Upon completion of the entry covered by the permit, and after all entrants have exited the permit space, the individual authorizing the entry shall cancel the permit.

(e) *Training and duties of authorized entrants.* The employer shall ensure that employees who work as authorized entrants receive the appropriate training, and perform their assigned duties under the entry permit program, as follows:

(1) *Hazard recognition.* The employer shall ensure that authorized entrants:

(i) Know the hazards which may be faced during entry;

(ii) Recognize the signs and symptoms of exposure to a hazard; and

(iii) Understand the consequences of exposure to a hazard.

(2) *Communication.* The employer shall ensure that authorized entrants:

(i) Maintain contact with the attendant; and

(ii) Notify the attendant when the entrants self-initiate evacuation of a permit space.

(3) *Protective equipment.* The employer shall ensure that authorized entrants:

(i) Are aware of the personal protective equipment, such as retrieval lines, respirators or clothing, needed for safe entry and exit;

(ii) Are provided with the necessary personal protective equipment;

(iii) Use the personal protective equipment properly; and

(iv) Are aware of the external barriers needed to protect entrants from external hazards and of the proper use of those barriers.

(4) *Self-rescue.* The employer shall ensure that authorized entrants exit the permit space, unless it is physically impossible to do so, when:

(i) The attendant orders evacuation;

(ii) An automatic alarm is activated; or

(iii) The authorized entrants perceive that they are in danger.

(f) *Training and duties of the attendant.* Except where paragraph (i) applies, the employer shall ensure that an attendant is stationed and remains outside the permit space(s) at all times during entry operations, and that employees who work as attendants receive the appropriate training and perform their assigned duties under the entry permit program, as follows:

(1) *Number of entrants.* The employer shall ensure that attendants continuously maintain an accurate count of all persons in the space.

(2) *Hazard recognition.* The employer shall ensure that attendants know of and can recognize potential permit space hazards, monitor activities inside and outside the permit space to determine if it is safe for entrants to remain in the space.

(3) *Communication.* The employer shall ensure that attendants:

(i) Maintain effective and continuous contact with authorized entrants during entry;

(ii) Order authorized entrants to evacuate the permit space immediately when:

(A) The attendant observes a condition which is not allowed in the entry permit;

(B) The attendant detects behavioral effects of hazard exposure;

(C) The attendant detects a situation outside the space which could endanger the entrants;

(D) The attendant detects an uncontrolled hazard within the permit space;

(E) The attendant is monitoring entry in more than one permit space and must focus attention on the rescue of entrants from one of those spaces; and

(F) The attendant must leave the work station.

(iii) Summon rescue and other emergency services as soon as the attendant determines that authorized entrants need to escape from permit space hazards; and

(iv) Take the following actions, as necessary, when unauthorized persons approach or enter a permit space while entry is underway:

(A) Warn the unauthorized persons away from the space;

(B) Request the unauthorized persons to exit immediately if they have entered the permit space; and

(C) Inform the authorized entrants and any other persons designated by the employer if unauthorized persons have entered the permit space.

(4) *Rescue.* The employer shall ensure that attendants:

(i) Do not enter the permit space to attempt rescue of entrants; and

(ii) Properly use any rescue equipment provided for their use and perform any other assigned rescue and emergency duties, without entering the permit space.

(g) *Training and duties of the individual authorizing or in charge of entry.* The employer shall ensure that individuals authorizing or in charge of entry receive the appropriate training and perform assigned duties, as follows:

(1) *Entry authorization and supervision.* Individuals authorizing or in charge of entry shall:

(i) Determine that the entry permit contains the requisite information before authorizing or allowing entry;

(ii) Determine that the necessary procedures, practices and equipment for safe entry are in effect before allowing entry;

(iii) Determine, at appropriate intervals, that entry operations remain consistent with the terms of the entry permit, and that acceptable entry conditions are present;

(iv) Cancel the entry authorization and terminate entry whenever acceptable entry conditions are not present; and

(v) Take the necessary measures for concluding an entry operation, such as closing off a permit space and cancelling the permit, once the work authorized by the permit has been completed.

(vi) Individuals empowered to authorize entries may also serve as authorized entrants or attendants for an entry if they have the proper training.

(2) *Dealing with unauthorized personnel.* Individuals authorizing or in charge of entry shall take the appropriate measures to remove

unauthorized personnel who are in or near entry permit spaces.

(h) *Rescue team.* The employer shall have either an in-plant rescue team or an arrangement under which an outside rescue team will respond to a request for rescue services.

(1) *In-plant rescue team.* If the employer decides to use an in-plant team, the employer shall ensure that:

(i) Personnel assigned to an in-plant rescue team are provided with and trained to use properly the personal protective equipment, including respirators, and rescue equipment necessary for making rescues from the employer's permit spaces;

(ii) The in-plant rescue team is trained to perform the assigned rescue functions and has received the training required for authorized entrants;

(iii) Rescue teams practice making permit space rescues at least once every twelve months, by means of simulated rescue operations in which they remove dummies, mannequins or personnel through representative openings and portals whose size, configuration and accessibility closely approximate those of the permit spaces from which rescues may be required; and

(iv) At least one member of each rescue team maintains current certification in basic first-aid and cardiopulmonary resuscitation (CPR) skills.

(2) *Outside rescue team.* If the employer chooses to use outside rescue services, the employer shall ensure that the designated rescuers are aware of the hazards they may confront when called on to perform rescues at the employer's facility, so that the outside rescue team can equip, train and conduct itself appropriately.

(i) *Special permits for entry into low-hazard permit spaces.*

When employers determine, based on documentation which appears on the entry permit, that the permit spaces they plan to have employees enter are low-hazard permit spaces, the employers may authorize entry into a permit space without providing an attendant, for a period of up to one year, by complying with paragraphs (c) and (d) and the following provisions, as applicable:

(1) *Inspection and Checking.* Employers who plan to have employees periodically enter low-hazard permit spaces on a routine basis, solely to inspect or check meters or other equipment, shall ensure that authorized entrants receive the necessary training and that:

(i) Appropriate entry practices and procedures are in effect before authorizing or allowing entry, and are followed throughout the entry;

(ii) In permit spaces with potential for atmospheric hazard, the permit space atmosphere shall be tested prior to each entry and as the entry proceeds, using an appropriate direct reading instrument and a remote sampling probe and testing in the following sequence: Oxygen concentration, combustible gas or vapor, and potential toxic contaminants;

(iii) No permit space hazard is present immediately before each entry;

(iv) The authorized entrant neither takes anything into the permit space nor takes any action which could cause a hazard to arise;

(v) If the space has a potential for a hazardous atmosphere and the entry requires the entrant to move through areas which were not tested prior to entry, the authorized entrant has an appropriate direct reading instrument and remote sampling probe throughout the entry so that the entrant can determine using the testing sequence in paragraph (i)(1)(ii) of this section, at the appropriate intervals, if the permit space conditions remain acceptable for entry;

(vi) The entry permit is revoked when the direct reading instrument being used or some other circumstance indicates that conditions in the space are no longer acceptable for entry; and

(vii) When an entry permit has been revoked because unacceptable conditions have arisen in a permit space, subsequent entry may not be made by special permit until the space is restored to special permit conditions.

(2) *Minor maintenance work.* Employers who plan to have employees enter low-hazard permit spaces to perform minor maintenance work, such as tightening a packing nut, which would not generate a serious hazard shall ensure that authorized entrants receive the necessary training and that:

(i) Appropriate entry practices and procedures are in effect before authorizing or allowing entry and are followed throughout the entry;

(ii) If the space has a potential for a hazardous atmosphere, the permit space atmosphere shall be shown to be, and to remain, acceptable for entry using one of the following means, as appropriate to make that determination:

(A) Ventilation of the permit space prior to entry, using a mechanically powered ventilator for at least the time specified in the nomograph prepared for that ventilator, and continuously throughout the entry; or

(B) A combination of mechanically powered ventilation and atmospheric testing; or

(C) Continuous atmospheric monitoring; or

(D) Frequent atmospheric testing.

(iii) The entry permit is revoked when the conditions become unacceptable for entry; and

(iv) When an entry permit has been revoked because unacceptable conditions have arisen in a permit space, any subsequent entry is made with an attendant stationed outside the permit space.

(3) *Entry into certain diked areas.* Employers who plan to have employees enter diked areas which have dikes six feet or more in height and are regulated as permit spaces shall ensure that authorized entrants receive the necessary training and that:

(i) Appropriate entry practices and procedures are in effect before authorizing or allowing entry, and are followed throughout the entry;

(ii) There has been no escape of flammable, toxic or corrosive materials or other change in the permit space which causes a permit space hazard to be present;

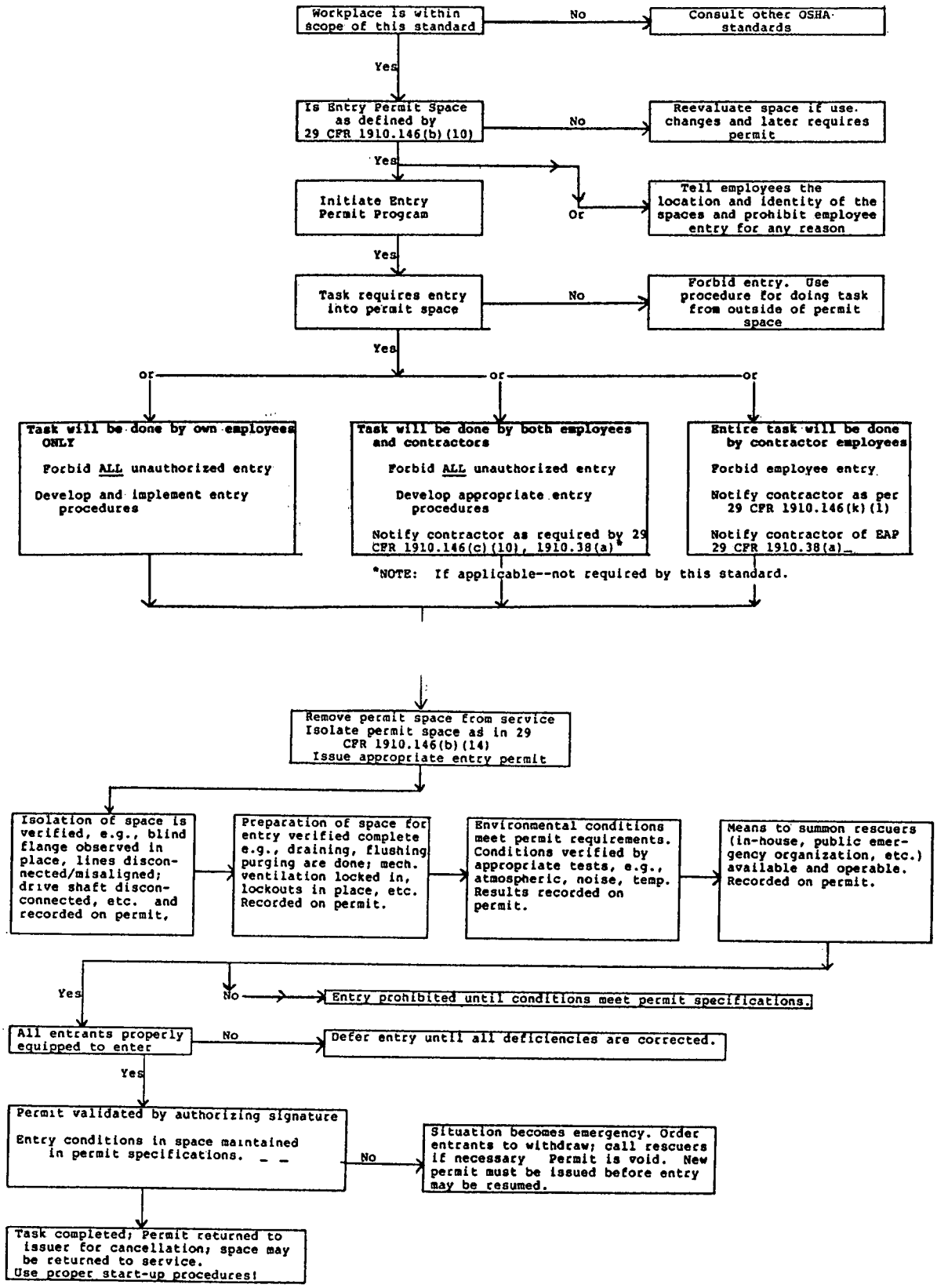
(iii) Any linebreaking is performed using the appropriate equipment and in accordance with the appropriate procedures, including procedures for the authorization of line breaking through a permit which could be attached to the entry permit;

(iv) The entry permit is revoked when the conditions become unacceptable for entry; and

(v) When an entry permit has been revoked because unacceptable conditions have arisen in a permit space, any subsequent entry is made with an attendant stationed outside the permit space.

BILLING CODE 4510-26-M

APPENDIX A. to §1910.146
PERMIT REQUIRED CONFINED SPACE DECISION FLOWCHART



BILLING CODE 4510-26-C

Appendix B to § 1910.146—References for Further Information

The following references provide information which can be helpful in understanding the requirements contained in various provisions of the standard as well as provide other helpful information.

1. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related To Toxic And Asphyxiating Atmospheres In Confined Spaces As Found In Reports of OSHA Fatality/Catastrophe Investigations. Washington, DC 20210. U.S. DOL/OSHA, 1985.

2. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related to Fire and/or Explosion in Confined Work Spaces as Found in OSHA Fatality/Catastrophe Investigations. Washington, DC 20210. U.S. DOL/OSHA, 1982.

3. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related to Lockout/Tagout Problems As Found in Reports of OSHA Fatality/Catastrophe Investigations. Washington, DC 20210. U.S. DOL/OSHA, 1982.

4. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related to Grain Handling As Found in Reports of OSHA Fatality/Catastrophe Investigations. Washington, DC 20210. U.S. DOL/OSHA, 1983.

5. U.S. Department of Health and Human Services, National Institute for Occupational Safety and Health (DHHS/NIOSH), "Request for Assistance in Preventing Occupational Fatalities in Confined Spaces. Cincinnati, Ohio 45226. HHS/PHS/CDC/NIOSH, 1986.

6. U.S. Department of Health, Education, and Welfare, National Institute for Occupational Safety and Health (USDHEW/NIOSH). "Criteria for a Recommended Standard Working in Confined Spaces. Cincinnati, Ohio 45226. U.S. DHEW/NIOSH, 1979.

7 State of California, Department of Industrial Relations. General Industry Safety Orders #5182, "Confined Spaces. Sacramento, California 95814.

8. State of Florida, Department of Commerce, Bureau of Workmen's Compensation "Regulation Relating to Hazardous Atmospheres in Confined Spaces, 1969. Tallahassee, Florida 32301.

9. Kentucky Department of Labor, Occupational Safety and Health Program. "Kentucky Occupational Safety and Health General Industry Standards, 803 Kar 2:015 Section 3, Confined Spaces. Frankfort, Kentucky 40601.

10. Michigan Department of Public Health, Division of Occupational Health. "Control Measures for Hazardous Atmospheres (including tank and vessel entry). Lansing, Michigan 48909.

11. Commonwealth of Pennsylvania, Department of Environmental Resources. "Entry to Confined Spaces. Harrisburg, Pennsylvania 17120.

12. State of New Jersey, Department of Labor and Industry, Bureau of Engineering and Safety, New Jersey Administrative Code Title 12, Chapter 170, "Work in Confined Spaces, April 1971. Trenton, New Jersey 08625.

13. American National Standards Institute (ANSI). "Safety Requirements for Working in Tanks and other Confined Spaces." ANSI Z117.1-1977 New York, New York 10018.

14. American Petroleum Institute (API). Draft #3, "Guidelines for Working in Inert Confined Spaces in the Petroleum Industry. AOSC, 1985. Washington, DC 20005.

15. Organization Resource Counselors, Inc. "Sixth Draft of Proposed Performance Standard for Confined Spaces. Washington, DC 20006.

16. National Fire Protection Association (NFPA). "Standards for the Control of Gas Hazards on Vessels, NFPA 306-1984. Batterymarch Park, Quincy, Massachusetts 022699.

17 West Virginia University. "Confined Space Entry. An Evaluation of Current Practices and Procedures used by General Industry with Recommendations for Improvements to the Confined Space Entry Standard. 1984. Morgantown, West Virginia 26505.

18. E. I. DuPont de Nemours and Company. Safety Engineering Standard, "Vessel and Confined Space Entry. Wilmington, Delaware 19898.

Appendix C to § 1910.146

This appendix provides examples of permits in current use by industries where entries are made into permit required confined spaces. One sample permit is applicable to spaces directly supervised by the person who authorizes the entry (checklist type permit), paragraph (d)(2), and the other example is applicable to spaces authorized for entry by a person who does not directly supervise the entry [paragraph(d)(3)]. These samples are intended to provide guidance for employers in devising their own permits. They may be reproduced and used in whole or in part as applicable and desirable.

These examples are advisory only; their use is *NOT* mandatory.

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ALL COPIES OF PERMIT WILL REMAIN AT JOB SITE UNTIL JOB IS COMPLETED

☐ CONFINED SPACE ENTRY PERMIT
☐ HAZARDOUS AREA ENTRY PERMIT

1

LOCATION and DESCRIPTION of Confined Space _____ Date _____

PURPOSE of Entry _____ Time _____ M

DEPARTMENT _____ Expiration _____ M

PERSON in Charge of Work _____

2

SUPERVISOR (S) in Charge of Crews	Type of Crew	Phone

3

SPECIAL REQUIREMENTS	Yes	No		Yes	No
Lock Out – De-energize			Escape Harness		
Lines Broken – Capped or Blanked			Tripod emergency escape unit		
Purge – Flush and vent			Lifelines		
Ventilation			Fire Extinguishers		
Secure Area			Lighting		
Breathing Apparatus			Protective Clothing		
Resuscitator – Inhalator			Respirator		

4

TEST(S) TO BE TAKEN (Valid for one 8-hour turn only)	P.E.L.	YES	NO	DATE M	DATE M	DATE M	DATE M	DATE M	DATE M	DATE M	DATE M
% of Oxygen	19.5% +21%										
% of L.E.L. *	Any % over 10										
Carbon Monoxide	50 ppm										
Aromatic Hydrocarbon	10 ppm										
Hydrocyanic Acid	10 ppm										
Hydrogen Sulfide	10 ppm										
Sulfur Dioxide	5 ppm										
Ammonia	25 ppm										

GAS TESTER _____ Name

Note: Continuous/periodic tests shall be established before beginning job. Any questions pertaining to test requirements contact certified division gas tester Plant Gas Coordinator or the Industrial Hygienist

5

INSTRUMENTS USED Name	Type	Ident. No.

YES ☐
NO ☐

SAFETY STANDBY PERSON(S) Name	Ck. No.

AMBULANCE
FIRE

Supv. authorizing all above conditions satisfied _____

P.E.L. Permissible Entry Level
L.E.L. Lower Explosion Level

Orig. to Dept.
Copy to Safety

CONFINED SPACE & HAZARDOUS AREA ENTRY PERMIT

The form will be initiated by the supervisor in charge of the complete job.

Part 1 3, and 4 (yes or no) can be completed at the procedure meeting, namely:

Location – Purpose – Person in Charge – Date – Time of job start – Estimated time of completion – Special requirements – Tests to be taken/how often

(Note) If job will continue an estimate of 6 turns, 6 copies of the entry permit will be initiated at the procedure meeting with the same information as stated above.

The supervisor in charge at the job site will negotiate the following:

Part 2 – Outside supervisor(s) – Group Leader – Type of Crew (Electrical, carpenter boilermaker etc.)

Part 4 – Results of tests taken prior to job entry – (Lab or certified gas tester will note all information on form, and sign.)
List all other tests taken during turn.

Part 5 – List all instruments used for tests (Lab will note information on form.)

The supervisor at the job site will list name(s) of safety standby person(s) if needed.

The supervisor authorizing all the above conditions to his satisfaction will sign, date and time prior to work start. (Each turn)

Confined Space and Hazardous Area Entry Permit and Procedure will remain at the job site.

When job is completed –

Original to Department
Duplicate to Safety Department

VESSEL AND CONFINED
SPACE ENTRY

TANK ENTRY – SAFETY CHECK SHEET – TANK NO. _____
(This form must be completely filled in each time tank is entered)

Item	Done			Removed		
	Date	Time	By	Date	Time	By
1. Initial Inspection – Operations						
a. Inspect tank – must be clean, cool and fume free						
2. Safety Locks – Operations						
a. Agitator. Test Start switch						
Note: Any one entering tank must have key to lock on agitator in his pocket.						
b. Can Dowtherm valve and lock						
c. 14 Transfer pump						
3. Lines Broken and/or Blanked						
a. Sulfuric Acid						
b. Molten PX						
c. Solvent – bottom of tank – remove F/B valve						
d. Caustic						
e. Nitrogen						
f. Vent – line to tower						
g. Charging chute – remove section – Cover inlet on third floor – place STOP sign at site						
Note: All blanks must have yellow tab						
4. Safety Locks – Mechanical						
a. Agitator – See 2a above						
5. Safety Equipment – Mechanical						
a. Air Blower – 1 – tested						
b. Air Mask – 2 – Connected – tested						
c. Ladder – 1 – correct color code						
d. Safety Harness – 2 – wrist type – inspected						
e. Rescue Chainfall in place – tested						
f. Safety Light – tested						
g. Alarm Horn – tested						
6. Final Check – Operations and Mechanical						
a. Oxygen test result						
b. Explosimeter test result						
c. Tank cleared for entry – Operations						
d. Tank cleared for entry – Mechanical						
7 Work Completed by Mechanical						
a. Tank returned to Operations						
8. Final Check by Operations						
a. Recheck all lines for blanks						
b. Tank returned to service						

[FR Doc. 89-13059 Filed 6-2-89; 8:45 am]
BILLING CODE 4510-26-C

federal register

Monday
June 5, 1989

Part III

Environmental Protection Agency

40 CFR Part 22

Collection of Civil Penalties Under Title II of the Toxic Substances Control Act, the Asbestos Hazard Emergency Response Act of 1986; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL-3428-1]

Collection of Civil Penalties Under Title II of the Toxic Substances Control Act, the Asbestos Hazard Emergency Response Act of 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the Consolidated Rules of Practice, 40 CFR Part 22, under which administrative proceedings to assess civil penalties by EPA are conducted. Presently, all administrative civil penalties assessed under the Consolidated Rules must be paid to the Treasurer of the United States of America. Section 207 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2647 (enacted in section 2 of the Asbestos Hazard Emergency Response Act of 1986 (AHERA)), however, requires that all civil penalties collected from local educational agencies under Title II be used by the local educational agencies for purposes of complying with Title II. Any portion of a collected civil penalty remaining unspent after compliance by a local educational agency is completed, must be deposited into the Asbestos Trust Fund established under section 5 of AHERA. This rule amends the Consolidated Rules of Practice to modify penalty collection procedures as they pertain to collection of penalties under TSCA Title II.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jon D. Silberman, Attorney, Toxics Litigation Division (LE-134P), Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Room NE-113, Northeast Mall, 401 M Street, SW Washington, DC 20460; Telephone: 202-475-8690.

SUPPLEMENTARY INFORMATION: This final rule codifies certain language appearing in section 207(a) Title II of TSCA, enacted as section 2 of AHERA. AHERA, the term commonly used for these provisions, will be used in this preamble.

This rule establishes supplemental rules of practice governing the administrative assessment of civil penalties under AHERA. Rather than being paid into the United States Treasury, as are other administratively assessed civil penalties (*see* 40 CFR 22.31(b)), administrative civil penalties collected from local educational agencies under section 207(a) for violations of AHERA will be made available to the local educational agencies for purposes of complying with AHERA. Once compliance is achieved, any remaining balance of such penalties will be deposited into the Asbestos Trust Fund established under AHERA section 5.

As this rule simply codifies statutory language and is procedural in effect, public comment is unnecessary, and no opportunity for public comment is being afforded.

This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17 1981. This rule was submitted to OMB for review under E.O. 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 40 CFR Part 22

Administrative practice and procedure, Asbestos, Schools.

Dated: May 8, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR Part 22 is amended as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 is revised to read as follows:

Authority: Secs. 16 and 207 of the Toxic Substances Control Act; secs. 211 and 301 of the Clean Air Act; secs. 14 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act; secs. 105 and 108 of the Marine Protection, Research, and Sanctuaries Act; secs. 2002 and 3008 of the Solid Waste Disposal Act.

2. Section 22.41 is added to read as follows:

§ 22.41. Supplemental rules of practice governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) Scope of the Supplemental rules. These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR Part 22), all proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act (the Act") (15 U.S.C. 2647). Where inconsistencies exist between these Supplemental rules and the Consolidated rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) Collection of civil penalty. Any civil penalty collected under section 207 of the Act shall be used by the local educational agency for purposes of complying with Title II of the Act. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

[FR Doc. 89-13276 Filed 6-2-89; 8:45 am]

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federal register

Monday
June 5, 1989

Part IV

Department of Education

34 CFR Parts 668 and 682

Student Assistance General Provisions, Guaranteed Student Loan (GSL), and PLUS Programs; Implementation of the Default Reduction Initiative and Clarification; Final Rule and Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistant General Provisions regulations (34 CFR Part 668) and the regulations for the Guaranteed Student Loan (GSL) and PLUS programs (34 CFR Part 682). The final regulations are needed to implement the Secretary's default reduction initiative, and clarify that certain regulations in Part 682 apply to the Supplemental Loans for Students (SLS) Program.

Note: Pub. L. 100-297, enacted April 28, 1988, has renamed the Guaranteed Student Loan (GSL) Program, the Stafford Loan Program. This change will be reflected in a later document.

DATES:

Effective date: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 668.15, 668.23, 668.44, 668.90, 682.604, 682.606, and 682.610. Those sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Section 682.603(c) applies only to the certification of a loan application on or after October 1, 1989. Section 682.606(b)(2) applies only to the refund calculation for a student whose last recorded day of attendance occurs on or after June 5, 1990. Section 682.411(h) applies only to a loan for which a request for preclaim assistance is made on or after December 4, 1989. Also, if a lender holds more than one loan made to a specific borrower, and those loans were acquired by the lender prior to that date, the requirements of § 682.411(h) are satisfied as to all of those loans if the lender complies with those requirements as to at least one of those loans.

Sections 668.44(c)(1)(ii) through (iv) and (d) apply only to loans certified for periods of enrollment beginning on or after December 1, 1989. However, the requirements of section 487(a)(8) of the Act regarding disclosures continue to apply.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe or Pamela A. Moran, telephone number (202) 732-4242.

SUPPLEMENTARY INFORMATION: On September 16, 1988, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (53 FR 36216). The NPRM included a detailed discussion of the various regulatory proposals included in the default reduction initiative, and that discussion will not be repeated here. The comment period on the NPRM was extended through February 28, 1989 (53 FR 39317).

The Secretary's extensive review of the default issue and the public comments received since the publication of the NPRM have resulted in a number of significant changes to the NPRM. A discussion of those changes follows. A full discussion of other changes to the NPRM is contained in the Summary of Comments and Responses, published as an appendix to the regulations.

The Secretary believes that several additional regulatory initiatives are needed to address the default problem. Those new regulatory initiatives will appear in a new NPRM to be published separately.

Revisions to the Notice of Proposed Rulemaking

Part 668—Student Assistance General Provisions

Section 668.15 Additional factors for evaluating administrative capability

The Secretary has revised the provision in this section that would have authorized the initiation of a proceeding to limit, suspend, or terminate (LST) the eligibility of a school with a default rate above 20 percent. The revised provision authorizes the initiation of such a proceeding beginning in 1991 if the school's default rate exceeds 60% (to be lowered to 40% in annual increments of 5%) or if it exceeds 40% and was not reduced by an increment of at least 5% from the preceding year's rate (*e.g.*, a 50% rate must be reduced to 45% or below). As noted in revised § 668.90, a school against whom an LST action is brought under this provision will be able to avoid an LST sanction by demonstrating that it has acted diligently to implement the default reduction measures described in Appendix D of Part 668. This defense to LST sanctions based on a high default rate is referred to in this document as "the Appendix D defense.

It may not be necessary or appropriate to initiate LST actions against all schools that exceed the default rate triggers described above. Before deciding whether to institute an LST action against a school, the Secretary will generally request from the school the information described in §668.15(b)(2) pertaining to the causes of default by the school's students. In deciding whether to initiate a proceeding, the Secretary intends to consider this information, the progress being made by the school in reducing defaults, other mitigating factors, and the likelihood of the school's satisfying the elements of the Appendix D defense.

Under the revised § 668.15(e), a school with a default rate over 20% could be required to implement specified reasonable and appropriate default reduction measures—in effect, a default management plan. The contents of each school's plan will be established by the Secretary based on a review of the school's analysis of its causes of default, any recommendations by the cognizant guarantee agencies, consultation with the school, and the information presented by the school at any informal hearing provided at the school's request. The goal of this process will be to select measures to address the major causes of default by the school's students.

While the authority to require high default schools to implement reasonable and appropriate default reduction measures has been in the General Provisions regulations since 1975, the use of a cumulative default rate in those regulations, and the inadequacy of available data on defaults that occurred in the early years of the GSL program, has made taking such actions difficult. The use of fiscal year default rates in the final regulations removes this impediment to the effective use of this authority.

In addition to the LST and default management plan initiatives, under revised §§ 682.604 and 682.606, a school with a default rate over 30% is required to adopt two "core" default reduction measures—a *pro rata* refund policy and delayed certification of loan applications—designed to reduce defaults by dropouts. The Secretary believes that this multi-tiered approach will preserve access to postsecondary education for all students regardless of income level, while protecting the Federal taxpayer from unreasonable risks of loss. The final regulations recognize that Federal policy should not discourage schools from serving the most disadvantaged members of society, but that it is nevertheless fair to require schools that present a high default risk

to take reasonable measures to reduce that risk.

Section 668.22 Distribution formula for institutional refunds and for repayment of disbursements made to the student for non-institutional costs

The final regulations do not revise current § 668.22, since the proposed revisions to that section in the NPRM were based on the application of a *pro rata* refund requirement to all schools. As noted below, the final regulations impose that requirement only on schools with default rates above 30%.

Section 668.44 Institutional information

The final regulations revise this section to require that a school disclose a job placement rate based on the information it has regarding the job placement of its students, including dropouts. The Secretary was concerned that the NPRM's proposed exclusion from the job placement rate calculation of graduates who do not respond to a school's job placement questionnaire could result in disclosure of inflated job placement rates. This potential bias is eliminated by the approach taken in the final rule. The school is required to disclose to prospective students the number of graduates for whom the school lacks job placement information, and the number of graduates that decide not to seek employment in the relevant occupation. In this way, the disclosures required by this section will provide data that is accurate and complete, in a simplified form that facilitates informed consumer choice. By requiring disclosure of job placement rates for all students, not just graduates, the final rule also provides prospective students with more useful information than would disclosures of job placement rates just for graduates.

In order to ensure that the job placement information disclosed to prospective students by a school under this section is accurate, each program review of the school conducted by the Department will include an examination of the procedures employed by the school in compiling that information, and, in selected cases, verification of the accuracy of that information through inquiries to employers and former students.

Section 668.90 Initial and final decisions—Appeals

This section has been revised to reflect the new 60% and 40% default rate thresholds for LST proceedings described in § 668.15 and discussed above. In addition, the elements of the Appendix D defense that a school may assert to avoid LST sanctions have been added to this section. This defense is satisfied, and the administrative law judge is therefore precluded from imposing an LST sanction against the school based on a high default rate, if the school shows that it has acted diligently to implement the default reduction measures described in Appendix D to Part 668.

It should be emphasized that the Appendix D defense prevents the termination of a school based on its default rate if the school shows that it has implemented the measures listed in Appendix D. Thus, while a school's default rate of more than 60%, or of more than 40% absent a 5% annual reduction, is grounds for initiating an LST proceeding, it cannot serve as the basis for imposing an LST sanction on a school that demonstrates its administrative capability under this defense. The Secretary notes, however, that absent this defense, the ALJ must impose the sanction sought by the designated Department official; the ALJ retains no discretion in such a case. In effect, the LST provisions of § 668.15 and the Appendix D defense operate to (1) require that each school with a default rate above the rates described above implement the measures listed in Appendix D, and (2) make LST sanctions apply automatically to a school that fails to make a diligent effort to do so. The Secretary believes that, although some of the measures in Appendix D will be more effective for some schools than for others, the serious risk of financial loss to the GSL and SLS programs posed by schools with very high default rates requires that those schools take each of these steps, in order to provide the substantial incremental benefit in default reduction that each step will afford at every school.

The Secretary further notes that the Appendix D defense does not prevent the imposition of an LST sanction against a school based on a violation of program requirements. The Secretary will view a school's substantial noncompliance with a requirement of the regulations contained in this document as a serious infraction, requiring imposition of the termination sanction in most cases.

Part 682—Guaranteed Student Loan and Plus Programs

Section 682.410 Fiscal, administrative, and enforcement requirements

The final regulations revise the NPRM by increasing from 15% to 20% the school default rate that will trigger a guarantee agency's duty to conduct a program review of a school. A review is not required of a school with a rate above 20% if the school is subject to a default management plan imposed by the Secretary under § 668.15, or if the school's rate is not based on at least one cohort of loans entering repayment in a single fiscal year that totals $100,000 or more. These revisions greatly reduce the burden on guarantee agencies with respect to the number of reviews required to be conducted, while preserving the effectiveness of the program review requirement as an element of the default reduction initiative.

Section 682.603 Certification by a participating school in connection with a loan application

Under the NPRM, one default reduction measure that a school with a default rate above 20% would have had to justify not implementing was delaying the certification of a borrower's loan application so that the borrower's loan proceeds were not received by the borrower until at least 30 days into the loan period. *See* NPRM proposed § 668.90(a)(3)(iii)(B) and proposed Appendix D to Part 668, item 14. Section 682.603 of the final regulations makes delayed certification with respect to the school's first-time borrowers a requirement applicable to any school with a default rate over 30%, until the Secretary notifies the school that its rate no longer exceeds that level. To ensure that this provision operates to prevent the delivery of loan proceeds to early dropouts as intended, this section also specifies that the student's endorsement of the check for the first disbursement of a loan subject to delayed certification may not occur until 30 days into the loan period.

The Secretary believes that delayed delivery of loan proceeds to first-time borrowers should apply to all schools, and has proposed legislation to accomplish this goal. These regulations only effect this policy for high default schools, because the Secretary believes that the impact on the programs of applying this policy to all schools is serious enough that the Congress should be given the opportunity to decide whether such a step is warranted.

Section 682.606 Refund policy

This provision has been revised to require the implementation of a *pro rata* refund policy only by schools with default rates above 30%, and to limit the required application of such a policy by the school to the shorter of the first six months in the student's program of study, or the first half of that program. All other schools and academic periods

continue to be subject to the fair and equitable refund requirements of § 682.606(b), and Appendix A to Part 682. As with the delayed certification requirement, this rule would require high default schools to take a step that addresses the troubling problem of defaults by early dropouts. The Secretary is limiting the application of this rule to high default schools because he believes that the regulatory imposition of a mandated refund policy should only be undertaken for schools whose default experience provides strong justification for doing so on program integrity grounds. The Secretary believes that the importance of a *pro rata* refund policy in reducing early dropouts provides that justification when a school's default rate exceeds 30%.

Section 682.610 Records, reports, and inspection requirements for participating schools

The final regulations revise this section to require each school that is required to use a "track record" disclosure form set forth in Appendix A to Part 668 to provide a completed form to the Secretary, along with information on the total cost of the program involved, on an annual basis. The NPRM required that the completed form be provided to each prospective student, but did not mandate that the school provide a copy of the form to the Secretary.

The Secretary will use the track record information provided under this provision in making various policy decisions relevant to vocational training programs, and in formulating his proposals for reauthorization of the Higher Education Act in 1991. The Secretary also intends to use this track record information to compile and disseminate lists of undergraduate nonbaccalaureate vocational training programs, arranged by geographic area and vocation in which each program is offered, to further enhance consumers' ability to make well-informed choices about enrollment in vocational training programs. The recipients of the lists will include high schools, welfare offices, and other entities likely to receive requests for information on these programs from prospective students.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 2,452 parties submitted comments on the proposed regulations. In addition, the Secretary received over 1,200 comments in response to the separate request for comments on the default issue published in the **Federal Register** on November 3, 1988 (53 FR 44514). An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues raised by commenters are discussed under the section of the regulations to which they pertain. Technical and other minor comments and changes are not addressed.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan progams-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: June 1, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Part 668 and Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.15 is revised to read as follows:

§ 668.15 Additional factors for evaluating administrative capability.

(a) The Secretary considers it an indication of an institution's impaired capability of properly administering Title IV HEA programs if—

(1) The fiscal year default rate, as defined in paragraph (f) of this section, on loans made under the GSL and SLS programs to students for attendance at that institution exceeds 20 percent;

(2) The default rate on loans made under the Perkins Loan program to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; or

(3)(i) For an institution that a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during that academic year; or

(ii) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled on the first day of classes of any eight-month period withdraw during that period.

(b) If the GSL and SLS fiscal year default rate for an institution exceeds 20 percent for any fiscal year after fiscal year 1988, the Secretary may, after such consultation with cognizant guarantee agencies as the Secretary deems appropriate, take one or more of the following actions:

(1) On or after January 1, 1991, initiate a proceeding under Subpart G of this part to limit, suspend, or terminate the eligibility of the institution to participate in the Title IV HEA programs, if—

(i) The institution's GSL and SLS fiscal year default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (*e.g.*, a 50 percent rate was not reduced to 45 percent or below); or

(ii) The institution's GSL and SLS fiscal year default rate exceeds—

(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;

(C) 50 percent for fiscal year 1991;

(D) 45 percent for fiscal year 1992; or

(E) 40 percent for any fiscal year after fiscal year 1992.

(2) Require the institution to submit to the Secretary and one or more guarantee agencies the following information,

within a time frame specified by the Secretary, to help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution:

(i) A comprehensive written analysis of the causes of default by its sudents, for defaults in the first two years of repayment, that occurred during the three most recent calendar years ending not less than six months prior to the Secretary's request, and the factual basis for each conclusion reached in the analysis.

(ii) In the case of an institution offering an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, a statistical analysis showing the following for each program:

(A) The pass rates of graduates of the program in the three preceding calendar years ending not less than six months prior to the Secretary's request on any licensure or certification examination required by the State in which the institution is located for employment in the particular vocational, trade, or career field.

(B) The job placement rates for students who were originally scheduled, at the time of enrollment, to complete the program in the three most recent calendar years ending not less than eighteen months prior to the Secretary's request, as calculated in accordance with § 668.44(c)(3) of this part.

(C) The completion rates for students in the program for the three most recent calendar years ending not less than 18 months prior to the Secretary's request, as calculated in accordance with § 668.44(c)(4) of this part, for all of the institution's regular students in the aggregate, and as segregated according to the following categories:

(*1*) Title IV student aid recipients.

(*2*) High school graduates or holders of GED certificates at the time of enrollment.

(*3*) Students admitted on the basis of "ability to benefit" as defined in § 668.7(b) of this part.

(iii) A written description of all additional steps taken by the institution beyond those otherwise required by statute, regulation, or agreement with the Secretary, designed to reduce defaults by its students in the future.

(iv) Any other information relating to that determination, as reasonably required by the Secretary.

(c)(1) If the default rate for an institution under the Perkins Loan program exceeds the rate set forth in paragraph (a)(2) of this section, or if the withdrawal rate at an institution exceeds the rate set forth in paragraph (a)(3) of this section for an academic year, the Secretary may require the institution to submit for its latest complete fiscal year—

(i) A profit and loss statement and a balance sheet that are based on the same accounting procedures used by the institution for financial reporting;

(ii) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards; or

(iii) Other information required by the Secretary to determine the cause of the high withdrawal or default rate and the best measures for alleviating that condition.

(2) The date of preparation of the documents referred to in paragraph (c)(1)(i) through (iii) of this section must be within 12 months of the date of the Secretary's request.

(d) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (c)(1)(i) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(e) If the institution's GSL and SLS fiscal year default rate, Perkins Loan program default rate, or withdrawal rate exceeds the rates set forth in paragraph (a)(1), (a)(2), or (a)(3) of this section respectively, in addition to, or in lieu of, taking the actions described in paragraph (b) of this section, or requiring the institution to submit the documents described in paragraph (c) of this section, the Secretary may require the institution, after notice and opportunity for a hearing, to take specified reasonable and appropriate measures to alleviate that condition as a requirement for its continued participation in the Title IV HEA programs.

(f) The following definitions apply to this section and § 668.90 of this part:

(1) "Fiscal year default rate" means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on GSL or SLS program loans received for attendance at the institution, the percentage of those current and former students who enter repayment on GSL or SLS program loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year. For any fiscal year in which less than 30 of the institution's current and former students enter repayment, the term "fiscal year default rate" means the average of the rate calculated under the preceding sentence for the three most recent fiscal years. In the case of a student who has attended and borrowed at more than one school, the student (and his or her subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(2) "Fiscal year" means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(Authority: 20 U.S.C. 1082, 1094)

3. In section 668.23, paragraph (f)(1)(vi) is amended by removing the word "and"· paragraph (f)(1)(vii) is amended by removing the period and adding in its place "· and"· and a new paragraph (f)(1)(viii) is added, to read as follows:

§ 668.23 Audits, records, and examination.

(f)

(1)

(viii) Information substantiating all disclosures made to a prospective student under § 668.44 (c) through (f) of this part.

4. Section 668.44 is amended by revising paragraph (c), and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 668.44 Institutional information.

(c)(1)Prior to a prospective student's enrollment or execution of an enrollment contract, whichever occurs earlier, in an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, the institution shall disclose to the prospective student—

(i) All licensure or certification requirements established by the State in which the institution is located for the particular vocational, trade, or career field;

(ii) The pass rate of graduates of the program for the most recent calendar year that ended not less than six months prior to the date of disclosure, on any licensure or certification examination required by the State for employment in the particular vocational, trade, or career field;

(iii) The job placement rate for students who were originally scheduled,

at the time of enrollment, to complete the program in the most recent calendar year that ended not less than 18 months prior to the date of disclosure. In calculating this rate, the institution shall consider as not having obtained employment for any graduate for whom the institution does not possess evidence, documented in the graduate s file, showing that the graduate has obtained employment in the occupation for which the program is offered.

(iv) The completion rate for students in the program for the most recent calendar year that ended not less than 18 months prior to the date of disclosure. This rate is calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year that successfully completed the program, or obtained full-time employment in the occupation for which the training was offered, within 150% of the amount of time normally required to complete the program; and

(v) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.

(2) For purposes of this paragraph (c), a student is "originally scheduled, at the time of enrollment, to complete the program" on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application (if any), whichever is less. However, the "amount of time normally required to complete the program" must be calculated on a *pro rata* basis for students enrolled on a less than full-time basis.

(d) With respect to a program other than an undergraduate non-baccalaureate program designed to prepare students for a particular vocational, trade, or career field, prior to a prospective student's enrollment or execution of an enrollment contract, whichever is earlier, in a program for which the institution publicly makes a claim as to the job placement experience of its students as a means of attracting students to enroll in the program, the institution shall disclose to the prospective student—

(1)(i) The information described in paragraphs (c)(1) (i) through (iii) of this section, in the case of a baccalaureate or graduate program designed to prepare students for a particular vocational, trade, or career field; or

(ii) Other valid employment statistics for students who have enrolled in the program, for any other program;

(2) The information described in paragraph (c)(1)(iv) of this section; and

(3) Any other information necessary to substantiate the truth of the claim as to job placement.

(e) If an institution makes a claim to a prospective student regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field, it must disclose to the propsective student detailed statistics and other information necessary to substantiate the truthfulness of that claim.

(f)(1) The institution shall make the disclosure required under paragraphs (c)(1) (ii) through (iv) of this section using the applicable disclosure form set forth in Appendix A to this part, except that an institution may use an appropriate foreign language version of that form for a student whose primary language is not English.

(2) The institution shall indicate in the space provided for that purpose on the form the number of graduates of the program included in the calculation of the job placement rate disclosed on the form who state in writing that they have chosen not to attempt to obtain employment in the occupation for which the program is offered, and the number of such graduates, if any, who fail to indicate within 60 days, in response to a questionnaire seeking that information sent by the institution to the last known address of the graduate, whether they have obtained employment in that occupation.

(3) The completed disclosure form must be signed by the student and a copy thereof maintained by the institution in the student's file.

(Authority: 20 U.S.C. 1082, 1092)

5. In section 668.72, paragraph (j) is amended to remove the word "or" paragraph (k) is amended to remove the period and add, in its place, "; or" and a new paragraph (l) is added to read as follows:

§ 668.72 Nature of educational program.

(l) Any matters required to be disclosed to prospective students under § 668.44 of this part.

(Authority: 20 U.S.C. 1094)

6. Section 668.90 is amended by adding a new paragraph (a)(3)(iii), and revising the citation of legal authority to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a)

(3)

(iii) In a limitation, suspension or termination proceeding commenced on the grounds described in § 668.15(b)(1) of this part, if the administrative law judge finds that the institution's GSL and SLS fiscal year default rate, as defined in § 668.15(f) of this part, meets the conditions specified in § 668.15(b)(1) of this part for initiation of limitation, suspension, or termination proceedings, the administrative law judge shall find that the sanction sought by the designated Department official is warranted, except that the administrative law judge shall find that no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures described in Appendix D to this part.

(Authority: 20 U.S.C. 1082, 1094)

7 Part 668 is amended by adding an Appendix A to read as follows:

Appendix A—Track Record Disclosure Forms

This appendix provides forms for institutions to use to disclose to prospective students the information required by 34 CFR 668.44(c) (2) through (4). The use of these forms is required by 34 CFR 668.44(f).

An institution shall use Form I in connection with a program offered for a vocational, trade, or career occupation for which there exists a State licensure or certification examination required by the State for employment in the occupation. For all other programs for which disclosures under 34 CFR 668.44(c) (2) through (4) are required, the institution shall use Form II.

Form I:

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (*name of program*), (*name of institution*) wants you to know that, according to the latest information—

____%, or ___ of the ____ students in this program scheduled to graduate in (*year*) went on to graduate;

____%, or ___ of the ____ students scheduled to graduate in that year have found jobs in (*name of occupation or field for which training is offered*); and

____%, or ___ of the ____ graduates of this program taking the (*name of test*) administered by the State of (*name of State in which the program is being offered to the student*) in (*year*) passed that examination.

I have read and understood the graduation rate, licensing or certification examination

pass rate, and job placement rate information provided above.

Date

(*Prospective student's signature*)

*We have been told by ____ of the students that were scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ____ of that year s graduates have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

Form II

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (*name of program*), (*name of institution*) wants you to know that, according to the latest information—

____%, or __ of the ____ students in this program scheduled to graduate in (*year*) went on to graduate; and

____%, or __ of the ____ students scheduled to graduate in that year have found jobs in (*name of occupation or field for which training is offered*).

I have read and understood the graduation rate and job placement rate information provided above.

Date

(*Prospective student's signature*)

*We have been told by ____ of the students scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ____ of that year's graduates have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

8. Part 668 is amended by adding a new Appendix D to read as follows:

Appendix D—Default Reduction Measures

This appendix describes measures that an institution with a high default rate under the GSL and SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under § 668.15 may avoid those sanctions by demonstrating that it has made a diligent effort to implement the measures included in this Appendix. Other institutions should strongly consider taking these steps as well.

To reduce defaults, the Secretary recommends that the institution take the following measures:

I. Measures to Reduce Defaults by Dropouts

1. Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those admitted under "ability to benefit" criterion or those in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

2. Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, particularly with respect to academically high-risk students.

3. In consultation with the cognizant accrediting body, attempt to reduce its withdrawal rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

4. Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution.

5. Implement a compensation structure for commissioned enrollment representatives and salesmen under which a representative or salesman earns no more than a nominal commission for enrolling students that never attend school, and progressively greater commissions for students who remain in school for substantial periods.

6. Implement a *pro rata* refund policy, as defined in 34 CFR 682.606(b)(2).

7 Delay certification of a first-time borrower s loan application, as described in 34 CFR 682:603(c).

8. Except in the case of a program of study by correspondence, require each first-time student borrower to endorse the loan check at the institution, and pick up at the institution any loan proceeds remaining after deduction of institutional charges.

II. Measures to Reduce Defaults Related to Borrowers' Difficulty Finding Employment

1. Expand its job placement program for its students by, for example, increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs.

2. In consultation with the cognizant accrediting body, attempt to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

3. Establish a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

III. Measures To Improve Borrowers Understanding and Respect for the Loan Repayment Obligation

1. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact each borrower with respect to whom the lender has requested preclaims assistance from the guarantee agency to urge the borrower to repay the loan and to emphasize the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested.

2. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact a borrower during the grace period in order to—

(i) Remind the borrower of the importance of the repayment obligation and of the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested" and

(ii) Update the institution's records regarding the borrower s address, telephone number, employer, and employer s address.

3. At the time of a borrower s admission to the institution, obtain information from the borrower regarding references and family members beyond those provided on the loan application, to enable the institution to provide the lender with a variety of ways to locate a borrower who later relocates without notifying the lender.

4. Require an enrollment representative or salesman to explain carefully to a prospective student that, except in the case of a loan made or originated by the institution, the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any GSL or SLS loan made to the borrower for enrollment at the institution.

5. Conduct the following counseling activities in addition to those described in 34 CFR Part 682, Subpart F·

(a) As part of the initial loan counseling provided to a GSL or SLS borrower—

(1) Provide information to the borrower regarding, and through the use of a written test and intensive additional counseling for those who fail the test, ensure the borrower's comprehension of, the terms and conditions of GSL and SLS program loans, including—

(i) The stated interest rate on the borrower's loans;

(ii) The applicable grace period provided to the borrower and the approximate date the first installment payment will be due;

(iii) A description of the charges imposed for failure of the borrower to pay all or part of an installment payment when due; and

(iv) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the lender or guarantee agency to collect the loan, including attorney's fees;

(2) Explain the borrower s rights and responsibilities in the GSL and SLS loan programs including—

(i) The borrower's responsibility to inform his or her lender immediately of any change of name, address, telephone number, or Social Security number;

(ii) The borrower s right to deferment, cancellation or postponement of repayment, and the procedures for obtaining those benefits;

(iii) The borrower's responsibility to contact his or her lender in a timely manner, before the due date of any payment he or she cannot make; and

(iv) The availability of forbearance under the circumstances and procedures described in 34 CFR Part 682;

(3) Provide to the borrower—

(i) (A) General information on the average indebtedness of student borrowers who have obtained GSL or SLS program loans for attendance at that institution and the average amount of a required monthly payment based on that indebtedness; or

(B) The estimated balance owed by the borrower on GSL and SLS loans, and the average amount of a required monthly payment based on that balance; and

(ii) Detailed information regarding the consequences of the failure to repay the loan, including a damaged credit rating for at least 7 years, loss of generous repayment schedule and deferment options, possible seizure of Federal and State income tax refunds due, exposure to civil suit, liability for collection costs, possible referral of the account to a collection agency, garnishment of wages if the borrower is a Federal employee, and loss of eligibility for further Federal Title IV student assistance.

(4) Review the repayment options (*e.g.*, loan consolidation, refinancing) available to the borrower;

(5) Explain the sale of loans by lenders and the use by lenders of outside contractors to service loans; and

(6) Provide general information on budgeting of living expenses and other aspects of personal financial management.

(b) As part of the exit counseling provided to a GSL or SLS borrower—

(1) Provide the counseling and testing described in paragraph (a) for the initial loan counseling;

(2) Provide a sample loan repayment schedule based on the borrower's total loan indebtedness for attendance at that institution;

(3) Provide the name and address of the borrower's lender(s) according to the institution's records;

(4) Provide guidance on the preparation of correspondence to the borrower's lender(s) and completion of deferment forms; and

(c) Obtain information from the borrower regarding the borrower's address, the address of the borrower's next-of-kin, and the name and address of the borrower's expected employer.

6. Use available audio-visual materials, such as videos and films, to enhance the effectiveness of its initial and exit counseling.

IV General

1. Conduct an annual comprehensive self-evaluation of its administration of the Title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

9. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

10. A new § 682.104 is added to read as follows:

§ 682.104 Applicability of regulations to the Supplemental Loans for Students Program.

The Supplemental Loans for Students (SLS) program is a continuation of the portion of the predecessor PLUS Program that provided for loans to student borrowers. Accordingly, the provisions of the regulations in this part, Part 600, and Part 668, applicable to loans made to students under the PLUS Program apply to loans made under the SLS Program, except where inconsistent with the Act.

(Authority: 20 U.S.C. 1078–1, 1082)

11. Section 682.410 is amended by removing the word "and" at the end of paragraph (c)(1)(i)(B), by removing the period at the end of paragraph (c)(1)(ii)(B) and adding in its place "and" by adding a new paragraph (c)(1)(iii), and by revising the citation of legal authority to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(c)

(1)

(iii) Each participating school located in a State for which the guarantee agency is the principal guarantee agency that has a fiscal year default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in § 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under 34 CFR 668.15 to take specific default reduction measures, or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000.

(Authority: 20 U.S.C. 1078, 1078–1, 1082, 1094, 1097)

12. Section 682.411 is amended by revising paragraph (h) to read as follows:

§ 682.411 Due diligence by lenders in the collection of guarantee agency loans.

(h) If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date that assistance is first available from the agency, and shall, not later than 30 days after sending that request unless the loan has been brought current prior to that thirtieth day, notify the school for attendance at which the loan was made of the request by providing the school with a copy of that request, or by other means.

13. Section 682.603 is amended by adding a new paragraph (c) and revising the citation of legal authority to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

*

(c) Beginning not later than 60 days after a school receives notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 668, exceeded 30 percent for any fiscal year after fiscal year 1986, and continuing until the school is notified by the Secretary that its rate was equal to or less than 30 percent for a subsequent fiscal year, a school shall delay certification of the loan application of any student applying for his or her first GSL or SLS loan for attendance at the school, so that, in compliance with § 682.604, the school ensures that the student's endorsement of the check for (or written approval for the release of funds disbursed by electronic funds transfer representing) the first disbursement of the loan, the delivery of any loan proceeds to such a borrower, and the crediting of any proceeds to the borrower's account, do not occur until the borrower has attended the institution for at least 30 days during the period of enrollment for which the loan was made.

(Authority: 20 U.S.C. 1077 1078, 1078–1, 1078–2, 1082, 1085, 1094)

14. Section 682.604 is amended by revising the section heading, by adding new paragraphs (f), (g), and (h), and revising the authority citation to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(f) *Initial counseling.* (1) Except in the case of a correspondence school, a school shall conduct counseling with each GSL and SLS borrower, either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first GSL or SLS loan made to the borrower for attendance at the school, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. A correspondence school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a student borrower of a GSL or SLS program loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in Appendix D to 34 CFR Part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each GSL and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge, or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling the school must—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained GSL or SLS program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (*e.g.*, loan consolidation, refinancing);

(iv) Suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower; and

(v) Include the matters described in paragraph (f)(2) of this section.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in Appendix D to Part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)–(g) of this section as to that borrower.

(Authority: 20 U.S.C. 1077 1078, 1078–1, 1082, 1085, 1092, 1094)

15. Section 682.605 is amended by revising paragraph (a) to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) Purpose. This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part, for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under § 682.607 of this part.

16. Section 682.606 is revised to read as follows:

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board and other charges, to a student who received a GSL or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for the period of attendance for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete the period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's GSL, SLS, or PLUS program loans under 34 CFR Part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 668, exceeded 30 percent for any fiscal year after 1986, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose withdrawal date is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the commencement of the student's program.

(c)(1) "*Pro rata* refund, as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded upward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, plus—

(i) A reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks comprising the period of enrollment for which the

student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school would reissue to another student be returned by a student once the school determines that the borrower has withdrawn, if the school makes a written request for that return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1094)

17. Section 682.607 is amended by revising paragraph (c) to read as follow:

§ 682.607 Payment of a refund to a lender.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the earliest of the—

(i) Student's withdrawal as detremined under § 682.605 (b)(1)(i) or (b)(3);

(ii) Expiration of the academic term (*e.g.*, semester, quarter, or trimester) in which the student withdrew, as determined under § 682.605(b)(1)(ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under § 682.605(b)(1)(ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

18. Section 682.610 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 682.610 Records, reports, and inspection requirements for participating schools.

(f) *Information sharing.* Upon request, a school shall promptly provide a lender or guarantee agency with any information it has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(g) *Reports to the Secretary.* With respect to each program for which a disclosure to a prospective student is required by 34 CFR 668.44 to be made using a form set forth in Appendix A. Part 668, a school shall, between October 1 and December 31 of each year, transmit to the Secretary—

(1) A completed copy of that form containing the most recent data required by Part 668 to be included on the form; and

(2) Information showing the total amount of charges for tuition, fees, equipment, books, and supplies for the program.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

Section 668.15 Additional factors for evaluating administrative capability

Comments: The majority of commenters objected to the provisions in this section that would authorize the initiation of an LST action against a school with a GSL and SLS default rate greater than 20 percent. Many commenters objected to use of this criterion to eliminate a school from participation in all Federal student financial aid programs. They believed that this factor alone was not an adequate indicator of a school's administrative capability. Many commenters also believed that a school should have the option of implementing a default reduction plan to reduce its default rate prior to action by the Secretary to terminate the school.

Discussion: Several changes have been made. The Secretary has revised this section to implement a multi-tiered approach that authorizes the initiation of an LST action beginning in 1991 if the school's default rate exceeds 60% (this standard to be lowered to 40% in increments of 5% by 1995), or if that rate exceeds 40% and has not been reduced by an increment of at least 5% from the preceding year's rate. Under §§ 682.604 and 682.606, schools with default rates over 30% would be subject to two mandatory default reduction measures—a *pro rata* refund policy and delayed certification of loan applications for first-time borrowers. Finally, under this section, schools with default rates over 20% would be required to implement default management plans established by the Secretary on a case-by-case basis, with components of the plan being drawn from Appendix D, recommendations of the school and guarantee agencies, and other sources. The school would be provided an opportunity for an informal hearing prior to imposition of a plan.

Comments: Several commenters disagreed with the use of a fiscal year default rate. They thought that a cumulative rate or a rate that reflected a longer time frame would be more equitable. Other commenters urged the use of a dollar-based rate, rather than a borrower-based rate, and a number of commenters urged that the rate take account of post-default collections. Some commenters also expressed concern about the quality of available data on defaults.

Discussion: No change has been made. The Secretary believes that using a fiscal year default rate is more equitable than using a cumulative rate because it does not penalize a school for a high default rate incurred before it took steps to reduce defaults. Indeed, the positive results of actions taken by a school to reduce its default rate would be readily evident from its fiscal year rates, but not from its cumulative rate. Further, a default that takes place more than two years after the borrower leaves school is unlikely to be attributable to the actions of the school and should therefore not be charged to the school.

A borrower-based rate has been retained in preference to a dollar-based rate to avoid numerous technical issues inherent in the latter approach, such as the calculation of outstanding balances, attribution of payments, capitalization of interest, and the like. A dollar-based rate would also tend to unfairly and artificially reduce the rates for longer programs, since graduates of those programs have loan balances that are much larger, relative to the loan balances of default-prone dropouts, than the graduates of shorter programs. Recognizing past problems with the quality of default-related data submitted to the Department by guarantee agencies, the Secretary has recently revised the reporting requirements for guarantee agencies to ensure that the data collected from all guarantee agencies on which actions would be taken under these regulations is both accurate and complete.

Comments: One commenter asked how deferments are treated in the default rate calculation.

Discussion: No change has been made. It is the entry of a loan into repayment that is relevant to the default rate calculation. Subsequent deferments are considered as falling within the repayment period. The end of a deferment period does not result in the borrower "entering repayment, even though the duty to make payments resumes at that time, since the borrower is considered to have been in repayment throughout the deferment period. Thus, a deferment granted a borrower after entering repayment on a loan in a given fiscal year is ignored in calculating the school's rate for that fiscal year. This is necessary both because not all deferments appear on the "tape dump" (the current source of the Secretary's default information) and because a default by a borrower after leaving deferment status may be too removed in time from the borrower's attendance at the school to be fairly charged to the school.

Comments: Many commenters claimed that it is unfair to place the burden of proof on the school to justify a high default rate. One commenter representing numerous lenders supported placing the burden of proof on the school, but recommended that a 50% default rate be used to trigger this rather than the 20% rate proposed in the NPRM. Many commenters objected to excluding the composition of the student body as an acceptable explanation for a high default rate. Other commenters wanted schools to have the option to deny certification of a loan, as well as require cosigners or credit checks for borrowers, to enable them to refuse loans to likely defaulters.

Discussion: A change has been made. Section 668.90 has been revised to clarify the defense that may be used to avoid LST sanctions. The Secretary believes that the burden of proof is appropriately placed on the school to demonstrate its administrative capability when a high default rate gives rise to a strong inference that this capability is lacking. At the high default rates specified in the final rule, this inference clearly arises. The recommendation that schools be allowed to require cosigners or credit checks, and to refuse to certify applications for otherwise eligible Stafford and SLS borrowers, would require legislative changes to implement, and thus are beyond the scope of these regulations.

Comments: Several commenters were disturbed by the possibility that schools with very few borrowers would be subject to sanctions based on their default rates.

Discussion: A change has been made. The Secretary recognizes that schools with very few borrowers could be placed at a disadvantage if they are judged under the default rate formula outlined in the NPRM, so he has revised that provision to evaluate a school with 30 borrowers or less entering repayment in a fiscal year based on a "rolling" three-year average default rate. In addition, it should be noted that an LST action allowed by this regulation against high default rate schools is not mandatory, and could be declined if a school's default volume is so low that the Department's resources would be more effectively employed in other ways.

Comments: A number of commenters recommended that the default rate calculation not treat as defaults, loans on which the borrowers begin or resume repayment after default.

Discussion: No change has been made. The fiscal year default rate is designed to yield information as to a school's performance in default-related matters. The use of post-default collection information would reduce the usefulness of the rate for this purpose by introducing factors unrelated to a school's default-related performance, such as the guarantor's effectiveness in collecting defaulted loans.

Comments: Several commenters asked whether a school would be given "credit" for defaulted loans that are purchased by that institution.

Discussion: A change has been made. The Secretary believes that a payment made by a school or related party to avoid a default is not an appropriate basis for excluding a loan from a school's default rate, and has revised this section to reflect that position.

Section 668.22 Distribution formula for institutional refunds and for repayment of disbursements made to the student for non-institutional costs

Comments: A number of commenters suggested that it would be inappropriate and unfair to establish, under proposed § 668.22(a)(3) (i) and (ii), two distinct refund attribution formulas—one for GSL, SLS, and PLUS loan recipients, and one for other students.

Discussion: A change has been made. Since the proposed revisions to § 668.22 were based on the application of a *pro rata* requirement to *all* schools, these regulations do not revise current § 668.22. Pursuant to § 682.606(b)(2) of these final regulations, a school is required to adopt a *pro rata* refund policy as one of two "core" default reduction measures only if its default rate exceeds 30%, and then only for certain borrowers and academic periods.

Section 668.44 Institutional information

Comments: A number of commenters suggested that the disclosures required by § 668.44 (c) through (f) of the NPRM should be reserved for institutions having "unacceptable" default rates. Many commenters agreed that the disclosures are needed, but suggested that they apply to all programs and all schools. Several commenters supported the Secretary's proposal to target these disclosures to vocational training programs, particularly given the aggressive marketing techniques employed by many trade and technical schools.

Discussion: No change has been made. While the provisions of current § 668.44 (a) and (b) are applicable to all schools, the Secretary believes that the dropout rate, placement rate, and State licensing examination pass rate disclosures, specified in § 668.44 (c) through (f), should be mandated only for a school that offers either an undergraduate non-baccalaureate trade program or another program (whether or not undergraduate non-baccalaureate) for which it makes a claim regarding job placement in order to attract prospective students. As stated in the preamble to the NPRM, the Secretary believes that adequate and accurate information on these matters is of critical importance to prospective students evaluating the quality of such programs. It should be noted that the provisions of § 668.44 (c) through (f) would not apply to a program that is primarily intended as preparatory for, and acceptable towards, a baccalaureate or equivalent level degree (*e.g.* Associate of Arts degree programs offered by community colleges), as distinguished from a course of study designed to provide a complete vocational training program.

Comments: Many commenters expressed concerns about the administrative burden imposed by the information collection and disclosure activities required by § 668.44 (c) through (e), and by the requirement that a school utilize and maintain the forms required by § 668.44(f) and Appendix A to Part 668. As a result a number of commenters recommended that the disclosures specified in the NPRM only be required of schools having unacceptable default rates.

Discussion: No change has been made. By statute, a school must disclose dropout rate, placement rate, and State licensing examination rate information for any programs as to which the school makes a marketing claim regarding job placement. *See* section 487(a)(8) of the HEA. This requirement applies to high default and low default schools alike. Given the fact that undergraduate nonbaccalaureate vocational training programs are marketed and purchased almost exclusively for their value in imparting employable vocational skills, the intent of section 487(b)(8) can be achieved only if the information listed in § 668.44 (c) through (f) is disclosed for each program of that type. Moreover, it is apparent that the market forces that should operate to reward effective programs and weed out the ineffective ones are not currently working. The Secretary believes that more informed consumer choice will do much to correct that problem, and thereby substantially reduce defaults, but this can only be accomplished if consumers have access to the information required under these provisions for all programs of this nature, good and bad. The Secretary, in § 668.44(f), has also specified that the required information described in § 668.44(c) (2) through (4) be disclosed to prospective students using the "track record" disclosure forms contained in Appendix A. The Secretary believes that the use of a standardized form, in an easy-to-read format and in language that can be readily understood by all students, will greatly enhance a prospective student's ability to fully consider the information provided, and to compare the various programs in which he or she may be interested.

Comments: One commenter indicated that a variety of factors could affect the decision of a graduate not to seek employment in the occupation for which the training was offered by the school. The commenter argued that the job placement rate calculation specified in § 668.44(c)(3) should exclude these graduates.

Discussion: A change has been made. The Secretary agrees that there may be valid reasons why a graduate of a program does not seek employment in the occupation for

which the training was offered. Section 668.44(c)(3) of these final regulations has been revised to allow a school to note in its disclosure the number of graduates who state in writing that they have chosen not to seek employent in the occupation for which they were trained. However, this provision does not allow the school to include a graduate who discontinues seeking such employment after an unsuccessful search.

Comments: One commenter recommended that the "completion rate" calculation in § 668.44(c)(4) include as completions borrowers who leave school to accept employment in the occupation for which the training was offered.

Discussion: A change has been made. Section 668.44(c)(4) has been revised to include as completions in the completion rate calculation those students who have not successfully completed the program (*i.e.*, graduated), but who have obtained full-time employment in the occupation for which the training was offered within 150% of the normal time for completion of the program.

Comments: One commenter suggested that, in using the documents specified in Appendix A to Part 668, as required by § 668.44(f), accommodation should be made for institutions that serve largely Spanish-speaking populations.

Discussion: A change has been made. Section 668.44(f) has been revised to permit the use of a foreign language version of the forms for students whose primary language is not English.

Comments: One commenter recommended that the Secretary, as part of these default reduction measures, require lenders to disclose to borrowers information about the role that secondary markets play in the GSL, SLS, and PLUS programs. The commenter also suggested that lenders be required to give notice to the guarantor, the school, and the student whenever a loan is sold or transferred to another eligible lender.

Discussion: No change has been made. While the Secretary agrees with the concerns expressed by the commenter, the suggestions are not within the scope of the final regulations. A separate NPRM, in which these issues will be addressed, is currently under development.

Section 668.90 Initial and final decisions—appeals

Comments: The comments received for this section mirrored the comments made under § 668.15. The major issues addressed by commenters were the use of a 20% default rate as a trigger to limit, suspend, or terminate an institution from participation in all Title IV programs, the use of a fiscal year default rate, and the relevance of the composition of a school's student body.

Discussion: A change has been made. These issues have been addressed in the preamble and elsewhere in this Appendix. This section has been revised to include the elements of the Appendix D defense that a school may prove to avoid LST sanctions. This defense prevents termination of a school if the school shows that it has acted diligently to implement the default reduction measures described in Appendix D of Part 668.

Appendix D—Default Reduction Measures

Comments: The Secretary received broad support for the idea that a school with a high default rate should adopt default reduction measures such as those contained in Appendix D. A number of school commenters noted that many of these measures were already part of the standard procedures. Many commenters were concerned about the administrative burden that would be imposed on a school performing some of these measures.

Discussion: A change has been made. To assist schools in identifying those measures appropriate for their circumstances, the Secretary has grouped the measures according to the cause of default that each is meant to address. Any school with a default rate over 20% could be required to implement a default management plan containing some of the measures in Appendix D, as well as other appropriate default reduction steps. These steps would also be selected to address the school's circumstances. In this manner, the Secretary and the school will be able to select those measures that require only the administrative effort necessary to adequately and efficiently address the school's particular causes of default.

Comments: One commenter was concerned that a school might be prohibited by State law from withholding an academic transcript of a former student. Another commenter argued that withholding a transcript would be counterproductive because, in the case of a student seeking employment, denying a request from a prospective employer for an academic transcript would prevent the borrower from acquiring a job, perhaps preventing the borrower from repaying the loan.

Discussion: A change has been made. The Secretary concurs with the objections raised and has deleted this measure from the final regulation.

Comments: Several commenters expressed concern over the suggestion in Appendix D that schools revise admission policies, as these policies, in the case of community colleges, are sometimes mandated by the State.

Discussion: A change has been made. The final regulation specifies that the school should revise its admissions policies in a manner that is consistent with applicable State law.

Comments: Many commenters requested clarifications about the applicability of the Fair Debt Collection Practices Act (FDCPA) to a school that followed the recommendation that it contact a borrower during his or her grace period or after the school received a copy of the lender's preclaims assistance request to urge the borrower to repay the loan.

Discussion: No change has been made. This provision specifies that the school's actions must be consistent with the FDCPA. The authority to interpret the FDCPA rests with the Federal Trade Commission (FTC), not with the Department of Education. In a letter from FTC's Division of Credit Practices to Louise G. Trubek, Executive Director, Center for Public Representation, dated September 12, 1988, the FTC indicated that pre-default collection efforts are not covered by the FDCPA.

Comments: Some commenters argued that, without notification to the school from the lender or guarantee agency that a borrower has made payments to resolve a delinquency, the school might continue efforts to urge the borrower to make payments after the delinquency is resolved, thereby damaging the collectibility of the loan. Other commenters expressed a more general concern that poorly informed or timed collection efforts by schools would do more harm than good.

Discussion: No change has been made. As noted in the NPRM, this default reduction step should be taken in cooperation with the lender to avoid confusing the borrower or damaging the collectibility of the loan. A school should always note in its communications with the borrower that, if the borrower has made payments to cure a delinquency, the school's notice should be ignored.

Comments: Several commenters supported the proposal that, under § 668.90, a school with a default rate over 20%, to avoid an LST sanction, would have to justify not adopting the practice of delaying the certification of a borrower loan application so that the borrower's proceeds were not delivered to the borrower or credited to the borrower's account until the borrower had attended the institution for 30–45 days during the period for which the loan was made. One commenter suggested applying this as a requirement for high default schools with dropout or cancellation problems. Numerous other commenters objected to this measure, expressing concern that it would negatively affect borrowers who need the proceeds from the loan for living expenses, and would create cash-flow problems at some schools.

Discussion: A change has been made. Section 682.603(c) has been amended to require each school with a default rate over 30% to delay certification of the loan application of each student for his or her first GSL or SLS loan for attendance at the school. The Secretary believes that the potential benefit of this measure justifies requiring all schools with default rates over 30% to take this step.

Section 682.410 Fiscal, administrative, and enforcement requirements

Comments: Several commenters supported the Secretary's proposal to establish a default rate that would trigger a guarantee agency's review of a school. However, many commenters suggested that the 15% default rate trigger was too low and should be increased to reduce the burden imposed on schools and agencies by this requirement.

Discussion: A change has been made. The Secretary has revised the NPRM by increasing from 15% to 20% the default rate that triggers a guarantee agency program review of a school. The final rule also excludes from mandatory review any school that is subject to a default management plan imposed by the Secretary under 34 CFR 668.15, and any school whose default rate of over 20 percent is not based on at least one cohort of loans entering repayment in a single fiscal year that totals $100,000 or more. These revisions significantly reduce the number of

program reviews that an agency would have been required to perform under the NPRM while preserving the effectiveness of this requirement as a default reduction tool.

The Secretary notes that, as guarantee agencies have previously been informed, the Department is receptive to proposals from individual guarantee agencies to employ specific selection criteria for program reviews that differ from the "top ten/2%" program review criteria in current § 682.410(c)(1)(ii)(A) and (B). If the Secretary is satisfied that an agency's proposed criteria represent an effective approach to the selection of schools for reviews, he will grant that agency a waiver from those provisions

Comments: Several commenters questioned the guarantee agencies' expertise to conduct program reviews of schools. Some commenters suggested that the reviews should be performed by professionally-trained auditors through program reviews by the Secretary or independent auditors hired by schools to review other Federal programs.

Discussion: No change has been made. Although the Secretary intends to increase Federal lender and school reviews, it is the Secretary's intent that guarantee agencies can and should assume a major responsibility for monitoring their program participants. The Secretary has provided guarantee agencies with extensive training in program review requirements and has developed a comprehensive site review guide for agency use.

Comments: One commenter recommended that the Secretary include a provision that would exempt from guarantee agency review any school that had lowered its default rate to below 15% even if its default rate exceeded 15% in the immediately preceding year.

Discussion: No change has been made. The Secretary believes that the increase from 15% to 20% in the default rate that triggers a guarantee agency review adequately addresses this concern.

Comments: Two commenters supported the requirement of guarantee agency program reviews of schools with excessive default rates, but thought that the review should be limited to the GSL, SLS, and PLUS programs, and should not include other Title IV programs.

Discussion: No change has been made. The provision requiring guarantee agency reviews of schools with fiscal year default rates in excess of 20% applies only to the GSL, PLUS, and SLS programs.

Comments: Several commenters questioned which agency would conduct the compliance program review for schools that deal with several guarantee agencies.

Discussion: No change has been made. An agency may either conduct a joint review of a school with another agency or establish a reciprocal agreement with the other agency. Under a joint review or a reciprocal agreement, each participating agency is responsible for the quality of the review. The Secretary recommends that all reciprocal agreements state that the performing agency will conduct the review in accordance with the OSFA site review guides, and that, as required, any unique requirements of each agency whose review response is to be satisfied by a review under the agreement will be included in each such review.

Section 682.411 Due diligence by lenders in the collection of guarantee agency loans

Comments: Some commenters recommended that, rather than requiring the lender to provide a copy of each preclaim assistance request to the school for attendance at which the loan was made, the lender should be allowed to provide this information to the last school attended by the borrower. The commenters noted that the last school attended by the borrower could provide more recent information to assist the lender in its collection efforts.

Discussion: No change has been made. The requirement that a lender provide a school with a copy of the preclaim assistance request is designed to alert the school of a potential default by one of its students, and to allow the school an opportunity to act in a timely manner to avert a default. Fairness requires that the school against whom a default will be charged have the opportunity to make a diligent effort to contact the borrower to encourage repayment.

Comments: Some commenters suggested that lenders be allowed to provide a periodic list to the school of delinquent borrowers for which the lender has requested preclaim assistance from the guarantor. Other commenters suggested that the guarantors, rather than lenders, provide this information to schools.

Discussion: A change has been made. The final regulations require the lender to notify the school within 30 days after it requests preclaim assistance. In this way, the regulations allow time for guarantors wishing to do so to provide schools with this notice on lenders' behalf, through the use of periodic lists. However, the Secretary believes that prompt notice to the school is necessary for any actions taken by the school to be meaningful in averting defaults, and is therefore requiring that notice reach the school within 30 days of the date of the lender's preclaim assistance request.

Section 682.604 Processing the borrower loan proceeds and counseling borrowers

Comments: Many commenters proposed that the lender, not the school, be responsible for counseling the student prior to the disbursement of the loan proceeds to the institution.

Discussion: No change has been made. The Secretary has declined to impose the responsibility of in-person counseling on the lender because the distance between many lenders and the borrowers they serve is often great. The Secretary believes that since a school will typically be in a better position than the lender to engage in face-to-face counseling, it is the most appropriate entity to provide entrance counseling. Moreover, lenders are already required to provide detailed disclosures to borrowers at the time of loan disbursement regarding the borrower's rights and obligations on GSL and SLS loans.

Comments: Several commenters indicated that they believe entrance counseling is redundant and ultimately ineffective because, in their view, early counseling does not make an impression on the student and does not significantly reduce defaults. Many other commenters supported the requirement of entrance counseling as an effective default reduction measure.

Discussion: No change has been made. The Secretary believes, and the experience of many schools confirms, that improving a borrower's understanding of the terms and conditions of the loan and impressing upon the borrower the importance of meeting his or her repayment obligations, at the time of receipt of loan proceeds, helps greatly in reducing defaults.

Comments: Several commenters suggested that the school be given the flexibility to schedule entrance counseling throughout the semester, or at least prior to the student's second loan disbursement, to avoid scheduling all counseling sessions with loan recipients during the registration period, when a substantial burden is already being imposed on the school's administrative resources.

Discussion: No change has been made. The Secretary believes it is imperative for students to receive loan counseling at, or prior to, the receipt of a GSL or SLS loan. The linkage of this counseling with the receipt of loan funds will impress upon the borrower the importance of the obligation to repay the money he or she is about to receive, thereby lessening the risk of default

Comments: Several commenters recommended that schools be allowed to use videotape presentations to counsel their students. Some commenters suggested that a videotape presentation followed up by a question and answer period with a financial aid officer would be an effective and efficient way to counsel borrowers.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the NPRM to allow for videotape presentations, and to require that the school provide each borrower an opportunity, after the entrance counseling session, to obtain answers to questions he or she may have regarding the loan.

Comments: Many commenters believed that requiring entrance counseling is too burdensome and costly for a school with a small financial aid staff and a large number of loan recipients. Other commenters expressed concern about the difficulty centralized financial aid offices would have in meeting with loan recipients at remote branches of the school, and suggested that the school be paid an administrative allowance to cover the extra burden.

Discussion: No change has been made. The Secretary believes that an institutional financial aid office can inexpensively reach its loan recipients through the use of group counseling sessions or videotapes.

Comments: One commenter recommended that the requirement in the NPRM that students in undergraduate non-baccalaureate vocational training programs be advised that they are obligated to repay their loans regardless of the outcome of their enrollment in the program, should be expanded to apply to all programs of study.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the regulations to make this requirement applicable to all programs of study.

Section 682.605 Determining the date of a student's withdrawal

Comments: Several commenters indicated that the proposed change to § 682.605(a) requires clarification.

Discussion: No change has been made. The amendment to § 682.605(a) simply clarifies that the date of a student's withdrawal, calculated under § 682.605(b), only relates to the institution's reports to lenders and to the date on which the institution's duty to pay a refund arises, not to the withdrawal date used for refund calculations. For this latter purpose, § 682.604 uses the student's last recorded day of attendance as 34 CFR 668.22 has done since January, 1988.

Section 682.606 School refund policy

Comments: Many commenters objected to the proposed amendment to § 682.606 requiring a school to employ a *pro rata* refund policy for a student receiving or benefiting from a GSL, SLS, or PLUS program loan who withdraws prior to the completion of the academic period for which the loan is made. These commenters believe that this requirement represented an unwarranted Federal intrusion into a school's administrative practices and would impose a significant increase in the administrative burden involved in refund calculations. Numerous commenters also argued that a *pro rata* refund was unfair in light of the substantial "up front" costs incurred by schools in enrolling a student and in offering a program that does not appreciably change when a student withdraws from school. A number of commenters argued that their current institutional refund policies, developed using standards approved by their accrediting agencies, are fair and equitable and do not unfairly penalize dropouts or contribute to loan defaults. Many commenters noted that the loss of revenue to the school that would result from the increased volume and dollar amount of refunds calculated using a *pro rata* policy would inevitably be passed along to students in the form of increased tuition costs. Several commenters suggested that the availability of a *pro rata* refund would encourage a student to withdraw when he or she encounters academic or financial difficulties. Several commenters recommended restricting the use of a *pro rata* policy to high default schools since the Secretary, in announcing the proposed rules, noted the linkage between a high level of dropouts and defaults. Some commenters recommended that the Department should not regulate the refund policy applicable to students who complete at least one half of their programs to reduce the administrative burden on schools and the intrusiveness of the rule, and in recognition both of the "up front" costs argument and the inapplicability of the "drop out reduction" rationale to a student that completes a substantial portion of the program before dropping out.

Discussion: A change has been made. Although the widely used practice of over-enrollment and the ability of many schools to quickly replace a dropout with a new enrollee militate strongly against the "up front costs" argument, the Secretary is requiring the use of a *pro rata* refund policy only when the default experience of the school requires that step to maintain GSL, SLS, and PLUS program integrity. Accordingly, this provision has been revised to require the implementation of a *pro rata* refund policy only by schools with default rates above 30 percent. Any school with a default rate at or below 30% must continue to use fair and equitable refund policies as defined in existing regulations. Further, the Secretary believes that the prospects for default are greater among those students who withdraw early in their programs, and that the aim of this rule should therefore be to remove the incentive for a school to enroll a student lacking a reasonable prospect for completing his or her program of study. The Secretary has accordingly revised the proposed rule to require the use of a *pro rata* policy only for a student whose withdrawal date occurs prior to the halfway point of the student's program, or the end of the first six months of the student's program, whichever is earlier. The Secretary believes that this targeted application of the *pro rata* refund rule will achieve the goals of the rule with a minimum of adverse effects. Also, the Secretary has revised the rule to permit the school to round upward to the nearest 10 percent the portion of the program deemed to have been completed by a student, to reduce administrative burden.

Comments: Several commenters from public institutions indicated that State law prevents them from applying a *pro rata* refund policy.

Discussion: No change has been made. The Secretary considers the use of a *pro rata* refund policy by those schools with default rates above 30 percent to be a necessary and appropriate administrative requirement for participation in the GSL, SLS, and PLUS programs. Therefore, schools that are subject to this requirement are required to implement a *pro rata* refund policy if they wish to continue to participate in those programs, regardless of the requirements of State law.

Comments: Many commenters objected to the imposition of a *pro rata* refund policy on the grounds that it would create inequities between loan recipients and students who do not receive loans or who do not receive any Title IV aid. Some commenters felt that the proposed regulations would force schools to establish multiple refund policies. Others considered that they would, as a matter of equity, be forced to apply a *pro rata* refund policy to all students. A number of commenters asserted that any refund policy mandated by the Secretary should encompass all students at an institution.

Discussion: No change has been made. The Secretary's legal authority to mandate refund policies at school is limited to students benefiting from GSL, SLS, or PLUS loans.

Comments: Some commenters argued that the implementation of a *pro rata* refund policy would have little impact on the default rate at a school, particularly if the school continues to be permitted to apply refund amounts to other sources of aid before returning loan funds to lenders. Other commenters indicated that, since students often use loan funds for non-institutional costs, a *pro rata* refund policy affecting only direct institutional costs, may result minimal increases in refunds for many students.

Discussion: No change has been made. These final regulations require high default schools to take steps, such as the implementation of a *pro rata* refund policy, to address the problem of defaults by dropouts. The primary purpose of the *pro rata* refund requirement is not to increase the dollar amount of loan funds returned to the lender, but to remove the incentive for high default schools to enroll students who are inadequately prepared and are therefore likely to quickly drop out and default. This rule also will provide an incentive for schools to take steps on their own to improve their completion rates.

Comments: A number of commenters suggested various measures to either complement or replace the implementation of the *pro rata* refund policy. Some commenters suggested that loans should be awarded incrementally as the student progresses through the academic term or that the aid be awarded after the student has successfully completed the term. Others felt that lenders should be required to disburse Part B loans according to dates recommended by the school. Still other commenters suggested requiring credit-worthy endorsers as a way to reduce defaults.

Discussion: No changes have been made. Implementation of these suggestions would require statutory amendments and therefore does not fall within the scope of these final regulations.

Comments: Many commenters maintained that the administrative fee that the school would be allowed to retain, pursuant to § 682.606(c)(1), would not cover all administrative expenses. Some suggested raising the amount to as much as $500.

Discussion: A change has been made. The revised rule allows a school to retain at least 10 percent of tuition and fees paid by a student that attends school at all during the loan period, in addition to the $100/5% administrative fee.

Section 682.607 Payment of a refund to a lender

Comments: A number of commenters stated that students often do not officially withdraw. Consequently, the school may not become aware of the student's withdrawal until the start of a subsequent academic period, or the school may not be able to identify the last date of attendance. Many of these commenters believe that the period for paying a refund to the lender should run from the start of the next academic period after that in which the borrower withdraw, as determined under § 682.605(b)(1)(ii). Other commenters urged the Secretary to retain the prior rule, which they read as requiring that a refund to be sent to the lender within 30 days of the date of the school's determination that the student has withdrawn.

Discussion: No change has been made. Current regulations treat the last recorded date of attendance as the dropout date for students who unofficially withdraw. 34 CFR 668.22. Under the prior regulations, with respect to an unofficial withdrawal, a refund was required to be sent within 30 days of the withdrawal date, *i.e.*, the last recorded date of attendance. This date could occur several

months before the end of the academic period in which the student ceased attendance. The Secretary does not believe this result is consistent with the administrative practices of many schools in monitoring enrollment status. However, the Secretary continues to be concerned with the length of time a refund remains unpaid, because the Secretary is continuing to pay interest benefits and special allowance on the full outstanding balance of the loan even though the funds are no longer needed by the borrower to pay educational expenses, and because a persistently inflated loan balance increases the risk of default. The Secretary believes that a school cannot be permitted to wait until the beginning of the next academic period to determine which students have unofficially withdrawn and pay their refunds. The Secretary also believes that, once the school has determined that the student has withdrawn, the school should expeditiously process any refund owed, and has therefore revised the regulations to require payment of a refund within 60 days of the date of the school's determination that the student has withdrawn. *See* §682.607(c)(2)(iv).

Comments: Several commenters suggested that the period in which a refund must be paid be extended from 30 up to 60 days. They believe that 30 days from the earlier of the dates specified in § 682.607(c)(1) does not provide sufficient time to allow for unexpected delays in processing refunds (*e.g.*, computer delays, the involvement of more than one office in the refund process, etc.), and that such a timeframe, immediately following the end of an academic period, could create undue administrative burdens.

Discussion: A change has been made. Section 682.607(c) now requires that the school must pay the lender a refund within 60 days of the earlier of the dates specified in § 682.607(c)(1) or, pursuant to § 682.607(c)(2), within 60 days after the last day of an approved leave of absence when the student does not return to school.

Comments: Several commenters questioned how the use of the term "semester" in § 682.607(c)(1)(ii) would apply to schools that do not use semesters.

Discussion: A change has been made. The final regulation uses the term "academic term" to clarify its applicability to quarters and trimesters.

Section 682.610 Records, reports, and inspection requirements for participating schools

Comment: Several commenters pointed out any change in the borrower's surname that the school was aware of would be very useful to the holder of the loan.

Discussion: A change has been made. This section in the final regulation has been revised to require a school to furnish upon request any information it has regarding the borrower's surname.

Comments: One commenter suggested that this provision would be an administrative burden for the school, requiring them to track former students.

Discussion: No change has been made. Nothing in this section requires a school to furnish any more information than it has on hand respecting the last known address, surname, employer and employer address of a borrower who attends or has attended the school.

[FR Doc. 89-13389 Filed 6-1-89; 3:51 pm]
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DEPARTMENT OF EDUCATION

34 CFR Part 682

Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Guaranteed Student Loan (GSL) and PLUS programs (34 CFR Part 682). The proposed regulations are needed to implement elements of the Secretary's default reduction initiative.

Note: Pub. L. 100-297 enacted April 28, 1988, has renamed the Guaranteed Student Loan (GSL) Program, the Stafford Loan Program. This change will be reflected in a later document.

DATES: Comments must be received on or before August 4, 1989.

ADDRESSES: Comments should be addressed to Pamela A. Moran, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW (Room 4310, ROB-3), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe or Pamela A. Moran, Telephone Number (202) 732-4242.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1987 the Secretary announced a new policy initiative designed to reduce defaults in the GSL and Supplemental Loans for Students (SLS) Programs. On Friday, September 16, 1988, the Secretary published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) (53 FR 36216) advancing a number of regulatory default reduction proposals. The Secretary is publishing in this issue of the **Federal Register** final regulations implementing those proposals, with significant revisions resulting from the numerous public comments received in response to a November 3, 1988 request for public comment (53 FR 44514), and to the September 16, 1988 NPRM. Those comments and the Secretary's continued review of the default issue revealed the need for several additional regulatory measures addressing certain aspects of the default problem. These proposed rules would implement those measures.

Regulatory Changes

These proposed regulations would make two important changes in the GSL and SLS programs.

(1) An assignee of a loan would be required to notify the borrower of the assignment if the borrower is thereby required to send payments to a different party.

(2) A private school that offers an undergraduate nonbaccalaureate vocational training program would be required to enter into a "teachout" agreement with another school, to ensure that students at the private school will not be prevented from completing their studies if the school closes.

A more detailed explanation of these changes follows.

Section 682.208 Due diligence in servicing a loan

The Secretary proposes to amend § 682.208 to require the assignee of any loan to notify the borrower, in writing, of the assignment, if the transaction results in a change in the party to whom the borrower must make payments. A similar requirement has been in effect in the Federal Insured Student Loan Program since 1970. 34 CFR 682.508(b)(2)(ii).

The Secretary has been advised repeatedly by schools, borrowers, and guarantee agencies that a significant cause of defaults is borrowers' confusion over who holds their loans. To ensure that an assignment causes a minimum of disruption to the borrower's repayment of the loan, the proposed rule would require that notice of the assignment be provided prior to or simultaneously with the completion of the assignment transaction.

Section 682.610 Records, reports, and inspection requirements for participating schools

The Secretary proposes to add a new paragraph (h) to this section. This provision would require each private school that offers an undergraduate nonbaccalaureate vocational training program to enter into an agreement with another school, under which the latter school would agree to offer each borrower enrolled in the private school an opportunity to complete his or her program of study, if the private school closes. These "teachout" agreements would do much to alleviate the hardships to students, and resulting defaults, caused by sudden school closings. These arrangements are sometimes, but by no means invariably, undertaken now.

The proposed regulation would apply this requirement only to private schools offering undergraduate nonbaccalaureate vocational training programs. In recent years, virtually every school that has closed in the middle of an academic term without provision for a teachout falls in this category. The Secretary therefore believes that applying this requirement just to schools in this category provides effective protection for students and ED against abrupt school closings without imposing unnecessary administrative burdens.

The Secretary believes that requiring a "teachout" agreement would be the most feasible and inexpensive way to ensure that the taxpayers and students are protected against abrupt school closings. A good school has a strong interest in the integrity and reliability of the sector of postsecondary education to which it belongs, so that it should be willing to assist the Secretary in providing this protection through its participation in a "teachout" agreement with another school in its area. Accrediting commissions have a similar interest in the performance of their respective sectors, and should consider establishing "teachout" agreements as an accreditation requirement.

Moreover, it would not be unduly expensive for a school to obtain a surety bond, if necessary, indemnifying the school agreeing to a "teachout" arrangement for the cost the latter may incur in carrying out its obligations thereunder. Such a bond would almost certainly be less expensive to obtain than a bond indemnifying the Secretary for all Federal student financial aid program funds disbursed to students at the school during a period in which it closes. This latter alternative, which has often been suggested as a means of protecting the taxpayer from the costs of closed schools, also lacks the consumer protection features of the proposal included here. Nevertheless, the Secretary is particularly interested in comments as to the fairest and most efficient means of addressing the issue of school closings. One alternative to the proposal for "teachout" agreements might be to require schools to participate in pooled-risk arrangements that provide full refunds to students at closed schools, such as are in effect now in several States for proprietary schools. The Secretary welcomes comments on this approach, and any other proposals to address this issue.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive

Order 12291. They are classified as nonmajor because they do not meet the critieria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

Certain reporting, recordkeeping, and compliance requirements are imposed on guarantee agencies, lenders, and schools by the regulations. However, these requirements would not have a significant impact because they would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Section 682.208(e) contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the commend period, in ROB-3, Room 4310, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 1, 1989.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Lauro F Cavazos,

Secretary of Education.

The Secretary proposes to amend Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

2. Section 682.208 is amended by adding a new paragraph (e) to read as follows:

§ 682.208 Due diligence in servicing a loan.

(e) If the assignment of a GSL, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignee of the loan shall, prior to or simultaneously with its receipt of a legal interest in the assigned loan, provide notice to the borrower of the assignment, the identity of the assignee, and the name and address of the party to whom subsequent payments must be sent. For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(9)(ii).

3. Section 682.610 is amended by adding a new paragraph (h) to read as follows:

§ 682.210 Records, reports, and inspection requirements for participating schools.

(h) *"Teachout" agreements.* (1) A private school that offers an undergraduate nonbaccalaureate program designed to prepare students for a particular vocational, trade, or career field shall at all times have in effect a "teachout" agreement with another school (the teachout school) as a condition for participation in the GSL, SLS, and PLUS programs.

(2) The "teachout" agreement shall contain the following provisions:

(i) The teachout school shall agree that, if the private school terminates its teaching activities in a course of study in which it enrolls a student to whom or on whose behalf a GSL, PLUS, or SLS loan is made for attendance at the private school, the teachout school will offer each such student enrolled in that course of study at the private school when the teaching activities are terminated a reasonable opportunity to promptly resume and complete his or her course of study, or a substantially similar course of study, in the geographic area in which the private school provided the original course of study.

(ii) The teachout school shall agree to provide this opportunity without charge to the student, except that the teachout school may assess the student charges for periods of enrollment that the student was required to undertake to complete the original course of study at the private school, as the student incurs those charges, up to the amount not yet paid by the student, that the private school would have been entitled to collect for those periods of enrollment from the student, had the private school not terminated its teaching activities.

[FR Doc. 89-13390 Filed 6-1-89; 3:51 pm]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.